

GUNNISON COUNTY BOARD OF ADJUSTMENTS
PRELIMINARY AGENDA: March 24, 2026
Blackstock Government Building 221 N. Wisconsin, Suite D
In Person and Zoom

- 1:00 p.m.**
- Call to order; determine quorum
 - Approval of Minutes from the April 29, 2025 Board of Adjustment meeting
 - Approval of Minutes from the September 30, 2025 Board of Adjustment meeting
 - Unscheduled citizens: A brief period in which the public is invited to make general comments or ask questions of the Commission or Planning Staff about items which are not scheduled on the day's agenda.
 - Miscellaneous/Staff Reminders/Announcements

1:15 p.m. **BOA-26-00002 Gunnison County Sign Variance Request**
John Cattles, representing Gunnison County, is requesting a variance from standards in Gunnison County Land Use Resolution (LUR) Section 13-109 *Signs* to allow the placement of a second sign at 25115 Hwy 135 (Parcel # 3255-120-00-093).

1:35 p.m. **APPEAL-26-00001 Scenic Butte Partners Appeal of Interpretation**
Otten Johnson on behalf of Scenic Butte Partners, LLC, submitted an appeal relative to an interpretation issued by the Gunnison County Community Development Department.

2:35 p.m. **APPEAL-26-00002 Scenic Butte Partners Appeal of Administrative Determination**
Otten Johnson on behalf of Scenic Butte Partners, LLC, submitted an appeal relative to an administrative determination issued by the Gunnison County Community Development Department.

Adjourn

Packet Materials are available online by visiting <https://gunnisoncounty.org/179/Board-of-Adjustment> and selecting "Most Recent Portfolio"

Use this link to join the Webinar on Zoom: <https://gunnisoncounty-org.zoom.us/j/86337231015>

NOTE: Unless otherwise noted, all meetings are conducted in the Blackstock Government Center Meeting Room at 221 N. Wisconsin St. in Gunnison, across the street from the Post Office. This is a preliminary agenda; agenda times may be changed by the staff up to 24 hours before the meeting date. If you are interested in a specific agenda item; you may want to call the Planning Department (641-0360) ahead of time to confirm its scheduled time. Anyone needing special accommodations, please contact the Planning Department before the meeting.

**GUNNISON COUNTY BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
Tuesday, April 29, 2025**

The Gunnison County Board of Adjustment conducted a regular meeting in the Planning Commission Meeting Room in the Blackstock Government Center, 221 N. Wisconsin, Gunnison, Co. and on Zoom **Present:**

BOA Chairperson - Jonathan Houck	Director of Community and Economic Development-Cathie Pagano
BOA Vice-Chairperson- Laura Daniels	Director of Planning- Hilary Seminick
BOA Member – Liz Smith	Planning Technician – Caroline Danielson
BOA Member – Andy Tocke	Others present as listed in text
BOA Alternate Member – Drew Brookhart	
BOA Alternate Member – John O’Neal	

Absent: Julie Baca

Recused: None

Zoom: Laura Daniels

With a quorum present Chairperson Houck opened the April 29, 2025 meeting of the Board of Adjustment at 1:33 p.m. Houck seated Brookhart as regular member of the BOA.

Moved by Smith seconded by Houck to approve Board of Adjustment meeting minutes, dated July 18, 2024, as presented. The motion passed unanimously in support.

Moved by Smith seconded by Tocke to approve Board of Adjustment meeting minutes, dated March 6, 2025, as presented. The motion passed unanimously in support.

APPEAL-25-00001 – Appeal of CB South POA Decision – 162 Escalante Dr.

Meg Burns (appellant) submitted an appeal of a decision made by the Crested Butte South Board of Directors approving a multi-family use on a parcel legally described as Lot 8, Block 10, Crested Butte South, Filing 2. The property owner is 162 Escalante, LLC.

Houck opened the agenda item at 1:48 p.m. Pagano confirmed adequate public notice had been provided. She clarified that the meeting was not a public hearing. Houck summarized the appeal process under the Special Area Regulations (SAR), noting that the Crested Butte South Property Owners Association (CB South POA) had approved a multi-family use on the subject parcel, and that decision was being appealed to the Gunnison County Board of Adjustment (BOA).

County Attorney Matthew Hoyt explained the concept of standing under the SAR, which requires the appellant to be either an applicant, the property owner, or a person aggrieved by the decision. Hoyt also addressed the timeliness of an appeal, which must be submitted within 15 calendar days of the POA decision, including a complete basis for appeal. He stated that establishing

standing is part of a complete appeal and that the BOA had the discretion to determine whether to proceed, even if the appeal was arguably untimely or incomplete.

Pagano noted that the POA decision was made on March 12, 2025, and the appeal was submitted via email on March 27, 2025, at 11:07 p.m. She added that the new SAR had been adopted on March 19, 2025, and the appellant was sent a copy of the new regulations on March 25, 2025. Houck then invited legal representatives for both parties to address whether the appellant met the requirements for standing and timeliness.

Attorney Kinsella, representing Meg Burns, argued that the appeal was submitted within the 15-day window and that confusion resulted from the recent SAR updates. Kinsella noted that Burns submitted a statement of standing on April 24, 2025, believing the previous SAR applied due to the timing of the application. Huckstep, representing the applicant (Cox), challenged the timeliness and completeness of the appeal and noted it was not formally submitted to the POA. Kinsella clarified that the POA was included in the original email submittal.

Board members discussed the complexity of applying new SAR standards mid-process and whether to exercise discretion regarding the timing of the standing statement. Several board members acknowledged the confusion due to recent changes and noted that the appellant is a layperson. There was general agreement to take a more flexible interpretation in this specific case, without setting a precedent for future appeals. Pagano confirmed that staff had communicated the applicability of the new SAR to the appellant in advance of the deadline.

Moved by Smith moved, seconded by Brookhart to accept all appeal-related correspondence submitted through April 28, 2025, including the appellant's April 24 statement of standing and the applicant's April 28 response. Houck clarified that this decision was not intended to set a precedent, but rather to acknowledge the unique timing of the SAR update. The motion carried unanimously in support.

The Board then discussed whether the appellant had established standing. Kinsella asserted that Burns shared a lot boundary with the subject parcel and would be substantially burdened by the proposed triplex, citing increased traffic, changes in neighborhood character, and insurance concerns. Huckstep countered that Burns had no legal right to fixed property values, traffic volumes, or occupancy types, and that the claims of harm were speculative. He emphasized that the proposed use was allowed under the governing documents, and no personal or property rights had been denied.

Board members considered whether the alleged harms constituted a substantial burden to a legally protected right. Several noted that Burns' concerns—such as increased density, loss of open space, and potential for rental use—could apply broadly to many developments in the area. Daniels and O'Neal both concluded that no personal or property right had been infringed. Smith and Houck found the claims speculative and not compelling. Hoyt clarified that under the SAR, potential for actual harm must be demonstrated, not just disagreement with the project.

Pagano confirmed that all future development in CB South must comply with defensible space and Wildland Urban Interface (WUI) codes.

Moved by Smith, seconded by Tocke, to affirm the decision of the CB South POA Board of Directors to approve the multi-family use at 162 Escalante Drive, citing the appellant's failure to establish standing. The motion carried unanimously in support.

Meeting adjourned at 4:16 p.m.

DRAFT

**GUNNISON COUNTY BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
Tuesday, September 30, 2025**

The Gunnison County Board of Adjustment conducted a meeting in the Planning Commission Meeting Room in the Blackstock Government Center, 221 N. Wisconsin, Gunnison, Co. and on Zoom **Present:**

BOA Vice-Chairperson- Laura Puckett Daniels	Director of Community and Economic Development – Cathie Pagano
BOA Member – Liz Smith	Director of Planning – Hillary Seminick
BOA Member – Andy Tocke	Planner II – Rachael Blondy
BOA Member – Julie Baca	Planner I – Caroline Danielson
BOA Alternate Member – Drew Brookhart	Planning Technician – Aidan McComas
BOA Alternate Member – John O’Neal	Others present as listed in text

Absent: Jonathan Houck

Recused:

Zoom: Julie Baca

With a quorum present Pucket-Daniels opened the September 30, 2025 regular meeting of the Board of Adjustment at 1:01 pm.

Moved by Smith, seconded by Baca to approve Board of Adjustment meeting minutes, dated July 17, 2025 minutes. The motion passed unanimously in support.

Staff announcement/miscellaneous:

1:00 pm: BOA-25-00001 – Thackberry Setback Variance – 81 County Road 40.

Julia Thackaberry, represented by Bob Davison, requests a setback variance for a 28’ x 36’ storage building at 81 County Rd 40 Gunnison, CO 81230, parcel # 3787-231-00-003. The applicant has requested a variance to reduce the side setback on the eastern property line from 15 to 7 feet.

Confirmation of Adequate Public Hearing

Danielson confirmed that adequate public notice was given.

Applicant Presentation

Bob Davison presented the application, explaining the site layout, current parcel use, and the need for the variance. He confirmed neighbor support through a letter of consent. He stated the variance was necessary to preserve grass cover behind the residence for grazing and to allow snow storage and quick access to the storage area.

Board members asked clarifying questions. Puckett Daniels asked about available open space and alternative building locations. Davison reiterated that the variance prevents grass degradation and supports efficient site use. Seminick noted the applicant’s compliance with BOA standards.

Danielson stated that standards were generally met, though alternative building placements existed.

Brookhart stated the proposed location was on dry, low-growth land, while other potential sites were greener. Tocke noted the variance would not burden neighbors or County services. Smith stated there were no substantial safety or health concerns. Puckett Daniels confirmed no impediments to access or snow plowing and reviewed referral comments, noting no concerns from agencies. Public Works had no comments, and Danielson noted Ben Prior's Sage Grouse concerns did not conflict with the application.

