PUBLIC HEARING
April 19, 2011

Present: Peter Runyon Chairman Pro-Tem
Sara Fisher Commissioner
Keith Montag County Manager
Bryan Treu County Attorney
Kathy Scriver Deputy Clerk to the Board

Absent: Jon Stavney Chairman

This being a scheduled Public Hearing, the following items were presented to the Board of County Commissioners for their consideration:

Resolution 2011-032 Designating April 24-30, 2011 as Week of the Young Child in Eagle County
Maggie Swonger, Health & Human Services

Ms. Swonger spoke about the annual celebration that focused public attention on the needs of young children and their families and early childhood programs that met those needs. It was also a time to honor all the hard working child-care providers, family child-care homes, centers, preschools, and head start programs. There would be a parade on April 28 in Eagle, Vail and Minturn.

Shelly Smith, with the Eagle County School District Early Childhood Program, spoke about the Vail Valley Foundation’s partnership with the School District and Family Literacy Project to offer a Summer Kindergarten Readiness Camp for 195 children in Eagle County.

Jeanne McQueeney thanked the board for their work done on behalf of early childhood. She shared some research called “willing and unable to serve”. The research results indicated that 75% of the young adults could not join the military for various reasons and encouraged the nation to invest in early childhood, as it was important to national security in the future.

Chairman Fisher thanked everyone for their ongoing dedication and spoke about the various community partnerships and programs that existed in the valley that addressed early learning opportunities.

Commissioner Fisher read the resolution into the record and moved to approve the resolution designating April 24-30, 2011 as Week of the Young Child in Eagle County.

Chairman Pro-Tem Runyon seconded the motion. Of the two voting Commissioners, the vote was declared unanimous.

Consent Agenda

Chairman Pro-Tem Runyon stated the first item before the Board was the Consent Agenda as follows:

A. Approval of Bill Paying for the Week of April 18, 2011 (subject to review by the Finance Director)
   Finance Department Representative

B. Approval of the Minutes for the Eagle County Board of Commissioners Meeting for March 29, 2011
   Teak Simonton, Clerk & Recorder

C. Resolution 2011-033 Concerning an Appointment to the Basalt Regional Library District Board of Trustees
   County Attorney’s Office Representative
D. Resolution 2011-034 Transferring and Distributing Revenues from the County Forest Reserve Fund, Fiscal Year 2010
   Diane Mauriello, County Attorney’s Office
   John Lewis, Finance Department

E. Agreement for Professional Services between Eagle County and Jviation, Inc. for Master Planning Services for Eagle County Regional Airport
   Airport Representative

F. Master Consulting Agreement between Eagle County and Ensoft Consulting, Inc. for Replacement Server Architecture and Software
   IT Representative

G. Annual Wildfire Operating Plan between Eagle County and the Colorado State Forest Service
   Joe Hoy, Sheriff’s Office

H. Intergovernmental Agreement between Town of Avon and Eagle County Concerning the Avon to Eagle-Vail Project
   ECO Trails Representative

   Chairman Pro-Tem Runyon asked the Attorney’s Office if there were any changes to the Consent Agenda. Bryan Treu, County Attorney stated that he had no comments.

   Chris Anderson spoke about item E. He presented a quick update on the agreement for professional services between Eagle County and Jviation, Inc. for Master Planning Services. There would be a series of different meetings in the future and an opportunity for public feedback. He looked forward to as much community input as possible.

   John Lewis spoke about item D. He explained the lease payment process and restrictions. This was the county’s third year of participation.

   Barry Smith spoke about item G. He stated that this agreement was the same as last year but the rate agreement had changed slightly.

   Ellie Caryl spoke about item H and the grants received for the trail improvements.

   Commissioner Fisher moved to approve the Consent Agenda, Items A-H. Chairman Pro-Tem Runyon seconded the motion. Of the two voting Commissioners, the vote was declared unanimous.

Citizen Input
   Chairman Pro-Tem Runyon opened and closed citizen Input, as there was none.

Ratification of Agreement to Buy and Sell Real Estate for the Nottingham Red Dirt Property
   Attorney’s Office Representative

   Mr. Treu stated that these were two more parcels of property that the county had entered into contracts for open space. Approval of the agreements would move the process forward and another public hearing for funding would need to be held in the near future. Both properties were on the Colorado River. The Nottingham Red Dirt parcel was a 232-acre parcel. The second was a 10-acre parcel on the river in Dotsero. Both parcels would be open
to the public and provide river access. The cost of the Nottingham property was $2.25 million. The county had
until early July to obtain funding. The Star Route Enterprise property purchase price was $700,000.

Commissioner Fisher appreciated that both landowners were interested in partnering with the county to
conserve land. She believed that both properties had historical uniqueness.

Mr. Montag spoke stated that Chairman Stavney supported the purchase of both purchases and believed it
was a unique opportunity to have river access as well as providing access to adjacent BLM land.

Chairman Pro-Tem Runyon stated that Chairman Stavney had been instrumental in leading the charge. He
believed that having safe river access was important.

Chairman Pro-Tem Runyon opened and closed public comment, as there was none.

Commissioner Fisher moved to ratify the purchase agreement to buy and sell real estate for the
Nottingham Red Dirt property.

Chairman Pro-Tem Runyon seconded the motion. Of the two voting Commissioners, the vote was declared
unanimous.

Ratification of Agreement to Buy and Sell Real Estate for the Star Route Enterprises LLC Property in Dotsero
Attorney’s Office Representative

Commissioner Fisher moved to ratify the purchase agreement to buy and sell real estate for the Star Route
Enterprises LLC property in Dotsero.

Chairman Pro-Tem Runyon seconded the motion. Of the two voting Commissioners, the vote was declared
unanimous.

