



**BEAVER
CREEK
METROPOLITAN
DISTRICT**

P.O. Box 2560
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81632

May 13, 2024

Via E-mail

Vince Hooper, Planner
Eagle County Community Development
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Re: Referral Comment Letter of Beaver Creek Metro District on the Arcadian on Beaver Creek Minor Type A Subdivision Application

Dear Vince,

Thank you for this opportunity for the Beaver Creek Metro District (the “District”) to provide comments on the proposed Arcadian on Beaver Creek (the “Development”) Type A Minor Subdivision. The District offers these comments to assist the County in its review of the subdivision standards, and to constructively engage with OI TAG Beaver Creek (the “Applicant”) to better understand impacts to District infrastructure and services, how those impacts can be mitigated, and any new responsibilities the Applicant intends the District to assume.

The present application represents the best opportunity for interested referral agencies to ensure that their needs are met relating to the services required and impacts generated by the Development. While there may be further subdivision and design review, the recording of a final plat for this subdivision will arguably confer development rights that will allow construction and new density on a physically constrained site in a relatively remote part of the Beaver Creek community. As such, this is the time for Eagle County and referral agencies to ensure that all potential impacts are quantified and addressed through this subdivision review process.

I. District Background and Interest in Application

The District was established in 1978 with the purpose of providing public services and utilities to properties within the Beaver Creek Planned Unit Development. Pursuant to the District’s 2021 Service Plan Supplement, the District has the power to provide the following services: Streets, Fire Protection, Water,

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Transportation, Traffic and Safety Controls, Television Relay and Translator, and Parks and Recreation. Water, Fire Protection, and Transportation are contracted with Upper Eagle River Water Authority, the Eagle River Fire Protection District, and Beaver Creek Resort Company, respectively. Parts of the remaining services such as snow removal for streets, weed control, and vehicle maintenance are also contracted out. All of these service and infrastructure maintenance requirements represent a substantial fiscal obligation that the District must budget for annually with a fixed mill as its sole source of income.

The District develops and adopts capital plans to improve services and related infrastructure to accommodate replacement of aging infrastructure, needs and desires of property owners and resort guests, and anticipated growth. These plans require some certainty of growth, location of density, patterns of development, and understanding of any new service and infrastructure obligations and extensions.

The District has an interest in new development following both the Eagle County Land Use Regulation (ECLUR) and the County-approved Beaver Creek Planned Unit Development (BCPUD) Guide. District infrastructure and services are designed and budgeted to accommodate a certain pattern and density of development that is regulated by these governing documents and regulations. The District's Service Plan requires certain levels of service that may be impacted by new development, which the District expects to pay its own way by constructing public infrastructure and/or paying impact fees to offset these impacts that are otherwise borne by existing taxpaying property owners. The site design is also important to ensure that District services such as transit and fire protection can safely and efficiently access the property and serve its residents and guests.

The District also has an interest in minimizing the visual and environmental impacts of new development on the area's natural resources. This includes impacts to water, slope stability, wildlife habitat, and recreational opportunities. As a primary local government entity whose boundaries include significant natural resources, the District considers itself a caretaker of these amenities that many Beaver Creek residents and guests enjoy.

Up to this point, the District has had minimal interaction with the Applicant regarding the Development and this Application. The Applicant did make a presentation to the District Board at its regular January 2024 meeting, but otherwise has not made any specific requests of the District or shared information beyond what is in the Application. The Application as currently presented fails to provide the District with sufficient information to understand likely impacts to its infrastructure and services, or any new or altered responsibilities relating to the property and Development. Because many of the impacts from this Development stand to accrue to the District, we anticipate substantive discussions with the Applicant to ensure that impacts are adequately addressed as a condition of any subdivision approval.

II. District Policy on New Development

As with any local government, the District expects new development to pay its own way and not place a burden on the existing property tax base. This includes constructing adequate public infrastructure and paying impact fees to reasonably offset the anticipated impacts of new development.

