AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Request for Waiver; Leigh Marie, LLC

Action Requested: Other Discussion; Public Hearing Date

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Request for Waiver Pursuant to Gunnison County Standards & Specifications for Road & Bridge Construction Re: Easement over Waunita Hot Springs Ranch, Inc. A public hearing date, time and place needs to be determined.

Fiscal Impact:

Submitted by: Liz Mense **Submitter's Email Address:** EMense@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok to place on agenda to determine and set date and time for hearing db 12/12/18

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 12/12/2018 Certificate of Insurance Required Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 12/12/2018

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 10

Agenda Date: 12/18/2018

Revised April 2015

The
Klug Law Firm, LLC

Noah Klug
Attorney & Counselor at Law

Licensed in Colorado and Missouri

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December 5, 2018

Gunnison County
c/o David Baumgarten, County Attorney
200 E. Virginia Avenue
Gunnison CO 81230

Via regular mail and e-mail to dbaumgarten@gunnisoncounty.org

Re: Leigh Marie, LLC Request for Waiver

Dear David:

As you know, I have been retained by Leigh Marie, LLC ("Leigh Marie")[1] to obtain the necessary permit for use of the east access (the "Eastern Easement") serving its property. The Eastern Easement runs through property owned by Leigh Marie's neighbor, Waunita Hot Springs Ranch, Inc. ("Waunita"), and is improved with a historic road (the "Access Road"). The purpose of this letter is to formally request that the County waive any further requirements for issuance of the access permit for the Access Road such that Leigh Marie can use the road.

The waiver process is found in The Gunnison County Standards and Specifications for Road and Bridge Construction ("R&B"). With exceptions that do not apply here, any waiver must be approved by the Board of County Commissioners (BOCC) in writing. R&B 1.9(A). No waiver can be granted until and unless certain fees have been paid to the County. R&B 1.9(D). I am enclosing a check in the amount of $250 to satisfy this requirement.

Per R&B 1.9(E), Leigh Marie identifies the following:

1. **Name, address and telephone number of the applicant:**

   Leigh Marie, LLC
   c/o The Klug Law Firm, LLC
   PO Box 6683
   Breckenridge CO 80424

[1] Previous correspondence was also sent on behalf of Leigh Marie's predecessor in interest, Mile 200, LLC.

2. Identification of the subject property and road:

The Access Road has existed in some form since the 1800s. There was a lawsuit styled The Board of County Commissioners of the County of Gunnison, Colorado v. Mile 200, LLC et al., 2009CV113, District Court, Gunnison County, Colorado that concerned, among other things, a dispute between Leigh Marie and Waunita relating to the Eastern Easement and the Access Road. As pertinent here, Leigh Marie and Waunita entered into a stipulation (*i.e.* agreement) fixing the location of the Eastern Easement and the Access Road. A true and accurate copy of the stipulation dated May 9, 2013, is attached as **Exhibit 1**. As shown in Exhibit 1, the Court entered the stipulation as an enforceable order. Leigh Marie requests a waiver with respect to the Access Road as described in Exhibit 1.

3. A specific description of the requested waiver (including relevant, proposed construction plans):

In the aforementioned lawsuit, the parties entered into additional stipulations that were also adopted as orders of the Court. One of these stipulations allowed Leigh Marie to perform work on the Access Road after receiving permits from the County. Without rehashing what was a contentious matter, Leigh Marie admittedly performed some of the work without first obtaining the permits. This resulted in Leigh Marie's principal, Scott Wagner, being found in contempt of court. A true and accurate copy of the Court's contempt order is attached as **Exhibit 2**. As required by the order, Mr. Wagner paid penalties imposed by the judge, including Waunita and the Countys' costs and attorney's fees. He and Leigh Marie are now seeking to move on from that unfortunate episode by applying for the needed access permit.

Leigh Marie applied to the County for the access permit for the Access Road in the form of my letter dated September 7, 2018, a true and accurate copy of which is attached as **Exhibit 3**. As discussed in that letter, the County's regulations state that, if work is done before issuance of the required permit(s), "no permit shall be issued until the applicant … remedies any damage caused." R&B 1.3. During the contempt proceedings, Waunita's principals, the Pringles, testified about the damages they suffered because of the unpermitted work, and the Court addressed these issues at length in its order (Exhibit 2). In my second letter to the County dated October 23, 2018, a true and accurate copy of which is attached as **Exhibit 4**, Leigh Marie reasonably offered to remedy the issues identified by the Pringles and determined by the Court. Specifically, Leigh Marie offered to narrow the road surface to the width of the right-of-way (which the Court found was between 9 and 11 feet as shown in photographs admitted in Court as Exhibit AA), remove any rocks or other debris placed outside the easement, address any drainage issues, and remove any ruts. You responded that the County would like Waunita to agree to the work.

As explained in our correspondence, Leigh Marie believes that the County would be improperly abdicating its authority were it to condition approval of the permit on Waunita's agreement to allow work in the Eastern Easement. Waunita has shown an unwillingness to cooperate in any way with Leigh Marie's efforts to finalize the use of the Access Road because it admittedly does not want the road to be used notwithstanding Leigh Marie's easement rights. In any event, Leigh Marie made a good faith effort to resolve this matter by having me discuss the

matter with Waunita's counsel, Rufus Wilderson, on two separate occasions (in addition to the conference call that you arranged with County staff) and eventually sending him a letter, on which you were copied, dated October 31, 2018, wherein Leigh Marie requested Waunita's approval for the work. A true and accurate copy of this letter is attached as **Exhibit 5**. Mr. Wilderson did not respond to the letter for Waunita.

Leigh Marie now finds itself in a Catch-22. It cannot use the Access Road without the necessary permit … it cannot obtain the permit without remedying damage caused by previous unpermitted work due to the County regulation at issue … and it cannot remedy the damage because Waunita will not cooperate in its good faith efforts to do so. This is an extremely inequitable situation and the result is a taking of Leigh Marie's lawful right to use the Access Road. Therefore, Leigh Marie asks the BOCC to waive the requirement in R&B 1.3 that it "remed[y] any damage caused" by prior unpermitted work such that no further work is required for issuance of the access permit for use of the Access Road.

As disclosed by the Court's order (Exhibit 2) and discussed in my second letter (Exhibit 4), the Pringles agreed to Leigh Marie "smoothening" the road and the contempt was a mere failure to obtain the necessary permit. While the County obviously has an interest in its regulations being followed, it must consider the "relative hardship" between Leigh Marie and Waunita such that it does not "become a party to extortion" in the form of Leigh Marie being forced to go to unreasonable lengths to obtain a simple access permit or constructively being denied the permit altogether. See Golden Press, Inc. v. Rylands, 235 P.2d 592, 595 (Colo. 1951); Hargreaves v. Skrbina, 662 P.2d 1078, 1080 (Colo. 1983). Because Leigh Marie simply cannot comply with the requirement to remedy the damage despite good faith efforts to do so, the County should find that the relative hardships favor Leigh Marie and waive the requirement.