First Quarter Interest and Public Trustee Reports
Karen Sheaffer, Treasure and Public Trustee

Ms. Sheaffer stated that according to the financial experts, interest rates should rise at the end of this year
or at the latest, the beginning of next year. 2007 was the last time interest rates were above 4%. They would keep
an eye on investment earnings to make sure the budgeted amount was realistic for the year. She hoped to invest
money this year at a higher rate than last and believed it would all come out in the end. The county investments
were paid out on a quarterly basis. She hoped to have the investment adviser meet with the board in May or June.
She stated that the public trustee would begin reporting to the board on a regular basis.

Karla Herridge spoke about the quarterly reporting process. The county took in roughly $48,000 of revenue
the first quarter of 2011. The expenses for the first quarter including wages and benefits were approximately
$42,000. Most of the revenue was a result of new foreclosure filings.

Commissioner Fisher requested that she provide a historical component in her reports to allow for
comparisons.

Ms. Herridge spoke about operating expenses and public educational opportunities. The county’s website
provides a lot of information for both investors and homeowners. Occasionally there are training videos and
seminars available.

Commissioner Fisher moved to adjourn as the Board of County Commissioners and re-convene as the
Eagle County Liquor Licensing Authority.

Chairman Pro-Tem Runyon seconded the motion. Of the two voting Commissioners, the vote was declared
unanimous.
Eagle County Liquor License Authority  
Kathy Scriver, Clerk and Recorder’s Office

Consent Agenda

Renewals

A. Rink Productions, Inc. d/b/a Rink Productions
   #26-65945-0000
   This is a renewal of an optional premise license in Beaver Creek. There have been no complaints or disturbances in the past year. All the necessary fees have been paid. An Alcohol Management Plan is on file in the Clerk’s Office and proof of server training has been provided.

B. Top of the Rockies, Inc. d/b/a Top of the Rockies at Vail
   #10-87789-0000
   This is a renewal of a hotel and restaurant license in Red Cliff. There have been no complaints or disturbances in the past year. All the necessary fees have been paid. An Alcohol Management Plan is on file in the Clerk’s Office and proof of server training has been provided.

C. Nastrovia, LLC d/b/a Woody’s Full Belly Kitchen and Pub
   #42-59626-0000
   This is a renewal of a hotel and restaurant license in Edwards. There have been no complaints or disturbances in the past year. All the necessary fees have been paid. An Alcohol Management Plan is on file in the Clerk’s Office and proof of server training has been provided.

D. Hyatt Corporation d/b/a Park Hyatt at Beaver Creek
   #04-85070-0000
   This is a renewal of a hotel and restaurant license with 1-opt. premises in Beaver Creek. There have been no complaints or disturbances in the past year. All the necessary fees have been paid. An Alcohol Management Plan is on file in the Clerk’s Office and proof of server training has been provided.

Other

E. Beaver Creek Food Service, Inc. d/b/a Trapper’s Cabin
   #04-51098-0001
   This is a Report of Change / Manager Registration. The applicant wishes to register William MacFarlane as the new manager, replacing Ron Neville. Mr. MacFarlane was reported to be of good moral character based on both his Sheriff and CBI report.

F. Grill at Singletree, LLC d/b/a Balata
   #12-56479-0000
   This is a Report of Change / Manager Registration. The applicant wishes to register Yoon Chough as the new manager, replacing Alysson Lincoln. Mr. Chough was reported to be of good moral character based on both his Sheriff and CBI report.

Commissioner Fisher moved that the Board approve the Liquor Consent Agenda for April 19, 2011 consisting of Items A-F. Chairman Pro-Tem Runyon seconded the motion. Of the two voting Commissioners, the vote was declared unanimous.
APPLICANT: Eagle Valley High School Foundation  
REQUEST: Special Event Permit  
EVENT: Cinco de Mayo event  
DATE: Sunday, May 8, 2011  
REPRESENTATIVE: Brandon Montag, president  
LOCATION: Eagle River Center, 0794 Fairgrounds Road-Eagle  
STAFF REPRESENTATIVE: Kathy Scriver  
CONCERN: None  

DESCRIPTION:  
Eagle Valley High School Foundation, a non-profit organization has requested a permit for a Cinco de Mayo event, hosted by NRC Broadcasting. The applicant is requesting a permit for Sunday, May 8 from noon – 7 p.m. This is a family event. There will be various restaurants and licensed food caterers providing a variety of Mexican food. Diamante will provide the security. The only alcohol served will be beer (canned).

STAFF FINDINGS:  
1. This application is in order, all requirements have been met, all necessary documents have been received, and all fees have been paid.
2. Public notice was given by the posting a sign in a conspicuous place on the premises on April 8, 2011, 10 days prior to the hearing.
3. No protests were filed in the Clerk and Recorder’s Office.
4. The applicant has provided proof of server training and an alcohol management plan.

STAFF RECOMMENDATION:  
All findings are positive and staff recommends approval.

DISCUSSION:  
Ms. Scriver presented the request. She indicated that staff had no concerns with the request. Brandon Montag, Laurie Asmussen, and Monica Mattingly were present. Ms. Asmussen stated that she was helping NRC broadcasting with the event and she was also a member of the Eagle Valley High School Foundation Board. This event provided an opportunity to raise money for the High School scholarship program. The foundation was made up of past Eagle Valley students, business leaders, and parents of current students. Due to the lack of funding from the state, they decided to start the foundation.

Commissioner Fisher recognized Brandon and Laurie for their work in the community. She believed it was a great community event.

Commissioner Fisher moved that the Local Liquor Licensing Authority approve the permit for the Eagle Valley High School Foundation event being held on May 8, 2011, from noon to 7:00 p.m. at the Eagle River Center in Unincorporated Eagle County. Chairman Pro-Tem Runyon seconded the motion. Of the two voting Commissioners, the vote was declared unanimous.
Commissioner Fisher moved to adjourn as the Eagle County Liquor Licensing Authority and reconvene as the Board of County Commissioners.