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In particular, the District's transportation infrastructure sees significant new pressure from both construction impacts and increased use resulting from new development. Construction traffic including heavy trucks can significantly deteriorate otherwise serviceable roads in a very short period of time. Increased pedestrian and vehicle traffic put additional pressure on existing congested roadways and intersections requiring safety improvements. These impacts must be quantified and adequately offset. Payment of District road access and impact fees will be mandatory for the development to have legal access to the District's roadways. These fees will pay upfront for Development impacts to District roads, filling the gap to the point where incremental property tax revenue increases will cover future maintenance caused by the Development.

Wherever new infrastructure will become the District's responsibility, the District requires conformance with District engineering standards, financial security, inspection and acceptance discretion, and a two year warranty. This will ensure that physical infrastructure meets local standards and does not become a burden on the District's taxpayers.

To the extent it is necessary, the District is considering retaining both a traffic and civil engineer to review plans and provide technical feedback to the Applicant to ensure that the District's interests are adequately addressed as we move forward in this review process.

III. Compliance with the ECLUR and BCPUD Guide

The District is providing these comments on land use regulation compliance with the intent to provide County staff and the Applicant with helpful feedback to ensure that the spirit of the ECLUR and BCPUD are diligently and equally enforced upon properties in the District's boundaries.

A. Type A Minor Subdivision Application Requirements

1. *Zoning*. The applicant must demonstrate that the land included within the proposed subdivision is properly zoned for the proposed use.

As further elaborated below in the Type A Minor Subdivision Standards, Tract C and Tract S are a single parcel with two different zoning categories – Residential Medium Density (RMD), and Open Space – Greenbelt (OSR). Either the entire parcel is RMD, or the entire parcel is OSR. Any change in zoning requires an amendment to the BCPUD.

2. *Access*. The applicant must demonstrate that all lots in the proposed subdivision have legal and physical access to a public street or right-of-way by conventional vehicle.

No evidence of legal access from Beaver Creek Drive has been provided. Vail Corporation owns the Beaver Creek Drive right-of-way over which the District holds a nonexclusive public easement that places maintenance responsibilities on the District. As such, constructing new units will require an access permit and payment of impact fees to offset construction traffic and new traffic on District streets, and traffic control services.

B. Type A Minor Subdivision Standards ECLUR Sec. 5-290.G.1

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1. *Consistent with Comprehensive Plan.*

The application appears to generally comply with the Eagle County Comprehensive Plan which identifies the BCPUD as “Existing Approved Development” which reflects the general governing authority of the PUD Guide. There is no applicable sub-area community plan for the BCPUD.

The Eagle River Watershed Plan (ERWP) does discuss the Beaver Creek drainage generally as an important Eagle River tributary. To the extent that document addresses impacts from development, it notes that benefits to wildlife along Beaver Creek have been significantly diminished. ERWP at 89. It further notes in Appendix C that Beaver Creek from the Mouth of Wayne Creek to the confluence with the Eagle River is under monitoring and evaluation (M&E) parameters under the Colorado Department of Public Health and Environment’s (CDPHE) 2012 Clean Water Act (CWA) 303(D) list for possible nonattainment of Aquatic Life Use. ERWP at 151. In the 2023 303(D) list, the Water Quality Control Commission (WQCC) provisionally moved this segment from the (M&E) list to the 303(D) impaired waters list indicating further deterioration. 5 CCR 1002-93.14.A.5. To the extent that replacing wetlands that provide water quality services on the subject property with stormwater conveyances further impairs this stream segment, the District believes the Applicant should provide further information on water quality impacts to Beaver Creek.

2. *Consistent with Land Use Regulations.*

a. *Compliance with the Beaver Creek Planned Unit Development (PUD) Guide*

Applicant maintains that Parcel No. 2105-123-00-001 is unplatted property known as Tract C within the PUD. At the same time, Applicant suggests that the Property (as defined in the Application) maintains two separate zoning designations under the PUD Guide – with proposed Lots 1 and 2 located within Tract C designated as RMD and the proposed open space tract located within Tract S designated as Open Space – Greenbelt. On their face, these two statements contradict one another and cannot coexist. If the Property is known as Tract C, it is zoned Residential Medium Density in its entirety. If the Property maintains two zoning designations under Tracts C and S, the Property cannot be a single parcel known as Tract C. The Applicant needs to clarify whether the Property is a single parcel known as Tract C or two separate parcels known as Tracts C and S.