4. A detailed explanation of why the proposed waiver is warranted by site specific conditions which create an unusual aspect or feature not shared by property in general:

The proposed waiver is warranted because Waunita, the owner of the property subject to the easement, will not agree to reasonable work being done to address the issues that it raised in court proceedings such that it is impossible for Leigh Marie to comply with R&B 1.3.

5. Explanation of why the proposed waiver:

a. Would not adversely affect the safe, efficient and orderly movement of motorized and non-motorized traffic:

There is no public traffic on the Access Road and the road has existed historically for more than a century without issue.

b. Would not adversely affect health or safety:

The unpermitted work addressed previous safety issues with the Access Road. The road is now in a generally safe condition. Allowing Leigh Marie to use the road in its current condition would not adversely affect safety.

c. Would not cause substantial injury to the owner or occupant of adjacent land(s):

There are no adjacent lands that would be affected by the access permit. Leigh Marie has a right to use the Eastern Easement as shown by Exhibit 1. Using the easement would not harm Waunita, which agreed to use of the easement. Indeed, the current inability of Leigh Marie to use the easement actually injures Leigh Marie by taking its use rights.

d. Would not cause substantial injury to the environment:

Leigh Marie is not proposing to do any work, so there would be no harm to the environment. To the contrary, if any additional work were done, that would be more detrimental to the environment than simply leaving the Access Road as-is.

e. Would provide the functional equivalent of these Standards and Specifications:

The requirement to remedy damage exists for the benefit of Waunita. Leigh Marie has fairly offered to remedy the damage as determined by the Court, but Waunita has not been cooperative and will not allow any work to be done in the Eastern Easement. In this circumstance, Waunita has waived the right to have any damage addressed.

Pursuant to R&B 1.9(G), Leigh Marie hereby requests that the BOCC set a date, time and place for a public hearing on this petition within fourteen days. Leigh Marie further request that the Public Works Department publish the required notice and provide them with a copy thereof for mailing.

Very truly yours,

/s/Noah Klug
Noah Klug

Ec: Scott Wagner

Encl:

Check # 3136 in amount of $250
Exhibit 1: Stipulation dated May 9, 2013
Exhibit 2: Contempt Order (including findings as to damage)
Exhibit 3: Letter to County dated September 7, 2018
Exhibit 4: Letter to County dated October 23, 2018
Exhibit 5: Letter to Waunita dated October 31, 2018

EXHIBIT
1

District Court Gunnison County, Colorado Court Address: 200 E. Virginia Ave. Gunnison, CO 81230	DATE FILED: May 9, 2013 4:48 PM FILING ID: 33CDE15F CASE NUMBER: 2009CV113
Plaintiff: THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, a political subdivision of the State of Colorado v. **Defendants:** MILE 200, LLC, a Colorado limited liability company and LEIGH MARIE, LLC, a Colorado limited liability company v. **Intervenor:** Waunita Hot Springs Ranch, Inc., a Colorado corporation	▲ COURT USE ONLY ▲
Attorney for Defendants: Robert T. Hoban Jean E. S. Gonnell Hoban & Feola, LLC 1626 Wazee Street, Suite 2A Denver, CO 80202 (303) 674-7000 Fax: 303-382-4685 **Attorneys for Intervenor:** WILDERSON LOCK & HILL, LLC Rufus O. Wilderson, Atty. Reg. #: 14361 525 North Main Street Gunnison, CO 81230 Phone Number: 970-641-1903 Facsimile Number: 970-641-1943 E-mail: rwilderson@lawoftherockies.com	Case No. 2009CV113 Div.: Ctrm.:

STIPULATION BETWEEN DEFENDANTS AND INTERVENOR

Defendants Mile 200, LLC and Leigh Marie, LLC ("Defendants"), by and through their counsel, Hoban and Feola, LLC, and Waunita Hot Springs Ranch, Inc. ("Intervenor"), by and through its counsel, Wilderson, Lock & Hill, LLC, submit this Stipulation between Defendants and Intervenor and respectfully request the Court to adopt this Stipulation as an Order of the Court.

Intervenor and Defendants acknowledge, agree and stipulate as follows:

1. Pursuant to a Warranty Deed executed February 10, 1962 (the "Pringle Deed"), Carl E. Bolin and Janet Bolin (the "Bolins") conveyed to Rodrick F. Pringle, Jr. and Junelle Pringle (the "Pringles") a 60 acre tract of land legally described as the S½ SE¼ SE¼ of Section 10, and the SW¼ SW¼ of Section 11, Township 49 North, Range 4 East of the N.M.P.M. in Gunnison County, Colorado. The Pringle Deed was recorded on March 20, 1962 at 11:15 a.m. at Reception No. 251029. A true and correct copy of the Pringle Deed is attached as Exhibit A.

2. Waunita is the successor in interest to the Pringles under the Pringle Deed. Waunita has acquired other lands in addition to those described in the Pringle Deed, and now owns a 213 acre tract of land in the E½SE¼ of Section 10, W½SW¼ of Section 11, N½N½ of Section 15, and the NW¼NW¼ of Section 14, Township 49 North, Range 4 East of the N.M.P.M. (the "Waunita Property"). The Waunita Property is depicted on the Improvement Survey Plat attached as Exhibit B (the "Improvement Survey Plat"). The parties acknowledge and agree that the Improvement Survey Plat is an accurate depiction of the Waunita Property and the roads, improvements, and section lines shown thereon.

3. Pursuant to a Warranty Deed executed January 1, 1962 (the "Horvath Deed") the Bolins conveyed to Joseph G. Horvath and Julia G. Horvath (the "Horvaths") a 180 acre tract of land legally described as the S½SW¼, W½SE¼, N½SE¼SE¼ of Section 10, Township 49 North, Range 4 East of the N.M.P.M.. The Horvath Deed was recorded on March 20, 1962 at 11:30 a.m. at Reception No. 251032. A true and copy of the Horvath Deed is attached as Exhibit C.

4. Defendant Leigh Marie, LLC is the successor in interest to the Horvaths under the Horvath Deed, and now owns the 180 acre tract of land described therein (the "Defendants' Property").

5. Defendants' Property is adjacent to the western boundary of the eastern portion of the Waunita Property, and adjacent to the northern boundary of the western portion of the Waunita Property.