Chairman Pro-Tem Runyon seconded the motion. Of the two voting Commissioners, the vote was declared unanimous.

Planning Files

LUR-3053 Regulation Amendment to Allow Residential Use in the County’s Commercial Zone Districts Subject to Special Use Review

FNZ-3054 Schmidt Residence Stream Setback Variance Request

FILE NO./PROCESS: LUR-3053 / Land Use Regulation Amendment
PROJECT NAME: Amendment of Special Use Provision to Allow Residential Use in the Commercial-Limited and Commercial-General Zone Districts
LOCATION: All of Unincorporated Eagle County
OWNER: Not Applicable
APPLICANT: Fritz Schmidt
REPRESENTATIVE: Knight Planning Services, Inc. / Terrill Knight
STAFF PLANNER: Bob Narracci

1. PROJECT DESCRIPTION

A. SUMMARY: This application proposes to amend the Eagle County Land Use Regulations to allow residential development in the Commercial-Limited and Commercial-General zone districts subject to Planning Commission and Board of County Commissioner Special Use Permit review and approval.

Presently, the Eagle County Land Use Regulations contain a provision which allows, via Special Use Permit review and approval, residential development within commercial zone districts not to exceed thirty-three (33) percent of the total floor area of all buildings on the site.

Proposed is a regulatory amendment to replace the thirty-three percent residential cap with the following language:

“Via Special Use Review, in the Commercial-Limited and Commercial-General Zone Districts, mixed-use commercial and residential development may be approved. The appropriate ratio of residential use to commercial use will be reviewed on a case-by-case basis subject to the standards established for Special Use Review”.

This amendment, if approved, will provide greater flexibility for creating mixed-use development within the county’s commercial general and commercial limited zone districts without resorting to a lengthy, expensive Planned Unit Development process.

B. PLANNING COMMISSION DELIBERATION SUMMARY & MOTION:

EAGLE COUNTY PLANNING COMMISSION

Chairman Heicher – Is not in favor of the FONSI request. The (stream setback) area should be inclusive of riparian and wetland preservation; the applicant is really asking for a 10 foot easement. It does not matter how long the existing residence has been in existence, intrusions into the setback need to be cleaned-up and the wetland/riparian area restored. The applicant needs to research other financing and insurance
institutions. Terrill and Fritz also need to meet with Ellie Caryl regarding the trail alignment and consider recommendation number 1. B. of the Town of Basalt’s comments. *This recommendation pertains to maintaining a maximum 70% residential / 30% commercial mixed-use ratio. The recommendation also suggests that stand-alone single-family and duplex units be exempted from the mixed-use ratio.*

**Commissioner Carpenter** – Look into realigning the trail easement closer to the river while still protecting riparian areas. Following a site visit, Commissioner Carpenter determined that the proposed FONSI is acceptable but is concerned about the proximity of the existing gravel parking lot to the embankment of the Eagle River.

**Commissioner Fritzlen** – Downzoning in Vail created many non-conforming lots and she is not aware of financing or insurance issues; she cannot support the request if this is the driving issue.

**Commissioner Hammon** – Does not believe amending the code for one applicant is prudent. The Special Use Permit criteria should still include a minimum commercial requirement if residential is to be approved. Given the age of the existing structure, it will probably need to be rebuilt in the foreseeable future anyway. The natural state of the riparian area needs to be restored regardless of the non-conforming setback. Commissioner Hammon agrees with her fellow commissioners that the property should be rezoned and that the land use regulation amendment is not appropriate. She further recommended to the applicant that an expert on stream wetland biology be employed to weigh in on the FONSI request relative to the condition of the wetland and riparian area and what can be done to improve it.

**Commissioner Campos** – Likewise does not believe amending the code for one applicant is prudent. *Please reference the attached emailed clarification of comment from Commissioner Campos to staff.*

**Commissioner Brock** – The natural state of the riparian area should be restored regardless of the setback. Believes that the applicant’s financing efforts are indeed problematic but does not agree with the proposed land use regulation amendment. He believes that the property should be rezoned to residential use. Commissioner Brock ultimately determined that the FONSI request is appropriate.

**Commissioner Nusbaum** – Agrees with Commissioner Fritzlen and Commissioner Campos’ comments and further believes the property should be rezoned to residential versus a land use regulation amendment.

**Commissioner Moffett** – Is not comfortable with the proposed regulatory amendment and does not believe the lower level of the existing residence should be converted to commercial use. Further, believes that the regulatory amendment, if approved, should specify a minimum mixed-use ratio. Amending the regulations is not the appropriate way to fix this landowner’s dilemma; rather, the property should be rezoned to residential use.

**Commissioner Franks** – For the same reasons expressed by Commissioner Moffett, does not believe the land use regulation amendment is the proper course of action and that a rezoning to residential use is more appropriate.

**Commissioner Long** – Agrees with all comments set forth by his fellow commissioners. The property should be rezoned to residential.

Following two hearings on March 2, 2011 and April 6, 2011, the Eagle County Planning Commission unanimously recommended denial of the Land Use Regulation Amendment proposal and the Special Use Permit Application.

**ROARING FORK VALLEY REGIONAL PLANNING COMMISSION**

The RFVRPC was required to hear and make a recommendation only on the land use regulation portion of the applicant’s three-part request.
Following their hearing on March 3, 2011, the RFVRPC recommended approval of the proposed regulatory amendment with the condition that the special use language to allow residential development in the commercial zone districts be amended to require that the resulting development consist of mixed-use commercial and residential development. They did not specify a minimum ratio of commercial to residential and did further recommend that an exception be included to accommodate pre-existing non-conforming land uses in the commercial zone districts.