Based upon its assertion that the Property maintains two separate zoning designations, Applicant goes on to conclude that no part of the Application requires an amendment to the PUD Guide because there are no proposed changes to the PUD. The District recommends that County staff more closely study whether an amendment to the PUD Guide is required pursuant to Section X.A. of the PUD Guide.

Based upon the apparent scrivener’s errors contained in the PUD Map filed with the PUD Guide as Exhibit G, a new PUD Map may be necessary and appropriate to identify the correct zoning designation of the Property. Applicant asserts that Exhibit G to the PUD Guide “very clearly shows the outline of Tract C and the Open Space parcel but has an error in the labelling for Tract C and Tract N.” This conclusion requires additional support and the District recommends that County staff closely study this issue to ensure compliance with the PUD Guide.

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b. Livestream setback for Wayne Creek.

The Arcadian Development includes areas of streams, wetlands and riparian zones, namely from Wayne Creek, which flows through the property. Waterflow from Wayne Creek appears to cross the property and Wayne Creek can be defined as a "Stream" according to the ECLUR. Specifically, from the engineering comments in the April 10, 2024, referral letter, from the Eagle County Community Development Planner, Vince Hooper, it states that Wayne Creek flows into the golf course water feature and then across this property. The letter goes on to state that the "status of Wayne Creek must be addressed to be able to move forward."

The Applicant has failed to conclusively address the impacts of Wayne Creek flowing through the property and has opined that the water flowing through the property meets the definition of an irrigation ditch, and not a stream. However, the Applicant has not conclusively shown that the watercourse is merely an irrigation ditch. Evidence suggests that the Townsend Ditch terminates on the golf course and that the current watercourse on the site is a re-aligned portion of the natural Wayne Creek.

ECLUR Section 3-340 provides setbacks for wetlands and riparian areas, for "a 75 foot strip of land measured horizontally from the high water mark on each side of any stream, or the 100 year floodplain, whichever provides the greater separation from the stream, shall be protected in its natural state." Section 3-340 further states that stream setbacks on lots located in PUD zoned areas shall comply with the stream setback as indicated by the PUD Guide. Where the PUD is silent to stream setbacks, building and improvements shall comply with the 75-foot setback requirement. An exception to this code is that the Community Development Director may approve a reduction of the stream setback to a minimum of 50 feet or the outer edge of the 100-year floodplain, whichever provides the greater separation from the stream. In order for consideration, the Applicant must clearly demonstrate compliance by submittal of a report, that addresses 1) water quality, 2) erosion, 3) habitat, 4) scenic and recreational values, and 5) alternative design, or 6) other circumstances.

According to the ECLUR, the definition of a Stream "means a watercourse having a natural source and terminus, banks and channel, through which waters flow at least periodically. Stream includes creeks and other flowing waters that are tributary to a river. Man-made irrigation ditches are excluded from this definition."

The Applicant relies on the assertion that neither the Townsend Ditch nor Wayne Creek are listed as streams in Eagle County to conclude that the watercourse on the Property does not meet the County's definition of a "stream." This conclusion is not substantiated by sufficient support. First, the Application does not provide enough information to reasonably conclude that the watercourse on the Property is not Wayne Creek. Second, regardless of whether the watercourse is Wayne Creek or the Townsend Ditch, the watercourse is tributary to Beaver Creek and thus meets the County's definition of stream.

Classification of the watercourse as tributary to Beaver Creek is confirmed by the following statement contained in the Memorandum dated February 16, 2024, prepared by The Aidan Group:

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The watercourse does have a bank and channel, water flows at least periodically and is tributary to the Eagle River and Beaver Creek; however, these characteristics were originally developed as a man-made irrigation ditch, which should be excluded from Eagle County's definition of a "stream".

Water that is tributary to a natural stream such as Beaver Creek or the Eagle River is part of the public's water resource and subject to appropriation under Colorado's priority system. See C.R.S. 37-92-103 ("Waters of the state" means all surface and underground water in or tributary to all natural streams within the state of Colorado, except for designated groundwater."). Based on this, the Applicant needs to provide additional evidence that it has the legal right to alter the watercourse from its current location.