6. Defendants claim two easements over Waunita Property that provide access to the Defendants' Property.

7. The first, the "Western Easement," was created pursuant to a "Highway Easement Agreement" dated May 6, 1963 and recorded on June 19, 1963 at Reception No. 255352. A true and correct copy of the Highway Easement Agreement is attached as Exhibit D. Pursuant to the Highway Easement Agreement, John S. Waters and Lois S. Waters (the "Waters") granted a permanent 30 foot access easement to the Horvaths per the terms and for the consideration stated therein.

8. With respect to the Western Easement, the parties stipulate and agree that:

a. The road depicted on the western portion of Waunita Property on the Improvement Survey Plat and labeled as the "Adjoiner's Driveway" is the road intended for use with respect to the Western Easement;

b. Although the "Adjoiner's Driveway" is located on the west side of Little Creek, and not the east side of Little Creek as described in the Highway Easement Agreement, both parties waive any right to move or require the other party to move that road;

c. Defendant Leigh Marie, LLC is a successor in interest to the rights and obligations of the Horvaths under the Highway Easement Agreement;

d. Waunita is the successor in interest to the rights and obligations of the Waters under the Highway Easement Agreement; and

e. There are no other documents or agreements affecting the rights or obligations of Defendants or Waunita with respect to the Western Easement.

8. The second, the "Eastern Easement," was created pursuant to the Horvath Deed. Pursuant to the Horvath Deed, the Bolins conveyed the Defendants' Property to the Horvaths "together with an easement over the present road running over and across the SW¼ of the SW¼ of Section 11" in order to provide the grantees "with the right of ingress and egress to the lands above described from Gunnison County Road No. 328."

9. With respect to the Eastern Easement, the parties stipulate and agree that:

a. Gunnison County Road No. 328 is now known as County Road 887;

b. The road depicted on the eastern portion of Waunita Property within Section 11 on the Improvement Survey Plat as "Access Easement" is the "present road running over and across the SW¼ of the SW¼ of Section 11" referred to in the Horvath Deed;

c. Defendant Leigh Marie, LLC is the successor in interest to the rights and obligations of the Horvaths under the Horvath Deed;

d. The Access Road, as described in the Horvath Deed, is limited to the SW1/4SW1/4 of Section 11;

e. The Horvath Deed gives the Defendants no right to use any portion of the Waunita Property outside of the physical boundaries of the Access Road as that road existed on January 1, 1962 in the SW1/4SW1/4 of Section 11;

f. The Access Road runs from County Road 887 in the southern part of the Waunita Property in the northwest quarter of Section 14 to the eastern edge of the Defendants' Property at the eastern boundary of Section 10.

g. The Access Road passes through the western half of the NW1/4NW1/4 of Section 14, and the western half of the SW1/4SW1/4 of Section 11.

h. County Road 887 is not located in Section 11. Rather, it is located further south in Section 14. See Improvement Survey Plat.

i. The Parties agree that even though the Access Road has been widened from the condition that existed on January 1, 1962, Defendants may use the Access Road as its exists on the date of this Stipulation in accordance with the terms of the Eastern Easement and this Stipulation.

j. Defendants acknowledge and agree that any use of the Eastern Easement must be properly permitted and Defendants will acquire such permits prior to any such use. Intervenor acknowledges and agrees that, so long as such use is properly permitted, such use is an acceptable use so long as Defendant's use of the easement is reasonably necessary for the beneficial use of Defendants' property, and provided that such use does not cause unreasonable damage to or unreasonably interfere with the use and enjoyment of the Intervenor's property. See, Lazy Dog Ranch v. Telluray Ranch Corp., 965 P.2d 1229, 1238 (Colo. 1998). The Parties further note that any and all claims in this action concerning the scope of uses permitted under the Eastern Easement are being dismissed without prejudice, as set forth herein.

k. The Parties covenant and agree that they will collaboratively work to improve and/or adjust the Access Road conditions, as necessary, by mutual agreement; provided, however, the physical location and/or width of the Access Road may not be changed

without Intervener's consent, which consent may be granted or denied in Intervener's sole discretion.

10. The property conveyed to the Pringles in the Pringle Deed was "subject to a certain Easement of right-of-way 50 feet in width over and across the SW1/4SW1/4 of said Section 11, said 50 foot Easement of right-of-way being adjacent to the easterly boundary line of said SW1/4SW1/4 of said Section 11 as particularly described in that certain Easement dated November 1, 1961, and recorded in Book 356 at Page 51 of the Gunnison County records from Carl E. Bolin and Jane Bolin to Maxwell L. Fleetwood and Mary Clytia Fleetwood" (the "Fleetwood Easement"). A true and copy of the Fleetwood Easement is attached as Exhibit E. The parties acknowledge and agree that:

a. The location of the Fleetwood Easement is depicted on the Improvement Survey Plat at the far eastern edge of the Waunita Property, on the opposite side of the SW1/4SW1/4 of Section 11 from the Access Road;

b. The Fleetwood Easement expressly limits its use to allowing the Fleetwoods and their successors with access across the encumbered land for the purpose of watering their livestock;

c. The easement was executed and recorded immediately following the recordation of a deed from the Bolins to Maxwell L. Fleetwood and Mary Clytia Fleetwood (the "Fleetwoods"), conveying, inter alia, the NW1/4SW1/4 of Section 11 and the NE1/4SE1/4 of Section 10 (the "Fleetwood Tract"). A true and copy of the Fleetwood Deed is attached as Exhibit F.

d. Waunita is currently the owner of NW1/4SW1/4 of Section 11 and the NE1/4SE1/4 of Section 10.

e. Neither Defendant is a successor-in-interest to the Fleetwood Easement; and

f. The Fleetwood Easement does not abut Defendants' Property at any point.

11. Irrespective of the fact that Pringle Deed was recorded prior to Horvath Deed, the grantees under the Pringle Deed had inquiry notice of the existence of the Access Road and the Eastern Easement.

12. Irrespective of the fact that the Eastern Easement is expressly limited to the SW¼SW¼ of Section 11, Defendants nonetheless have an easement implied by prior use to use that portion of the Access Road located in Section 14.

13. With respect to Intervenor's claim that Defendants' widening of portions of the Access Road constitutes a trespass, Defendants and Intervenor agree that they will work cooperatively to identify any such areas and ameliorate any damages caused to the Waunita Property thereby.

14. Defendants agree that the Western Easement and Eastern Easement are for use for ingress and egress and will not be used for parking vehicles or equipment or for storage of personal property.

