

ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS

Timothy V. Corrigan
District I

Douglas B. Monger
District II

M. Elizabeth Melton
District III

Work Session

April 6, 2020

LIVE AUDIO WILL BE AVAILABLE BY CALLING 1 (669) 900-6833.

MEETING ID: 522 308 0487

PASSWORD: 522

The Routt County Board of Health or Board of Commissioners may enter executive session pursuant to C.R.S. 24-6-402(4)(b) to receive legal advice related to specific legal questions concerning Routt County's COVID-19 response.

1. 10:30 A.M. CALL TO ORDER

2. COUNTY MANAGER UPDATE

Mark Collins, Interim County Manager

The Routt County Board of County Commissioners may enter executive session pursuant to C.R.S. 24-6-402(4)(b) to receive legal advice related to specific legal questions concerning Routt County's COVID-19 response.

3. LEGAL

Erick Knaus, County Attorney

The Routt County Board of County Commissioners may enter executive session pursuant to C.R.S. 24-6-402(4)(b) to receive legal advice related to specific legal questions concerning Routt County's COVID-19 response.

4. PURCHASE OF DEVELOPMENT RIGHTS CITIZENS ADVISORY BOARD (PDR) PROCESS DURING COVID-19 DISCUSSION

Presenter: Kendra Alfieri, PDR

The Routt County Board of County Commissioners may enter executive session pursuant to C.R.S. 24-6-402(4)(b) to receive legal advice related to specific legal questions concerning Routt County's COVID-19 response.

Documents:

[BCC AGENDA COMMUNICATION FORM - PDR OUTSOURCING 4.2020.PDF](#)
[PDR.PDF](#)

5. COVID-19 WORK SESSION

The Commissioners will address critical items for regular county and emergency operations related to the COVID-19 pandemic. Action may be taken and direction to staff may be given in relation to any of these items.

The Routt County Board of County Commissioners may enter executive session pursuant to C.R.S. 24-6-402(4)(b) to receive legal advice related to specific legal questions concerning Routt County's COVID-19 response.

6. PUBLIC COMMENT

Public Comment will be heard on any item quasi-judicial land use items
County Commissioners will take public comment under consideration but will
not make any decision or take action at this time.

1. DUE TO THE CURRENT PANDEMIC, THE COUNTY COMMISSIONERS REQUEST CITIZENS ATTEND THE MEETINGS VIA PHONE. Because public access to the Courthouse has been curtailed we request public comment be submitted in writing to bcc@co.routt.co.us. Public comments will be read into the record.

7. 1:00 P.M. MEETING ADJOURNED

LIVE AUDIO WILL BE AVAILABLE BY CALLING 1 (669) 900 6833.

MEETING ID: 522 308 0487

PASSWORD: 522

All programs, services and activities of Routt County are operated in compliance with the Americans with Disabilities Act. If you need a special accommodation as a result of a disability, please call the Commissioners Office at (970) 879-0108 to assure that we can meet your needs. Please notify us of your request as soon as possible prior to the scheduled event. Routt County uses the Relay Colorado service. Dial 711 or TDD (970) 870-5444.



ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA COMMUNICATION FORM

ITEM DATE: 4/6/20	ITEM TIME: 11:15am
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FROM:	Kendra Alfieri / PDR Admin
TODAY'S DATE:	4/2/20
AGENDA TITLE:	Discussion on PDR process during COVID19

CHECK ONE THAT APPLIES TO YOUR ITEM:	
<input type="checkbox"/> ACTION ITEM	
<input checked="" type="checkbox"/> DIRECTION	
<input type="checkbox"/> INFORMATION	

I. DESCRIBE THE REQUEST OR ISSUE:
Currently Legal is focusing on the public health crisis due to COVID19, so PDR projects are not getting reviewed. There are currently 3 projects that would like to close before June 1. The land trusts have asked if the county would be open to outsourcing the legal review so these projects can move forward. Also discussion on if new projects should be accepted (May deadline for submission), or delayed until review can take place.