The Board determined that the variance met applicable LUR requirements. Smith moved to approve the variance, seconded by Baca, with unanimous approval. Baca then moved to close the public hearing, seconded by Tocke, with unanimous approval.

1:30 pm: BOA-25-00002 – Johnson Setback Variance – 60 Mystery Lane.

The Applicant, Allan Johnson, requests a variance to setback standards for a 14' x 24' carport at 60 Mystery Lane (Parcel 3701-240-01-010), located on the north bank of the Gunnison River. The proposed carport would be angled to Mystery Lane and located north of the existing home, reducing the required 25-foot front setback to 18 feet on one side and 16 feet on the other.

Blondy confirmed adequate public notice was given.

Johnson explained the variance request, noting the carport would fit within property boundaries and be used solely for vehicles. He stated the disused well between the existing driveway and the proposed location prevented connection and explained the structure would eventually be clad to mimic the residence. Johnson emphasized the need to protect vehicles from weather and improve the property's aesthetics.

Board members raised questions regarding use, access, and safety. O'Neal confirmed the carport was intended only for cars. Blondy reported referral comments, noting Public Works concerns with multiple access points, potential traffic issues, and the number of waivers required to access the proposed carport. Staff also noted that not all variance requirements were met, that alternative locations existed on the parcel, and that a floodplain development permit would be required regardless of location.

Discussion focused on access points. Puckett Daniels and Smith expressed concern that three access points could create risks for traffic, utilities, neighbors, and snow plowing, particularly with the structure's proximity to Mystery Lane. Johnson explained that the old well prevented the use of one access for the carport, and he described the proposed location as the most practical and cost-effective. Board members emphasized that alternate feasible sites existed that would not require a variance.

Public comment included one statement of support for the variance. Johnson noted that Mystery Lane had only two residences and little traffic, but Board members stressed that future property transfers or development could increase density and traffic, creating conflicts.

Board discussion concluded that the application did not meet Land Use Resolution (LUR) requirements. O'Neal and Smith both cited health and safety risks, and Puckett Daniels explained that structures adjacent to a right-of-way could cause future traffic incidents. The Board agreed that adequate alternatives existed on the property without requiring a variance.

Tocke moved to deny the variance request as amended, Baca seconded, and the motion carried unanimously. Smith moved to close the public hearing, seconded by Baca, and the motion carried unanimously.

Meeting Adjourned at 2:01 pm.



Caroline Danielson, Planner I

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www.GunnisonCounty.org

To: Gunnison County Board of Adjustment
RE: BOA-26-00002 | Sign Variance Request for Whetstone Village
Meeting Date: March 24, 2026

1. Summary

John Cattles, representing Gunnison County, is requesting a variance from standards in Gunnison County Land Use Resolution (LUR) Section 13-109 *Signs* to allow the placement of a second sign at 25115 Hwy 135 ([parcel # 3255-120-00-093](#)). One monument sign is currently permitted at the site per the approval of the Whetstone Community Housing Development (LUC-22-00049). The applicant wishes to place an additional sign on the parcel to advertise leasing availability. The proposed sign is temporary, anticipated to be placed until the majority of units are leased. Per LUR Section 13-109 I:b *One Sign Per Use*, “there shall be one sign per primary use, except that when the subject property abuts two public roadways, there may be one sign facing each roadway.” Per LUR Section 13-109 K. 2 *Maximum Individual Sign Area*, “the maximum permitted area of individual signs shall be 50 sq. ft.” With this, the applicant is requesting a variance for a “non-compliant sign” per LUR Section 13-109 L *Signs Allowed Only by Variance by the Board of Adjustment*.

The application was referred to Gunnison County Public Works, Colorado Department of Transportation, Gunnison County Building and Environmental Health, and the Town of Crested Butte. The following comments were provided:

The Town of Crested Butte provided a referral letter suggesting that the sign be issued a temporary permit, allowing the sign to remain in place for up to six months following the Certificate of Occupancy. The full letter can be found in the permit file.

CDOT had no comments.

No comments were received from Gunnison County Public Works or Gunnison County Building and Environmental Health.

2. Compliance with Applicable Standards of the Land Use Resolution

The proposal has been reviewed for compliance with applicable standards of the Land Use Resolution.

Section 13-109 M. 4. Criteria for BOA Decision

The request for a sign variance shall comply with the standards outlined in LUR Section 13-109 M. 4. *Criteria for BOA Decision*.

“A variance shall be granted only upon a demonstration by the applicant by a preponderance of the evidence that the literal enforcement of this Section would

cause unnecessary or undue hardship to the applicant, and that there will be no adverse impact to adjacent land uses or the general public; and upon written finding by the BOA that all of the following criteria have been met:"

The applicant has provided the following responses to the criteria in the abovementioned section:

- a. **Hardship not Self-Imposed.** That the hardship has not been created by the applicant, or his/her predecessor;

The hardship is a function of the type of project. Signs are allowed for advertising lots in subdivisions but there is no mention in the code of advertising for rentals.

- b. **No Harm to Public Safety.** That there is no detriment to the public health, safety and welfare;

The sign will be placed outside of the right-of-way. It will not affect vision of motorists or snow removal activities. There will be no negative impact on public safety or welfare.

- c. **Demonstration of Need.** That there exists a clear and reasonable need for the sign at the proposed location;

The project is a large rental project, all available efforts to advertise available units will be necessary. "For Rent" signs are a common primary avenue for building awareness and reaching target markets for projects like this.

- d. **Consistency with Neighborhood.** That the type, style, size and other characteristics of the proposed sign are consistent with the character of the proposed location;

The adjacent development includes businesses with building mounted signs that are visible from the highway. This temporary sign will be similar in scale to those existing signs.

- e. **Compliance with all Other Standards.** That the location, character and format of the proposed sign are not in conflict with the purposes of this Section, or of this Resolution;

The sign complies with other standards:

Section I; sign is on-site for what it is advertising, one sign for the development, not in the right-of-way, no lighting, not internally lit, the sign will not interfere with snow removal or vision of motorist.

Section J; sign will be mounted to a wood frame designed to withstand elements for the period of time which it will be utilized, the structure and sign will be designed to withstand the wind load.

Section K; The sign will be less than 50 sq.ft. (4'x12' sign), the sign is not part of a cluster, the top of the sign will be approximately 16' above grade.

- f. **Public Benefit Outweighs Impacts.** That the benefits that the sign would provide to the public and county visitors would outweigh any adverse aesthetic or other impacts caused by the proposed sign.

The project is a publicly owned and operated development that will serve local workers by providing attainable housing. The local housing crisis is well documented and a high priority of the community. This sign will help develop awareness that the project is beginning to take rental applications which will benefit those in need of housing as well as support the project leasing requirements.

3. Request of Board of Adjustment

The variance request will be reviewed to determine compliance with the standards outlined in LUR Section 13-109 M. 4. *Criteria for BOA Decision.* The Board of Adjustment (BOA) is the decision-making body for this variance request. The BOA must determine whether the applicant has met the necessary criteria to justify a variance to the number of signs permitted on the parcel and the maximum sign area on the parcel. The BOA has the authority to approve, approve with conditions, or deny the request based on compliance with these standards.

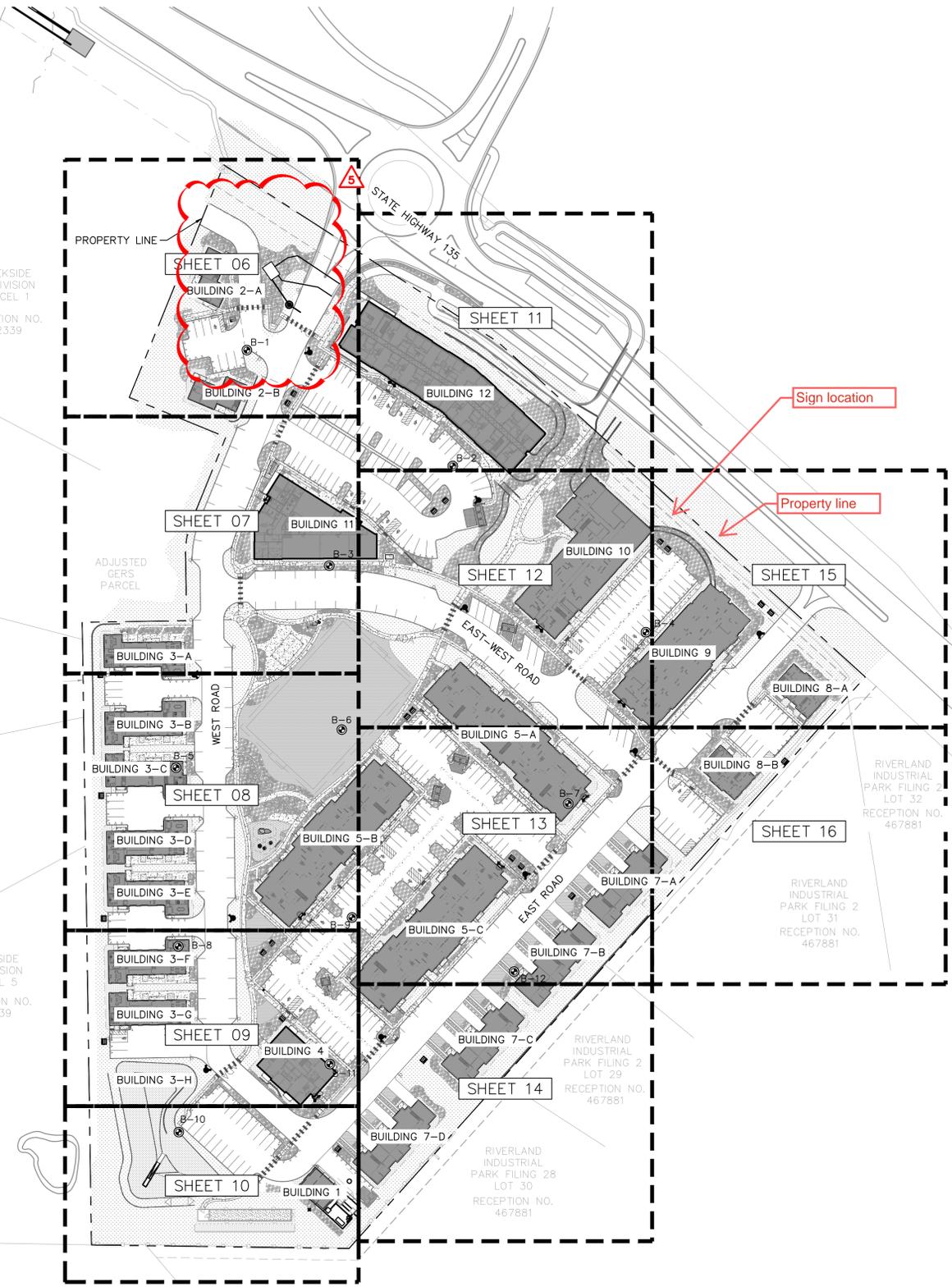
Exhibit C. *BOA Draft Decision Document* does not obligate the BOA to make a final decision on the application during this meeting. The BOA can reference Exhibit A. *Site Plan* and Exhibit B. *Sign Design* to understand the nature of the proposed variance.