15. Intervenor hereby dismisses, with prejudice, Intervenor's claims that Defendants' conduct on or around August 6, 2011 and thereafter, detailed in the Complaint in Intervention, constituted a trespass and nuisance.

16. Defendants and Intervenor hereby dismiss, without prejudice, (i) Intervenor's claim that Defendants' present and intended use of the Easement is an unreasonable increase in the scope of the Easement; (ii) Defendants' claim that its use of the Easement is a vested property right; and, (iii) Defendants' claim that its use of the Eastern Easement includes commercial uses.

17. Intervenor hereby dismisses, without prejudice, Intervenor's claims that (i) Defendants' alleged unpermitted activities on Defendants' Property and alleged destruction of the fence between Defendants' Property and the Forest Service lands to the North constitutes a trespass to any Waunita's grazing rights on Defendants' Property, as may be set forth in the "Highway Easement Agreement" dated May 6, 1963, and recorded with Gunnison County on June 19, 1963 at Reception No. 255352

18. Defendants and Intervenor agree that Intervenor's claim that Defendants have no right to use the Access Road to access the Defendants' Property for uses of the Defendants' Property that are in violation of the Gunnison County Land Use Resolution, remains for disposition in this case.

Respectfully submitted this 8th day of May, 2013.

Attorneys for Intervenors WAUNITA HOT SPRINGS, INC.

WILDERSON LOCK & HILL, LLC

By: /S/ Rufus Wilderson
Rufus O. Wilderson

Attorneys for Defendants, MILE 200, LLC AND LEIGH MARIE, LLC

HOBAN & FEOLA, LLC

By: /S/ Robert T. Hoban
Robert T. Hoban

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 9th day of May, 2013, I served a true and correct copy of the foregoing on the following parties via ICCES.

Robert T. Hoban Hoban & Feola, LLC 1626 Wazee St., Ste. 2A Denver, CO 80202 *Attorney for Mile 200, LLC and Leigh Marie, LLC*	David Baumgarten Art Trezise 200 East Virginia Gunnison, CO 81230 *Attorneys for Board of County Commissioners of the County of Gunnison, Colorado*

/S/ Jenny Bancroft
Jenny Bancroft

DISTRICT COURT, GUNNISON COUNTY, COLORADO Court Address: 200 E. Virginia Avenue, Gunnison, CO, 81230	
Plaintiff(s) COUNTY ATTORNEYS OFFICE OF GUNNISON COUN v. **Defendant(s)** MILE 200 LLC et al.	DATE FILED: May 11, 2013 3:20 PM CASE NUMBER: 2009CV113 ⚠ **COURT USE ONLY** ⚠ Case Number: 2009CV113 Division: 2 Courtroom:

Order Approving Stipulation Between Defendants and Intervenor

The motion/proposed order attached hereto: GRANTED.

Issue Date: 5/11/2013

JAMES STEVEN PATRICK
District Court Judge

EXHIBIT
2

Gunnison District Court Gunnison County, State of Colorado Court Address: PO Box 643, 541 4th St. Ouray, CO 81427	DATE FILED: February 15, 2018 4:50 PM CASE NUMBER: 2009CV113
The Board of County Commissioners of the County of Gunnison, Colorado, et al Plaintiffs v. **Mile 200, LLC, et al** Defendants v. **Waunita Hot Springs Ranch, Inc.** Intervenors	▲ COURT USE ONLY ▲ Case Number: **09 CV 113** Div: 4
Order on Motion for Contempt Citation	

This matter is before the Court on Intervenor Waunita Hot Springs Ranch's ("Waunita") Motion for Citation of Contempt of Court filed August 8, 2017. Citations to Defendants Leigh Marie, LLC, ("Leigh Marie") and Scott Wagner individually, issued on August 9, 2017. The Court conducted hearings on October 19, and 27, 2017. Based on the foregoing and other relevant authority, the Court makes the following findings, conclusions, and orders.

I. General Legal Standards

1. Waunita's Motion for Citation was filed pursuant to C.R.C.P. 107, and Waunita seeks both remedial and punitive sanctions for indirect contempt.

2. The elements of remedial contempt are: (i) that the party was subject to and aware of a court order; (ii) that the party failed to obey the order; and (iv) that the party has the present ability to comply with the order. *See In re Marriage of Cyr & Kay*, 186 P.3d 88, 92 (Colo. App. 2008); see also *People v. Allen*, 868 P.2d 369, 383 at n.10 (Colo. 1994); *In re Marriage of Nussbeck*, 974 P.2d 493, 498 (Colo. 1999). When the court imposes remedial contempt, it must do so in writing or on the record, and must set forth the particular means by which the person may purge the contempt. *In re Marriage of Cyr & Kay*, 186 P.3d at 92.

3. A Court asked to impose punitive sanctions should consider (i) whether the defendant subject to a court order; (ii) whether the did the defendant has or had the ability to comply with the order; (iii) whether the defendant willfully failed or refused to comply with the order; and the court must

expressly consider whether the defendant's conduct was offensive to the authority and dignity of the court. *See generally* C.R.C.P. 107; *Cyr & Kay*, 186 P.3d at 88.

II. Background and Findings of Fact

A. Prior Litigation and Court Orders

4. Defendant Mile 200, LLC, was the record owner of a 180-acre parcel of land in Gunnison County, Colorado ("The Mile 200 Property"). Defendant Leigh Marie, LLC, is a successor in interest to that parcel. Defendant Scott Waggoner is a principal of the latter entity.[1]

5. Plaintiff Board of County Commissioners of Gunnison County ("Gunnison County") is a local government entity, the land use code of which governs certain uses of the Mile 200 Property. Intervenor Waunita Hot Springs Ranch, Inc. ("Waunita"), owns a parcel of land adjacent to the Mile 200 Property.

6. The Waunita's parcel is situated primarily south and east of the Mile 200 Property. The Mile 200 Property is also bounded on the west by public land managed by the United States Forest Service. Further south of both the public land and Waunita's parcel is Gunnison County Road 887. The Mile 200 Property can only be accessed by roads over the public land ("the Western Access"), and a road that now runs completely between the Mile 200 Property over the Waunita parcel ("the Eastern Access") to County Road 887 that is an extension of a previous easement resulting from the "Horvath Deed."

7. Between 2009 and 2013, the parties litigated a number of alleged Gunnison County land use code violations on the part of the Defendants. Principal among those contested uses was the Defendant's potential use of the Eastern Access to supprt a burgeoning commercial endeavor on the Mile 200 Property. Ultimately, on June 5, 2012, the Court issued a preliminary injunction prohibiting the Defendants or their agents from pursuing certain improvements on the Mile 200 Property.