II. RECOMMENDED ACTION (motion):

III. DESCRIBE FISCAL IMPACTS (VARIATION TO BUDGET):
PROPOSED REVENUE (if applicable):
CURRENT BUDGETED AMOUNT:
PROPOSED EXPENDITURE:
FUNDING SOURCE:
SUPPLEMENTAL BUDGET NEEDED: YES <input type="checkbox"/> NO <input type="checkbox"/>

IV. IMPACTS OF A REGIONAL NATURE OR ON OTHER JURISDICTIONS (IDENTIFY ANY COMMUNICATIONS ON THIS ITEM):

V. BACKGROUND INFORMATION:

VI. LEGAL ISSUES:

VII. CONFLICTS OR ENVIRONMENTAL ISSUES:

VIII. SUMMARY AND OTHER OPTIONS:



ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA COMMUNICATION FORM

IX. LIST OF ATTACHMENTS:

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CLAIRE E. SOLLARS

P.O. Box 773702
Steamboat Springs, CO 80477
970.757.2713

Claire@ColoradoWaterMatters.com

6 April 2020

Routt County Board of County Commissioners
Erick Knaus
Lynaia South
c/o Kendra Alfieri

Re: Routt County PDR Program Tier II Due Diligence Review
TNC Project #188, CCALT / YVLT Project #191, and CCALT / YVLT Project #194

Dear County Commissioners, Erick, and Lynaia:

Without question, COVID 19 has unexpectedly required us to address a multitude of issues with limited time and resources. Those limitations affect all the Routt County programs that are needed to meet the health and welfare requirements of our community. Necessarily, many non-essential programs have been or will be placed "on hold" for a period of time. Of those, the PDR Program is uniquely situated because the pending legal review of Tier II Due Diligence documents can be completed through outsourcing. Outsourcing will provide Routt County with the immediate ability to finalize funding, close the three pending transactions, and offset the financial impacts of COVID 19 to these families while helping to keep their agricultural business intact.

Please note this letter is from me personally as I did not have the opportunity to discuss it with each PDR Board member before sending it. However, having the distinct pleasure and honor of working with them for many years, some in excess of two decades, I am confident my colleagues agree we should take the opportunity to timely complete Tier II Due Diligence review and permit the projects to close in the next few weeks.

Based on my experience with the PDR Program and knowing what is required for legal review of Tier II Due Diligence documents, outsourcing can be done in a manner that fully protects the interests of Routt County while permitting timely closings.

- The attorney would be hired as an independent contractor (rather than a Routt County employee) to represent Routt County for the limited purpose of conducting legal review of Tier II Due Diligence documents. Both TNC and

CCALT are willing to cover the cost of outsourcing for their respective projects.

- The attorney cannot have a conflict of interest that will affect working with Routt County, the landowners, the sponsoring land trust, or other funders of the projects.
- The attorney must have experience in real property law, preferably including conservation easements, and a working relationship with local government.
- The attorney must be an active member of the Colorado bar and have adequate professional liability coverage.
- The attorney must have the time available in the next few weeks to:
 - (a) review Tier II Due Diligence documents for all three pending projects;
 - (b) provide written comments to Routt County legal and the PDR Board;
 - (c) meet with the PDR Board to discuss the attorney's comments and any comments or issues raised by the PDR Board;
 - (d) work directly with TNC and CCALT to address the issues identified by the attorney and the PDR Board;
 - (e) meet with the Commissioners two times, first in executive session to discuss Tier Two Due Diligence review and whether the revisions (if any) address the identified issues, and second at the public meeting when the Commissioners vote to determine final funding; and
 - (f) follow through with other requests made by the Commissioners that are related to Tier II Due Diligence review.

If that attorney has any questions about the PDR Program, Tier II Due Diligence documents, or conservation easements, our PDR Board has a wide breadth and many collective decades of experience in all these matters. We would be willing to assist in whatever manner we can. I would further note that Routt County legal does an outstanding job with its review. Lynaia's previously-approved documents would be available for the attorney to compare to the submitted ones. Additionally, as discussed by TNC and CCALT, the attorney could talk with GOCO's staff.

Routt County Commissioners
Erick Knaus
Lynaia South

6 April 2020

Accompanying my letter are those from TNC and CCALT concerning the three projects. Each has critical needs to close in a few weeks. Each is faced with the reality that other funding sources and assistance will be gone if closing is not timely completed. Each knows that without a closing, the time, effort, and significant funds they have expended cannot be recovered. And if closing does not occur, each will likely lose the chance to conserve agricultural land, wildlife habitat, and preserve a family legacy.