2. STAFF REPORT

A. NECESSARY FINDINGS:

PROCESS INTENT
ECLUR Section: 5-230 Amendments to the Text of These Land Use Regulations or Official Zone District Map

Section Purpose: The purpose of this Section is to provide a means for changing the boundaries of the Official Zone District Map or any other map incorporated in these Regulations by reference, and for changing the text of these Land Use Regulations. It is not intended to relieve particular hardships, or to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions.

Standards: Section 5-230.D. No change in zoning shall be allowed unless in the sole discretion of the Board of County Commissioners, the change is justified in that the advantages of the use requested substantially outweigh the disadvantages to the County and neighboring lands. In making such a determination, the Planning Commission and the Board of County Commissioners shall consider the application submittal requirements and standards. There are no specific standards directly applicable for changing the text of the Land Use Regulations.

B. STAFF DISCUSSION:

Pursuant to Chapter 1, Eagle County Land Use Regulations Section 1.15.04 Referrals, the proposed amendments have been referred to the appropriate agencies, including all towns within Eagle County;

Pursuant to Chapter 1, Eagle County Land Use Regulations Section 1.15.05 Public Notice, Public notice has been given;

Pursuant to Chapter 2, Eagle County Land Use Regulations Section 5-230.B.2 Text Amendment:

a. The proposed amendments AMEND ONLY THE TEXT of Chapter 2, Article 3; of the Eagle County Land Use Regulations and do not amend the Official Zone District Map.
b. Precise wording of the proposed changes has been provided (please see attached)

Pursuant to Chapter 2, Eagle County Land Use Regulations Section 5-230.D., Standards for the review of Amendments to the Text of the Land Use Regulations, as applicable.

STANDARD: Consistency with the Comprehensive Plan. [Section 5-230.D.1] Does the proposed amendment consider the purposes and intents of the Comprehensive Plan, all ancillary County adopted Specialty and Community Plan documents, and is it consistent with all relevant goals, policies, implementation strategies and Future Land Use Map designations including but not necessarily limited to the following:

Section 3.2 General Development Policies a, c, e, f, g, h, i and k
| Section 3.3 | Economic Resources | Policies b, c, d, e, f, h, j, m and o |
| Section 3.4 | Housing | Policies a, d, e, g and n |
| Section 3.5 | Infrastructure and Services | Policies a, c, g, i, j, k, m and o |
| Section 3.6 | Water Resources | Policies a, b, c, d, e, f, g, h and i |
| Section 3.7 | Wildlife Resources | Policies a, b, c, d, e, f and i |
| Section 3.8 | Sensitive Lands | Policies a, c, e and g |
| Section 3.9 | Environmental Quality | Policies a, c and d |
| Section 3.10 | Future Land Use Map | Policy a |
| Section 4 | Adopted Area Community Plans | All relevant goals, policies and FLUM designations |

Additionally, all relevant goals & policies of the following plans or such equivalent plans and/or future plans, which may be in effect at the time of application for zone change:

- Eagle County Open Space Plan
- Eagle River Watershed Plan
- Eagle Valley Regional Trails Plan
- Eagle County Trails Plan (Roaring Fork)
- Eagle County Comprehensive Housing Plan
- Eagle County Airport Sub-Area Master Plan

Consistency with the Comprehensive Plan is not applicable to the proposed regulation amendment. Should the proposed amendment be approved then all future applications to allow residential development within a commercial zone district will be required to adhere to all applicable Special Use Permit approval standards; one of which is ‘Consistency with the Comprehensive Plan’.

| EXCEEDS MINIMUM STANDARDS |
| MEETS MINIMUM STANDARDS |
| MEETS THE MAJORITY OF MINIMUM STANDARDS |
| DOES NOT MEET MINIMUM STANDARDS |
| X NOT APPLICABLE |

**STANDARD: Compatible with Surrounding Uses.** [Section 5-230.D.2] Does the proposal provide compatibility with the type, intensity, character and scale of existing and permissible land uses surrounding the subject property? Dimensional limitations of the proposed zone district, when applied, should result in development that will be harmonious with the physical character of existing neighborhood(s) surrounding the subject property.

The issue of compatibility does not directly pertain to this regulation amendment proposal. Should the proposed amendment be approved then all future applications to allow residential development within a commercial zone district will be required to adhere to all applicable Special Use Permit approval standards; one of which is ‘Compatibility with Surrounding Uses’.

| EXCEEDS MINIMUM STANDARDS |
| MEETS MINIMUM STANDARDS |
| MEETS THE MAJORITY OF MINIMUM STANDARDS |
| DOES NOT MEET MINIMUM STANDARDS |
| X NOT APPLICABLE |

**STANDARD: Public Benefit.** [Section 5-230.D.3] Does the proposal address a demonstrated community need or otherwise result in one or more particular public benefits that offset the impacts of the proposed uses requested, including but not limited to: Affordable local resident housing; childcare facilities; multi-modal transportation; public recreational opportunities; infrastructure improvements; preservation of agriculture/sensitive lands.
A majority of the county’s existing commercially zoned property is located within community centers.

This finding is not directly applicable to this regulation amendment request; however, given increased development pressures experienced over time in unincorporated Eagle County; the county’s desire to focus new substantive development within community centers, and where practicable establish a framework for true Transportation Oriented Development, this regulatory amendment will provide flexibility to land owners, appointed and elected decision makers in developing and redeveloping commercially zoned properties in a mixed-use fashion; particularly those situated in key locations within community centers with easy transit access and proximity to possible future commuter rail nodes.