Although the PUD does not contain a specific setback requirement for any waterway, Eagle County requires a 75-foot setback. The Amended and Restated Guide to the Beaver Creek Planned Unit Development, dated January 24, 2017, states that all buildings "shall be set back at least 25' from the highwater mark of Beaver Creek" and "set back at least 50' from the high-water mark of the Eagle River". See Section VI. Assigned Land Use Designations. District believes that the Applicant may need to provide more information to meet its obligations under the ECLUR.

c. Snow Storage

ECLUR 4-130.K requires 2.5% of total parking area including access drives to be dedicated to snow storage. 4-130.M applies all parking standards to PUDs unless otherwise permitted in master plan. PUD Guide is silent on snow storage.

The application and plat have no reference to any snow storage plan or easements to accommodate such. To the extent that any snow storage will occur on the drive connecting Beaver Creek Drive to the Mirabelle, the District requests that it not impede emergency egress through the gate located thereon. Pursuant to the District's easement over Beaver Creek Drive that requires the District to maintain the right-of-way, the District will not allow any private snow storage to occur within the right-of-way. If there are underground snow-melting facilities being proposed, that should be noted in the application to ensure snow storage requirements are adequately addressed.

3. *Spatial Pattern Shall Be Efficient.*

The proposed Development will result in significant new density in an area that is otherwise lower density as compared with many parts of the BCPUD. While water, sewer, and electric are all provided for, this level of density implicates the District's services and infrastructure maintenance obligations. Aside from an assumption in the Application that the District will assist in maintenance of the Development's storm drainage facilities, no consideration of the District's services or infrastructure is considered in the Application.

The Development will result in substantially more density than the surrounding residences on lower Beaver Creek Drive. Below Fairway Drive there are currently 19 single family homes that have access onto Beaver Creek Drive. The Development will result in a 63% increase in unit density as compared with the rest of

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that segment of Beaver Creek Drive. This density will result in increased pressure on District infrastructure and services.

The District anticipates engaging with the Applicant to ensure that impacts to District services and infrastructure are adequately mitigated through construction of public improvements and/or monetary contributions to service and capital budgets. Below is a list of potential unaddressed impacts caused by the Development and accruing to the District.

a. Construction Plan

The District makes reference to the Beaver Creek Resort Company's Construction Activities and Compliance Deposit Regulation as revised on March 28, 2019 and incorporates that document by this reference. This document contains many important rules on conduct of site work, inspections, construction traffic flow, parking, permitted work times, and use of District rights-of-way.

Two regulations are of particular importance to the District as it relates to construction impacts. 6.08 Roadway Maintenance requires the Applicant to repair any damage to streets caused by construction traffic and keep the roads clean during construction. The District anticipates significant damage from the Development's construction traffic that must be repaired to the District's satisfaction. And given the proximity of the Development to Beaver Creek, the District will require a commitment to routine street sweeping to ensure that this impaired waterway is not further degraded. Rule 6.09 governs access and parking, requiring that vehicles be parked on-site or request permission to use District right-of-way for parking or material storage. Given the intensity of development being proposed on such a constrained site, the District anticipates there being a request for use of District right-of-way for construction activities.

The District assumes that construction traffic will use the Prater Road entrance, transit up Village Road, and down Beaver Creek Drive to access the site. The District does not believe that utilizing the gated drive behind the Mirabelle would provide safe access to the site and such use could compromise emergency evacuations.

b. Traffic

Construction and post-construction traffic congestion are of interest to the District as it considers traffic calming and pedestrian safety enhancements. The intersection at Beaver Creek Drive and Village Road currently experiences substantial congestion at peak times during the high resort seasons. The District is currently planning for pedestrian and vehicle traffic safety improvements at this intersection to calm traffic, allow better traffic flow, and provide better pedestrian safety. The McDowell traffic report is predicated on a September 2022 weekday traffic count at Village Road and Beaver Creek Drive which does not adequately acknowledge the peak traffic demands during the high resort season. The District requests that the traffic study be updated to more accurately reflect peak traffic conditions at the intersection so that the public can better understand the Development's potential contribution to congestion. The District believes that contribution to the proposed intersection improvement would be helpful in addressing likely increased vehicle and pedestrian traffic from the Development.