On a final note, we have worked very hard over the last two-plus decades to build relationships with our Routt County landowners, many of whom trust us to help them carry on family legacies. In times like these, I feel that trust is particularly crucial. I believe none of the PDR Board members wants to put the PDR Program on hold when there is a way to move forward with timely closings.

I look forward to discussing how we can implement outsourcing for Tier II Document review.

Thank you and best regards,



Claire E. Sollars

CC: Carl Vail, Dean Rossi, Mary Alice Page Allen, Mary Kay Monger, and Tarn Dickerson (Routt County PDR Board)
Kendra Alfieri (Office Manager – Routt County Commissioners Office)
Nancy Fishbein and Geoff Blakeslee (The Nature Conservancy)
Erik Glenn, Molly Fales, Meagan Knott, and Bryce Hinchman (Colorado Cattlemen's Agricultural Land Trust)

April 4, 2020

Routt County Board of County Commissioners
c/o Kendra Alfieri
522 Lincoln Avenue
Steamboat Springs, CO 80477
Sent via email to: kalfieri@co.routt.co.us

RE: Routt County PDR Project # 188 – Tier II Due Diligence Review Process

Dear County Commissioners:

The Nature Conservancy (TNC) recognizes the significant challenges that Routt County is currently facing to keep its citizens safe and essential government operations functioning during the COVID-19 pandemic. These matters are of the utmost importance and TNC is committed to doing its part to be part of the solution in Colorado. We approach you today in the hopes of figuring out solutions that will assist Routt County with the review and completion of projects funded by the Purchase of Development Rights (PDR) program.

TNC's [REDACTED] conservation easement project (PDR Project # 188) is currently in the Tier II due diligence review process with Routt County. TNC has been in communication with our partner, Colorado Cattleman's Agricultural Land Trust (CCALT) and we understand that they have two projects (#191 – [REDACTED] and #194 – [REDACTED]) that are also in the Tier II due diligence review process or are nearly ready to begin.

TNC submitted all of the required Tier II due documents for the [REDACTED] project to Kendra Alfieri, Office Manager for Routt County Commissioners Office on February 21, 2020 and we believe that the review is underway. This project has been many years in the making and is finally in the homestretch. Once Routt County completes review of the Tier II due diligence, the project will be ready to proceed to closing. The landowner, [REDACTED] has committed to making a significant charitable donation in order to make the easement a reality. The easement will add an additional [REDACTED] acres to the more than [REDACTED] of [REDACTED] lands that have already been protected by TNC with funding from PDR.

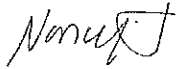
There are several deadlines that may be in jeopardy if the [REDACTED] project does not close by June 15, 2020. The project is also being funded with a grant from Great Outdoors Colorado (GOCO). The GOCO grant will provide a total of [REDACTED] to TNC to use towards the purchase price of the conservation easement, due diligence costs, stewardship endowment, and for storytelling. The GOCO

grant is set to expire on June 15, 2020. The grant has already been extended once and the GOCO Board of Directors will need to approve any additional extensions to the grant. Additionally, on July 16, 2019 the Routt County Board of County Commissioners extended the deadline for providing proof of Tier II compliance to May 1, 2020 for project #188. Both deadlines are fast approaching. There are also several project due diligence items that will need to be updated if the project does not close by June 15, 2020.

We understand that CCALT has proposed to assist Routt County with identifying an independent local attorney to assist with the review of due diligence. TNC is supportive of this idea and is willing to cover the cost of outsourcing legal review of the [REDACTED] due diligence and closing documents. As mentioned above, this project is also being funded by GOCO. A thorough review of the project due diligence is currently being conducted by GOCO and TNC is willing to engage with GOCO staff to see if they can assist Routt County or an independent attorney with the review of project due diligence.

These are extraordinary times in our world and TNC is eager to figure out solutions that will help protect these three important properties in Routt County while keeping resources focused on the health and safety of the citizens of the county. We appreciate your consideration of this letter and stand ready to assist Routt County and the PDR program.