4. Exhibits

You may review the entire application at <https://permitdb.gunnisoncounty.org/citizenaccess>, click "Projects", search by application number BOA-26-00002. Click on "Attachments".

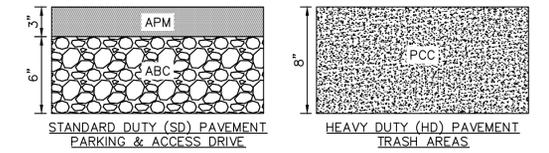
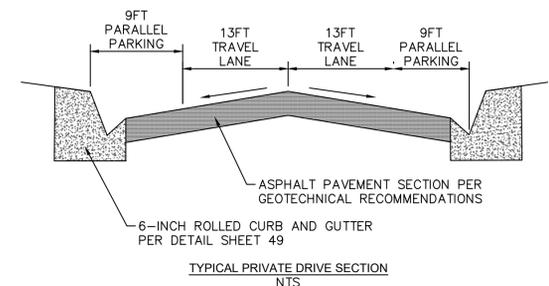
- A. Site Plan
- B. Sign Design
- C. Draft Decision Document

PARKING SUMMARY	
STANDARD STALLS	281
COMPACT STALLS	15
STANDARD EV STALLS	30
ADA STALLS	17
ADA EV STALLS	7
TOTAL ADA STALLS	24
TOTAL	350



LEGEND:

	PROPERTY LINE
	EXISTING EASEMENT LINE
	BUILDING SETBACK LINE
	PROPOSED CONCRETE CATCH CURB AND GUTTER
	PROPOSED CONCRETE SPILL CURB AND GUTTER
	PROPOSED SIDEWALK OR HARDSCAPE AREA
	PROPOSED LANDSCAPE AREA
	PROPOSED ASPHALT PAVEMENT
	PROPOSED BUILDING
	PROPOSED HEAVY DUTY PAVEMENT
	BORING LOCATION, REFER TO GEOTECHNICAL REPORT FOR DETAILS
	ACCESSIBLE ROUTE



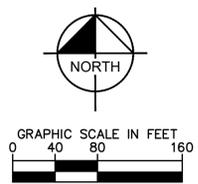
PAVEMENT SECTIONS AND MATERIALS SHALL BE CONSISTENT WITH THE GEOTECHNICAL STUDY PREPARED BY CMT TECHNICAL SERVICES DATED NOVEMBER 17, 2023.

OWNER:
 GUNNISON COUNTY
 211 N WISCONSIN ST.
 GUNNISON, CO. 81230

DEVELOPER:
 SERVITAS
 5525 N. MACARTHUR BLVD.
 SUITE 90, IRVING TX. 75038



- DATE:**
- 02/07/24 - PP 01
 - 04/26/24 - 50% CDs
 - 06/28/24 - PP 01
 - 08/15/24 - UTIL. REV01
 - 08/30/24 - BID SET #2
 - 09/26/24 - RFI #048
 - 10/31/24 - RFI 46, 47, 32
 - 11/20/24 - IFC
 - 02/12/25 - CBFPD



SHEET TITLE:
 OVERALL
 SITE PLAN



TO: Gunnison County Board of Adjustment

SUBJECT: Board of Adjustment Decision Document
BOA-26-00002 | Whetstone Village Sign Variance Request

DATE: March 24, 2026

PREPARED BY: Caroline Danielson, Planner I

At a work session on March 24, 2026, the Board of Adjustment _____ the following sign variance request in a ___ to ___ vote; moved by Member _____ and Seconded by Member _____.

PROJECT DESCRIPTION:

John Cattles, representing Gunnison County, is requesting a variance from standards in Gunnison County Land Use Resolution (LUR) Section 13-109 *Signs* to allow the placement of a second sign at 25115 Hwy 135 ([parcel # 3255-120-00-093](#)). One monument sign is currently permitted at the site per the approval of the Whetstone Community Housing Development (LUC-22-00049). The applicant wishes to place an additional sign on the parcel to advertise leasing availability. The proposed sign is temporary, anticipated to be placed until the majority of units are leased. Per LUR Section 13-109 I:b *One Sign Per Use*, “there shall be one sign per primary use, except that when the subject property abuts two public roadways, there may be one sign facing each roadway.” Per LUR Section 13-109 K. 2 *Maximum Individual Sign Area*, “the maximum permitted area of individual signs shall be 50 sq. ft.” With this, the applicant is requesting a variance for a “non-compliant sign” per LUR Section 13-109 L *Signs Allowed Only by Variance by the Board of Adjustment*.

PLANS/REPORTS/SUBMITTALS:

Plans, reports, letters and other submittal documents informing this decision include, but are not limited to:

- Sign Variance Application
- Sign Variance Request
- Site Plan
- Sign Design
- Town of CB Comments 26.03.05
- Board of Adjustment Staff Memo 26.03.24

MEETING DATES:

The Board of Adjustment held a work session to discuss the application on the following date(s):

- March 24, 2026

SITE VISIT:

No site visit was conducted.

REVIEW AGENCY REFERRAL COMMENTS:

A copy of the application was sent to the following referral agencies by email on March 4, 2026:

1. Gunnison County Public Works
No comments provided.
2. Gunnison County Building and Environmental Health Official
No comments provided.
3. Colorado Department of Transportation
CDOT had no comments on the application due to the location of the sign on private property.
4. Town of Crested Butte
The Town of Crested Butte provided a referral letter suggesting that the sign be issued a temporary permit, allowing the sign to remain in place for up to six months following the Certificate of Occupancy. The full letter can be found in the permit file.

COMPLIANCE WITH SECTION 13-109 M. 4. CRITERIA FOR BOA DECISION.

The Board of Adjustment shall consider all relevant materials and testimony and the standards of this Section and shall *approve, approve with conditions, or deny the Variance Request*, and shall, as part of that action, *include specific findings* that the application does or does not comply with Section 13-109 M. 4. *Criteria for BOA Decision*. If approved, the action will be memorialized in a Sign Permit.

The applicant has provided the following responses to the standards in the abovementioned section:

- a. **Hardship not Self-Imposed.** That the hardship has not been created by the applicant, or his/her predecessor;

The hardship is a function of the type of project. Signs are allowed for advertising lots in subdivisions but there is no mention in the code of advertising for rentals.

- b. **No Harm to Public Safety.** That there is no detriment to the public health, safety and welfare;

The sign will be placed outside of the right-of-way. It will not affect vision of motorists or snow removal activities. There will be no negative impact on public safety or welfare.

- c. **Demonstration of Need.** That there exists a clear and reasonable need for the sign at the proposed location;

The project is a large rental project, all available efforts to advertise available units will be necessary. "For Rent" signs are a common primary avenue for building awareness and reaching target markets for projects like this.

- d. **Consistency with Neighborhood.** That the type, style, size and other characteristics of the proposed sign are consistent with the character of the proposed location;

The adjacent development includes businesses with building mounted signs that are visible from the highway. This temporary sign will be similar in scale to those existing signs.

- e. **Compliance with all Other Standards.** That the location, character and format of the proposed sign are not in conflict with the purposes of this Section, or of this Resolution;

The sign complies with other standards:

Section I; sign is on-site for what it is advertising, one sign for the development, not in the right-of-way, no lighting, not internally lit, the sign will not interfere with snow removal or vision of motorist.

Section J; sign will be mounted to a wood frame designed to withstand elements for the period of time which it will be utilized, the structure and sign will be designed to withstand the wind load.

Section K; The sign will be less than 50 sq.ft. (4'x12' sign), the sign is not part of a cluster, the top of the sign will be approximately 16' above grade.

- f. **Public Benefit Outweighs Impacts.** That the benefits that the sign would provide to the public and county visitors would outweigh any adverse aesthetic or other impacts caused by the proposed sign.

The project is a publicly owned and operated development that will serve local workers by providing attainable housing. The local housing crisis is well documented and a high priority of the community. This sign will help develop awareness that the project is beginning to take rental applications which will benefit those in need of housing as well as support the project leasing requirements.

FINDINGS:

The Gunnison County Board of Adjustment finds that:

1. The Sign Variance request meets the standards of the Gunnison County Land Use Resolution Section 13-109 M. 4. *Criteria for BOA Decision.*
2. This review and decision incorporates, but is not limited to, all the documentation submitted to the County and included within the Community Development file relative to this application; including all exhibits, references and documents as included therein.