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The District also has some concerns regarding pedestrian safety on the lower part of Beaver Creek Drive, a narrow street that currently hosts low density development. Current pedestrian use on this road segment will likely be impacted by construction and post-construction traffic. Consideration of some separation between vehicles and pedestrians may be warranted. The District may retain a traffic engineer at the Applicant's cost to further evaluate these impacts.

c. Streets

The Application does not discuss construction or post-construction impacts to District maintained streets beyond the traffic study's conclusion that there will be little traffic impacts. It is worth noting that Beaver Creek Drive was repaved in 2023 and pursuant to the Construction Regulations, the Applicant will be responsible for damage to that surface resulting from construction traffic. The District will be requiring additional information and potentially retaining a traffic engineer, at the Applicant's cost, to better understand the increased impacts on Village Road and Beaver Creek Drive resulting from the Development. These impacts will be addressed, in part, through the payment of a road impact fee. In addition, road upgrades such as curb and gutter, sidewalks, or other public improvements may be required.

The Applicant represents that there will be widening of golf maintenance facility access, which lies in part within the District's right-of-way. Construction within and use of this right-of-way will require permission from the District and further discussion and coordination regarding maintenance responsibilities of this drive, which the District presently does not maintain, that also serves the adjacent two single family homes. The District anticipates formalizing such arrangement in an agreement with the Applicant and/or the future owners association.

The District also has concerns about whether two parking spaces per unit will be adequate for peak visitation periods. Parking is not allowed in the District right-of-way and should not be allowed on either the Golf Maintenance or Emergency Access drives to ensure adequate emergency vehicle and transit vehicle access.

The District is interested in any construction plans the Applicant has relating to the use of District streets for construction staging, and any other closures or disruptions likely to occur during construction.

d. Fire Service

Fire Service is the responsibility of the District but contracted through the Eagle River Fire Protection District (ERFPD). Given the significant site constraints, the District is interested in understanding plans for fire apparatus access and provision of sufficient turnarounds in order to provide adequate service to the Development.

e. Emergency Exit

While there is no formal arrangement with Vail Corporation, the District appreciates the existing understanding that a closure on Village Road, or an emergency evacuation of the area will result in traffic being routed through Beaver Creek Drive onto the drive connecting to the Mirabelle by Vail Corporation

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opening the gate. This arrangement is not referenced in the application or in recent easements recorded on the property for that drive. The Applicant appears to be making improvements on the drive based on review of the site plan, but which are not discussed in the Application. Further, the District is currently responsible under the existing arrangement for snow removal on the drive.

The District anticipates formalizing the emergency use of the drive and ensuring that the Development does not impact this important public safety outlet. The easement granted by the Applicant to Vail Corporation recorded at Reception No. 202314332 governs Vail's use of the emergency access drive. Section 4 of that instrument calls for the replacement of the easement upon recordation of the final subdivision plat. The District is interested in understanding whether the Applicant will be following through on this provision and if so, including additional language regarding emergency use of the drive.

Similarly, there needs to be a plan in place during construction to ensure that the drive is not impeded and can be cleared quickly of construction equipment in the event that emergency use of the drive is necessary.

f. Transit Service Impacts

The District is responsible for transit throughout its boundaries currently provided by the Village Connect bus service. Traffic congestion at Beaver Creek Drive and Village Road can have significant impacts on service to surrounding residences, necessitating additional understanding of traffic impacts caused by the Development. Additionally, the District will need to know whether it is anticipated that buses will be providing door-to-door service for the Development or pickup at the cul-de-sac. If buses are anticipated to access all units, then the service provider will need to review plans to assess whether grades, widths, and turnarounds are adequate for such access. Alternatively, if it is anticipated that passengers will be picked up and dropped off at the cul-de-sac, the District requests a review of adequate pedestrian infrastructure to safely access the cul-de-sac in all seasons.