Additionally, the proposed amendment will facilitate provision of affordable housing mitigation within mixed-use development by not restricting the residential / commercial ratio.

| STANDARD: Change of Circumstances. [Section 5-230.D.4] Does the proposal address or respond to a beneficial material change that has occurred to the immediate neighborhood or to the greater Eagle County community? |
|---|---|
| EXCEEDS MINIMUM STANDARDS | X MEETS MINIMUM STANDARDS |
| MEETS THE MAJORITY OF MINIMUM STANDARDS | DOES NOT MEET MINIMUM STANDARDS |
| NOT APPLICABLE |

As stated above, it is the county’s desire to focus substantive new development into community centers while at the same time creating a framework for true Transportation Oriented Development in appropriate and strategic locations. This proposed regulatory amendment will enable easier implementation of these goals.

| STANDARD: Adequate Infrastructure. [Section 5-230.D.5] Is the property subject to the proposal served by adequate roads, water, sewer and other public use facilities? |
|---|---|
| EXCEEDS MINIMUM STANDARDS | X MEETS MINIMUM STANDARDS |
| MEETS THE MAJORITY OF MINIMUM STANDARDS | DOES NOT MEET MINIMUM STANDARDS |
| NOT APPLICABLE |

This amendment will not result in the need for new infrastructure.

C. REFERRAL RESPONSES:

Additional Referral Agencies - This proposal was referred to the following agencies:
- Eagle County: Airport, Animal Services, Assessors, ECO Trails, ECO Transit, Environmental Health, Housing, Road and Bridge, RE-50J School District, Sheriff’s Office, Surveyor, Weed and Pest, Wildfire Mitigation Specialist, Historical Society
- Town of Avon, Town of Eagle, Town of Minturn, Town of Red Cliff, Town of Vail, Town of Gypsum, Town of Basalt.
The following referral comments were received in response to this request:

**Eagle County Engineering Department:** In the attached response dated February 10, 2011, the Engineering Department offers no comments regarding this application.

**ECO Trails:** In the attached response dated January 3, 2011, ECO Trails is requesting a 15 foot wide trail easement to accommodate the future route of the Eagle Valley Core Trail through Edwards, connecting to the Eagle River Preserve. The final trail design will accommodate and not block the access driveway to the residential property.

**Colorado Division of Wildlife:** In the attached response dated January 7, 2011, CDOW did not provide comment regarding the proposed regulation amendment and rather, focused on the companion Finding of No Significant Impact stream setback request.

**Colorado Geological Survey:** In the attached response dated January 18, 2011, the CGS does not see any issues with allowing dwelling units on commercial property. A geologic hazard review is still required via the special use permit process.

**Town of Basalt:** In the attached response dated January 3, 2011, the Town offers the following suggestions:

- a) Require larger properties over a certain size to meet the cap unless they are reviewed through the PUD process so the decision makers get a more thorough review of development proposals on the large commercially-zoned properties that do not want to provide a minimum amount of commercial. The Eagle County Land Use Regulations already require commercially zoned properties (not PUD’s) to obtain Special Use Permit approval for all construction of 22,000 square feet or greater. Historically, the PUD process has been the only way to achieve mixed-use development in Eagle County (other than a residential unit or two in a primarily commercial development via special use permit). The existing Special Use Permit standards provide complete discretion to the appointed and elected decision makers in determining the appropriateness of a given request and whether or not to approve, approve with conditions or deny any Special Use Permit application.
b) Exempting stand-alone, single-family and duplex units from the residential cap on properties that receive a special use permit but maintain a relaxed residential cap for multi-family development. The Town suggests a relaxed residential cap around 70% on smaller commercially zoned properties to be consistent with the relatively new mortgage lending requirements that preclude conventional mortgages from the FHA, VA, Fannie Mae or Freddie Mac on condominiumized residential units that are part of a mixed use buildings containing more than 30% non-residential space. Every Special Use Permit application for residential development on a commercially zoned property will be evaluated on its own merit; including the appropriateness of the amount and type of residential development proposed. It is staff’s preference to not create artificial thresholds which may not adequately anticipate all possibilities. The county is not responsible for ensuring that land use development will ultimately be financeable; rather, that is a business decision.

Basalt & Rural Fire Protection District: In the attached response dated December 30, 2010, The District states that from a building and fire code standpoint they have the tools necessary to evaluate mixed use occupancies that have greater residential activity that the 33 percent cap presently in place. The District wants assurance that the Special Use Permit process will provide the mechanism to ensure that an adequate evaluation and conditions are administered. All Special Use Permit applications are referred to the appropriate emergency service responders for review, comment and recommendation. The District through its review of proposed special uses can provide recommendations regarding water storage, adequate water flow distribution for fire suppression, proper street design and traffic circulation, or any other pertinent comments as may be applicable.

NWCCOG: In the attached response dated December 14, 2010, NWCCOG offers no comments on the proposed regulation amendment.

Mauriello Planning Group, LLC: In the attached response dated December 27, 2010, support for the proposed amendment is provided.

Newland Project Resources: In the attached response dated December 15, 2010, it is questioned where the 33% restriction originated to begin with and further supports the proposed amendment.

Stan Clauson Associates: In the attached response dated December 13, 2010, it is acknowledged that the proposed amendment would provide additional flexibility in the code but cautions against squeezing out commercial development with more lucrative residential development or interrupt commercial continuity with residential pockets thereby creating less compact development. The Special Use Permit standards allow full discretion in considering the appropriateness of proposed residential development within commercial zone districts.

D. SUMMARY ANALYSIS:

The proposed amendment will introduce greater flexibility and utility to the county’s established commercial zone districts while facilitating establishment of mixed-use Transportation Oriented Development framework in appropriate locations.