DECISION:

The Gunnison County Board of Adjustment, having considered the submitted application, site plan, and referral agency comments, has reached the above findings and approves the sign variance request described in BOA-26-00002 with the following conditions:

1. This permit is limited to activities described within the “Project Description” of this application, and as depicted on the Plan submitted as part of this application. Expansion or change of this use will require either an application for amendment of this permit, or submittal of an application

for a new permit, in compliance with applicable requirements of the *Gunnison County Land Use Resolution*.

2. This approval is founded on each individual requirement. Should the applicant successfully challenge any such finding or requirement, this approval is null and void.
3. This permit may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.
4. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.
5. Approval of this use is based upon the facts presented and implies no approval of similar use in the same or different location and/or with different impacts on the environment and community. Any such future application shall be reviewed and evaluated, subject to its compliance with current regulations, and its impact to the County.
6. The sign permit shall be temporary in nature. The sign is to be removed 6 months following the issuance of a Certificate of Occupancy.

To: Gunnison County Board of Adjustment
Date: March 11, 2026
Meeting Date: March 24, 2026
Re: APPEAL-26-00001 | Scenic Butte Appeal of Interpretation

1. Background

Otten Johnson on behalf of Scenic Butte Partners, LLC, (the Appellant) submitted an appeal (*See* “Request for Appeal”, February 5, 2026) relative to an interpretation issued by the Gunnison County Community Development Department to the Appellant on January 21, 2026 (*See* “Response to 122225 request for Interpretation 012126”, January 21, 2026). The BOA must consider the appeal within 30 days after the date the written appeal was filed and applicable appeal fee paid.

The purpose of this memo is two-fold. First, it provides an outline of the recently adopted and amended appeal process as it relates to Board of Adjustment (“BOA”) decision-making. Second, it explains the staff’s analysis of the issues raised on appeal.

2. Applicable Regulations

The Appeal is pursuant to the following regulations:

- A. Gunnison County Land Use Resolution (“LUR”) § 1-114:D. *Appeals*;
- B. LUR § 8-103: *Appeals*;
- C. LUR § 2-102: *Definitions*, specifically:
 - a. ACCESS means the place, method or way by which pedestrians and vehicles obtain usable ingress and egress to a property or land use.
 - RESIDENTIAL ACCESS means an ingress or egress to no more than two residences or lots, including any that includes a home occupation, or a multiple-family residence as defined by this Resolution.

3. Process

The BOA must determine whether to conduct a public hearing. LUR § 8-103: C.2.b.1. *Criteria for Conducting a Public Hearing* states:

The BOA shall conduct a public hearing if the BOA is satisfied that the anticipated, additional testimony or documents could not reasonably have been presented to the initial decision-making body. The BOA shall consider all of the following in making such a decision:

a. AVAILABILITY AT TIME OF REVIEW BY INITIAL DECISION-MAKING BODY. Availability of the anticipated, additional testimony or documents at the time of review of the application by the initial decision-making body.

b. ADDITIONAL TESTIMONY OR EVIDENCE WOULD BE SIGNIFICANT. Whether the additional testimony or evidence would be significant; that is, whether it would have a major effect on the BOA's decision on the appeal.

4. Actions that may be appealed to the BOA

Pursuant to LUR §1-114:D. Appeals:

"Interpretations or final decisions rendered by the Community Development Director may be appealed to the Board of Adjustment. The appeal shall be submitted and considered pursuant to the requirements of Section 8- 603: Appeals".

5. BOA Determination Whether to Conduct Public Hearing

At the initial meeting to discuss the appeal, the BOA shall determine if a public hearing should be conducted on the appeal based on the standards of § 8-103:D.b *BOA Determination Whether to Conduct Public Hearing*:

1. *"CRITERIA FOR CONDUCTING PUBLIC HEARING. The BOA shall conduct a public hearing if the BOA is satisfied that the anticipated, additional testimony or documents could not reasonably have been presented to the initial decision-making body. The BOA shall consider all of the following in making such a decision:*

a. AVAILABILITY AT TIME OF REVIEW BY INITIAL DECISION-MAKING BODY. Availability of the anticipated, additional testimony or documents at the time of review of the application by the initial decision-making body.

b. ADDITIONAL TESTIMONY OR EVIDENCE WOULD BE SIGNIFICANT. Whether the additional testimony or evidence would be significant; that is, whether it would have a major effect on the BOA's decision on the appeal.

In making the determination of conducting a public hearing, the BOA may accept comment from the applicant and appellant relative only to the conduct of the hearing but not the substantive matters of the appeal itself.

If the BOA determines not to hold a public hearing, a decision shall only consider the administrative record, argument by the Appellant and presentation by Gunnison County Staff pursuant to LUR § 8-103:C.2.c. *BOA Consideration Only Of Record; No Public Hearing Conducted*. Further, the chair may place limitations, including time limits, on such oral presentations:

"...review of the record of the initial decision-making body, and argument by the appellant and applicant regarding that record. No new evidence shall be accepted or considered, and the BOA chairperson may limit statements made to the BOA".

If the BOA determines to conduct a public hearing, the BOA may consider the record and new evidence pursuant to LUR § 8-103:C.2.d. *BOA Consideration Of Record And New Evidence; Public Hearing Conducted.*

“... the BOA shall make its decision de novo based on consideration of the record of the initial decision-making body and any evidence presented at the public hearing”.

6. BOA Decision

The BOA shall make a decision to affirm, reverse, modify or remand, in whole or part, the appealed action. When the BOA reverses or modifies a decision, the BOA shall set forth its findings and state its reasons. Reversal, modification or remand of a decision shall require the concurring vote of four of the five members. When the BOA elects to remand the matter back to the initial decision-making body, the BOA shall include a statement explaining the reasons for the remand and the action to be taken. (See LUR § 8-103:C.3.)

The original action shall only be modified, reversed or remanded, as provided in § 8-103:C.3.a of the LUR, if the appellant establishes that:

“a. No Credible Evidence. There is no credible evidence in the record to support the original decision;

b. Original Action Inconsistent with This Resolution. The original action was inconsistent with the applicable requirements of this Resolution; or

c. Review Body Action Inappropriate. The initial decision-making body exceeded its jurisdiction or abused its discretion”.

7. Summary of Interpretation and Request for Appeal

The January 21, 2026 interpretation concluded that the proposal constitutes a road for the following reasons:

A. The Road Crosses Five Parcels

The proposed alignment:

- Begins at Lot 20A, [3177-000-01-019](#), Vanguard Atlantic Ltd C/O Graypoint LLC
- Crosses Lot 20B, [3177-000-01-020](#), Scenic Butte Partners LLC
- Crosses USFS land, [3177-000-00-192i](#)
- Crosses BLM land, [3177-000-00-068](#)
- Serves the Appellants two parcels, parcel ID unavailable.
 - Note: the road was proposed to serve the Appellant’s four parcels at time of initial application. A boundary line adjustment and lot cluster were recorded at Reception No. 706112 on December 10, 2025. A Land Use Change permit was not required because the resultant lots were larger than 35 acres. The parcel boundaries and IDs have not been updated on the Assessor’s website.

The Applicant asserts that no other parcels will use the road; however, the road physically crosses Lot 20B and the road is physically accessible to that parcel. The LUR definition of “Residential Access” does not condition classification on a promise not to use the facility. It evaluates what the infrastructure is, not merely what the Applicant currently intends.

B. The LUR Does Not Regulates Private Easements

The Applicant argues that the easement restricts use to two residences; however, Gunnison County is not a party to the easement. The County is normally not a party to private easements and such agreements may be amended, supplemented, or terminated by future court order or agreement. The LUR does not incorporate private contractual limitations into its definitional framework. LUR decisions cannot be contingent upon private legal arrangements outside County control.

8. Response to Applicant’s Legal Arguments

Staff requested that the County Attorney provide analysis of those legal issues raised by Appellant’s February 5, 2026 statement of appeal (See “Request for Appeal”, February 5, 2026). The specific issue raised by Appellant is as follows:

“The County concludes that “the proposed road will be physically usable by parties that own land that the road crosses, regardless of the language of any easement.” This is nothing more than a suggestion that hypothetical parties will violate the law, and that the County will decline to enforce it. The County does not deny certificates of occupancy on the grounds that the builder could construct unlawful additions or begin and unlawful use later. The County does not set its own capital expenditures budget on the assumption that its roads and bridges must be built to accommodate drivers who speed at twice the local limits. The law does not allow the County to demand infrastructure or payments disproportionate to project impacts. Nollan v. California Coastal Commission, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994); C.R.S. §§ 29-20-201, et seq.; C.R.S. §§ 29-20-102(2) and 104.5. A request for infrastructure to support an illegal use simply because it is physically possible would be nonsensical and unlawful. So too, here”.

A. The BOA May Be Authorized to Hear Some, But Not All, of Appellant’s Constitutional Challenges

With regard to whether the Board of Adjustment is authorized by law to weigh in on Appellant’s Constitutional challenges -- the answer from the County Attorney is both “yes and no.” It is well established that:

Where the constitutionality of a statute, under which an administrative agency acts, is challenged, the administrative agency cannot pass upon its constitutionality. That function may be exercised only by the judicial branch of government. The proper forum for this is the district court, where a declaratory judgment action can be initiated by the party.

Arapahoe Roofing & Sheet Metal, Inc. v. Denver, 831 P.2d 451, 454 (Colo. 1992) (internal citations and quotations omitted). See also *Welch v. Colo. State Plumbing Bd.*, 2020 COA 130, ¶ 14, 474 P.3d 236, 240 (“Administrative agencies do not have the authority to determine the constitutionality of statutes they are charged with enforcing.”). Thus, and to the extent the Appellant is facially challenging the

constitutionality of either the LUR or the County building codes, the Board of Adjustment probably lacks jurisdiction to hear such questions.