The District is aware of significant difficulties that the Village Connect service encounters at the intersection of Village Road and Beaver Creek Drive. The increase in density proposed by this Development will undoubtedly result in a substantial increase in Village Connect requests, especially in such a relatively remote location. The District has concerns about Village Connect being able to provide adequate service during peak traffic times of the high resort season.

g. Parks and Recreation

The Development is not located close to many developed recreational facilities. Given the number of units being constructed, some thought should be given to any needs for recreational amenities. The proximity to Beaver Creek will undoubtedly draw additional visitation to its banks, likely damaging the riparian vegetation. The Applicant should provide a plan for managing this likely use. It remains unclear who will be responsible for the future Tract S parcel. If the owners association is ultimately responsible for the property's management, it will need a plan to ensure that the resources on the property are properly managed.

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The District has an interest in preserving the water quality of Beaver Creek, which is listed as impaired on CDPHE's 303(D) list. All drainage structures, construction activities, the rerouting of the watercourse, and future site uses should not be allowed to further impair this segment of Beaver Creek.

h. Stormwater infrastructure

The only reference to the District in the application is regarding stormwater facilities being constructed offsite and apparently becoming the responsibility of the District. Drainage Report at 7. The District wishes to better understand ownership and maintenance responsibilities for these new facilities. If the Applicant intends to dedicate any of this infrastructure to the District, there will be security and warranty requirements to ensure that improvements are constructed to County standards.

i. Headgate Operations

The District is currently responsible for the operation of the headgate where the watercourse intersects the emergency access way. The District operates the headgate to manage flows in the relatively shallow ditch on the west side of the drive to prevent flooding and in accordance with the District's water rights obligations. Civil plans sheet C1.2 shows a 36-inch stormwater conveyance replacing the existing "natural" course of the ditch/creek. If it is anticipated that the District will continue to operate the current headgate or some replacement system, the District will require an understanding of any water rights impacts as it relates to moving the watercourse's return flow, and access easement(s) necessary for such ongoing operations and maintenance obligations.

4. *Suitability for Development.*

Please refer to the foregoing comments relating to impacts to District infrastructure and services resulting from site design and configuration.

5. *Compatible with Surrounding Uses.*

Please refer to the foregoing comments relating to impacts to District infrastructure and services resulting from increased density in a remote, less dense part of the community.

6. *Improvement Agreements*

The District will require the Applicant to enter into an agreement memorializing the Applicant's obligations, any new District responsibilities, calculation of impact fees, and other public infrastructure mitigation.

7. *Conformance with Final Plat Requirements.*

The District will need to engage with the Applicant to review its rights in the right-of-way easements and how the Development will affect those legal rights. Any proposed alteration of those rights should be reflected on the plat.

Regarding Plat Note 2: The District requests that the Applicant and County determine which version(s) of the PUD Guide should be reflected in the note. As drafted, only the 1994 version would seem to apply,

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which would be erroneous at this time. Further, if there are exceptions on title that do not apply to the property, the Applicant should work with the title company to have them removed from the title commitment and the plat.

IV. Conclusion

The District has many interests in this application as a higher density development within an otherwise remote lower-density residential neighborhood. As noted above, this level of development will impact the District's services and infrastructure, resulting in additional obligations to accommodate new pressure from residents and guests. Maintaining existing levels of service and maintenance are of paramount concern to the District. The District will not allow the Development to put any burden on the existing property tax base but will instead require the payment of impact fees and/or construction of public improvements to offset these impacts. Further, the District needs additional information to understand what new or different responsibilities the Applicant intends the District to assume as a result of the Development. The District also wishes to ensure that the County enforce the ECLUR and BCPUD by more closely analyzing the existing zoning designations on this single tract. The District also has an interest in impacts to presently functioning natural resources such as wetlands that provide environmental benefits and recreational opportunities.

The District Board reiterates its desire to work collaboratively with the Applicant and the County to ensure that its interests are adequately incorporated into the pending subdivision application.

Yours very truly,



David Eickholt
Board Chair

Cc: Bill Simmons, General Manager
Russell Newton, General Counsel
Richard Peterson-Cremer, Special Counsel