

**Town of Marble
Meeting of the Board of Trustees**

April 6, 2017

7:00 P.M.

Marble Community Church, 121 W. State St. Marble, Colorado

Agenda

7:00 P.M.

- A. Call to order & roll call for the Meeting of the Board of Trustees**
- B. Approve previous minutes**
- C. Mayor's Comments**
 - a. Court system status, Will
 - b. Up-date on Marble Water Company communications, Will
- D. Clerk Report, Ron Leach**
 - a. Bills payable April 6, 2017, Ron
 - b. Review Steve Lucht's concerns regarding 2014 audit, Ron
 - c. Review Steve Lucht complaint letter to CDPHE, Ron
 - d. Consider issuance of 2017 Town of Marble business licenses, Will
 - e. Application for water rights status, Ron
- E. Current Land Use Issues**
 - a. Beaver Lake Lodge, Karen
 - i. Issuance of building permit for addition to cabin 6, Karen
 - ii. Consider approval of easement for water line placement in alley, Karen
 - b. Consider approval of ordinance amending zoning code re: lot consolidations/splits, Ron
 - c. Consider approval of ordinance amending zoning code fees & expenses, Ron
 - d. Other
- F. Old Business**
 - a. Up-date report regarding fuel leak, Richard Wells
 - b. Discussion of campground opening status, Will
 - c. Consider 15,000 supplemental budget for expenses for campground and town building, Will
 - d. Report on purchase and installation plan for speed bumps, Tim
 - e. Discussion of other summer projects, clean-up day, no parking signs, other projects
- G. New Business**
 - a. Other
- H. Adjourn**

Minutes of
Town of Marble
Meeting of the Board of Trustees
March 2, 2017
7:00 P.M.

Marble Community Church, 121 W. State St. Marble, Colorado

- A. Call to order & roll call for the Meeting of the Board of Trustees: The meeting was called to order at 6:58 p.m. by Will Handville. Present: Will Handville, Richard Wells Tim Hunter, Larry Good, Mike Yellico. Also present: Ron Leach, Town Clerk and Terry Langley, minutes
- B. Approve previous minutes: Mike Yellico moved that the minutes from the Feb. 2, 2017 be approved, Larry Good seconded and the motion passed.
- C. Mayor's Comments: Will reminded everyone that there would be no outbursts
- D. Up-date report regarding fuel leak: Rob Goodwin from the Carbondale Fire District was unable to attend. Richard Wells spoke as the town representative on this issue. He reported that the intergovernmental agreement has been signed. Drilling for core samples will be done early next week.
- E. Discussion of conditional water rights, Ron Leach reported that the town must renew water rights every eight years. The lawyer has prepared the paperwork to be submitted to the Colorado district water court, as far as he is able. He is waiting on information requested from the Marble Water Company. Once he has that, he will complete it and send it in.
- F. Clerk Report, Ron Leach
- a. Bills payable March 2, 2017: Ron reported that balances total \$294,550.75 Deposits this month totaled \$6,003.00. Bills payable total \$9,916.22. Larry Good made the motion to pay the bills, Mike Yellico seconded and the motion passed. Steve Lucht referred to a 2014 audit recommendation that an independent third party have read only access to the bank statements to verify the bank balances listed in the packet and asked if this had been done. Ron said that board member Richard Wells was that person. Steve said that person could not be Richard Wells but had to be someone independent from the board. Ron said there is not an independent third party with read only access to the bank statements to verify the bank balances at this time. Will said the council would look into the issue and getting that in place.
 - b. Consider Town of Marble 2017 business licenses: Ron reported that he will be sending existing license holders the business license application along with a cover letter early next week. Applications will be reviewed at the April meeting. He reported that Richard Wells has applied for a license for a bike rental business. Will Handville made a motion that license fees be prorated for businesses opening either before or after the April license period. Larry Good seconded. The motion passed.

G. Current Land Use Issues

- a. Consider issuance of building permit to John Ackerman: Mike Yellico recused himself. Ron had reported last month that all applications and fees had been submitted with the exception of the opinion from Sopris Engineering on sewer plans. That has now been received. Tim Hunter reported that he had reviewed the blueprints and has no questions. Ron was instructed to issue the building permit.
- b. Discussion of Marble Water Company Special Assessment: Will Handville stated that he wanted to make clear that this was not the fault of Slow Groovin' Barbeque (SGB) and the Town of Marble, as some have indicated. He reported that Marble Water Company (MWC) wanted the wells as to insure the water is protected and that the town was in full agreement with this and agreed to pay half of the estimated cost, up to \$8,000. On review of the plans, Sopris Engineering recommended locating the wells in different places to cover a wider scope of possible contamination. MWC did not respond to this suggestion and proceeded to drill wells. Will said that he will request a meeting with John Williams when John is back in the area. Carol Parker asked about the town's refusal to pay the \$8,000. Will replied that the town wants a signed agreement with MWC, including the town seeing the results and that the \$8000 was still in the budget. Richard Wells said that the council wants everyone to understand that the town has had no communication with the MWC since the town requested some adjustments in the well locations. Mike reported that the minutes from the Oct meeting reflect that the town wants to protect the wells and agreed to pay up to half of the original estimate. He stated that the town does want to work with the MWC on this and future issues. Larry asked if there were any reps from the MWC in attendance. There were not. Steve Lucht said that he does not represent the MWC but he has been in contact with John Williams. He said that there was evidence that SGB's septic system was not sufficient. He reported that Wright Water Engineers felt that the risk is high and the wells are needed. Wayne Lorenze of WWC met with Steve Lucht and answered many questions including the placement of the wells. Will said that there was no communication concerning this to the town. Steve said that liability issue necessitated going ahead with the project. Will stated that the town did not have an issue with the placement, but with the lack of communication and how the issue was handled. Tim Hunter said that the sense of urgency conveyed by John Williams was due to the desire to test the leach field when the restaurant use was high. Kathy Zentmyer reported that the test results will be sent to the tap holders. Will repeated the desire to build a good working relationship with the MWC. Mike suggested that there be liason from the council on the MWC board. Tim Hunter asked about the test results – do we have a problem? Kathy said the tests show no nitrates at this time, but since the restaurant is closed they are considered this a base line. Questions and comments were taken from the floor. Glen Smith asked about who is on the board. Cindy Fowler stated that there was a lack of communication between the MWC and consumers. Linda Adams questioned the need for an assessment. Ryan Vinciguerra reported that no information was sought from him and that reported facts and figures were incorrect. He

monitors water use daily and is well under system limits. Will stated that their goal is a better working relationship and more communication with the MWC.

- c. Discussion of Slow Groovin' water monitoring requirements: Ron reported that David Kurtz of the Colorado Public Health and Environment has received complaints from MWC and Steve Lucht concerning SGB. He is requiring data collection and monitoring of water usage, number of patrons, etc. If the system exceeds 2,000 gallons per day, then the state will regulate the system. Under 2,000 is regulated by the town. Ryan reported that there is no wastewater diverted from SGB to the apartment which has its own septic system. Ron, representing the town, will do the required monitoring and report to CPHE.
- d. Continued Use by Review hearing pursuant to Section 7.2.20 of the Zoning Code regarding proposed multi-family dwelling units by Slow Groovin Holdings, LLC, at TBD Gallo Hill Drive: Ryan Vinciguerra said that he had asked to be taken off of this month's agenda, but was happy to answer questions. Larry Good asked if all five units would be identical and how many people would they be designed for. Ryan answered that they would be two bedroom units with a maximum of two couples. Will expressed a concern about the increase in traffic with 20 people making trips and the impact on surrounding property values. Larry said that residential traffic is much different than tourist traffic. He recognizes the schism between those who want to keep the town small and those who want to see the community grow. Mike Yellico pointed out that everyone who lives in town uses the road. Richard asked if any other lots were developable on the road. Will said that there is one lot that can be developed, and the 3.5 acre lot. Hank said there is another 2 acre lot. Will said that the town had given Ryan a list of concerns. He said that it is currently zoned as a single family lot, but the town can issue a variance. He said that the town cannot make a decision until they have the information they need, including addressing the concerns given. Tim expressed a concern about the proposed shared septic system in light of the problems previously caused by a shared septic system in the town. Discussion concerning short term/long term rentals, deed restrictions and subdivision/multi-family designation followed.
- e. Discussion of Beaver Lake Lodge building permit process, Max Gibbons for Karen Good: Larry Good recused himself from council decision. He explained that they are not currently asking for a permit but rather for the town's opinion on the concept of building four glamping tents – canvas sides with a roof, floor and footings. They were previously approved for five walk-in tent camp sites with campfire sites, dumpsters, parking, etc. on a one year trial basis. The septic system was designed for expansion. Mike asked if these would be engineered foundations. One bedroom with a bathroom. A common kitchen area would include cooking facilities. Ron said, from a fire department standpoint, the kitchen would need to have treated canvas and solid footing for the stove. Richard asked if the cabins would be added to the current system. Larry said that is the plan and that the current system has been reviewed and is adequate. Steve Lucht asked why the lodge is not included in the calculations of the septic system. Where does the ditch run in relation to

the lodge property and the septic system? Water from the ditch will impact the leach field. Will asked about on site parking. Richard asked about the alley access since it is town property. Larry will take these comments and questions under consideration as they work on the permit application.

f. Consideration of amendment to Zoning Code regarding lot consolidation and lot line adjustment process. Ron reported that Kendall has done the legal work necessary and has done a draft to be included on next month's agenda. Judy said that the county will do lot consolidation to make it into one tax number if there is a need to do this swiftly. The following people have made requests and they will be discussed once the changes to the zoning codes have been made:

- i.* Discussion regarding lot line adjustments, Taylor Property, Ron
- ii.* Discussion of lot consolidation, Evans Property, Ron
- iii.* Discussion of lot consolidation, Manus Property, Ron

g. Other: Campground will be opened once the weather allows. Mike Yellico made a motion and Tim Hunter seconded that the campground will be run by the town. Mike Yellico, Richard Wells and Tim Hunter voted yes. Larry voted no, explaining that he needed more information to vote yes.