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[1] Individual liability for contemptuous acts of a corporation – even one closely held – is not discussed in depth in Colorado cases, and was not litigated here. Both Leigh Marie, LLC and Scott Wagner were issued citations in this case. More, in the federal jurisdiction non-parties similarly situated to Mr. Wagner may be held so liable:

> In order for a person who is not a party in an action in which a court order was issued and who is not named in the order to be held in contempt of court for acting in violation of the order, the nonparty must be in privity with, must aid and abet, or must act in concert with, the named party in acts constituting a violation of the order, must conspire to cause or bring about a contemptuous action, or must act in collusion or combination with the named defendants. *In re World Parts, LLC*, 291 B.R. 248 (Dist. NY 2003) (citing 17 Am. Jur. 2d §62 (1990)).

At all times, Scott Wagner acted as the alter ego of Leigh Marie, and the Court enters the contempt findings and orders below accordingly.

8. In May of 2013, the Defendants and Waunita reached a stipulation that settled further litigation. With respect to the Eastern Access, the Parties agreed, among other terms, to allow the Defendants to use the Eastern Access to reach County Road 877:

> i. The Parties agree that even though the [Eastern Access] has been widened...Defendants may use the [Eastern Access] as its [sic] exists on the date of this stipulation.... *Stipulation Between Defendants and Intervenor at* para. i, Gunnison 09CV113, May 9, 2013 ("May 2013 Stipulation").

9. They also agreed that the Defendant would pursue permits required by Gunnison County to use the Eastern Access in conformity with Gunnison County's land use code:

> j. Defendants acknowledge and agree that any use of [Eastern Access] must be properly permitted and Defendants will acquire such permits prior to any such use. *May 2013 Stipulation at* para. j.

10. In addition, the Defendants and Waunita agreed to cooperate to perform maintenance on the Eastern Access:

> k. The Parties covenant and agree that they will collaboratively work to improve and/or adjust the [Eastern Access] conditions, as necessary, by mutual agreement.... *May 2013 Stipulation at para.* K.

11. Some of the terms, including to a degree those quoted above, were not immediately actionable due to the Court's prior injunction enforcing the terms of a Gunnison County stop work order and prohibiting certain improvements. This led to further litigation and, ultimately, another stipulation entered by all of the Parties in December 2014 that was adopted by the Court on December 15, 2014. *Stipulation for Dismissal Without Prejudice*, Gunnison 09CV113, December 11, 2014 ("December 2014 Stipulation").

12. Critical among the terms and conditions of the December 2014 Stipulation is an agreement that the Defendants could begin using the Eastern Access (when entry via the Western Access was not available) to enter the Mile 200 Property to begin remedial work necessary to bring their use of that property in conformity with the Gunnison County land use code. Specifically:

> No heavy equipment will be transported to or from the property via the Eastern Access unless and until permitted as contemplated below.... Use of the Eastern Access shall be limited to ingress and egress. Defendants shall have no right to make any improvements to the portion of the Eastern Access running across Intervenor's property without written consent.... Any right to use the Eastern Access under this Stipulation, other than in an emergency, shall cease one year after the Courts' approval of this stipulation unless Defendants have acquired either a residential or commercial access permit from the County for use of the Eastern Access.... December 2014 Stipulation *at* §5.

13. The Intervenors allege that the Defendants have failed to acquire the permits contemplated by these agreements, and have used the Eastern Access outside the stipulations' parameters.

B. Contemptuous Acts

14. The Court first finds that Mr. Wagner, and thereby Leigh Marie, used the Eastern Access and performed maintenance on the Eastern Access despite not having the permits contemplated by the stipulations.

15. This is first evidenced by the testimony of Ryan Pringle. Mr. Pringle, along with his wife, is an owner of the Waunita property. Mr. Pringle was able to describe events depicted in his testimony clearly. Mr. Pringle is self-interested, but his testimony was corroborated by numerous exhibits. The Court finds Mr. Pringle's testimony credible.

16. Mr. Pringle described some concerns raised in August, 2015, to Mr. Wagner concerning heavy equipment and road maintenance being performed on the Eastern Access after the 1-year grace period established by the December 2014 Stipulation had expired. Exhibit EE also depicts this use and maintenance.

17. In 2016, Mr. Wagner continued to use the Eastern Access outside the scope of the stipulations and without permits. Exhibit FF shows snow removal performed by Mr. Wagner in the winter of 2016 and 2017. In particular, that Exhibit shows and Mr. Pringle testified that the snow removal was performed with heavy equipment and that the plowing and snow deposits went outside the width of the Eastern Access. This is further evidenced by damage to fences outside of the road width.

18. In addition, Mr. Pringle described a meeting he had with Mr. Wagner in April of 2017 concerning the condition of the Eastern Access. Mr. Wagner expressed concern over the condition of the Eastern Access and expressed interest in improving its condition. The road contained boulders. Mr. Pringle assented to re-surfacing of the road. He thought that the road would be smoothed and that perhaps a layer of fresh gravel would be laid. He indicated that he would not agree, however, to any widening of the Eastern Access. He reiterated this concern in a subsequent meeting with Mr. Wagner and Mr. Wagner's agent, Todd Starr, in July of 2017. Pringle, Wagner and Starr never reduced their understanding to a writing.

19. The condition of the Eastern Access prior to this conversation and at the beginning of this construction is depicted in Exhibit AA. At that time, the road was between 9 and 11 feet in width.

20. Mr. Wagner began work to improve the road in July of 2017. Exhibit BB shows the beginning of some resurfacing and regrading. It also shows large boulders being excavated with heavy equipment, and much of the debris and boulders removed from the road during this excavation were placed on the side of the Eastern Access. Again, a large "front-end loader" was used for this work, as evidenced by Exhibit CC. Boulders and timbers are currently located outside the original road width on Waunita property.

21. By August of 2017, the road was re-graded and more clear of boulders, but the Eastern Access was wider than that it had previously been. It is rutted and appears to have poor drainage. According to Mr. Pringle, these ruts were created by Mr. Wagner's work on and use of the road.

22. Mrs. Pringle corroborated Mr. Pringle's testimony regarding the April 2017 meeting. Mrs. Pringle testified that Mr. Wagner wanted to improve the condition of the Eastern Access. She testified that Wagner did not mention widening the road or placing debris outside of the existing right of way.

23. On this and other issues, the Court also heard and has considered the testimony of Mr. Wagner. Mr. Wagner is self-interested, and his testimony was not corroborated to the degree Mr. Pringle's was. The Court finds that where his testimony conflicts with other evidence, it is of less credibility.