E. PLANNING COMMISSION AND BOARD OF COUNTY COMMISSIONERS OPTIONS:

1. Approve the [ECLUR TEXT AMENDMENT] request without conditions if it is determined that the petition will not adversely affect the public health, safety, and welfare and the proposed use is attuned with the immediately adjacent and nearby neighborhood properties and uses and the proposal is in compliance with both the Eagle County Land Use Regulations and with the guidelines of the Eagle County Comprehensive Plan (and/or other applicable master plans).

2. Deny the [ECLUR TEXT AMENDMENT] request if it is determined that the petition will adversely affect the public health, safety, and welfare and/or the proposed use is not attuned with the immediately adjacent and nearby neighborhood properties and uses and the proposal is not in compliance with both the
Eagle County Land Use Regulations and with the guidelines of the Eagle County Comprehensive Plan (and/or other applicable master plans).

3. **Table the [ECLUR TEXT AMENDMENT] request if additional information is required** to fully evaluate the petition. Give specific direction to the petitioner and staff.

4. **Approve the [ECLUR TEXT AMENDMENT] request with conditions and/or performance standards** if it is determined that certain conditions and/or performance standards are necessary to ensure public, health, safety, and welfare and/or enhances the attunement of the use with the immediately adjacent and nearby neighborhood properties and uses and the proposal is in compliance with both the Eagle County Land Use Regulations and with the guidelines of the Eagle County Comprehensive Plan (and/or other applicable master plans).

---

**ZS-3055 Schmidt Residence Special Use Permit**

Bob Narracci, Planning

**ACTION:** Currently, the Eagle County Land Use Regulations allow via Special Use Permit Review dwelling units on a commercially zoned property not to exceed thirty-three (33) percent of the total floor area of all buildings on the site. This proposal is to eliminate the maximum thirty-three (33) percent cap for residential use on commercially zoned property and will still be subject to Special Use Permit Review.

The purpose for this Finding of No Significant Impact is an Administrative Stream Setback Variance to memorialize an existing stream setback of 50 feet from the high water mark of the Eagle River where 75 feet is currently required. The existing residence was constructed in 1973 prior to zoning regulations being implemented by Eagle County in October of 1974.

The purpose for this Special Use Permit is to allow a residential structure in the Commercial-General zone district. Currently, the existing residence is considered a legal non-conforming land use.

**LOCATION:** 71 Edwards Access Road  
**FILE NO./PROCESS:** ZS-3055 Special Use Permit / FNZ-3054 Finding of No Significant Impact  
**PROJECT NAME:** Fritz Schmidt Property / Residence in the Commercial-General Zone District  
**OWNER:** Fritz Schmidt Trust and Cecilia Schmidt Trust  
**APPLICANT:** Owner  
**REPRESENTATIVE:** Knight Planning Services, Inc. / Terrill Knight

**1. PROJECT DESCRIPTION**

**A. SUMMARY:** This Special Use Permit application is to recognize a pre-existing single-family residence, constructed in 1973, to remain as a legal use in the Commercial General Zone District. The home was constructed prior to zoning being implemented in unincorporated Eagle County. The property was assigned the ‘Commercial General’ zoning designation in October of 1974; the residence has been non-conforming in terms of zoning ever since.

Per the Eagle County Land Use Regulations, non-conforming structures if damaged to an extent of 50% of its value or more, cannot be reconstructed or repaired without first correcting the non-conformity via zone change or in this case Special Use Permit approval.

Companion to the Special Use Permit application is an application for Finding of No Significant Impact which proposes to legalize the existing residence’s 50-foot stream setback where a 75-foot setback is
presently required and a Land Use Regulation Amendment to change the allowances for residential development in the Commercial-General and Commercial-Limited Zone Districts (Eagle County File No. LUR-3053).

B. **SITE DATA:**

**Surrounding Land Uses / Zoning:**

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Zoning</th>
<th>Land Use</th>
<th>Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>North: Old Edwards Estates</td>
<td>Residential Suburban Medium Density</td>
<td>South: Mixed-Use Development</td>
<td>Commercial General</td>
</tr>
<tr>
<td>South: Riverwalk Mixed-Use Development</td>
<td>Planned Unit Development</td>
<td>East: CDOT Interstate Traveller Rest Area</td>
<td>Resource</td>
</tr>
<tr>
<td>West: Eagle River Preserve</td>
<td>Resource</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Existing Zoning:** Commercial General

**Proposed Zoning:** NA

**Current Development:** Single-Family Residence

**Site Conditions:** Developed

<table>
<thead>
<tr>
<th>Total Land Area</th>
<th>Acres: 2.426-acres</th>
<th>Square feet: 105,684 square feet</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Total Open Space</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Water: Public: ERW&amp;SD</th>
<th>Private:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Sewer: Public: ERW&amp;SD</th>
<th>Private:</th>
</tr>
</thead>
</table>

| Access | Via Edwards Access Road |

C. **CHRONOLOGY/BACKGROUND:**

1973: Existing residence constructed
1974: Eagle County adopted and implemented zoning for all unincorporated lands.
1987: Subject property platted for first time.
1998: Subject property part of an amended final plat.
2000: Subject property defined in its current configuration via amended final plat.
2010: Property owner discovers that the existing single-family residence has been considered legal non-conforming by Eagle County since 1974; thereby making it impossible to refinance the residence and property.
2010: Applications received by Eagle County to amend the Special Use Permit allowances for residences in a commercial zone district, request for a stream setback variance and this proposed Special Use Permit.

D. **PLANNING COMMISSION DELIBERATION SUMMARY & MOTION:**

**EAGLE COUNTY PLANNING COMMISSION**

Chairman Heicher – Is not in favor of the FONSI request. The (stream setback) area should be inclusive of riparian and wetland preservation; the applicant is really asking for a 10 foot easement. It does not matter how long the existing residence has been in existence, intrusions into the setback need to be cleaned-up and the wetland/riparian area restored. The applicant needs to research other financing and insurance institutions. Terrill and Fritz also need to meet with Ellie Caryl regarding the trail alignment and consider recommendation number 1. B. of the Town of Basalt’s comments. *This recommendation pertains to*
maintaining a maximum 70% residential / 30% commercial mixed-use ratio. The recommendation also suggests that stand-alone single-family and duplex units be exempted from the mixed-use ratio.