H. Old Business

a. Court system: Will has found a judge willing to serve as Marble's judge. He is the judge for both the town of Carbondale and Eagle. There are many things that need to be in place – enforcement, hiring a prosecutor, fines, etc., before this can begin.

b. CIRSA response to Petrocco claim: the Notice of Claim has been reviewed by the town attorney and the town's insurance company and they determined the town does not have an obligation to become in private disputes.

I. New Business

a. Other: Glenn Smith asked who is taking reservations for the RV park? Will explained that the town building will need some work to be offices for the campground and the town. Money from the campground will be used for this purpose. Questions to be answered include length of permitted stay, costs, etc.

b. Steve Finn asked about the need for a new master plan. The council will take a look at the current plan and determine if it needs to be updated.

c. Max Gibbons asked that the council consider whether there is a possible charge of conflict of interest to do with the campground and other lodging businesses.

J. Adjourn Rixhard Wells moved to adjourn the meeting and Larry Good seconded. The meeting was adjourned at 9:40 p.m.

Respectfully submitted,

Terry Langley

Minutes of the Town of Marble Work Session
March 16, 2017
Mable Community Church, 121 W State Street, Marble Colorado

The meeting was called to order at 7:00 pm by Mayor Will Handville. Present: Richard Wells, Tim Hunter & Will Handville. Absent: Larry Good & Mike Yellico. Also present: Ron Leach, Town Clerk.

A. Will Handville reminded those present that no final action on any topics would be taken at this meeting.

B. Campground: Will reported that the town building has been cleared out. Ron and Will have looked at needed repairs and feel that \$5,000.00 is the minimum needed for repairs on the roof and the deck as well as construction of a handicapped ramp and interior wall for a town office. Additionally, the campground road needs new road base, installation of two culverts, and repair of the fence across front for approximately another \$5,000.00. After some discussion, it was decided that the total should be increased to \$15,000.00 for both.

C. Marble Water Company. Will reached out to John Williams by telephone. Will asked for a face-to-face meeting to discuss a better working relationship and what the town could do to help concerning the cost of the monitoring wells. John suggested the town flying him and another member of the board in from AZ. Will suggests allocating 10,000 more for a total of \$18,000. In return the town would ask that a. campground tap fees be waived, b. the campground and building get free water, c. the MWC help pay for the town water rights, d. a town representative or liaison be added to the water board, and e. test results be made available to the board and the right to retest or get a second opinion be given to the town. Discussion followed and the council suggested flying Will and another council person to Arizona. Will would suggest a 2 day meeting of 3-4 hours per day prior to the next town council meeting (April 6). He requested and was granted permission to set up this meeting..

D. Supplemental Budget: snow removal costs exceeded the amount budgeted and funds for repairs to the camp ground, and additional help to the Marble Water Company were not included in the budget. Ron Leach advised that there was no need for a new supplemental budget each time something comes up. Rather, the town can wait until November and do it all at once.

E. Slow Groovin': Concerns regarding the secondary prep kitchen sewer system being put into the apartment sewer (#6 on the list from the state) need to be addressed. Ron will have looked at this by the next council meeting.

F. Gallo Hill subdivision: Suggestions for alternatives to five tiny houses on one septic system and resulting traffic increases were discussed. These will be presented to Ryan Vinciguerra.

G. Signs: Cost of the current proposed signs is approximately \$500.00. A proposal will be presented at the April meeting. Previously approved speed bumps can be ordered.

H. Judge and Court system: Judge Collins is currently the judge for Carbondale is ready to help set up the system and to be our judge. Will is meeting with him next week. Court will be held in Carbondale. He will be asked to come to the May meeting to meet the council and town citizens.

I. Once snow melts, Duane Piffer will be asked to stock pile road base for work on 4th street, Main Street past the school and Marble street. Richard will make a proposal for gravel and road base for parking in 2018.

J. Will asked about Tim Hunter's time frame and commitment for resigning from the council to allow for advertising of the opening.

K. Business Licenses: Ron reported that applications have been mailed out. These are to be returned with the \$50 fee and licenses will be approved or denied at the April 6 meeting. Denied business owners will be asked to appear at the May meeting to answer questions regarding operations.

L. OWTS: Will reported that only three small towns in the state do their own OWTS. All others are handled through the county. This would take a huge load off of the town's plate in terms of time, money and aggravation. Tim suggests looking at the county regulations compared to the town's. This is for a future council meeting.

M. April meeting agenda: Business licenses, approve expenditures for the campground/town building, court system report, Slow Groovin' checklist from the state, summer projects including street improvements, town clean-up day, signage, campground/town building work (benches, picnic tables, hand dryer, tree/brush removal, irrigation/sprinkler, roof, ramp, interior wall, etc.)

Will Handville moved to adjourn the meeting, Richard Wells seconded and the motion passed. The meeting was adjourned at 7:30

Respectfully submitted,

Terry Langley

10:22 AM
03/30/17
Accrual Basis

Town of Marble
Balance Sheet
As of March 31, 2017

	Mar 31, 17
ASSETS	
Current Assets	
Checking/Savings	
*General Fund -0240	59,850.87
Money Market -1084	211,318.08
Water Fees -0873	14,756.14
Total Checking/Savings	285,925.09
Total Current Assets	285,925.09
TOTAL ASSETS	285,925.09
LIABILITIES & EQUITY	0.00

APRIL 6, 2017

TOTAL REVENUES 10,803.32

TOTAL EXPENDITURES 11,055.74

Town of Marble
Deposit Detail
March 1 - 29, 2017

Date	Name	Memo	Account	Amount
03/19/2017		Deposit	*General Fund -0240	3,240.05
	Gunnison County	Deposit	Sales Tax	-269.36
	Colorado Stone Quarry CSQ	Deposit	Colorado Stone Maintenance Reim	-300.00
	Colorado Stone Quarry CSQ	Deposit	Colorado Stone Use Agreement	-2,199.42
	Colorado Mountain News Media	overpayment-refund	Legal Expense	-12.05
	State of Colorado	March 17	Colo Trust Fund	-309.22
		Fowler x2, Marble Water	Business Licenses	-150.00
TOTAL				-3,240.05
03/29/2017		Deposit	*General Fund -0240	498.44
		Alpine Elec, SMitty, CSQ...	Business Licenses	-350.00
	Gunnison County	January 17	Sales Tax	-148.44
TOTAL				-498.44

Town of Marble
Deposit Detail-Money Market Fund
March 2017

<u>Date</u>	<u>Name</u>	<u>Memo</u>	<u>Account</u>	<u>Amount</u>
03/10/2017		Deposit	Money Market -1084	7,064.83
	Gunnison County	Deposit	Additional License Tax	-71.00
	Gunnison County	Deposit	Property Tax	-6,997.24
	Gunnison County	Deposit	Specific Ownership Tax	-137.24
	Gunnison County	Deposit	Treasurers Fees	140.65
TOTAL				-7,064.83

Town of Marble
Check Register
April 6, 2017

<u>Date</u>	<u>Num</u>	<u>Account</u>	<u>Amount</u>
CIRSA			
04/06/2017	10229	Liability & Worker Comp Insc	-599.25
04/06/2017	10229	Liability & Worker Comp Insc	-331.75
Total CIRSA			-931.00
Daly Property Services, Inc.			
04/06/2017	10230	Snow & Ice Removal	-2,972.50
Total Daly Property Services, Inc.			-2,972.50
Holy Cross Electric			
04/06/2017	10234	Campground/Store Expenses	-19.61
04/06/2017	10234	Utilities	-19.68
Total Holy Cross Electric			-39.29
Law of the Rockies			
04/06/2017	10238	Legal Expense	-2,702.22
Total Law of the Rockies			-2,702.22
Marble Community Church			
04/06/2017	10231	Rent	-50.00
Total Marble Community Church			-50.00
Marble Water Company			
04/06/2017	10235	Utilities	-50.00
04/06/2017	10235	Other Purchased Services	
04/06/2017	10235	Utilities	-50.00
Total Marble Water Company			-100.00
Ray Bourg			
04/06/2017	10233	Campground/Store Expenses	-13.77
Total Ray Bourg			-13.77
Terry Langley			
04/06/2017	10232	Office Expense	-150.00
Total Terry Langley			-150.00
Tim Hunter			
04/06/2017	10237	Bank Building Maintenance	-19.44
Total Tim Hunter			-19.44
Valley Garbage Solution, LLC			
04/06/2017	10228	Playground & Park Improvements	-110.00
Total Valley Garbage Solution, LLC			-110.00
Will Handville			
04/06/2017	10236	Street Maintenance	-40.92
Total Will Handville			-40.92
TOTAL			-7,129.14

Town of Marble
Checks Issued Between Meetings
March 3 - 29, 2017

<u>Date</u>	<u>Num</u>	<u>Account</u>	<u>Amount</u>
Colorado Mountain News Media 03/19/2017		Legal Expense	-12.05
Total Colorado Mountain News Media			-12.05
Peak Architecture 03/23/2017	10223	Unclassified	1,300.00
Total Peak Architecture			1,300.00
TOTAL			1,287.95

03/30/17

**Town of Marble
Payroll Report
April 2017**

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Type</u>	<u>Amount</u>
Colorado Department of Revenue				
04/06/2017	10224	Colorado Departme...	Liability Check	-153.00
Total Colorado Department of Revenue				-153.00
United States Treasury				
04/06/2017	10225	United States Treas...	Liability Check	-1,139.88
Total United States Treasury				-1,139.88
Charles R Manus				
04/06/2017	10226	Charles R Manus	Paycheck	-323.22
Total Charles R Manus				-323.22
Ronald S Leach				
04/06/2017	10227	Ronald S Leach	Paycheck	-1,022.55
Total Ronald S Leach				-1,022.55
TOTAL				-2,638.65



McMAHAN AND ASSOCIATES, L.L.C.

Certified Public Accountants and Consultants

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To the Board of Trustees Town of Marble, Colorado

We have audited the financial statements of the Town of Marble, Colorado (the "Town") for the year ended December 31, 2014. Professional standards require that we provide you with the following information related to our audit.

Qualitative Aspects of Accounting Policies

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Town are described in the Notes to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year. We noted no transactions entered into during the year for which there is a lack of authoritative guidance or consensus.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were capital assets and related depreciation and accumulated depreciation, and the loan payable, which requires further information and corroboration with the Marble Water Company on the terms and balances of principal and interest due.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the engagement, other than those that are trivial, and communicate them to the appropriate level of management. The accounting records were maintained on a cash basis, and entries were required to convert to accrual basis.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Member: American Institute of Certified Public Accountants

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Management Representations

As is required in an audit engagement we have requested certain representations from management that are included in the management representation letter.