Sincerely,



Nancy Fishbein
Director of Land & Water Protection

cc: Claire Sollars (PDR Board Chair)
Erik Glenn (CCALT Executive Director)



April 4, 2020

Routt County Board of County Commissioners
c/o Kendra Alfieri
522 Lincoln Avenue
Steamboat Springs, CO 80477
Sent via email to: kalfieri@co.routt.co.us

RE: Routt County PDR – Tier Two Due Diligence Review Process

Dear County Commissioners:

Thank you for your time and consideration of this urgent request from the Colorado Cattlemen's Agricultural Land Trust ("CCALT").

We appreciate the gravity of the situation associated with the COVID-19 outbreak and your critical role in keeping the citizens of Routt County safe as well as maintaining essential governmental functions during these unprecedented times. At this moment, more than ever, we feel that it is our duty to speak up for our landowner partners who have invested significant time and financial resources in anticipation of placing their properties under conservation easement with the help of the PDR program.

Specifically, this request pertains to PDR Projects #191 – [REDACTED] and #194 – [REDACTED]. Virtually all of the due diligence for these projects has been completed and each has a clear path to closing; however, they will be in jeopardy unless we are able to identify a way to complete the requisite Routt County due diligence review over the coming weeks. In both cases, failing to close on schedule could have devastating financial impacts to these families due to lender deadlines and other considerations detailed in the project specific letters attached as **Exhibits A and B**. Further, delays will only exacerbate the financial impacts of the COVID-19 crises in Routt County.

In light of what we have witnessed over the past several weeks, CCALT is deeply concerned about volatility in the real estate market and its potential impact on subsequent treasury appraisals necessary to claim Colorado state tax credits and federal tax deductions. The appraisals will be completed post-closing and are required to use the date of recording as the date of valuation. CCALT has already heard from appraisers that they are expecting a significant impact on appraised values once they get more market data. For landowners like the [REDACTED], who are donating a significant portion of the value of the easement on the [REDACTED], the sale of tax credits is a critical financial component of the transaction. If

instability in the real estate market winds up drastically reducing the family's expected number of tax credits, the landowners could face a significantly worse financial outcome than was projected. Beyond financial impacts, delays in closing could have broader implications for land conservation efforts in Routt County.

CCALT depends on landowners trusting us to complete conservation easement transactions within a timeframe that meets their personal and financial goals. Landowners are asked to expend significant funds to complete the due diligence necessary to complete these transactions. These costs exceed ██████████ without including the landowner's own legal fees. Frequently, the families we work with need to borrow funds to cover these expenses, thereby increasing the costs of completing the conservation easement. Many of these landowners have inflexible closing timelines based on external factors like deeds of trust. If CCALT is unable to complete a transaction, even given the current circumstances, and a landowner incurs a significant financial liability or loses a property, CCALT's reputation will be severely and irreparably damaged in this tight-knit community where positive experiences foster new opportunities for land conservation. Further, trust issues could arise if delays are the result of Routt County being unable to be flexible and implement creative – yet responsible – alternative methods to keep County functions such as PDR reviews from being significantly interrupted.

CCALT understands that the Routt County Attorney's Office does not have the capacity to review Tier Two due diligence materials during the ongoing public health crisis. However, our goal is to do everything we can to minimize the virus's impact on the lives and finances of our landowner partners. After rounds of internal discussions and having consulted with the Chair of the PDR Board, Claire Sollars and Routt County's Kendra Alfieri regarding the issues we are currently facing, we believe we have identified viable alternatives to the County's standard due diligence review process that would allow these projects to remain on schedule and for everyone to maintain the reputation and trust we so depend upon to conduct our respective businesses. Our proposed alternatives are detailed below.

Option A: Outside Counsel Completes Due Diligence Review

- Proposal: The County or CCALT engages an independent outside local attorney familiar with local government and conservation easements to complete the due diligence review process or certain aspects of the review. CCALT is willing to cover the cost of outsourcing the legal review.
- Other notes: The reviewing attorney would need to carry malpractice insurance. Ms. Sollars consulted with her malpractice carrier and has the ability to add a part-time attorney to her insurance as an Independent Contractor at no cost, so long as the contractor works less than 10 hours per month. Additionally, there is no conflict of interest for a PDR Board member to hire an attorney as an Independent Contractor absent an attorney-client relationship. If the reviewing attorney has questions about conservation easements or certain due diligence

items, Josh Tenneson of Great Outdoors Colorado (Director of Finance & Operations) would be happy to talk through any issues that arise pro bono. NOTE: Prior to assuming his current role with GOCO, Josh Tenneson spent several years as a key member of Arapahoe County's Open Space Team and also leading GOCO's transactional due diligence review program. Josh is also the previous Routt County attorney, John Merrill's, son-in-law.