24. One of Mr. Wagner's motivations for improving the road was an incident in the winter of 2017, during which his daughter and her vehicle became stuck on and perhaps slipped off of the Eastern Access. He felt that it was imperative that the condition of the road be improved.

25. Mr. Wagner also described the discussions he had with Waunita regarding the 2017 road work. While he testified that his understanding was that Mr. Pringle had authorized extensive work, the Court only finds that Mr. Pringle authorized simple resurfacing.

26. In fact, Mr. Pringle confronted Mr. Wagner and Mr. Starr with concerns about the scope of this work and reminded them of the need for a permit to use the Eastern Access. In response, Mr. Wagner replied "I don't need no fucking permit."

27. It is uncontroverted that neither Leigh Marie nor Scott Wagner obtained the residential or commercial access permit described in the December 2014 Stipulation.

28. Concerning this and related permitting issues, the Court heard the testimony of Neal Starkebaum. Mr. Starkebaum testified regarding the need for an access permit prior to use and improvement of the Eastern Access. At the time that the improvement work was done, and at the time of trial, no such permit had been issued by Gunnison County. The Court finds that Mr. Starkebaum is disinterested, that his testimony is corroborated by documentary evidence, and that he is credible.

29. Mr. Starkebaum testified that Mr. Wagner applied for an access permit in 2017 – evidenced by Exhibit JJ – but that the 2017 Eastern Access improvements were already substantially completed by the time that application had been submitted. Again, to date, no such permit has been granted. Critically, Mr. Starkebaum noted a number of deficiencies with the access permit – it was to be accompanied by a site plan and location map, reclamation permit, drainage plan, grade and other information. Clearly, the permit was not unreasonably withheld or denied. In fact, Gunnison County issued a stop-work order, evidenced by Exhibit HH, because the work performed was not permitted.

30. Mr. Wagner did apply for a reclamation permit, and Exhibit KK is a copy of that permit. That permit was not issued because it did not identify the type of reclamation to be performed, and

because no security was provided by Mr. Wagner. This permit was not granted because of the previous stop-work order. The County's policy is that such permits are not granted until the reasons for the stop-work order being issued are remedied.

31. Exhibit LL is another example of a previous permit applied for by Mr. Wagner. Wagner, through Mile 200, applied for a driveway permit in 2010 to allow commercial access over the Eastern Access. The application was not completed.

32. Exhibit MM is an example of a 2009 access permit on the Western Access to the Mile 200 Property. Mr. Wagner is therefore not unfamiliar with this process. Exhibit NN is an access permit that was granted for driveway access to Mr. Wagner to a separate property for a separate purpose. According to Mr. Starkebaum, it was granted pursuant to a standard process.

33. Mr. Wagner testified that he understood the terms and conditions of the December 2014 Stipulation. He clearly testified that he understood the one-year grace period and the requirement to obtain the necessary permits from the County. He also clearly testified that he did not obtain those permits.

34. To be sure, Mr. Wagner testified that he was told that he had a permit - perhaps by Mr. Starr - but clarified that he never actually received an executed permit. He testified that he has applied for numerous permits, some of which have been approved, and some of which have not. On cross examination in particular, Mr. Wagner acknowledged that he did not apply for the access permit contemplated by the December 2014 Stipulation until after Gunnison County issued its stop-work order in the fall of 2017.

35. Finally, the Court has considered the testimony of Mr. Johnathan Houck. The Court does not find that testimony immediately pertinent to the instant dispute.

III. Analysis

A. Leigh Marie and Scott Wagner are in Indirect Contempt Warranting Remedial Sanctions

36. Consistent with the findings of fact above, and concerning the Intervenor's request for remedial sanctions, the Court finds the burden of proof and standard met. The Defendants have committed indirect contempt of court for which redial sanctions are appropriate.

37. As an initial matter, it is uncontroverted that Leigh Marie and Waunita are parties to the May 2013 Stipulation, and that those parties as well as Gunnison County are parties to the December 2014 Stipulation. It is also uncontroverted that the 2013 and 2014 stipulations are orders of the court that are binding on the Parties. It is also uncontroverted that Mr. Wagner is the principal of Leigh Marie, LLC.

38. The Court finds and concludes that Mr. Wagner, and therefore Leigh Marie, have failed to comply with both the May 2013 Stipulation and, in particular, the December 2014 Stipulation. Mr. Wagner and Leigh Marie have used with Eastern Access after the one-year grace period. They have both failed to acquire the required access permit. They have operated heavy equipment on

the Eastern Access as expressly prohibited by the December 2014 Stipulation. They have also improved the road beyond that authorized by the December 2014 Stipulation.

39. Mr. Wagner argues that the agreement and discussion he had with Waunita worked some sort of waiver of the stipulations – Wagner was authorized to perform the road maintenance undertaken in the summer of 2017 by Waunita and cannot, therefore, have violated their agreement.

40. In addition, Mr.Wagner argues that an implied covenant of good faith and fair dealing should be read into those stipulations, and that Waunita violated that covenant by authorizing use of the Eastern Access. Mr. Wagner does not cite, and the Court is not aware of any authority for such a covenant being read into a stipulation adopted as a court order. Even if such a covenant existed, the Court would not conclude it was breached.

41. The Court finds that the work performed went beyond the authorization made by Waunita. The Pringles authorized limited road re-surfacing. Waunita did not authorize the road to be widened, and did not authorize the stacking of boulders outside the easement. To the extent that Waunita could waive provisions of the stipulations, they did not make a waiver broad enough to allow the actual work undertaken by Mr. Wagner. Nor was any such waiver or authorization reduced to a writing.

42. This argument also fails because Gunnison County is a Party to the December 2014 Stipulation and was simply not privy to the discussions about the proposed work in 2017. Surely, any waiver of the December 2014 Stipulation would have to entered, approved or ratified by all the Parties to it.

43. Second, the Court finds and concludes that Mr. Wagner and Leigh Marie have the present ability to comply with the Court's orders. Mr. Wagner is familiar with the permitting process. Wagner and Leigh Marie have simply failed to complete this process as it pertains to the Eastern Access. The findings above lead to the conclusion that Mr. Wagner and Leigh Marie have failed to receive the permits based on their own unwillingness to engage in the process. The extent to which Leigh Marie feels that Gunnison County is unlawfully withholding these permits, other avenues to relief exist that do not flout court orders.

44. To be sure, there may be significant expense associated with the permitting process. Gunnison County's stop-work orders imply that significant work may need to be done to fulfil reclamation requirements. The Court nonetheless finds that the Defendants have the present ability to comply with the stipulations as well as the purge clause listed below. At their simplest, the stipulations require the Defendants to refrain from using the Eastern Access without a permit except in cases of emergency. Permitting difficulties aside, the Defendants are perfectly able to refrain from using that right-of-way.