Recommendations

In planning and performing our audit of the Town's financial statements as of and for the year ended December 31, 2014, we noted the following opportunity for improvement of internal controls and day-to-day operations, which is presented for your consideration below.

Bank Statements

Currently, bank statements are received by the Clerk and forwarded to a staff member to prepare the monthly bank reconciliations. An additional improvement to internal control would be to have the staff member have read-only access to online bank statements.

This report is intended solely for the information and use of the Board of Directors, management, and others within the organization and is not intended to be, and should not be, used by anyone other than those specified parties.

Sincerely,

McMahan and Associates, L.L.C.

McMahan and Associates, L.L.C.
December 21, 2015

Member: American Institute of Certified Public Accountants

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February 8, 2016

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Re: Implementation of OWTS Regulations in Marble, Colorado

Dear Messrs. Cousino and Kurz:

We are writing this letter on behalf of [REDACTED], a concerned resident of the Town of Marble, Colorado ("Town"). In 2015, the Town adopted On-site Wastewater Treatment System ("OWTS") Regulations¹ to comply with Colorado Water Quality Control Commission (WQCC) Regulation 43, 5 CCR 1002-43. The Town appears to lack a working knowledge of its OWTS regulations ("2015 Marble OWTS Regulations"), and it is substantially failing to administer and enforce the permitting requirements. There are several OWTS within the Town that are not in compliance with Regulation 43 and the 2015 Marble OWTS Regulations. These non-compliant OWTS pose a danger to public health and safety.

Mr. [REDACTED] has communicated his concerns about these OWTS to the Town of Marble Board, and no corrective action has been taken. We are writing to request that the Colorado Water Quality Control Division ("WQCD") ensure the proper enforcement of the provisions of Regulation 43 and the 2015 Marble OWTS Regulations and assume such functions as may be necessary to protect the public health and water quality as authorized by Section 25-10-110 of the On-site Wastewater Treatment Systems Act ("OWTSA"), C.R.S. §§ 25-10-101, *et seq.*, and WQCC Regulation 43.4.H.2.

¹ 2015 Marble OWTS Regulations:
https://townofmarble.com/uploads/Marble_OWTS_regulations_2015.pdf

The specific OWTS of concern are:

1. Slow Groovin' BBQ Restaurant

The Slow Groovin' BBQ Restaurant OWTS does not meet the minimum lot size requirements of the 2015 Marble OWTS Regulations. The owner of the Restaurant OWTS owns six non-contiguous lots within the original Town, and there are two OWTS installed and operating on that property. Because the lots are not contiguous, they do not qualify as a consolidated property. See 2015 Marble OWTS Regulation 8.L.3. Each lot is approximately 2,500 square feet, for a total area of approximately 15,000 square feet. Pursuant to the Town's regulations, a property must be at least 20,000 square feet in order to qualify for an OWTS permit. See 2015 Marble OWTS Regulation 8.L.1. Therefore, even if the lots were contiguous and qualified as a consolidated property, they would not meet the minimum lot size set forth in the 2015 Marble OWTS Regulations for a single OWTS. The Town has ignored its own regulations in approving the location and operation of these OWTS.

A. Original System

The Town did not provide any information regarding the original OWTS in response to a request for documentation under the Colorado Open Records Act ("CORA"). However, it appears that the original OWTS served the restaurant, a garage, and two apartments. In 2003, the new OWTS was installed across the street from the original OWTS to serve the restaurant. Since that time, a commissary/kitchen has been added to the garage. The original OWTS remains in operation and now treats waste from a garage, two apartments, and a commissary. The addition of the commissary may be an expanded use that has not been properly assessed by the Town as required by its regulations. See 2015 Marble OWTS Regulation 4.B.2.

Additionally, there is a concern that the soil treatment area ("STA") for the original OWTS is located with 50 feet of two groundwater wells, which provide potable water to the restaurant and an adjacent residence. The STA is required to be at least 100 feet away from any onsite well. See 2015 Marble OWTS Regulation, Table 7-2.

B. New System

The new Restaurant OWTS was designed and installed in 2003. The average daily flow of the restaurant was estimated using the available square footage (1,250) for an approximate seating capacity of 30 patrons. Using 50 gallons per person per day resulted in a total average daily flow of 1,500 gpd. The design flow is $1,500 \times 1.5 = 2,250$ gpd. Because its design capacity exceeds 2,000 gpd, the Restaurant OWTS should have obtained approval of the site location and design from the WQCD pursuant to WQCC Regulation 22, 5 CCR 1002-22, and a groundwater discharge permit pursuant to WQCC Regulation 61, 5 CCR 1002-61, when it was initially installed. See WQCC Reg. 22.2(16); 2015 Marble OWTS Regulation 2.E.2. However, the Town of Marble allowed this system to be installed,

operated, and transferred to a new owner without the necessary approvals and permits from the WQCD.

Although the design flow was based on 30 patrons per day, the restaurant now serves 200-300 patrons per day in peak months, resulting in an expanded use of the existing system. The Town's regulations require a permit for the expanded use of an OWTS. *See* 2015 Marble OWTS Regulation 4.B.2. The OWTS must be replaced or modified to handle the increased design flow unless it is determined that the existing system is adequately designed and constructed for the higher design flow rate. *See* WQCC Reg. 43.4(b)(8); 2015 Marble OWTS Regulation 4.B.2. The calculated wastewater flow to the Restaurant OWTS from the current number of patrons exceeds the design criteria by a factor of 7 to 10. The Restaurant is currently using portable toilets to supplement its system; however, the Town has not investigated to ensure that the current OWTS is not being overloaded.

In addition, the Restaurant OWTS is located approximately 400 feet upgradient of two alluvial potable water wells owned and operated by the Marble Water Company ("MWC"). The Restaurant OWTS is a septic tank/absorption system that provides little removal of nitrogen and therefore has the potential to contaminate the alluvial groundwater supply for the MWC. Recent photographs of Carbonate Creek show an abundance of algae, which may be related to the availability of nitrogen. (Photographs attached.) The WQCD should require nitrogen reduction processes in order to protect the existing water supplies.

The Restaurant OWTS does not have a grease interceptor tank or a septic tank effluent screen, both of which are required by the Town's 2015 OWTS Regulations (and the prior 1996 Regulations).

Wright Water Engineers ("WWE") evaluated the Restaurant OWTS on behalf of the Marble Water Company in 2003, 2007, and 2016. WWE recommended in a report dated August 12, 2016, that the Town install or require the installation of monitoring wells upgradient and downgradient of the Restaurant OWTS to determine the effectiveness of the OWTS. (A copy of the WWE Report is attached.) The Town has not required any monitoring wells.

2. Vince Savage – Beaver Lake Retreat and Training Center

Mr. Savage is installing a new OWTS for the Beaver Lake Retreat and Training Center, and the Town is not requiring Mr. Savage to follow the permitting requirements of Regulation 43 and the 2015 Marble OWTS Regulations. The current OWTS was installed in 1979 and upgraded in 1992 to accommodate additional bedrooms. In 2013, Mr. Savage applied for a permit to repair the OWTS. That work was never completed. Now, according to his letter to the Mayor of the Town of Marble dated October 15, 2016, Mr. Savage is in the process of "upgrading with a new system" to be completed by end of summer 2017. Prior to installing, altering, or repairing a system, the applicant must obtain a permit. *See* 2015 Marble OWTS Regulation 4.A.1. Mr. Savage does not have a permit for the work underway. In response to a request for documentation under CORA, the Town did not

provide a permit application or an issued permit related to that work. The WQCD should intervene and ensure that Mr. Savage follows the permitting process and that the new OWTS complies with the requirements of Regulation 43 and the 2015 Marble OWTS Regulations.

Upon information and belief, the new system has a design capacity of over 2000 gpd, which would necessitate the WQCD's approval of the site location and design. We are unable to verify the design capacity because the design documents have not been made available to the public.

3. Duane Piffer – 102 Main Street

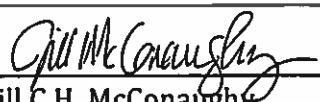
The Town granted Mr. Piffer a permit in 2015 for the installation of a new OWTS to serve a maintenance facility at 102 Main Street. The OWTS was installed in 2016. There is concern that the OWTS was installed in the floodplain and lacks an impermeable barrier. The 2015 Marble OWTS Regulations prohibit the installation of a new OWTS in the floodplain. See 2015 Marble OWTS Regulation 8.J. The design and "as-built" documents for this OWTS were not provided in response to informal requests and a formal request under CORA. Therefore, compliance with the location and design criteria cannot be verified.

In addition to these site-specific concerns, Mr. [REDACTED] has observed that the Town's officials and staff lack training and knowledge concerning the Town's 2015 OWTS Regulations. The Mayor acknowledged as much in a letter to the owner of the Slow Groovin' BBQ Restaurant, dated March 15, 2016, stating that the Town is "in a learning phase with regards to ordinances and codes." The Town does not diligently implement its permitting program to ensure that developers apply for and receive the necessary permits, putting the quality of Marble's source water at risk of contamination. This letter highlights a few examples; however, a full audit of the Town's OWTS and permits is needed. The sparse documentation provided in response to the CORA request indicates that the Town either lacks required records related to these projects or is withholding information from the public.

For these reasons, on behalf of Mr. [REDACTED] we are requesting that the WQCD exercise its authority under section 25-10-110 of the OWTSA and Regulation 43.4.H.2. and assume all functions necessary to ensure the proper implementation of Regulation 43 and the Town's 2015 OWTS Regulations within the Town of Marble.

Sincerely,

Mary Elizabeth Geiger
Garfield & Hecht, P.C.