Option B: Great Outdoors Colorado Completes Due Diligence Review

- Proposal: Great Outdoors Colorado ("GOCO") has partnered with Routt County on dozens of conservation easement projects. GOCO conducts a rigorous and comprehensive due diligence review prior to disbursing funding for a conservation easement. Their staff possesses the skill set, experience, and expertise to complete due diligence review at a level that would be satisfactory to Routt County. CCALT has been in communication with GOCO regarding this proposal and GOCO is willing to assist Routt County in its due diligence review.
- Other notes: GOCO did not provide funding for PDR Projects #191 or #194 and accordingly does not have a conflict of interest in completing the review.

Beyond impacts to our landowner partners, both of these transactions have financial implications for CCALT. Under our model, none of our costs are covered prior to closing. If a transaction does not close, CCALT is not compensated for our staff time or legal time unless a landowner chooses to make a donation to cover those expenses. CCALT's fiscal year ends on June 30, and we have budgeted for both of these transactions to close in the current fiscal year. Receiving the income from these transactions will help CCALT retain our full staff through this crisis and the capacity to continue to complete meaningful conservation work in Routt County.

Thank you for your continued support for local land conservation efforts and for considering this proposal in light of the extreme extenuating circumstances resulting from the COVID-19 pandemic.

Respectfully submitted,

Erik L. Glenn
Executive Director

Enclosures

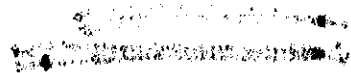
Exhibit A: [REDACTED] PDR Project Timeline & Closing Considerations

Exhibit B: [REDACTED] PDR Project Timeline & Closing Considerations

EXHIBIT A

[REDACTED] PDR Project Timeline & Closing Considerations

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April 3, 2020

Advisory Board of Directors
Routt County Purchase of Development Rights Program ("PDR")
c/o Kendra Alfieri, via e-mail
522 Lincoln Ave., Ste. 30
Steamboat Springs, CO 80487

Re: ██████████ Conservation Easement – PDR Project #194
Project Status Update: Closing Urgency

Dear County Commissioners,

At a meeting on July 31, 2018, the Routt County Board of County Commissioners ("BCC") voted to approve the funding recommendations made by the PDR Advisory Board with regard to PDR Project #194, ██████████. The BCC approved funding at the level of ██████████ of which ██████████ can be used for reimbursement of qualifying transactional costs. The BCC subsequently granted a funding extension request at a meeting on July 16, 2019, conditionally extending the Tier II due diligence deadline until May 1, 2020.

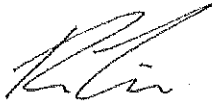
The Colorado Cattlemen's Agricultural Land Trust ("CCALT") has made significant progress in advancing this project and CCALT submitted all Tier II documentation on February 28, 2020 in anticipation of closing. The project must close by May 30, 2020. The reasons for that closing date are as follows:

- Outstanding Loans. The landowners, ██████████, assumed a substantial loan to acquire the property from a family partnership in 2018. They bought the property with the specific intent of using conservation easement funds to pay down the loan to a manageable level. The deed of trust is included in the title documents provided as part of the Tier II due diligence submission. A promissory note will become due on May 30, 2020. It would be financially devastating to the family if the easement failed to close within the necessary timeline and could potentially result in a default on the loan. If the family defaulted on the loan, the easement transaction would not move forward and it puts the family at significant risk of losing the property. Our goal is to avoid that scenario by offering alternative solutions to keep this project on track to close.
- Other Transactional Funding Will Expire. The Upper Yampa River Habitat Partnership Program ("HPP") is contributing transaction costs to the conservation easement which have been allocated from its 2019 budget. The HPP fiscal year ends on June 30, 2020; accordingly, the conservation easement must close prior to that date to ensure we can use those allocated funds. In

addition, funding from the United States Department of Agriculture, Natural Resources Conservation Service has been awarded in the amount of [REDACTED] to purchase the conservation easement to match Routt County's contribution to the project. The Nature Conservancy committed a transaction cost grant to complete the project in 2020. Delays in closing could potentially jeopardize the status of those committed funds, and even the transaction itself, if we are unable to identify an alternative path forward at this time.