45. The Court notes that this is also a significant problem with crafting a remedial sanction to compel compliance with the stipulations. While there is every indication that Leigh Marie wishes to continue using the Eastern Access, they are free to abandon it altogether. The Court cannot, therefore, compel Leigh Marie or Mr. Wagner to obtain these permits – any sanction crafted must allow for non-use or abandonment of the Eastern Access.

B. Leigh Marie and Scott Wagner are in Indirect Contempt Warranting Punitive Sanctions

46. The Court incorporates the findings and conclusions above, and finds the heightened evidentiary standard and burden of proof met. Additionally, the Court concludes that Leigh Marie and Mr. Wagner's conduct was willful. Mr. Wagner stated that he felt that he did not need a permit, and yet applied for a permit after tensions rose in late 2017. He is familiar with the process, but simply has not engaged it.

47. The Court also finds and concludes that the Defendant's actions are offensive to the authority and dignity of the court. The public relies on the adoption of stipulations as court orders for the very purpose of ensuring their enforceability. Mr. Wagner has flagrantly disobeyed these orders.

IV. Sentence and Orders

47. Leigh Marie and Scott Wagner, as well as any successors in interest, shall be jointly and severally liable for all sanctions imposed below.

A. Remedial Sanctions

48. To remedy their use of the Eastern Access without the permits contemplated by the December 2014 Stipulation, Leigh Marie and Scott Wagner shall immediately cease any use of the Eastern Access until their contempt is purged. Leigh Marie and Mr. Wagner may continue to use the Eastern Access in emergencies only.

49. Pursuant to C.R.C.P. 107(d)(2), the Plaintiffs and Intervenor are awarded their attorney fees. Fee affidavits shall be filed within 35 days of the date of this order.

B. Manner in Which Contempt may be Purged

50. Upon receipt of the permits contemplated by the December 2014 Stipulation, the Defendants may resume their use of the Eastern Access consistent with the use for which the permits are obtained.

C. Punitive Sanctions

51. To vindicate the authority and dignity of the Court, Leigh Marie shall pay a fine of $25,000.00 into the registry of the Gunnison Combined Courts.

52. The Defendant is entitled to make a statement in mitigation of this sentence. This sentence is therefore stayed 14 days. If the Defendant wishes to make such a statement, he shall file a statement in writing, or request to set a hearing to make such a statement within 14 days.

By the Court this 15th day of February, 2018.

D. Cory Jackson
District Court Judge

EXHIBIT
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September 7, 2018

Gunnison County
c/o David Baumgarten, County Attorney

Via e-mail to dbaumgarten@gunnisoncounty.org

Re: Mile 200, LLC, and Leigh Marie, LLC Permits

Dear Mr. Baumgarten:

I have been retained by Mile 200, LLC, and Leigh Marie, LLC (jointly "Wagner") to obtain the necessary permit(s) for use of the east access serving their properties. I am aware of the substantial history concerning this matter and, for myself and Mr. Wagner, hope we can put that behind us and work productively to find a final mutually acceptable resolution. Of course, by applying for these permits, Wagner do not waive any rights they otherwise have. Please forgive me if some of the issues raised here have been addressed previously; I will appreciate your patience. The issues appear to concern an access permit, a reclamation permit, and the stop work order issued by the County dated September 26, 2017 (the "Stop Work Order"), which I understand to be the only active stop work order. Each of those issues is discussed below in turn.

Access Permit

With reference to the Gunnison County Land Use Regulations ("LUR"), driveway access onto a County road "shall require an Access Permit from the Gunnison County Public Works Department, and shall meet the standards of the *Gunnison County Standards and Specifications for Road and Bridge Construction*." LUR 12-103(G)(3)(b). See also LUR 1-104(M)(1). In turn, the Gunnison County Standards and Specifications for Road and Bridge Construction ("R&B") indicate that an access permit requires (1) a site inspection by the Director of Public Works; and (2) compliance with the "Standards and Specifications." R&B 7.4. In addition, the Director may "specify certain conditions, in addition to those set forth in these Standards and Specifications, for issuance of an access permit." Id.

I believe the Director has already conducted the site inspection. Given the technical nature of the Standards and Specifications, and the Director's discretion, Wagner request that the County confirm that no further improvement to the east access road would be required to obtain

the access permit and use the road. Wagner further request that the County (including the Director) confirm that there are no other conditions that would apply to issuance of the access permit and that it issue the permit.

If the County believes that further improvements are required or does intend to impose additional conditions, then Wagner request that it specify the needed improvements and conditions as applicable. In such case, Wagner further request that the County indicate whether it will issue an access permit for use of the east road as a nonconforming use under LUR 1-108 or will grant a waiver of any Standards and Specifications under R&B 1.9 to allow use of the road.

Reclamation Permit

A reclamation permit is required for all earth moving that disturbs 10,000 or more square footage. LUR 13-115(B). A Gunnison Sage-grouse preapplication conference is required for any proposed site disturbance if the site is located within mapped occupied Gunnison Sage-grouse habitat. LUR 13-115(C)(1). A reclamation permit is required for any proposed site disturbance within Tier 1 Habitat. LUR 13-115(C)(2).

It appears from a review of the County's GIS mapping that a small section of the east access is within Tier 1 Habitat, do you agree? In any event, Wagner are not proposing any new earth moving or other site disturbance of the east access and request that the County confirm that no reclamation permit is required. To the extent that the County is concerned with permitting previous work, I understand that such work disturbed less than 10,000 square feet such that no reclamation permit was required.

Stop Work Order

The Stop Work Order is related to the work Wagner did in the east access that was the subject of the contempt citation. Mr. Wagner has either paid the penalties for the contempt, or will do so shortly, and hopes to put that issue behind him. The Stop Work Order states that Wagner is required to obtain an access permit and reclamation permit. Therefore, resolution of those issues, as discussed above, should enable the County to lift the Stop Work Order.

When "activity has begun before issuance of [any required] permit(s), no permit shall be issued until the applicant ... remedies any damage caused, and complies with all enforcement actions taken by Gunnison County." R&B 1.3. The work at issue caused no apparent damage and, in any event, there is no practical way to undo any earth movement. The payment of the contempt penalties will constitute compliance with all enforcement action taken by the County. Wagner request that the County confirm that it will not impose any further requirements to lift the Stop Work Order.