Jill C.H. McConaughy
Riverside Law Office

Attachments:

- (1) Letter from Town of Marble Mayor, Will Handville, to Ryan Vinciguerra, dated March 15, 2016
- (2) Report of Wright Water Engineers to Marble Water Company, dated August 12, 2016, regarding Slow Groovin' BBQ Restaurant OWTS
- (3) Letter from Vince Savage to Town of Marble Mayor, Will Handville, dated October 15, 2016
- (4) Photographs of Carbonate Creek, taken November 8, 2016



COLORADO
**Department of Public
Health & Environment**

Dedicated to protecting and improving the health and environment of the people of Colorado

March 10, 2017

Mary Elizabeth Geiger, Esq.
Garfield & Hecht, P.C.
420 Seventh Street, Suite 100
Glenwood Springs, CO 81601

Jill C.H. McConaughy
Riverside Law Office
6800 Highway 82, Suite 4
P.O. Box 3196
Glenwood Springs, CO 81602

Subject: Response to Inquiry
Implementation of On-site Wastewater Treatment System Regulations
Marble, Colorado

Dear Ms. Geiger and Ms. McConaughy:

The Water Quality Control Division (the "division") appreciates input from citizens like the February 8, 2016 correspondence provided by your firms on behalf of Mr. Steve Lucht regarding the implementation of the on-site wastewater treatment system (OWTS) regulations in Marble, Colorado. Your letter expresses concerns with the Town of Marble's capabilities to administer their On-site Wastewater Treatment System Regulations 2015, citing three examples. As a result of these concerns, your letter requests that the division assume responsibility of the rules adopted by the Town in accordance with section 25-10-110 of the On-site Wastewater Treatment Systems Act.

Statewide, local agencies, like the Town of Marble, continually improve their ability to implement their regulations. The Town of Marble has most recently demonstrated improvement of its OWTS regulations by retaining an experienced consultant to review OWTS applications and provide guidance for local issues related to OWTS. During this transition, the division has consulted with the Town of Marble and/or local owners of the onsite wastewater treatment systems named within your letter. Based on the available information, the Town of Marble appears to be conforming to the minimum state regulatory and statutory requirements related to onsite wastewater treatment systems in addition to improving their program.

The division does not find that the Town of Marble has substantially failed to administer and enforce the requirements of the On-site Wastewater Treatment Systems Act. Please continue to work with the Town of Marble on OWTS issues since the town has the primary responsibility for the enforcement of the On-site Wastewater Treatment Systems Act.



Mary Elizabeth Geiger, Esq. and Jill C.H. McConaughy
Response to Inquiry, Implementation of OWTS Regulations in Marble, CO

March 10, 2017
Page 2 of 2

If you have any questions regarding this letter, please contact me by phone at 303-692-3552 or by electronic mail at david.kurz@state.co.us.

Sincerely,



David W. Kurz
dc=local,dc=dphe,ou=Divisions,
ou=WQC,ou=Users,cn=David W.
Kurz, email=david.kurz@state.co.us
2017.03.10 16:31:01 -0700

David Kurz, P.E.
Lead Wastewater Engineer
Engineering Section
Water Quality Control Division
Colorado Department of Public Health and Environment

cc: Ron Leach, Town of Marble
Paul Rutledge, Sopris Engineering LLC
Chuck Cousino, WQCD On-site Wastewater Treatment System Coordinator
Bret Icenogle, WQCD-Engineering Section Manager

Town of Marble 2017
Business Licenses
3/26/2017

	Business	First	Last	Address	City	State	Zip
1	Abstract Marble Company	Gary	Bascom	303 W. Park	Marble	CO	81623
2	Alpine Electronics	Josh	Stapelfeldt	701 W. Park	Marble	CO	81623
3	As You Like it Pool and Spa	C/O CPA Services		PO Box 818	Glenwood Springs	CO	81602
4	Beaver Lake Lodge and Cabins	Karen and Larry	Good	201 E. Silver	Marble	CO	81623
5	Beaver Lake Retreat	Vince	Savage	105 E. Marble	Marble	CO	81623
6	Camp Marble Designs	Christine	Sidelinger	5675 Marble Village Drive	Marble	CO	81623
7	CAP Construction	Charley	Parker	420 W. Silver	Marble	CO	81623
8	Colorado Stone Quarry	Paul	Bombalicky	1 Marble Quarry Road	Marble	CO	81623
10	Connie Hendrix Gallery	Connie	Hendrix	645 West Main St.	Marble	CO	81623
11	Crystal River Jeep Tours	Glenn and Patsy	Smith	220 W. Park	Marble	CO	81623
12	Inn at Raspberry Ridge	Gary and Patsy	Wagner	5580 County Road 3	Marble	CO	81623
13	Marble Hideaway	Charley and Carol	Parker	420 W. Silver	Marble	CO	81623
14	Marble Historical Society	Tom	Williams	412 W. Main	Marble	CO	81623
15	Marble Mechanical Services	Joe	Brown	223 E. Main	Marble	CO	81623
16	Marble Water Company	Kathy	Zentmyer	PO Box 23	Carbondale	CO	81623
17	The Marble Gallery	Mario	Villalobos	620 W. Park	Marble	CO	81623
18	Pifco	Duane	Piffer	0372 Crystal Park Drive	Redstone	CO	81623
19	Rusby Property Services	Jason	Rusby	112 E. Main Street	Marble	CO	81623
20	Rusby Rentals	Jason	Rusby	112 E. Main Street	Marble	CO	81623
21	Salon Gallos	Cyndi	Fowler	110 Slate Drive	Marble	CO	81623
22	Slow Groovin' BBQ	Ryan	Vinciguerra	101 W. First Street	Marble	CO	81623
23	SUP Marble	Cyndi	Fowler	110 Slate Drive	Marble	CO	81623
24	Scottomotive	Scott	Wilson	408 Aspen Business 1A	Aspen	CO	81611
25	Grateful Builders	Mike	Yellico	8 E. Marble Street	Marble	CO	81623
26	Bicycle Rental	Richard	Wells	116 E. Main Street	Marble	CO	81623

February 27th, 2017

Mr. David Kurz, P.E.
Lead Wastewater Engineer, P.E.
Engineering Section, Water Quality Control Division
Colorado Department of Health & Environment

Mr. Ryan Vinciguerra
Slow Groovin' BBQ
Marble, CO

Mr. David Kurz:

This correspondence has been prepared in response to the letter issued by the Division on December 29th, which cited the April 5th 2016 letter prepared by SGM for the property owner. Design flow concerns and proposed permit conditions as described in the December 29th letter have been considered and evaluated in light of daily flow data for the period from May 20th to October 6th 2016.

The Slow Groovin OWTS was designed in March of 2003 and constructed in July of 2003 in accordance with the 1996 version of the Town of Marble OWTS Regulations, as were in place at that time. The Town of Marble adopted revised OWTS regulations in 2015 pursuant to CDPHE Regulation 43. Data presented in this report shows that operation of the Slow Groovin OWTS remains compliant with the 2015 Town of Marble OWTS Regulations as well as CDPHE Regulation 43.

Design Flow

Methods used for calculation of the slow Groovin OWTS design flow in 2003 remain consistent with the method described in the current 2015 Town of Marble OWTS regulations. The standard values as described in Table 6-2 were utilized, including a 50 GPD/seat average flow for restaurants.

$$Q_{AVE} = N_{seats} * \frac{GPD}{SEAT}$$
$$Q_{AVE} = 30_{SEATS} * 50 \frac{GPD}{SEAT} = 1,500 GPD$$

A peaking factor of 1.5 was added on top of the regulation-calculated flow to accommodate hourly variations and rare exceedances over the calculated average daily design flow during peak season. The Slow Groovin OWTS was therefore constructed with 56 infiltrator units to handle a total design flow of 2,250 GPD.

Despite the constructed design flow of 2,250 GPD, it is understood that actual receiving flows should be maintained below 2,000 GPD for compliance with Regulation 43.

Flow Data

The SGM letter from April 5th, 2016 provided peak flow projections based on the best available information at that time, including partial-season monthly water meter data, approximate restaurant patronage data, and engineering extrapolations to yield a conservatively high estimate average day and peak day sanitary flows. Following the April 5th 2016 letter from SGM and prior to the December 29th letter from CDPHE, the property owner elected to collect water meter data for nearly all of the 2016 business season to provide an accurate representation of actual peak flows. This data includes consistent daily readings for the peak traffic months of June, July and August.

SGM reevaluated Slow Groovin OWTS flows using the daily water meter data as provided by Slow Groovin staff. Analysis yielded a median daily flow of 1,100 GPD and a maximum daily flow of 1,700 GPD. Daily flows only exceeded 1,500 GPD a total of 6 days in the 2016 season. Flows never approached the constructed capacity of 2,250 GPD or the CDPHE Regulation 43 implied limit of 2,000 GPD. The maximum week average day flow of 1,343 GPD, as calculated by rolling 7-day average, occurs in early July and is related to the 4th of July holiday week. Table 1 provides a summary of flow statistics for 2016.

Table 1. Flow Calculation Summary

	Date	Flow (GPD)
Consecutive Measurement	19-May-2016; 6-Oct-16	
Max. Week Avg. Day	4-Jul-16; 10-Jul-16	1343
Median Flow		1100
Peak Days	31-May-16	1600
	19-Jun-16	1600
	4-Jul-16	1600
	10-Jul-16	1700
	17-Jul-16	1700
	25-Jul-16	1700

The collected data shows that the OWTS has sufficient capacity to treat the observed flow without exceeding the 2,000 GPD maximum week threshold as referred to in the December 29th letter.

Proposed Permit Conditions

The December 29th letter describes six proposed permit conditions:

- a. *"Slow Groovin shall develop and actively implement a business operating plan to limit the activities, customers, or other wastewater generating loads to less than or equal to 2,000 gallons in a day based on the average daily flow at maximum occupancy."*

The calculated Maximum Week Average Day flow of 1,343 GPD is sufficiently below the regulation implied 2,000 GPD threshold, and therefore a "business operating plan" is not needed at this time. Slow Groovin should take care when adding any new equipment, processes, etc. as to not cause a significant increase in wastewater generation. SGM is not aware of any such changes or planned changes at this time.

- b. *"Data logger to be installed and shall continuously monitor influent flow to the OWTS (prior to equalization basin(s), if any)."*

Regulation 43 Section 6.4 describes either Table 6-2 OR "metered water flows for inside use" as two individual acceptable measures for determining OWTS design flow. Metered water data used in this analysis showed consistency with Table 6-2 and serves as evidence that the OWTS is well within the constructed design capacity and regulation implied threshold.