However, Appellant appears not to be challenging the constitutionality of either the County building codes or the LUR, but whether the application of these regulations was constitutional. “Although administrative agencies do not have authority to pass on facial challenges to the constitutionality of statutes, they have authority to determine whether an otherwise constitutional statute has been unconstitutionally applied.” *Pepper v. Indus. Claim Appeals Office*, 131 P.3d 1137, 1146 (Colo. App. 2005). “Distinguishing between facial and as-applied challenges, we have noted that a facial challenge considers the restriction’s application to all conceivable parties, while an as-applied challenge tests the application of that restriction to the facts of a plaintiff’s concrete case.” *Harmon v. City of Norman*, 61 F.4th 779, 789 (10th Cir. 2023) (internal citation and quotations omitted). “Though the same substantive standard applies to both facial and as-applied challenges, the latter demands a developed factual record and the application of a statute to a specific person.” *Id.* Therefore, the Board of Adjustment arguably can decide Appellant’s constitutional claims to the extent they are directed at the application of the regulations by staff rather than the regulations themselves. That said, and as further discussed below, the Board should consider asking Appellant to clarify whether it is making a facial or as-applied challenge to County regulations. If the former, the County Attorney recommends that it decline to engage in such a review, and if the latter, the County Attorney’s recommendations are further set forth below.

- B. The County Attorney Recommends that if the Board is Inclined to Take Up the Constitutional Question Raised by Appellant, the Board Ask Clarifying Questions of the Applicant and Consider Requesting Supplemental Analysis by Staff.

The County Attorney provides the following additional analysis and recommendations:

“Because the citations to authority are not specific and the legal arguments not fully addressed, the County Attorney is struggling to understand the contentions of the Applicant, and, in turn, to provide legal advice regarding these contentions.

Appellants state that “[t]he law does not allow the County to demand infrastructure or payments disproportionate to project impacts”, citing *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); C.R.S. §§ 29-20-201, *et seq.*; C.R.S. §§ 29-20-102(2) and 104.5. The County Attorney does not understand 1) exactly how these authorities support this proposition, or 2) how this proposition is related to the requested interpretation. *Nollan*, for example, notes that the Supreme Court has “long recognized that land-use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land[.]” See *Nollan v. Cal. Coastal Com*, 483 U.S. 825, 834, 107 S. Ct. 3141, 3147 (1987) (internal citations and quotations omitted). The County Attorney is failing to understand Appellant’s apparent argument that staff’s conclusion that the subject proposal constitutes a road is somehow a

Constitutional taking or relates to the imposition of a fee or some other land use condition. Similarly, the *Dolan* Court acknowledged that:

The authority of state and local governments to engage in land use planning has been sustained against constitutional challenge as long ago as our decision in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 71 L. Ed. 303, 47 S. Ct. 114 (1926).

'Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.' *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413, 67 L. Ed. 322, 43 S. Ct. 158 (1922). A land use regulation does not effect a taking if it 'substantially advances legitimate state interests' and does not 'deny an owner economically viable use of his land.' *Agins v. City of Tiburon*, 447 U.S. 255, 260, 65 L. Ed. 2d 106, 100 S. Ct. 2138 (1980).

Dolan v. City of Tigard, 512 U.S. 374, 384-85, 114 S. Ct. 2309, 2316 (1994). Again, the County Attorney is failing to understand how the Planning Director's decision at issue implicates takings law.

As to Appellant's statutory citations, C.R.S. § 29-20-203 (1) (2025) provides that "[i]n imposing conditions upon the granting of land-use approvals, no local government shall require an owner of private property to dedicate real property to the public, or pay money or provide services to a public entity in an amount that is determined on an individual and discretionary basis, unless there is an essential nexus between the dedication or payment and a legitimate local government interest, and the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of such property." The County Attorney does not understand how the Planning Director's conclusion that the proposal is a road somehow constitutes a dedication or property or the requirement to pay money or services.

Appellant cites to C.R.S. § 29-20-102 (2) (2025), which provides:

The general assembly further finds and declares that local governments will be better able to properly plan for growth and serve new residents if they are authorized to impose impact fees as a condition of approval of development permits. However, impact fees and other development charges can affect growth and development patterns outside a local government's jurisdiction, and uniform impact fee authority among local governments will encourage proper growth management.

Given that the Planning Director's interpretation did not relate to the imposition of an impact fee, the County Attorney is not comprehending Appellant's citation to this statute. For this same reason, the County Attorney is puzzled by the citation to CRS § 29-20-104.5, which governs impact fees.

Assuming that the Board and Planning staff share the County Attorney's confusion, and to the extent the Board considers it germane to take up Appellant's Constitutional arguments, the County Attorney recommends that the Board request that Appellant, either through supplemental briefing, oral argument, or both, flesh out these arguments through specific citations to authority and further explanation. After receiving such additional information, the Board should continue whether to

continue the proceeding to another date to provide the County Attorney and staff additional time to analyze Appellant's contentions and supplement this memorandum to the Board."

9. Exhibits and Administrative Record

- A. "Request for Appeal", February 5, 2026
- B. "Response to 122225 request for Interpretation 012126", January 21, 2026

The Administrative Record can be accessed on <https://permitdb.gunnisoncounty.org/citizenaccess/>, click on the "Projects" button, then click the "Application Number" button, type "APPEAL-26-00001" into the search field, click "Search", select the result, then click on "Attachments".

February 5, 2026

ANDREW L.W. PETERS
303 575 7507
APETERS@OTTENJOHNSON.COM

Board of Adjustment
Gunnison County
200 E. Virginia
Gunnison, CO 81230

Re: Appeal of Interpretation – Residential Access

Dear Board Members:

Our Firm represents Scenic Butte Partners, LLC (the “**Applicant**”) with respect to the application for a Land Use Change referred to as LUC-25-00003 (the “**Application**”). The Application proposes an access drive located largely on federally held land (the “**Proposed Driveway**”) for two homesites on the two lots comprising the Applicant’s 160 acres of real property (“**Property**”). We are in receipt of the County’s interpretation pursuant to § 1-114 of the Gunnison County Land Use Resolution (“**LUR**”) dated January 21, 2026, with respect to the application of the term “Residential Access,” as defined in LUR § 2-102, to the Proposed Driveway (the “**Interpretation**”).

The Applicant now submits this appeal (the “**Appeal**”) pursuant to LUR § 8-103:A(8). We provide the following letter to state the basis of the appeal and the requested relief. The record for this Appeal consists of this request, the Interpretation, and the Application and all related documents that have been submitted to the County to date.

I. Application History.

The Applicant submitted this Application to construct an access drive that will serve two residences. The residences will be located upon the Applicant’s two parcels, which comprise the Property. To secure access to the Property, the Applicant engaged in a lengthy legal dispute, which resulted in a court-created easement through the Trappers Crossing at Crested Butte Subdivision by way of Trappers Way (the “**Easement**”), as described in the Immediate Possession Order dated April 8, 2021 (the “**Immediate Possession Order**”). The Easement is “for a private way for the use and enjoyment of the Scenic Butte 160-acre parcel to and including building and constructing a road and not to exceed two residences, ingress and egress to the site, installing utilities and maintain the road and driveway to the 160-acre parcel.” Consistent with the limitations of the Immediate Possession Order, which limits legal access for two residences, the Applicant has replatted the Property to comprise two lots, as opposed to its original four-lot configuration. Each lot is approximately 80 acres, as shown on the attached plat.

The Proposed Driveway begins at a point on the boundary of Lot 20A (APN 3177-000-01-019), as required by the Immediate Possession Order, and will cross Lot 20B¹ (APN 3177-000-01-020), a USFS parcel (APN 3177-000-00-173), and a BLM parcel (APN 3177-000-00-068) to reach the two parcels comprising the Property; however, consistent with the Easement’s limitations, the Proposed Driveway can provide ingress and egress to only the two parcels comprising the Property.

In the Determination of Completeness dated May 14, 2025, the County determined that the Proposed Driveway is not a Residential Access. The Applicant then submitted a request for an Interpretation on December 22, 2025, with respect to the term “Residential Access” (LUR § 2-102) as applied to the Proposed Driveway. On January 21, 2026, the County issued an Interpretation, in which it affirmed that the “access still does not meet the definition of a residential access” and “instead meets the definition of a road under the LUR.”

That finding is inconsistent with the LUR. Moreover, if applied, the practical implication of the Interpretation’s conclusion will be that the Proposed Driveway must be widened from 16 feet to 22 feet. Such a change will increase the amount of cut and fill by 251 percent and 135 percent respectively and will increase the estimated cost of construction from \$2,206,840.00 to \$7,744,438.00. The County, the United States Forest Service (“USFS”), the Bureau of Land Management (“BLM”), various referral agencies, and the public have all stressed the importance of minimizing project impacts. The Applicant shares an interest in delivering safe, all-season access to the Property, while minimizing impacts and unnecessary expense.

Since then, the County has determined the Application is void. While the Applicant disputes that outcome, the Applicant’s focus is moving forward construction of the Proposed Driveway, which, first and foremost, involves finalizing the design. Accordingly, the Applicant is pursuing this line of inquiry regarding the classification of the Proposed Driveway with the County to finality, at which point the Applicant will submit the required materials for the pending or renewed Land Use Change Application.

As a result, the Applicant now respectfully submits this Appeal to the Board of Adjustment for its consideration.

II. The County erred when it determined that the Proposed Driveway does not meet the County’s definition of Residential Access.

Under LUR § 2-102, Residential Access means “an ingress or egress to no more than two residences or lots,” including any that includes a home occupation, or a multiple-family residence as defined by this Resolution. LUR § 2-102. The Proposed Driveway meets the definition. The Proposed Driveway will provide ingress/egress to the two planned residences on the two lots making up the Property, and only those two properties.