Commissioner Carpenter – Look into realigning the trail easement closer to the river while still protecting riparian areas. Following a site visit, Commissioner Carpenter determined that the proposed FONSI is acceptable but is concerned about the proximity of the existing gravel parking lot to the embankment of the Eagle River.

Commissioner Fritzlen – Downzoning in Vail created many non-conforming lots and she is not aware of financing or insurance issues; she cannot support the request if this is the driving issue.

Commissioner Hammon – Does not believe amending the code for one applicant is prudent. The Special Use Permit criteria should still include a minimum commercial requirement if residential is to be approved. Given the age of the existing structure, it will probably need to be rebuilt in the foreseeable future anyway. The natural state of the riparian area needs to be restored regardless of the non-conforming setback. Commissioner Hammon agrees with her fellow commissioners that the property should be rezoned and that the land use regulation amendment is not appropriate. She further recommended to the applicant that an expert on stream wetland biology be employed to weigh in on the FONSI request relative to the condition of the wetland and riparian area and what can be done to improve it.

Commissioner Campos – Likewise does not believe amending the code for one applicant is prudent. Please reference the attached emailed clarification of comment from Commissioner Campos to staff.

Commissioner Brock – The natural state of the riparian area should be restored regardless of the setback. Believes that the applicant’s financing efforts are indeed problematic but does not agree with the proposed land use regulation amendment. He believes that the property should be rezoned to residential use. Commissioner Brock ultimately determined that the FONSI request is appropriate.

Commissioner Nusbaum – Agrees with Commissioner Fritzlen and Commissioner Campos’ comments and further believes the property should be rezoned to residential versus a land use regulation amendment.

Commissioner Moffett – Is not comfortable with the proposed regulatory amendment and does not believe the lower level of the existing residence should be converted to commercial use. Further, believes that the regulatory amendment, if approved, should specify a minimum mixed-use ratio. Amending the regulations is not the appropriate way to fix this landowner’s dilemma; rather, the property should be rezoned to residential use.

Commissioner Franks – For the same reasons expressed by Commissioner Moffett, does not believe the land use regulation amendment is the proper course of action and that a rezoning to residential use is more appropriate.

Commissioner Long – Agrees with all comments set forth by his fellow commissioners. The property should be rezoned to residential.

Following two hearings on March 2, 2011 and April 6, 2011, the Eagle County Planning Commission unanimously recommended denial of the Land Use Regulation Amendment proposal and the Special Use Permit Application.

ROARING FORK VALLEY REGIONAL PLANNING COMMISSION

The RFVRPC was required to hear and make a recommendation only on the land use regulation portion of the applicant’s three-part request.

Following their hearing on March 3, 2011, the RFVRPC recommended approval of the proposed regulatory amendment with the condition that the special use language to allow residential development in the
commercial zone districts be amended to require that the resulting development consist of mixed-use commercial and residential development. They did not specify a minimum ratio of commercial to residential and did further recommend that an exception be included to accommodate pre-existing non-conforming land uses in the commercial zone districts.

2. **STAFF REPORT**

A. **NECESSARY FINDINGS:**

**PROCESS INTENT**

ECLUR Section: 5-250 Special Use Permits

**Section Purpose:** Special Uses are those uses that are not necessarily compatible with the other uses allowed in a zone district, but which may be determined compatible with the other uses allowed in the zone district based upon individual review of their location, design, configuration, density and intensity of use, and the imposition of appropriate conditions to ensure the compatibility of the use at a particular location with surrounding land uses. All Special Uses shall meet the standards set forth in this Section.

**Standards:**

Section 5-250.B. The issuance of a Special Use Permit shall be dependent upon findings that there is competent evidence that the proposed use as conditioned, fully complies with all the standards of this Section, this Division, this Article, and these Land Use Regulations. The Planning Commission may recommend and the Board of County Commissioners may attach any conditions deemed appropriate to ensure compliance with the following standards, including conformity to a specific site plan, requirements to improve public facilities necessary to serve the Special Use, and limitations on the operating characteristics of the use, or the location or duration of the Special Use Permit.

**STANDARD: Consistent with Comprehensive Plan.** [Section 5-250.B.1] The proposed Special Use shall be appropriate for its proposed location and be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and the FLUM of the Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.

**EAGLE COUNTY COMPREHENSIVE PLAN**

<table>
<thead>
<tr>
<th>FLUM Designation</th>
<th>Environmental Quality</th>
<th>Sensitive Lands</th>
<th>Wildlife Resources</th>
<th>Water Resources</th>
<th>Infrastructure and Services</th>
<th>Housing</th>
<th>Economic Resources</th>
<th>Development</th>
<th>Governance</th>
</tr>
</thead>
<tbody>
<tr>
<td>X1</td>
<td>X</td>
<td>X2</td>
<td>X3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Exceeds Recommendations**

**Incorporates Majority of Recommendations**

**Does Not Incorporate Recommendations**

**Not Applicable**

X1- The Plan speaks to preserving quality of life unique to Eagle County through environmental preservation and creating sense of place for each community. Also, that future growth provides a healthy balance between economic success, quality of life and preservation of the environment. This proposal will not result in any additional development potential on the subject property. Any future commercial development on the subject property will necessitate successful completion of a Special Use Permit or other applicable land use approvals.
X2 – Although not directly applicable to this proposal, the existing single-family residence on the commercially zoned subject property is not the highest and best use of this Edwards core area property and, as such, may be viewed as a temporary use of the land until economic conditions are such that substantive mixed-use commercial development again makes sense to pursue.