- c. *"Daily recording of actual use in units deemed appropriate to determine loading to the OWTS (e.g. number of persons present, number of meals served, or other appropriate units)."*
- d. *"Quarterly reporting of matched daily population and flow data sent to Town of Marble for seasons when the businesses are open. Reporting information also sent to the Water Quality Control Division for at least the first year of operation after the flow meter is installed"*

The magnitude of current wastewater flows in relation to the OWTS design capacity does not warrant additional recording for the purpose of additional flow reporting or loading calculations. SGM has no reason to anticipate a significant discrepancy in wastewater loading or strength from the standard values described in Table 6-2 for restaurants, as the daily flow data generally supports the Table 6-2 calculated flow. Flow calculations for water usage as described in this report do not support the need for additional measurement and reporting.

- e. *"If the system exceeds an influent hydraulic load of 2,000 gallons in a day based on the average daily flow at maximum occupancy, the local permit terminates, the OWTS becomes subject to the Act, and Slow Groovin must construct a domestic wastewater treatment works following the applicable State of Colorado statutes, regulations, and policies including, but not limited to, site location approval, design approval, discharge permit, compliance monitoring, and reporting."*

The 2016 flow data and Maximum Week Average Daily Flow does not support a concern for the exceedance of the regulation implied 2,000 GPD limit.

- f. *"Wastewater derived from the restaurant and/or catering business must not be diverted to the small apartment OWTS that serves the one-bedroom apartment located above the restaurant such as through sewer drain connections or use of the apartment restroom by employees or customers not residing in the apartment."*

SGM is not aware of any such connections between the apartment OWTS and restaurant OWTS, or of any practices to divert flow.

Sincerely,
SGM Inc.



Chad Paulson, P.E.
Principal / Public Sector Leader



Rob Ringle, E.I.
Public Sector

Mr. Brown

This letter is to advise you that prior to the issuance of an annual business license; the Town Council is requesting you to appear in person to discuss issues that have been identified with your business and to answer concerns voiced to the council from members of the community. I understand your concerns with appearing before the council, but let me assure you that the meeting will be run with respect for all parties involved in the discussions.

Please contact the town clerk to be placed on the agenda for the April meeting.

As per your request; issues to be discussed include the following:

- **Abandoned vehicles**
- **Hazardous waste disposal**
- **Your plans for additional cleaning of the property**

I look forward to working with you to resolve these issues and to build a better relation between you and the Town of Marble.

**Will Handville – Mayor
Town of Marble**

Mr. Vinciguerra

This letter is to advise you that prior to the issuance of an annual business license for Slow Groovin, the town council is requesting you to appear in person to discuss issues that have been identified with your business and to answer concerns voiced to the council from members of the community.

I understand your concerns with appearing before the council repeatedly but I assure you the meeting will be run with fairness and respect for all parties involved in the discussion.

Please contact the town clerk to be placed on the agenda for the April meeting.

I look forward to working with you to resolve these issues and to build a better relation between SGB and the Town of Marble.

Will Handville – Mayor

Town of Marble

Mr. Savage,

This letter is to advise you that prior to the issuance of an annual business license for Beaver Lake Retreat; the Town Council is requesting you to appear in person to discuss issues that have been identified with your operation and to answer concerns voiced to the council from members of the community. I understand your concerns with appearing before the council, but let me assure you that there will be persons require to repose themselves and the meeting will be run with respect for all parties involved in the discussions.

Please contact the town clerk to be placed on the agenda for the April meeting.

As per your request; issues to be discussed include the following:

- OWTS in regards to number of persons attending events
- Parking
- Noise
- Open fires
- Unsupervised parties
- Abandoned vehicles parked on town property

I look forward to working with you to resolve these issues and to build a better relation between you and the Town of Marble.

Will Handville – Mayor
Town of Marble

BEATTIE, CHADWICK & HOUP, LLP

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TELEPHONE (970) 945-8659
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WWW.BCH-LAW.COM

rjarvis@bch-law.com

March 14, 2017

Via Email

Kendall Burgemeister
Law of the Rockies
525 North Main Street
Gunnison, CO 81230

Re: Town of Marble Diligence Application re: Marble Pipeline and Water System

Dear Kendall:

This letter constitutes the Marble Water Company's ("MWC") response to your email to me dated February 27, 2017. As an initial matter, MWC will not be paying any portion of the cost of the upcoming diligence proceeding. Nowhere does the water rights lease state that MWC is responsible for costs associated with diligence proceedings. Had MWC agreed to pay such costs, express language to that effect would be in the lease.

Also, MWC is perplexed by the request for payment of costs. The Town has never requested that MWC pay money for any of the previous five diligence proceedings over the past 30+ years. The Town's complete failure to ever ask for reimbursement of costs in the past furthermore indicates that such a requirement is not part of the lease. Also, MWC is confused by the request for payment of costs when the Town leased the subject water right to MWC for just \$1.00, and MWC has and continues to provide Town residents a service normally provided by a municipality.

MWC does believe it appropriate to assist the Town with the provision of information regarding use of the subject water right that might be useful for the upcoming case. Marble Water Company Well No. 2 has been pumped at 25 g.p.m. every day during the past six years (although not pumped continuously). That water has been put to beneficial use via MWC's municipal water system.

As to diligence activities, MWC has done the following within the last six years:

1. MWC negotiated for an extension of its water supply system to serve property to which water service was otherwise unavailable. MWC produced a draft line extension agreement for this purpose.
2. MWC engaged legal counsel regarding compliance with the Safe Drinking Water Act regulations.

Kendall Burgemeister

March 14, 2017

Page 2 of 2

3. MWC connected an additional residence to the MWC water system in 2014.
4. MWC engaged Wright Water Engineers to produce an EQR report regarding its water supply system.
5. MWC negotiated the purchase of three new taps for the Meri Dais Campground and General Store.
6. MWC engaged Wright Water Engineers to study the productivity of the Marble Company Well.
7. MWC undertook implementation of the Backflow Prevention and Cross-Connection Control Program.
8. MWC engaged Wright Water Engineers to monitor a possible source of nitrate contamination to MWC wells. To date, MWC has spent over \$20,000 on such monitoring. Monitoring and testing is ongoing and additional costs are expected to be incurred. MWC has also incurred attorneys fees and costs associated with the above-referenced possible nitrate contamination issue.

If you have any questions, please give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan M. Jarvis".

Ryan M. Jarvis, Esq.

cc: Client

DISTRICT COURT, WATER DIVISION 5, COLORADO Garfield Co. Courthouse 109 8th Street, Ste 104 Glenwood Springs, CO 81601	▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE TOWN OF MARBLE, COLORADO IN GUNNISON COUNTY	
Attorneys for Applicant: LAW OF THE ROCKIES Marcus J. Lock, Atty. Reg. #33048 Kendall K. Burgemeister, Atty. Reg. #41593 525 North Main Street Gunnison, CO 81230 Telephone: (970) 641-1903 Facsimile: (970) 641-1943 mlock@lawoftherockies.com kburgemeister@lawoftherockies.com	
Case Number: 17CW ____ (ref. 09CW133)	
APPLICATION TO MAKE CONDITIONAL RIGHTS ABSOLUTE IN PART AND FOR FINDING OF REASONABLE DILIGENCE	

1. Name and address of Applicant:

Town of Marble
 322 W. Park St.
 Marble, CO 81623

Please direct all correspondence to the above-captioned counsel for Applicant.

2. Name of right: Marble Pipeline and Water System.

a. Case Number and Date of Original Decree and Relevant Subsequent Decrees, all entered by the District Court, Water Division 5, State of Colorado:

- i. The conditional water right that is the subject of this application was originally decreed in W-1848 (May 29, 1974). Diligence was shown in W-1848-78 (July 18, 1979); 82CW64 (June 29, 1982); 86CW67 (November 4, 1986; 0.056 made absolute, 2.944 remaining conditional); 90CW70 (August 1, 1990); 96CW92 (September 17, 1996); 02CW250 (September 3, 2003); and 09CW133 (March 5, 2011).

- ii. In Case No. 79CW361, the Town of Marble obtained an alternate point of diversion for 0.056 cfs of the conditional portion of the Marble Pipeline and Water System water right, at a well now known as the Marble Water Company Well. This 0.056 cfs was made absolute in Case No. 86CW67.
 - iii. In Case No. 94CW117, another alternate point of diversion was decreed at a well, known as the Marble Water Company Well No. 2 in the amount of 0.1 cfs (45 gpm) from the remaining 2.944 cfs decreed conditionally to the Marble Pipeline and Water System.
 - b. Location:
 - i. The point of diversion of the Marble Pipeline and Water System is located on the westerly bank of Carbonate Creek at a point whence the Southeast Corner of Section 26, Township 11 South, Range 88 West of the 6th P.M. bears South 20° 21' East 4,832.1 feet, being a point in the NW1/4NE1/4 of said Section, 758 feet from the North section line and 1676 feet from the East section line.
 - ii. The Marble Water Company Well is located in the NW1/4SE1/4 of Section, 26, Township 11S, Range 88W, Sixth P.M., 2600 feet from the South section line and 1800 feet from the East section line.
 - iii. The Marble Water Company Well No. 2 is located NW1/4SE1/4 of Section, 26, Township 11S, Range 88W, Sixth P.M., 2565 feet from the South section line and 1835 feet from the East section line.
 - iv. The locations of these structures are illustrated on Exhibit A.
 - c. Source: Carbonate Creek (and groundwater tributary thereto), tributary to the Crystal River, tributary to the Roaring Fork River.
 - d. Appropriation Date: December 31, 1907.
 - e. Amount: 6.0 cfs, of which 2.944 cfs remain conditional.
 - f. Uses: Municipal, industrial, fire protection, sewage removal and treatment, lawn and garden irrigation, and domestic purposes within the Town of Marble and its immediate vicinity.
3. Detailed outline of what has been done toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures, during the previous diligence period:
- a. An undivided one-third interest in the conditional water rights that are the subject

of this application are leased to the Marble Water Company (MWC), which in turn supplies water to the Town's constituents. During the last diligence period, the MWC reports having undertaken the following specific activities:

- i. Negotiated for an extension of its water supply system to serve property to which water service was otherwise unavailable;
- ii. Engaged legal counsel regarding compliance with the Safe Drinking Water Act regulations;
- iii. Connected an additional residence to the MWC water system in 2014;
- iv. Engaged Wright Water Engineers to produce an EQR report regarding its water supply system;
- v. Negotiated the sale of three taps for the Meri Dais Campground and General Store;
- vi. Engaged Wright Water Engineers to study the productivity of the Marble Company Well;
- vii. Undertook implementation of the Backflow Prevention and Cross-Connection Control Program;
- viii. Engaged Wright Water Engineers to monitor an alleged possible source of nitrate contamination to MWC wells. MWC reports having spent over \$20,000 on such monitoring, plus additional costs and attorney fees.

b. A portion of the conditional water right has been put to beneficial use. 0.056 cfs of the 0.1 cfs decreed to be diverted through the Marble Water Company Well No. 2 alternate point of diversion has been so diverted. Such water has been diverted since July 1, 1998, and was diverted every day during the most recent diligence period.

c. Each year, Town residents remove debris from and divert water through the Marble Pipeline and Water System (which is currently an open ditch), where such water is available for diversion by Town residents for irrigation purposes and to recharge the aquifer. However, the Town is unable to establish that water was diverted in an amount greater than the amount that is already decreed absolute (3.0 cfs).

d. The Marble Pipeline and Water System and the alternate points of diversion decreed to the Marble Water Company Well and the Marble Water Company Well No. 2 are part of an integrated system providing water to the Town of Marble. "When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system." C.R.S. § 37-

92-301(4)(b); see also *City & Cty. of Denver By & Through Bd. of Water Comm'rs v. Colorado River Water Conservation Dist.*, 696 P.2d 730, 750 (Colo. 1985) ("work accomplished on one portion of an integrated project may be considered evidence of reasonable diligence on the part of the appropriator as to another portion of the project, even in another drainage basin, if the portion on which the work is done must necessarily be constructed in order that the second portion may be successfully operated.").

4. Relief Requested. Applicant seeks to make the Marble Pipeline and Water System conditional water right absolute in the additional amount of 0.056 cfs, and a finding of reasonable diligence with respect to the remaining 2.844 cfs. Should the Court determine that the 0.056 cfs cannot be made absolute for any reason, Applicants requests a finding of reasonable diligence with respect to any portion not made absolute.

5. The owner of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored: All of the structures are on property owned by Applicant.

Respectfully submitted this ____ day of March, 2017.

LAW OF THE ROCKIES

By: /s/ Kendall K. Burgemeister
Kendall K. Burgemeister

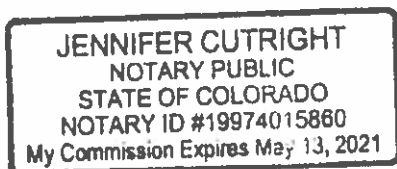
**VERIFICATION AND ACKNOWLEDGMENT OF APPLICANT OR OTHER PERSON
HAVING KNOWLEDGE OF THE FACTS STATED IN THIS APPLICATION**

I WILLIAM HANDVILLE being first duly sworn, hereby state that I have read this Application, that I have personal knowledge of the facts stated and, that I verify its contents to the best of my knowledge, information, and belief.

William Handville
Signature

3-18-17
Date

The foregoing instrument was acknowledged before me in the County of Garfield, State of Colorado, this 20 day of March, 2017, by the person whose signature appears above.



My Commission Expires: 5/13/21
Jennifer Cutright
Notary Public/Deputy Clerk

The person signing this verification is a representative of the Applicant.

Town of Marble
Ordinance Number 2
Series of 2017

AN EMERGENCY ORDINANCE AMENDING THE ZONING CODE WITH RESPECT TO
BOUNDARY ADJUSTMENTS AND LOT CONSOLIDATIONS

WHEREAS:

- A. The Town of Marble (the "Town") is a statutory town organized pursuant to Colorado Law; C.R.S. §31-1-101 *et seq.*;
- B. The Town is authorized to regulate land use matters within its boundaries, *see* C.R.S. § 31-23-101 *et seq.*, and has adopted land use regulations known as the Zoning Code;
- C. The Town desires to update the Zoning Code provisions regarding boundary adjustments and add provisions regarding lot consolidations.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MARBLE, COLORADO THAT:

1. Section 7.5.50 of the Zoning Code shall be amended to read in its entirety as shown on the attached Exhibit A.

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED BY TITLE ONLY this ____ day of _____, 2017, by a vote of ____ in favor and ____ opposed.

TOWN OF MARBLE:

ATTEST:

Will Handville, Mayor

Ron Leach, Clerk

Ordinance 2017-2 Exhibit A

7.8.50 Subdivision Exemptions

A. The following activities shall be exempted from the terms of this Chapter 7.8, except as expressly incorporated into this Section 7.8.50.

1. Lot Line Adjustments. A lot line adjustment is the realignment of boundary lines between adjacent parcels, resulting in no increase in the number of parcels, provided that the adjustment is to correct an engineering or survey error in a recorded plat or is to permit an insubstantial boundary change between parcels. A Lot Line Adjustment must:

- a. Affect only legally recognized lots;
- b. Not create a lot that would be divided by a public or private road; AND
- c. Not result in the creation of a lot or parcel of land that would fail to conform to any applicable zoning or other legal standard, or increase the extent of any existing lawful non-conforming use.

2. Lot Consolidations. A lot consolidation means the elimination of one or more lot lines between two or more contiguous lots, resulting in a reduction in the overall number of lots. A lot consolidation must:

- a. Affect only legally recognized lots;
- b. Affect only lots under identical ownership;
- c. Not propose the relocation or reconfiguration of previously established lot lines (unless a lot line adjustment is also applied for);
- d. Not create a lot that would be divided by a public or private road; AND
- e. Not result in the creation of a lot or parcel of land that would fail to conform to any applicable zoning or other legal standard, or increase the extent of any existing lawful non-conforming use.

B. Subdivision exemption review procedures.

1. An applicant may combine an application for multiple exemptions into a single application, provided that all of the requirements for each exemption are met (e.g. a lot consolidation and a lot line adjustment for three contiguous lots, with one lot line being eliminated and one lot line being adjusted).

2. All applications for a subdivision exemption shall be submitted to the Town Clerk.

3. Following submission of an application, the Town Clerk shall determine whether the application is complete. The Town Clerk shall not process or schedule the processing

of any application which is found to be incomplete. The Town Clerk shall notify the applicant if an application is incomplete and reasonably identify the deficiencies in the application.

4. Upon receipt of a complete application, the Board of Trustees shall consider the application at the next regularly scheduled and duly noticed Board meeting that is at least two weeks after the receipt of a complete application.

5. Before or upon approval of the application, the applicant shall obtain all required signatures on the plat. The Town shall not sign the plat until signatures have been obtained from all parties whose consent to the application is required.

C. Application Requirements. All subdivision exemption applications shall include the following:

1. The information required by Section 7.8.20 of this Chapter;
2. A draft of a land survey plat that:
 - a. Meets the requirements of C.R.S. § 38-51-106;
 - b. Includes a title with the phrase "Lot Consolidation" or "Lot Line Adjustment," as the case may be, followed by a description of the lots being consolidated;
 - c. Clearly indicates the lot line(s) being eliminated or adjusted;
 - d. Includes a title opinion in the following form:

ATTORNEY'S OPINION

I, (printed name of attorney), an attorney at law duly licensed to practice in the State of Colorado, hereby certify that I have examined title to all lands that are the subject of this plat. Such title is vested in _____ and is free and clear of all liens, defects, encumbrances, restrictions and reservations except as follows: (list same or indicate none).

Dated this _____ day of _____, 20 ____.

/s/ _____
Attorney-at-Law

- e. Includes the consent of all owners and lienholders of the subject property, in the following form:

(I, We), (printed name of owner(s), mortgagee(s) and lien holder(s)) being (the owner(s), a lienholder) of the land described as follows: (insert legal

description) hereby consent to the (lot line adjustment / lot consolidation) shown on this plat.

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____ (owner / lienholder). Witness my hand and official seal
My Commission expires _____.

Notary Public

- f. Includes the following additional language:

Surveyor's Certificate

I, _____, registered land surveyor, do hereby certify that I have prepared this plat, that the location of the outside boundary, roads and other features are accurately and correctly shown hereon, that the same are based on field surveys and that the platted site and the roads conform to those staked on the ground.

In witness whereof, I have set my seal this ____ day of _____, _____.
(SEAL)

Surveyor

GUNNISON COUNTY CLERK AND RECORDER'S ACCEPTANCE

This plat was accepted for filing in the office of the Clerk and Recorder of Gunnison County, Colorado, on this ____ day of _____, _____, Reception Number _____, Time _____, Date _____.

Gunnison County Clerk and Recorder

3. A Fee Reimbursement Agreement executed by all owners and each fee or deposit required by the Schedule of Fees, Expenses and Deposits.

4. Certification from the Gunnison County Treasurer's Office indicating that all real property taxes applicable to the subject parcel(s) have been paid up to the year in which approval is under consideration.

5. The applicant shall submit to the Town Clerk one electronic copy and two hard copies of all application materials. The draft plat shall be 24" x 36".

6. The Town may reasonably require the applicant to submit additional materials beyond those specified in this Section, as it deems reasonably necessary to aid in the review of the application.

D. Standards for Approval.

1. An application for a subdivision exemption shall be approved by the Board of Trustees where the Board of Trustees finds:
 - a. The proposal meets the definition of the applicable exemption as set forth in Section 7.8.50.A.
 - b. The plat meets all of the requirements of Section 7.8.50.C.2.
 - c. The proposal does not substantially and adversely affect the character or future development of the surrounding area.
 - d. The proposal is compatible with the Town's Comprehensive Plan.
 - e. The proposal does not raise significant issues of policy which are not addressed by the Comprehensive Plan or this Zoning Code.
 - f. The proposal complies with all other applicable requirements of this section.
2. An application for a boundary line adjustment shall meet the following additional standards:
 - a. The proposed lot configuration and arrangement do not, in the opinion of the Board of Trustees, create illogical or substantially unusable lot areas; and
 - b. The purpose of the adjustment shall be to make an insubstantial (as determined in the Board's subjective discretion) boundary change between adjacent lots.
3. The Board of Trustees shall have discretion to not require compliance with Chapter 7.6 of the Zoning Code. This provision shall not be interpreted to apply to future development activities on a lot that was previously consolidated.
4. The Board of Trustees may impose reasonable conditions upon any approval of a subdivision exemption that are necessary to ensure continued conformance with the standards of the Town Code.