The Gunnison County Standards and Specifications for Roads and Bridges provide an even more detailed definition of Residential Access. The Residential Access definition therein explains, “Residential access is a

¹ The Applicant has not, in this Application, proposed to provide access to Lot 20B.

private access over 50 inches in width, for the exclusive use of the owners, occupants and their invitees and is not considered a road or highway.”

As limited by the Easement created by the Immediate Possession Order, the Proposed Driveway is just that. It is a private access that is exclusive to the residential use by the owners of the Property. Again, in the words of the court: the Proposed Driveway will provide “a private way for the use and enjoyment of the Scenic Butte 160-acre parcel . . . not to exceed two residences, [and] ingress and egress to the site.” All use of the Proposed Driveway will be limited by the Easement, meaning that any access to USFS or BLM land, or any other private property, would violate the law and constitute trespassing.

Under the LUR, access means “the place, method or way by which pedestrians and vehicles obtain usable ingress and egress to a property or land use.” For ingress and egress to be “usable,” there must be both physical and legal access. Only the two lots comprising the Property will have usable access along the Proposed Driveway, as only those lots will have legal and physical access.

A. The County’s definition of access must include legal access.

The only two parcels that have legal access to use the Proposed Driveway comprise the Property. The Easement is limited to “two residences” on “the 160-acre parcel.” The scope of the Easement provided by the Court necessarily limits the Proposed Driveway. The Easement does not—and cannot—provide legal access to USFS or BLM land, or any other public or private property. The Applicant cannot, as the holder of the Easement “unilaterally authorize other properties to use the easement for access.” *See Riddell v. Ewell*, 929 P.2d 30, 32 (Colo. App. 1996). The County’s current position would require the Applicant to build a larger access road to support additional use that neither the Applicant nor the County could ever authorize.

The Applicant agrees that, as the County asserts, the easement could be changed at some future time. Even accepting this as a possibility—though an extraordinarily unlikely one given the years-long battle to secure Applicant’s minimal rights—private access rights do not determine the County’s regulatory and enforcement authority. Should the Applicant secure additional rights in the future and seeks to deliver access in a manner that exceeds the limits for a residential access, they County can determine the required facilities at that point. There is nothing today, however, that warrants a more intense roadway.

The County concludes that “the proposed road will be physically usable by parties that own land that the road crosses, regardless of the language of any easement.” This is nothing more than a suggestion that hypothetical parties will violate the law, and that the County will decline to enforce it. The County does not deny certificates of occupancy on the grounds that the builder could construct unlawful additions or begin and unlawful use later. The County does not set its own capital expenditures budget on the assumption that its roads and bridges must be built to accommodate drivers who speed at twice the local limits. The law does not allow the County to demand infrastructure or payments disproportionate to project impacts. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); C.R.S. §§ 29-20-201, *et seq.*; C.R.S. §§ 29-20-102(2) and 104.5. A request for infrastructure to support an illegal use simply because it is physically possible would be nonsensical and unlawful. So too, here.

It may be helpful to consider this problem from the opposite direction as well. Section 2-102 of the LUR defines “Legal Access” as “the physical access recognized by law, from the state highway system to the subject lot.” Section 12-103:G(3) requires applicants to demonstrate Legal Access to a public road for all residential lots. We cannot imagine that the County ever permits residential lot development upon an applicant’s submission that, although it lacks Legal Access to a lot, it plans to trespass on existing drives and exceed their designed capacity. If the County would not accept that assumption during permitting, there is no reason for it to assume unlawful action here either.

Additionally, the LUR describes access as “usable” ingress and egress. “Usable” in this context cannot include “usable by illegal means.” Just as we cannot imagine the County permitting development on a property without legal access on the assumption that it would be reached unlawfully, the County erred in requiring the Applicant to develop infrastructure to accommodate hypothetical unlawful activity. Requiring the Applicant to build to a higher standard because other property owners could use the Proposed Driveway without legal access functionally requires the Applicant to accommodate anticipated violations of the law. The County has a system of laws to govern land use and, notably, specifically to govern access.² Requiring infrastructure sized appropriately for planned noncompliance with the law undermines the County’s own legal authority.

Relatedly, the County asserts that “it is hard to imagine that Scenic Butte Partners wishes to limit their own access to Lot 20b and will not utilize the proposed road to access Lot 20b.” If the Applicant were to use the Proposed Driveway to access Lot 20B, the Applicant would be doing so in violation of a court order. Again, the County’s assumption that the Applicant would violate the law after going through years of legal process and great expense to lawfully secure access to its Property is both speculative and unwarranted. If, however, the County remains concerned about future use of Lot 20B by the Applicant or any other owner, please see Section II.C of this letter for a description of how the County could address such future potential use without requiring the Applicant to account for such use, which is currently unlawful.

B. The County’s definition of access must include physical access.

The Proposed Driveway does not contemplate providing any usable ingress or egress to Lot 20A, Lot 20B, the USFS parcel, or the BLM parcel. The civil engineering plans provide turnouts for safety. They do not depict any points of access for pedestrians or for vehicles to those properties.

The County’s position remains that because the Proposed driveway “functionally . . . crosses five parcels” it must be a road. However, the definition of Residential Access requires more than simply crossing a parcel, it requires providing “an ingress or egress.” The Application does not propose to do so.

C. Allowing the Proposed Driveway to be built as a Residential Access does not limit the County’s authority to regulate access by any future development along the Proposed Driveway.

As the Applicant has previously explained, the County has the legal authority under the LUR to impose conditions on an application’s approval. LUR § 5 105:A(5). For example, the County could include conditions

² See LUR § 12-103:G; see also LUR § 1-103:M(1-2).

of approval to prevent any future development from exceeding the contemplated capacity of the Proposed Driveway.

The County's Land Use Change Permit process would alert the County of such development. That process sets standards for access, including that "legal access shall be provided" to "ensure all residential lots have legal access to a public road." Accordingly, if another parcel along the Proposed Driveway were to develop, that parcel owner would be required to submit a Land Use Change Permit and demonstrate it had legal access to the road (at least for residential use), which it would not have without a change in the easement. We imagine the County would require, at that time, the future applicant to demonstrate its legal access, such as by producing documentation of legal access. Also at that time, the County could require adjustment of the Proposed Driveway to meet the appropriate standards, as it could no longer be classified as a Residential Access.

If, as the Applicant has previously described, the County were to include a condition on the approval³ of the Proposed Driveway pursuant to under the LUR § 5-105:A(5), then at the time of that future application, the County could require the portion of the Proposed Driveway serving that parcel be improved to satisfy whatever standard the County deems appropriate at that time.

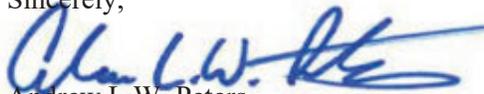
By pursuing this approach, the County can minimize the size and impact of the roadway. Unless and until legal access is obtained and a landowner seeks to develop any of those parcels, it is simply unnecessary to require the Applicant to build a larger roadway, and, by insisting otherwise, the County appears to be acting against its own interest and the interest of various other agencies in minimizing the impact of the Proposed Driveway on federal lands and the community's shared viewshed.

III. Requested Relief.

For the foregoing reasons, the Applicant now respectfully requests that the Board of Adjustment reverse the Interpretation and determine that the Proposed Driveway constitutes a Residential Access under the LUR.

We appreciate your time and consideration of this request. We are happy to provide any additional information that you may require as you consider the merits of this appeal. Please reach out if we can be of further assistance.

Sincerely,



Andrew L.W. Peters

For the Firm

ALWP/dcd

³ We provide an example of what this potential condition could include: (1) Lot 20B shall not be granted legal access to the approved access drive unless and until Lot20B's then-owner secures the then-required County approval for a drive serving more than two residences and completes any and all improvements required to the access drive required for such approval; and (2) the conditional approval shall be recorded the real property records of the Gunnison County Clerk & Recorder for Lot 20B to apprise future buyers of the restrictions set forth in these conditions.



Cathie Pagano, Assistant County Manager
Gunnison County Community & Economic Development Department

Phone: (970) 641-0360
Email: planning@gunnisoncounty.org
Website: www.GunnisonCounty.org

January 21, 2026

Andrew Peters

Otten Johnson

APeters@OttenJohnson.com

Re: December 22, 2025 Request for Interpretation related to LUC-25-00003 for Scenic Butte Partners, LLC

Dear Mr. Peters,

Gunnison County is in receipt of your request for interpretation dated December 22, 2025 in regard to LUC-25-00003 for Scenic Butte Partners, LLC. As we understand you request interpretation of:

"§ 1-114 of the Gunnison County Land Use Resolution ("LUR") with respect to the application of the term "Residential Access" as defined in LUR § 2-102 to the proposed access drive, located largely on federally held land, ("Proposed Driveway") to access two homesites located on the two lots comprising the Applicant's 160 acres of real property ("Property") as contemplated in the Application."

Set forth below is my interpretation.

On December 22, 2025 Otten Johnson, representing Scenic Butte Partners, LLC submitted additional and revised application materials to Gunnison County including an "Updated Plat" recorded in the office of the Gunnison County Clerk and Recorder at Reception No. 706112. The plat titled, "Scenic Butte Partners Lot Consolidation" depicts that there were originally four parcels, each approximately 41 acres in size. The boundaries of the four parcels have been adjusted and there are now two parcels, each approximately 82 acres in size.