Conclusion

To summarize, Wagner request that the County do the following within 14 days:

Confirm that no further improvement to the east access road would be required to obtain the access permit and use the road (or state what improvements would be required);

Confirm that there are no other conditions that would apply to issuance of the access permit (or state such conditions);

To the extent that any improvements or conditions would otherwise apply, determine that the east access is a nonconforming use and/or grant a waiver of any Standards and Specifications as needed to use the road;

Confirm that no reclamation permit is required to use the east access (or state what actions are required to obtain the reclamation permit); and

Confirm that, once Wagner has paid the contempt penalties, it will not impose any further requirements to lift the Stop Work Order (or state such requirements).

Your consideration of this matter will be appreciated.

Very truly yours,

/s/Noah Klug
Noah Klug

Ec: Scott Wagner

EXHIBIT
4

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October 23, 2018

Gunnison County
c/o David Baumgarten, County Attorney

Via e-mail to dbaumgarten@gunnisoncounty.org

Re: Mile 200, LLC, and Leigh Marie, LLC Permits

Dear David:

As you know, I represent Mile 200, LLC, and Leigh Marie, LLC (jointly "Wagner"). Thank you for arranging the telephone conference on October 10, 2018, with County staff, myself, and counsel for the Pringles to discuss Wagners' pending application for an access permit to use the East Access. I have thus far been impressed with the County's responsiveness and efforts to help resolve this matter and I hope this will continue. At the conference, you indicated the County's initial position that Wagner would be required to return the road to its former character in order to satisfy the requirement that they "remedy any damage caused" by previous unpermitted work. The purpose of this letter is to ask the County to take another look at this requirement.

In its Order on Motion for Contempt Citation dated February 15, 2018, the Court made specific findings concerning the Pringles' claim to damage by the previous unpermitted work, noting their concerns were that the road "is rutted and appears to have poor drainage" along with Wagner "widening the road [and] placing debris outside the existing right of way." The logical way of proceeding, then, would be for Wagner to "remedy any damage caused" by specifically addressing these issues found by the Court. Wagner should not be require to make the road any rougher than it is currently because the Court made three separate findings that the Pringles had agreed to it being smoothened as follows: "Mr. Pringle assented to re-surfacing of the road" … "the Court … finds that Mr. Pringle authorized simple resurfacing" and … "[Mr. Pringle] thought that the road would be smoothed and that perhaps a layer of fresh gravel would be laid."

If the original sin was Wagner tearing up the road without the necessary permit, then requiring them to tear up the road again as a condition of approval would make no sense. It would also constitute economic waste, involve unnecessary environmental degradation (particularly in what may be Gunnison Sage-Grouse habitat) and overall be unconscionable. The

benefit to the Pringles, if any, would be very slight while the detriment to Wagner in terms of the cost of the work and the concomitant loss of safety and usability of the road would be great. If Wagner were forced to initiate a declaratory action on this issue, the Court likely would weigh the relative hardships and estop the County and the Pringles from requiring Wagner to do anything more than what was complained about at the hearing.

Wagner would like to reach an agreement with the County along the lines discussed at the telephone conference. With respect to remedying any damage caused by their previous work, they would propose, consistent with the Court's order, narrowing the road surface to the width of the easement (which the Court found was between 9 and 11 feet as shown in Exhibit AA), removing any rocks or other debris placed outside the easement, addressing any drainage issues, and removing any ruts. The County would agree to issue the access permit upon completion of the work and that there would be no additional permitting requirements.

All of this assumes that the Pringles would agree to Wagner doing work in the easement. If the Pringles will not so agree, then the County should simply issue the access permit for the road as-is. After all, the requirement to remedy damage is for the Pringles' benefit and, if the Pringles will not allow the damage to be remedied, then they should be deemed to have waived any right to demand the same. It would be unfair to place Wagner in the limbo of the County requiring work that the Pringles oppose.

Please let me know if we can move toward finalizing an agreement as outlined here.

Very truly yours,

/s/Noah Klug
Noah Klug

Ec: Scott Wagner

EXHIBIT
5

The
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Noah Klug
Attorney & Counselor at Law

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October 31, 2018

Waunita Hot Springs Ranch, Inc.
c/o Rufus Wilderson, Attorney

Via e-mail to rwilderson@wildersonlaw.com

Re: Mile 200, LLC, and Leigh Marie, LLC Permits

Dear Rufus:

In follow-up to our phone conversation today, I represent Mile 200, LLC, and Leigh Marie, LLC (jointly "Wagner"), which have a right-of-way easement across the neighboring property owned by your client, Waunita Hot Springs Ranch ("Waunita" or the "Pringles"). Wagner have applied for an access permit needed to utilize the easement. Unless the County waives the requirement, Wagner will be required to "remedy any damage caused" by previously unpermitted work for purposes of the County's Road and Bridge standards as a condition of receiving the permit. The purpose of this letter is to request that Waunita agree to allow Wagner to remedy the damage as found in the Order on Motion for Contempt Citation dated February 15, 2018.

In the referenced order, the Court made specific findings concerning the Pringles' claim to damage by the previously unpermitted work, noting the Pringles' concerns were that the road "is rutted and appears to have poor drainage" along with Wagner "widening the road [and] placing debris outside the existing right of way." Wagner are therefore offering to "remedy any damage caused" by specifically addressing these issues found by the Court.

In our discussion today, you suggested that Wagner should be required to replace the boulders in the road. You indicated that Waunita want the road to be rough so it will be more difficult to use. On this issue, the Court made three separate findings that the Pringles had agreed to the road being smoothened as follows: "Mr. Pringle assented to re-surfacing of the road" … "the Court … finds that Mr. Pringle authorized simple resurfacing" and … "[Mr. Pringle] thought that the road would be smoothed and that perhaps a layer of fresh gravel would be laid." While there may have been a misunderstanding between Mr. Pringle and Wagner concerning whether the work would involve removing boulders, it is clear that your clients agreed in

principle to the road being smoothened. Therefore, they should not request that any boulders be returned to the road.

In sum, Wagner request Waunita's approval that they narrow the road surface to the width of the easement as shown in Exhibit AA, remove any ruts, remove any debris outside the easement and address any drainage issues. Please let me know within ten days if we can move toward finalizing an agreement as outlined here.

Very truly yours,

/s/Noah Klug
Noah Klug

Ec: Scott Wagner
David Baumgarten, County Attorney

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LOOK FOR:
3D hologram foil across top
Heat-sensitive circle in upper-right corner

92-340/1021

12/5/18
Date

Pay to the Order of Gunnison County $250.00

Two hundred fifty and 00/100 Dollars

Alpine Bank
252 Dillon Ridge Road
PO BOX 739
Dillon CO 80435
970-468-4701

For Leigh Marie

Nicole

MP

Security Check