Town of Marble
Ordinance Number 1
Series of 2017

AN EMERGENCY ORDINANCE AMENDING THE ZONING CODE WITH RESPECT TO
FEES AND EXPENSES

WHEREAS:

- A. The Town of Marble (the "Town") is a statutory town organized pursuant to Colorado Law; C.R.S. §31-1-101 *et seq.*;
- B. The Town is authorized to regulate land use matters within its boundaries, *see* C.R.S. § 31-23-101 *et seq.*, and has adopted land use regulations known as the Zoning Code;
- C. The current fees specified by the Zoning Code are generally inadequate to fully cover the Town's expenses in considering an application submitted pursuant to the Zoning Code;
- D. The Board of Trustees of the Town (the "Board") believes that the applicant is the party that should properly bear the costs of application, review, consideration and inspection associated with land use activities; and
- E. The Board desire to create a framework by which applicants for land use activities in the Town are required to cover the full cost of review, consideration and inspection of such activities.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MARBLE, COLORADO THAT:

- 1. Section 7.4.40 of the Zoning Code shall be amended to read in its entirety as shown on the attached Exhibit A.
- 2. Appendix A of the Zoning Code shall be amended to include the attached Exhibit B.
- 3. The Schedule of Fees, Expenses and Deposits attached as Exhibit C is hereby adopted.
- 4. Section 7.2.40.K.5.d of the Zoning Code is amended to read: "At the time the application is made, the Town Clerk shall collect a fee from the property owner in an amount shown on the Schedule of Fees, Expenses and Deposits."
- 5. Section 7.3.50.B of the Zoning Code is amended to read: "No request for a variance shall be considered prior to receipt of each fee or deposit required by the Schedule of Fees, Expenses and Deposits."
- 6. Section 7.5.50 of the Zoning Code is amended to read: "Upon receipt of a complete application and each fee or deposit required by the Schedule of Fees, Expenses and Deposits, the Board of Trustees shall consider the application for amendment of the zoning map, which application shall have followed the procedures set forth in foregoing sections of this Chapter."
- 7. Section 7.5.60 of the Zoning Code is amended to read:

A. Before any action shall be taken, the applicant proposing or recommending a change in the District regulations or District boundaries shall deposit with the Town Clerk each fee or deposit required by the Schedule of Fees, Expenses and Deposits.

B. Before any action shall be taken, the applicant seeking an annexation shall deposit with the Town Clerk each fee or deposit required by the Schedule of Fees, Expenses and Deposits.

8. Section 7.7.150.A of the Zoning Code is amended to read: "Independent and Dependent Camping Units. To defray the cost of increased services, permit fees for temporary parking, occupation and use of camping units for each fourteen (14) day period shall be as shown on the Schedule of Fees, Expenses and Deposits. A permit will be issued, valid only for the dates of issue."

9. Emergency Certification. It is hereby found and declared by the Town of Marble that effective review of applications submitted pursuant to the Zoning Code is necessary to preserve and protect public health, and with the current fee system in place, the Town is unable to effectively complete such review. Therefore, an emergency is hereby declared to exist, and this ordinance, being necessary for the immediate preservation of public health, shall be in full force and effect from and after its passage and approval.

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED BY TITLE ONLY this ____ day of _____, 2017, by a vote of ____ in favor and ____ opposed.

TOWN OF MARBLE:

ATTEST:

Will Handville, Mayor

Ron Leach, Clerk

Ordinance 2017-1 Exhibit A

7.4.40 Fee Schedule; Fee Reimbursement

A. Establishment and Payment of Fees.

1. The Board of Trustees shall, by resolution or ordinance, establish a schedule of fees, expenses and deposits, for matters pertaining to this Zoning Code. The schedule shall be posted on the Town website and may be amended only by resolution or ordinance of the Board of Trustees.
2. At the time of submission of an application for any type approval described in this Zoning Code, the applicant shall pay to the Town the established fees and deposits for the purpose of the Town's review and processing of the application.
3. No action shall be taken on any application unless the applicant is in compliance with the requirements of this Section 7.4.40. Failure to comply with this Section shall be cause for the Town to cease processing the application and/or deny approval of the application.

B. Reimbursement of review costs.

1. With respect to an application for any type of land use change approval described in this Zoning Code (e.g. variance, use by review, rezoning, subdivision, subdivision exemption, planned unit development, annexation), but not including applications for basic permits or licenses authorized by or mentioned in the Zoning Code (e.g. building permit, OWTS permit, camping license, special event permit), the applicant shall be responsible for the Town's cost associated with review and processing of the application.
2. At the time of submission of any application for any type of land use change approval described in the preceding paragraph, the applicant shall execute an Agreement for Payment of Development Review Expenses ("Agreement") in a form substantially similar to that included in Appendix A to this Zoning Code. The terms, conditions and obligations of the Agreement are incorporated as requirements of this Zoning Code as if set forth herein. The final form of an Agreement shall be subject to review, revision and approval by the Town Attorney based on the particular circumstances of the proposed development and, following such approval, shall be presented to the Board of Trustees for its consideration. No application shall be deemed complete until a fully executed Agreement is on file with the Town.
3. Accounting. The Town shall maintain a separate accounting of all monies deposited and expended with respect to each application. Statements shall be made available to the applicant upon reasonable request.
4. Waivers and Modification of Fees and Expenses. Upon written request by an applicant, the Board of Trustees may administratively waive, modify, adjust or refund any fee or expense associated with the processing of any application where the Board of Trustees determines that: (a) Payment of all fees and expenses would impose a unique and substantial hardship on the Applicant; or (b) The project provides a significant and substantial public benefit to the Town (i.e. will substantially advance the health, safety and welfare of the Town) not otherwise required by the Zoning Code.

Ordinance 2017-1 Exhibit C

TOWN OF MARBLE

AGREEMENT FOR PAYMENT OF DEVELOPMENT REVIEW EXPENSES PURSUANT
TO SECTION 7.4.40 OF THE TOWN OF MARBLE ZONING CODE

THIS AGREEMENT, is made and entered into by and between the TOWN OF MARBLE, COLORADO, a Colorado statutory town, (the "Town") and _____, hereinafter referred to as the "Applicant." The Applicant and the Town shall collectively be referred to as the "Parties." This Agreement shall be effective following execution by the Parties.

RECITALS AND REPRESENTATIONS:

WHEREAS, the Applicant is the owner of, or represents that he or she is the authorized agent of the owner of, certain property situated in the Town of Marble, Gunnison County, State of Colorado, (the "Property") which is described as:

[Insert Legal Description.]

WHEREAS, the Applicant has made an application ("Application") to the Town of Marble, with respect to the Property, for the review and consideration of [Insert Description of Land Use Change.]

WHEREAS, the Parties hereto recognize that the Town is expected to incur expenses in considering the Applicant's application and project, including but not limited to expenses incurred for legal and notice publications, engineering services, attorney fees, consultant fees, reproduction and photocopying of materials, public hearing expenses, recording costs and inspections by Town staff to ensure the Applicant's compliance with the requirements of the approved plans and specifications;

WHEREAS, the Zoning Code requires the Applicant to execute an agreement for the payment of Town expenses incurred in the processing and review of the Applicant's application and that this requirement is based on the policy that the applicant is the party that should properly bear the costs of application, review, consideration and inspection associated with development; and

WHEREAS, the Applicant understands that the review and processing fees incurred by the Town are independent, separate and apart from the Town's decision to approve or deny the submitted application and that such fees are owed by the Applicant regardless of the Town's decision on the application or the Applicant's decision to postpone, abandon or terminate processing of the application.

NOW THEREFORE, in consideration of the premises and of the mutual promises and conditions hereinafter contained and the requirements of the Zoning Code, it is hereby agreed as follows:

I. APPLICANT SHALL PAY ALL EXPENSES. The Applicant shall pay in accordance with this Agreement, all expenses which are directly related to the Town's review, processing,

Ordinance 2017-1 Exhibit C

consideration, and inspection of the Application. The Board of Trustees may waive, modify, adjust or refund any fee or expense, in its sole subjective discretion, in accordance with Section 7.4.40. of the Zoning Code.

2. **DEFINITIONS.** For purposes of this Agreement:

a. "Application" shall mean any application, petition, or similar request for approval subject to Section 7.4.40.B of the Zoning code, together with all documentation, data and information submitted to the Town in order to seek such approval.

b. "Expenses" shall include all expenses, costs, fees, assessments and other charges incurred by the Town and directly related to the Town's processing, review, consideration and inspection (both pre- and post-application approval) of the Application. Such expenses may include, but shall not be limited to: legal and notice publication(s); engineering services; land use planning services; inspections and inspection services fees and charges billed to the Town by other agencies and entities statutorily or legally required to review the Applicant's documentation and development (including state and federal regulatory agencies); attorneys' fees and charges (for the Town Attorney only, unless otherwise pre-approved by the Applicant); specialized consultant fees necessary to ensure Application or development conformance with federal, state or local laws (e.g., water, wetlands, biological and geo-technical consultants); reproduction and photocopying of the Application and other supporting or necessary materials; and public hearing, public meeting and administrative meeting expenses (including all costs of conducting a special meeting if requested by the Applicant). Expenses shall *not* include any expenses that are recovered through another fee payment program, such as OWTS permit inspections or building permit inspections.

i. Salaried Staff Time: Expenses shall include a charge for time spent by salaried "in-house" Town staff (e.g. the Town Clerk) on the Application, at the rate set forth on the most recent Schedule of Fees adopted by the Town.

ii. Hourly Staff Time: Expenses shall include a charge for time spent by hourly "in-house" Town staff on the Application, at a rate equal to the hourly rate paid by the Town to such staff.

iii. Expenses shall not include time spent by Town staff in attendance at regularly scheduled meetings of the Board of Trustees where the Application is discussed.

iv. It is the express intent of this Paragraph that the Applicant shall bear and pay in full all expenses and costs of the Town in the processing of the Application and, if such Application is approved, for the Town's inspection and review of the development until such time that the development is complete in accordance with the approved Application.