My letter dated May 14, 2025 (attached) to Scenic Butte Partners, LLC and Mr. Peters, addressed this matter:

"The letter from Andrew Peters dated April 14, 2025 requested that the current application be processed as an Administrative Review application per Section 5-102: P. I do not find that the

proposed road meets the definition of a residential access. Section 2-102 of the Gunnison County *Land Use Resolution* defines residential access as “an ingress or egress to no more than two residences or lots, including any that includes a home occupation or multiple-family residence as defined by this Resolution.” The applicant proposes to restrict the use of the road by other parcels so that only two of the seven parcels on the road may access the road. The definition of residential access includes “ingress or egress” it does not qualify that the ingress/egress must be a legally established agreement between various property owners. I do not find this argument meets the standards of the LUR. Based on the submitted information, the proposed improvement meets the definition of a road and is classified as a Minor Impact land use change permit per Section 6-102: M. General Road Cutting or Construction.”

While the applicant has reduced the number of parcels that will be accessed by the proposed road from seven parcels to five parcels, I find that the access still does not meet the definition of a residential access as set forth in the *Gunnison County Land Use Resolution* and instead meets the definition of a road under the LUR.

I understand that the easement as described in the Immediate Possession Order dated April 8, 2021 may restrict the use of the easement to two residences. However, easements are not regulated by Gunnison County, the County is not a party to the litigation matter you reference, and the subject easement may be amended, supplemented or terminated by agreement of the parties or by a subsequent court order. Further, nothing in the LUR changes or modifies the definitions of either “residential access” or “road” merely due to use restrictions imposed by contract or court order. Additionally, functionally the road crosses five parcels, including Lot 20b, Trapper’s Crossing at Crested Butte Subdivision, owned by Scenic Butte Partners, LLC. The proposed road will be physically usable by parties that own land that the road crosses, regardless of the language of any easement. It is hard to imagine that Scenic Butte Partners wishes to limit their own access to Lot 20b and will not utilize the proposed road to access Lot 20b.

Accordingly, I conclude that road at issue does not meet the definition of “residential access” under the *Gunnison County Land Use Resolution*. Based on the submitted information, the proposed improvement meets the definition of a road and is classified as a Minor Impact land use change permit per Section 6-102: M. *General Road Cutting or Construction* of the *Gunnison County Land Use Resolution*.

Sincerely,

Catherine Pagano

Cathie Pagano, AICP CEP
Assistant County Manager for Community and Economic Development

To: Gunnison County Board of Adjustment
Date: March 11, 2026
Meeting Date: March 24, 2026
Re: APPEAL-26-00002 | Scenic Butte Appeal of Administrative Determination

1. Background

Otten Johnson on behalf of Scenic Butte Partners, LLC, (the Appellant) submitted an appeal (See “Appeal of Inactive Status”, February 6, 2026) relative to an administrative determination issued by the Gunnison County Community Development Department to the Appellant on January 23, 2026 (See “Response to 122225 submittal 012326”, January 21, 2026). The BOA must consider the appeal within 30 days after the date the written appeal was filed and applicable appeal fee paid.

The purpose of this memo is two-fold. First, it provides an outline of the recently adopted and amended appeal process as it relates to Board of Adjustment (“BOA”) decision-making. Second, it explains the staff’s analysis of the issues raised on appeal.

2. Applicable Regulations

The Appeal is pursuant to the following regulations:

- A. Gunnison County Land Use Resolution (“LUR”) § 1-114:D. *Appeals*;
- B. LUR § 8-103: *Appeals*;
- C. LUR § 3-105: *Withdrawn and Inactive Applications*

3. Process

The BOA must determine whether to conduct a public hearing. LUR § 8-103: C.2.b.1. *Criteria for Conducting a Public Hearing* states:

The BOA shall conduct a public hearing if the BOA is satisfied that the anticipated, additional testimony or documents could not reasonably have been presented to the initial decision-making body. The BOA shall consider all of the following in making such a decision:

a. AVAILABILITY AT TIME OF REVIEW BY INITIAL DECISION-MAKING BODY. Availability of the anticipated, additional testimony or documents at the time of review of the application by the initial decision-making body.

b. ADDITIONAL TESTIMONY OR EVIDENCE WOULD BE SIGNIFICANT. Whether the additional testimony or evidence would be significant; that is, whether it would have a major effect on the BOA’s decision on the appeal.

4. Actions that may be appealed to the BOA

Pursuant to LUR §1-114:D. Appeals:

“Interpretations or final decisions rendered by the Community Development Director may be appealed to the Board of Adjustment. The appeal shall be submitted and considered pursuant to the requirements of Section 8- 603: Appeals”.

5. BOA Determination Whether to Conduct Public Hearing

At the initial meeting to discuss the appeal, the BOA shall determine if a public hearing should be conducted on the appeal based on the standards of § 8-103:D.b *BOA Determination Whether to Conduct Public Hearing*:

1. *“CRITERIA FOR CONDUCTING PUBLIC HEARING. The BOA shall conduct a public hearing if the BOA is satisfied that the anticipated, additional testimony or documents could not reasonably have been presented to the initial decision-making body. The BOA shall consider all of the following in making such a decision:*

a. AVAILABILITY AT TIME OF REVIEW BY INITIAL DECISION-MAKING BODY. Availability of the anticipated, additional testimony or documents at the time of review of the application by the initial decision-making body.

b. ADDITIONAL TESTIMONY OR EVIDENCE WOULD BE SIGNIFICANT. Whether the additional testimony or evidence would be significant; that is, whether it would have a major effect on the BOA’s decision on the appeal.

In making the determination of conducting a public hearing, the BOA may accept comment from the applicant and appellant relative only to the conduct of the hearing but not the substantive matters of the appeal itself.

If the BOA determines not to hold a public hearing, a decision shall only consider the administrative record and testimony by the Appellant and Gunnison County Staff pursuant to LUR § 8-103:C.2.c. *BOA Consideration Only Of Record; No Public Hearing Conducted.*

“...review of the record of the initial decision-making body, and argument by the appellant and applicant regarding that record. No new evidence shall be accepted or considered, and the BOA chairperson may limit statements made to the BOA”.

If the BOA determines to conduct a public hearing, the BOA may consider the record and new evidence pursuant to LUR § 8-103:C.2.d. *BOA Consideration Of Record And New Evidence; Public Hearing Conducted.*

“... the BOA shall make its decision de novo based on consideration of the record of the initial decision-making body and any evidence presented at the public hearing”.

6. BOA Decision

The BOA shall make a decision to affirm, reverse, modify or remand, in whole or part, the appealed action. When the BOA reverses or modifies a decision, the BOA shall set forth its findings and state its reasons. Reversal of a decision shall require the concurring vote of four of the five members. When the BOA elects to remand the matter back to the initial decision-making body, the BOA shall include a statement explaining the reasons for the remand and the action to be taken. (See LUR § 8-103:C.3.)

The original action shall only be modified, reversed or remanded, as provided in § 8-103:C.3.a of the LUR, if the appellant establishes that:

“a. No Credible Evidence. There is no credible evidence in the record to support the original decision;

b. Original Action Inconsistent with This Resolution. The original action was inconsistent with the applicable requirements of this Resolution; or

c. Review Body Action Inappropriate. The initial decision-making body exceeded its jurisdiction or abused its discretion”.

7. Summary of Determination and Request for Appeal

A. Determination of Completeness – May 14, 2025

On May 14, 2025, the County determined the application was complete for processing and classified the proposal as a road subject to Minor Impact review under LUR § 6-102:M. The application was referred to agencies for review.

B. June 30, 2025 | Request for Additional Information

Following referral comments, the County requested revised road plans complying with Fire Code and Gunnison County Road & Bridge Standards, including modification of the road width; and additional geotechnical information as required by the Colorado Geological Survey (CGS) pursuant to LUR § 11-104:E.2. This request triggered LUR § 3-105:B.

C. November 3, 2025 | Inactivity Warning

On November 3, 2025, the Applicant was reminded in writing that under LUR § 3-105:B:

“An application that has become inactive because an applicant is required to submit additional information and has failed to do so for a period of more than six months from when it was requested shall become void...”

The six-month deadline was December 30, 2025.

D. December 22, 2025 | Submittal

The Applicant submitted materials on December 22, 2025; however, the same September 2024 road plans were resubmitted, no revised 22-foot road plans were provided, the requested CGS geotechnical revisions were not provided, the Applicant instead disputed the need for the requested materials.

E. January 23, 2026 | Determination of Inactive and Void Application

Because the required information had not been submitted within six months of the June 30 request, the County determined the application was inactive and void pursuant to LUR § 3-105:B .

8. Exhibits and Administrative Record

- A. "Appeal of Inactive Status", February 6, 2026
- B. "Response to 122225 submittal 012326", January 23, 2026

The Administrative Record can be accessed on

<https://permitdb.gunnisoncounty.org/citizenaccess/>, click on the "Projects" button, then click the "Application Number" button, type "APPEAL-26-00001" into the search field, click "Search", select the result, then click on "Attachments".

February 6, 2026

ANDREW L.W. PETERS
303 575 7507
APETERS@OTTENJOHNSON.COM

Board of Adjustment
Gunnison County
200 E. Virginia
Gunnison, CO 81230

Re: Appeal of Inactive Status of LUC-25-00003

Dear Board Members:

Our Firm represents Scenic Butte Partners, LLC (the “**Applicant**”) with respect to the application for a Land Use Change referred to as LUC-25-00003 (the “**Application**”). The Application proposes an access drive, located largely on federally held land (the “**Proposed Driveway**”) for two homesites on the two lots comprising the Applicant’s 160 acres of real property (“**Property**”) located in Gunnison County (the “**County**”).

Most recently, in a letter dated January 23, 2026, the County determined that the Applicant has failed to respond to certain County requests, and, therefore, the Application is void due to inactivity. The Applicant now submits this appeal challenging that determination (the “**Appeal**”) pursuant to the Gunnison County Land Use Resolution (“**LUR**”) § 8-103:A. The record for this Appeal includes this letter, the Application, and all related documents provided to the County to date, including, but not limited to, documents involved with the Applicant’s request for interpretation, the resulting interpretation (the “**Interpretation**”), and any other documents related to the classification of the Proposed Driveway (the “**Classification Matter**”).