Thank you for your unwavering support for land conservation projects in the Yampa Valley. On behalf of all of us at CCALT and our landowner partners, we appreciate the BCC's consideration of these extenuating circumstances. Please do not hesitate to contact CCALT if you have any questions, comments, or concerns related to this project.

Best regards,



Bryce Hinchman
Conservation Manager

EXHIBIT B

[REDACTED] DR Project Timelines & Closing Considerations

[Remainder of the Page Intentionally Blank: Letter on the following pages]

April 3, 2020

Advisory Board of Directors
Routt County Purchase of Development Rights Program ("PDR")
c/o Kendra Alfieri, via e-mail
522 Lincoln Ave., Ste. 30
Steamboat Springs, CO 80487

Re: ██████████ Conservation Easement – Project #191
Project Status Update: Closing Urgency

Dear County Commissioners,

At a meeting on July 31, 2018, the Routt County Board of County Commissioners ("BCC") voted to approve the funding recommendations made by the PDR Advisory Board with regard to PDR Project #191, "██████████". The BCC approved funding at the level of ██████████ of which up to ██████████ could be used towards the reimbursement of qualifying transaction costs. The BCC subsequently granted a funding extension request at a meeting on July 16, 2019, conditionally extending the Tier II due diligence deadline until May 1, 2020.

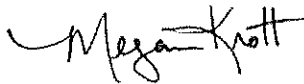
The Colorado Cattlemen's Agricultural Land Trust ("CCALT") has made significant progress in advancing this project and CCALT anticipates that all the required Tier II documentation will be submitted prior to May 1, 2020. The project must close by June 30, 2020. The reason for that closing date is as follows:

- The Upper Yampa River Habitat Partnership Program (HPP) is contributing transaction costs to the conservation easement which have been allocated from 2019's budget. The HPP's fiscal year ends June 30th, so the conservation easement must close prior to that date to ensure we can use those allocated funds.
- ██████████ took out a bank loan to purchase the property from their family in 2019. The sooner the family can close and pay off the mortgage and reduce the interest compounding, the better. The family will also have agricultural expenses in July that they were budgeting the conservation easement money to help with.
- The family will be donating approximately ██████████ in value according to the appraisal. To receive tax credits, an updated treasury appraisal must be completed based on date of closing. Given the instability in the market right now, a delay in closing risks the chance that the treasury appraisal shows less value. Tax credits are critical to the ██████████ family's goals, and we don't want

to further risk significant impacts to the real estate market as a result of COVID-19.

We sincerely hope there is a way to work through outsourcing Tier II due diligence review so the closing of ██████████ can remain on track. The landowners and CCALT have already spent tens of thousands of dollars getting this project to the finish line. Thank you for your continued support for important conservation projects such as Starbuck Ranch. Please do not hesitate to contact CCALT if you have any questions, comments, or concerns related to this project.

Sincerely,

A handwritten signature in black ink that reads "Megan Knott". The signature is written in a cursive, flowing style.

Megan Knott
Director of Stewardship

11-11-11



4/3/2020

Erik Glenn
Colorado Cattleman's Agricultural Land Trust
8833 Ralston Rd #2239
Arvada, CO 80002

RE: [REDACTED] Conservation Easement Execution

Mr. Glenn:

As a follow up to our conversation regarding execution of the Conservation Easement for [REDACTED] and [REDACTED] in Routt County I wanted to emphasize that any delay in the funding would cause financial harm to our customers. Their loan is due on May 30th, 2020 and any delay to the funding would increase interest costs, bank fees, appraisal fees, and legal fees. In the best interest of the borrowers please do not delay the execution and funding for the conservation easement.

Please feel free to contact me with any questions or concerns. Your prompt attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Johnson", written over a horizontal line.

Josh Johnson
Agribusiness Banking
ANB Bank
2108 Milestone Drive
Fort Collins, CO 80525

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