3. **FULL AND SEPARATE ACCOUNTING OF REVIEW EXPENSES.** The Town shall maintain a separate accounting of all monies deposited and expended with respect to this Agreement. Statements shall be made available to the Applicant upon reasonable request. The Parties understand that, due to customary delays in billing by the Town's outside consultants, a current statement may only include expenses billed to the Town as of the date of the Applicant's request.

Ordinance 2017-1 Exhibit C

4. **RESOLUTION OF DISAGREEMENT CONCERNING EXPENSES.** The Applicant may contest an expense billed to the Applicant pursuant to this Agreement by delivering written notice of the contested expense(s) to the attention of the Town Clerk. The Town Clerk shall use his or her best efforts to review a timely written contest within 14 days and to promptly respond in writing to the Applicant by: (1) affirming the expense as appropriate under this Agreement; (2) deleting or rescinding the expense as inappropriate under the Agreement; or (3) modifying or reducing the expense with reasons for the modification or reduction. The Applicant may appeal the Town Clerk's decision to the Board of Trustees by delivering a written request for appeal to the Town Clerk within 7 days after the Applicant's receipt of the Town Clerk's decision. Such appeal shall be considered by the Board of Trustees at the next regularly scheduled Board meeting that is at least 14 days after the Town's receipt of the written request for appeal. The Board of Trustees, after providing the Applicant an opportunity to be heard, shall: (1) affirm the expense as appropriate under this Agreement; (2) delete or rescind the expense as inappropriate under the Agreement; or (3) modify or reduce the expense. The Board of Trustees' decision shall be final. Review and processing of an Applicant's timely written contest shall not be an expense within the meaning of this Agreement.
5. **DEPOSIT ACCOUNT.**
- a. The Applicant shall deposit the amount of money required by the Schedule of Fees in effect at the time of Application submittal and shall maintain a deposit account with the Town ("Deposit Account") in accordance with this paragraph.
- b. The Town shall credit the Deposit Account for amounts deposited by the Applicant and shall debit payment of the Expenses from the Deposit Account. At such time that the Expenses charged against the Deposit Account exceed ninety percent (90%) or more of the initial required deposit, and within 14 days of the Applicant's receipt of notice by the Town, the Applicant shall supplement the Deposit Account by making an additional deposit with the Town Clerk of an amount of at least fifty percent (50%) of the amount of the initial deposit for land use fees and expenses. The Town Clerk may reduce the amount of, or may waive, the Applicant's making of an additional deposit where the Clerk finds that the estimated or anticipated additional Expenses for the processing of the Application will not likely exceed the remaining balance held in the Deposit Account by the Town.
- c. The Applicant shall be obligated to maintain a positive balance in the Deposit Account at all times. Failure by the Applicant to maintain a positive balance in the Deposit Account and to timely make an additional deposit within 14 days of notice by the Town in accordance with this Section shall constitute a material breach of this Agreement.
6. **APPLICATION TERMINATION.** Except as otherwise precluded or prohibited by law or an agreement with the Town, the Applicant may terminate the processing of an Application at any time by delivering written notice to the Town. The Town shall immediately take all reasonable steps necessary to terminate the accrual of additional and continuing Expenses to the Applicant. In no event shall the Applicant be obligated to pay an Expense associated with work or service performed on the Application which is more than forty-eight (48) hours after the date and time of the delivery of the Applicant's notice of termination.

Ordinance 2017-1 Exhibit C

7. **LIEN AGAINST PROPERTY.** To the extent permitted by law, expenses incurred by the Applicant in accordance with this Agreement, together with the cost of collection, shall constitute a lien against the Property described in this Agreement and described in the Application. By this Agreement, the Applicant consents to the imposition of a lien and the cost of collection against the Property and represents that the Applicant is authorized to so consent as the owner of the Property or as the authorized agent of the owner.

8. **ENFORCEMENT AND COLLECTION OF EXPENSES.** In the event of the Applicant's breach of this Agreement, all amounts owing shall be due and payable immediately and such amount shall accrue interest at an amount equal to 12% per annum until paid in full. In such event, the Town shall be entitled to and may invoke one or more of the following remedies following the Town's mailing of a letter demanding payment in full to the Applicant:

- a. Postponement, cessation and/or termination of the processing of the Application or any other land use application or approval related to the Property;
- b. Denial of the Application;
- c. Imposition of a condition upon approval that the Applicant pay all Expenses prior to issuance of further approvals, including building permits, for all or any portion of the Property;
- d. Withholding, postponing and/or denying: (1) any building permits for any part or portion of the Property or for any improvement which serves or will provide service to the Property; (2) construction documentation review or approval; (3) grading, road cut or other construction or permit approval; and/or (4) the submission, receipt, processing or approval of any application or request by the Applicant or the Applicant's affiliates for any form of land use or construction application related in any way to the Property;
- e. Refusal or denial of the acceptance of any other application for land use approval or development of any kind for the Property submitted by the Applicant or any other person;
- f. Commencement of any remedy provided by law or equity, including an action for declaratory judgment, injunction and/or damages; and/or
- g. Certification of the lien for collection to the appropriate officials for Gunnison County.

9. **NO IMPLICATION OF APPROVAL.** The Applicant agrees to pay all Expenses, regardless of whether the Town approves or denies the Application. The Applicant understands that the approval of the Application is not, and shall not constitute, consideration for the Applicant's payment in accordance with this Agreement. The Town shall not be estopped or otherwise limited or precluded from denial or conditional approval of the Application by the terms, conditions or obligations of this Agreement.

10. **MISCELLANEOUS PROVISIONS**

- a. **No Waiver:** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Ordinance 2017-1 Exhibit C

- b. **No Waiver of Governmental Immunity:** Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- c. **Binding Effect:** The parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives and assigns thereof and shall constitute covenants running with the described Property. To the extent permitted by law, the Applicant and all future successors, heirs, legal representatives and assigns of the Applicant shall be jointly and severally responsible for all terms, conditions and obligations set forth in this Agreement. The Town may, at its discretion, record this Agreement with the Clerk and Recorder for Gunnison County.
- d. **No Third Party Beneficiaries:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town and Applicant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement.
- e. **Governing Law, Venue and Enforcement:** This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement shall lie with any appropriate court within Gunnison County, Colorado.
- f. **Attorneys' Fees:** If the Applicant breaches this Agreement, the Applicant shall pay the Town's reasonable costs of collection and costs and attorneys' fees incurred in the enforcement of the terms, conditions and obligations of this Agreement, whether or not legal proceedings are instituted.
- g. **Assignment and Release:** All or part of the rights, duties, obligations, responsibilities or benefits set forth in this Agreement shall not be assigned by the Applicant without the express written consent of the Board of Trustees for the Town of Marble. Any such written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities or benefits so assigned, and shall not be effective unless approved by resolution or motion of the Board of Trustees. No assignment shall release the Applicant from performance of any duty, obligation or responsibility unless such release is clearly expressed in such written document of assignment. Prior to approving any release of the Applicant, the Town may, at its sole discretion, require the party assuming any duty, obligation or responsibility of the Applicant to provide to the Town written evidence of financial or other ability or capability to meet the particular duty, obligation or responsibility being assumed by the party.
- h. **Severability:** Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

Ordinance 2017-1 Exhibit C

i. **Integration and Amendment:** This Agreement represents the entire agreement between the parties regarding the subject matter hereof. This Agreement may be amended only by an instrument in writing signed by the Parties.

j. **Incorporation of Exhibits:** Unless otherwise stated in this Agreement, exhibits, applications or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes.

k. **Applicant Includes Agents:** For purposes of incurring expenses, such as but not limited to requesting meetings and submitting reports and studies for Town review, the term “Applicant” shall include any authorized agent, consultant or other person acting on behalf of the Applicant.

1. Notices: Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

If to Applicant:

Town of Marble

Attn: Town Clerk

322 W. Park St., Marble, CO 81623

IN WITNESSES WHEREOF, the Town and the Applicant have caused this Agreement to be duly executed as of the dates set forth below.

APPLICANT

By: _____

Date: _____

Print Name: _____

Position/Title: _____

STATE OF _____)
) ss.

COUNTY OF _____)

Acknowledged before me this _____ day of _____, 20____, by _____
_____. My Commission Expires: _____.

Notary Public

Ordinance 2017-1 Exhibit C

Town of Marble

Schedule of Fees, Expenses and Deposits

(Effective _____, 2017)

Zoning Code

Matter	Non-Refundable Application Fee*	Deposit	Reimbursement Agreement Required
Use by Review (7.2.20)	\$250	\$1,000	Yes
Keeping Livestock (7.2.40.K.5)	\$50	\$200	Yes
Variance (7.2.70; 7.3.50.B; 7.7.160; 7.9.80)	\$50	\$500	Yes
Annexation / Initial Zoning (7.5.60)	\$500	\$1,000	Yes
Rezoning (7.5.60)	\$500	\$1,000	Yes
Development Permits (7.6.70)	\$100	\$200	Yes
Camping Permit (7.7.150)	\$20	N/A	No
Subdivision (7.8.20)	\$500	\$1000	Yes
Subdivision Exemption (7.8.50)	\$100	\$200	Yes
Any other matter not specifically included above	\$50	\$250	Yes

*Where a Non-Refundable Application Fee and Deposit are required, the total amount to be deposited by the Applicant shall be the Deposit, and the Non-Refundable Application Fee shall be that portion of the amount deposited that is non-refundable. When an application process is completed (by approval, denial, withdrawal, or otherwise), the amount of the Deposit returned to the Applicant shall equal the Deposit minus the greater of the Non-Refundable Application Fee or the Town's Expenses.

Hourly rate to be charged for salaried staff time pursuant to Reimbursement Agreements: \$25.

Building Codes

Fees shall be charged in accordance with the applicable building code
No Reimbursement Agreement Required

OWTS Regulations

Application Fee: \$100
Permit Fee (new installation): \$900
Permit Fee (repairs and alterations): \$200
Surcharge: \$23
No Reimbursement Agreement Required

Ordinance 2017-1 Exhibit C

Other

Applications for easements across Town property require a \$200 deposit and execution of a Reimbursement Agreement.