We provide the following letter to state the basis of the appeal and the requested relief.

Background

As of May 14, 2025, the County determined the Application was complete. The County then submitted the Application to various referral agencies for review. In a letter dated June 30, 2025, the County required additional review of Proposed Driveway based on the agency referral responses. Specifically, the County requested:

1. Revised road plans that expanded the width of the road from 16 feet to 22 feet; and
2. Submittal of deficiencies and additional analysis as described in the letter from CGS dated June 27, 2025.

On December 22, 2025, the Applicant submitted a letter responding to agency referral responses and to the County's request for additional information related to the Application ("**December 22 Submittal**").

The December 22 Submittal explained that the Applicant planned to formally challenge the County's classification of the Proposed Driveway as a road instead of a Residential Access. Simultaneous with the December 22 Submittal, the Applicant submitted a request for Interpretation regarding the Classification Matter, pursuant to LUR § 1-114.

As described in the December 22 Submittal, upon receipt of the County's comments, the Applicant diligently attempted to comply with the County's requirements for a larger road, despite the Applicant's disagreement with the foundation for the request. However, the redesign of the road resulted in an increase of the amounts of cut and fill by 251 percent and 135 percent respectively and, according to the Applicant's engineer's probable cost opinions, more than tripled the cost. Given the dramatic increase in impact of Proposed Driveway based on the County's request for a larger road, and the Applicant's disagreement with the County's legal conclusions, the Applicant determined that it was worthwhile to challenge the classification of the proposed driveway as a road, particularly because the theme of the agency referral responses involved minimizing the overall impact of the Proposed Driveway, which the wider road classification directly contradicts. Accordingly, the Applicant based the December 22 Submittal on the original design, believing that it will ultimately prevail on the question of whether the proposed driveway is Residential Access (the "**Classification Matter**").

The December 22 Submittal also recognized that the outcome of the Interpretation and related appeals could ultimately require the Applicant to proceed with the access road instead of the access drive. In the meantime, the Applicant does not want the County to expend limited time and resources reviewing a road design, that may not ultimately be used, pending the outcome of the Classification Matter. This is particularly true because, if the Applicant prevails, the resolution may minimize the scale of both the proposed improvements and the County's review.

Separately, the December 22 Submittal also addressed the requested additional geotechnical information. The Applicant explained that, plainly, the outcome of the Classification Matter will impact the required geotechnical information required. A larger road will likely require additional testing. And, as the December 22 Submittal explained, the Applicant would be happy to supplement the report with additional information once Classification Matter is resolved and testing can take place in May or June, as snowpack and weather permit.

Basis for Appeal

Section 3-105:B of the LUR provides that "[a]n application that has become inactive because an applicant is required to submit additional information and has failed to do so for a period of more than six months from when it was requested shall become void and the resubmittal of a new application and fees shall be required."

The Applicant does not contest that it did not provide County with plans showing a 22-foot-wide road design. Nonetheless, the County's determination that the Application is inactive is in error because the Applicant

provided additional information regarding the matters raised in the County's letter. Therefore, the Application is not inactive.

The County's determination is clear: "the applicant has not submitted the required information . . . and [the application] is inactive and void." However, the practical outcome of such an application of the LUR is unrealistic. Such a strict application would permit the County to demand any number and variety of additional requirements from applicants, even after having already determined their applications were complete, and, unless the applicant complied with every single demand, render such application void. The request for additional information must, at a minimum, be lawful and authorized by the LUR. Without those safeguards, what's to stop the County from continually requiring additional reports and redesigns for a politically unpopular project until an applicant simply runs out of resources to pursue the project? There appears to be no recourse for applicants who disagree with what the County asserts that it requires for review.

Here, the Applicant responded to every single agency referral response and provided dozens of pages of material for the County's review. The Applicant explained why the requested materials were not included, when they could be expected, and provided significant additional information related to the requests made by the County. In short, the Applicant can hardly be construed as having failed to supply additional information. Likewise, the Application is simply not "inactive."

Regarding the required additional geotechnical information, as the Applicant previously explained, once the Classification Matter is resolved the Applicant will supplement the geotechnical report with any additional information and results of additional testing based on the final design of the Proposed Driveway, as necessary. However, this testing cannot take place currently due to weather conditions. The Applicant's consultants anticipate any additional testing, assuming the Classification Matter is resolved, could take place in May or June, as conditions permit.

Specifically, the County refers to Darin Duran's comment that, "[n]o such plans exist and; therefore, a meaningful hazard analysis cannot be conducted," is somehow a result of the Applicant's refusal to provide the 22-foot plans. The Applicant believes this is a misunderstanding. The Colorado Geological Survey, in its letter dated June 26, 2025, requests, among other items, "an integrated site plan, clearly depicting the driveway alignment, utilities, and planned building pads at a sufficiently detailed scale, should be provided to fully evaluate hazard interactions and assess the effectiveness of the proposed mitigation." Where Mr. Duran writes, "[n]o such plans exist," he is referring to the fact that as of now, there are no proposed plans to develop any of the Property as a part of the Application. The Application is only for the Proposed Driveway. Accordingly, and as explained in the December 22 Submittal, the Applicant does not believe that an "integrated site plan" is necessary to evaluate the impact of the Proposed Driveway.

Disagreements over regulatory interpretation are not unusual in land use processes. Disputes often arise over what local governments can require of an applicant, about which standards apply to particular circumstances, or whether a concern has been adequately addressed. In our experience, these are not unusual scenarios. It is, however, unusual that in response to such a disagreement, a local government would respond as the County has here—simply void the Application altogether. The County erred in doing so.

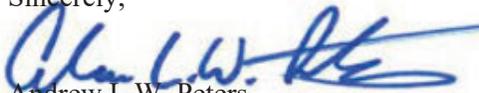
February 6, 2026
Page 4

Requested Relief

For the foregoing reasons, the Applicant now respectfully requests that the Board of Adjustment determine that the Applicant has not “failed” to “submit additional information,” thereby causing the Application to become inactive and void. We request that the Board of Adjustment reverse Cathie Pagano’s decision to void the Application and determine the Application is active and will remain so during the pendency of the Classification Matter.

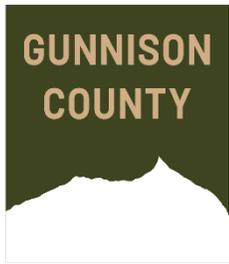
We look forward to your response. Please let us know if we can provide any additional information as you review this request. Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew L.W. Peters".

Andrew L.W. Peters
For the Firm

ALWP/dcd



Cathie Pagano, Assistant County Manager
Gunnison County Community & Economic Development Department

Phone: (970) 641-0360
Email: planning@gunnisoncounty.org
Website: www.GunnisonCounty.org

January 23, 2026

Andrew Peters

Otten Johnson

APeters@OttenJohnson.com

Re: December 22, 2025 submittal related to LUC-25-00003 for Scenic Butte Partners, LLC

Dear Mr. Peters,

Gunnison County is in receipt of additional submittals dated December 22, 2025 regarding LUC-25-00003 for Scenic Butte Partners, LLC. As stated in my prior letters (see May 14, 2025 and January 21, 2026) the proposed development meets Gunnison County's definition of a road and is therefore classified as a Minor Impact land use change permit application and shall comply with the Gunnison County Road and Bridge Standards.

The items required to be submitted were described in my letter dated June 30, 2025:

- "1. Revised road plans in compliance with the adopted Fire Code and Gunnison County Road and Bridge Standards, including modification of the road width, as described in the Public Works comments and additional detail as requested by each agency.*
- 2. Submittal of deficiencies and additional analysis as described in the letter from CGS dated June 27, 2025 in compliance with Section 11-104: E.2. Determination by CGS: "If CGS determines there are geologic hazards on the property that have not been adequately addressed by the applicant, or that the application is otherwise incomplete or inadequate, the County shall require the applicant to revise the application to address those hazards."*

The applicant submitted the same road plans dated September 2024 that were previously submitted and found to be deficient. Additionally, the applicant did not submit the information required by the Colorado Geological Survey (CGS) as requested but instead refuted the request. The letter from Darin Duran, P.E. of CMT Technical Services dated December 18, 2025 states:

“CMT has already determined there are no observable hazards in the vicinity of the proposed building pads. Determining if proposed construction would create hazards, would require actual construction plans that include proposed grades. No such plans exist and; therefore, a meaningful hazard analysis cannot be conducted.”

The road plans that were requested in June 2025 are required to include the above data including proposed grades of the entire impact area including the roadbed and cut/fill slopes. The applicant’s refusal to provide the required road plans now also impedes their own ability to provide the required information regarding geologic hazards as requested by CGS and required by the Gunnison County *Land Use Resolution* Section 11-104: E.2.:

“If CGS determines there are geologic hazards on the property that have not been adequately addressed by the applicant, or that the application is otherwise incomplete or inadequate, the County shall require the applicant to revise the application to address those hazards.”

As stated in the email to the applicant and his representatives dated November 3, 2025:

“Section 3-105: B. Inactive Applications states:

‘An application that has become inactive because an applicant is required to submit additional information and has failed to do so for a period of more than six months from when it was requested shall become void and the resubmittal of a new application and fees shall be required.’

The applicant was notified by me on June 30, 2025 of the requirement to submit additional information (see above). Based on Section 3-105: B, the application will be considered void after December 30, 2025 if the required information is not submitted prior to that date.”

I find that the applicant has not submitted the required information which was detailed in an email from me dated June 30, 2025 and again restated on November 3, 2025 and is inactive and void. Any proposed development shall be required to submit a new land use change application and fees shall be required.

Sincerely,

Catherine Pagano

Cathie Pagano, AICP CEP
Assistant County Manager for Community and Economic Development