X3 – Due to the fact that this proposal does not entail additional commercial or new residential development, the Housing Guidelines are not applicable. The existing home; however, is located in a convenient location in a community center, close to jobs, and services.

X4 – The subject property is served by public water, sewer and roads. The property is immediately adjacent to existing commercial services. ECO Trails has requested that the applicant provide a fifteen (15) foot wide trail easement across the subject property to accommodate the future route of the Eagle Valley Core Trail through Edwards, connecting to the Eagle River Preserve. The final trail design will accommodate and not block the driveway access to the subject property.

X5 – The subject property is served with public water. The plan speaks to protecting against source water contamination; in the FONSI application to decrease the stream setback to 50 feet where 75 feet is required for the existing single family residence, insufficient information was provided to determine that the decreased stream setback provides adequate source water protection. While it is a fact that the residence has been in place since 1973, this in and of itself is not a sufficient basis upon which to grant the stream setback variance. What this means to the applicant is that should the existing residence be damaged to an extent of 50% or more of its value then it cannot be reconstructed in its current footprint and any newly constructed or reconstructed residence would need to satisfy the 75 foot stream setback requirement. It appears from the site plans that sufficient space exists within the lot to accommodate the 75 foot stream setback and all other minimum lot and building standards specific to the Commercial General Zone District.

X6 – In the attached response dated January 7, 2011 from the Colorado Division of Wildlife, no comment was provided pertaining to the special use permit request or the companion land use regulation amendment request. Regarding the stream setback variance, CDOW indicates that it does favor a 75 foot stream setback but is not opposed to grandfathering the current residence footprint at a 50 foot setback. If the current building is torn down for redevelopment of the lot then the 75 foot stream setback shall apply.

X7 – The existing residence does avoid areas of significant natural hazard. There are no known historical or archeological resources on the property.

X8 - The existing residence does not generate any undue ocular, olfactory or auditory impacts which will compromise the environmental quality of the property or surrounding areas. Some extraneous uses of the property have been identified by adjacent property owners and thru staff site visit. As a condition of the applicant’s requests, use of the property should be brought into conformance with the provisions of the Commercial General Zone District and other regulatory requirements.

X9 – The FLUM identifies the property as appropriate for mixed use development.

**EDWARDS AREA COMMUNITY PLAN**

| FLUM | Land Use | Housing | Transportation | Open Space | Potable H2O & Wastewater | Services and Facilities | Environmental Quality | Economic Development | Recreation and Tourism | Historic Preservation | Implementation |
|------|---------|---------|----------------|------------|-------------------------|------------------------|-----------------------|----------------------|-----------------------|----------------------|---------------|---------------|
|      | Exceeds Recommendation |       |                |            |                         |                        |                       |                      |                       |                      |               |               |
|      | Incorporates Majority of Recommendations | X1   | X2              | X3         |                         |                        |                       |                      |                      |                      |               |               |
|      | Does Not Incorporate Recommendations |       |                |            |                         |                        |                       |                      |                      |                      |               |               |
|      | Not Applicable | X     | X               | X          | X                      | X                      | X                     | X                    | X                    | X                    |               |               |

**X1** - The Plan speaks to protection of natural resources and systems, balanced growth, protection of social, cultural and historic resources, community character and mining activities. This Special Use Permit proposal to recognize the existing single-family residence as an allowed use in the Commercial General Zone District will not adversely impact natural resources, change growth patterns, alter social, cultural and historic resources or change the
community character. Staff believes the proposed variance of the stream setback requirement is not necessary given that the subject property is sufficiently large enough to reconstruct the single-family residence in a location which meets the current 75 foot stream setback, in the event that the existing home is destroyed to more than 50% of its value.

**X2** – The existing residence is served by public water and sanitation facilities. Future development of the property will be held to the minimum 75 foot stream setback requirement thereby better protecting ground and surface water from environmental degradation. A recommended condition of approval is that all extraneous activities occurring on the subject property which are not typically customary to residential use, such as parking of commercial vehicles, should be ceased; absent proper review and approval by the county.

**X3** – The Plan speaks to ecosystem management, storm water drainage systems, clean mountain air, scenic vistas, protecting unique natural resources, protection of riparian, wetland and aquatic habitat, and protection of rare and endangered flora and fauna. The existing residence will not further compromise any of these stated goals.

**X4** - The FLUM identifies the property as appropriate for mixed use development.

---

**STANDARD: Compatibility.** ([Section 5-250.B.2](#)) The proposed Special Use shall be appropriate for its proposed location and compatible with the character of surrounding land uses.

<table>
<thead>
<tr>
<th>Surrounding Land Uses / Zoning</th>
<th>Potential Compatibility Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>North: Old Edwards Estates</td>
<td></td>
</tr>
<tr>
<td>South: Mixed Use Commercial</td>
<td></td>
</tr>
<tr>
<td>East: Mixed Use Commercial Riverwalk</td>
<td></td>
</tr>
<tr>
<td>West: Eagle River Preserve</td>
<td></td>
</tr>
</tbody>
</table>

Focusing only on the Special Use Permit request to recognize the existing single family residence as an allowed use in the Commercial General Zone District, no new compatibility issues should arise.

In 1981 when Old Edwards Estates received county approval, presumably consideration was given to potential conflicts between the single family residential development on the north side of the Eagle River and the existing commercially zoned property on the south side of the river. The Commercial General designation was assigned to the subject property in 1974.

Comments received from the owners of property in Old Edwards Estates, indicate that it is not the existing residence on the subject property creating compatibility problems rather; it is the extraneous uses of the property which are the cause of concern.

---

**STANDARD: Zone District Standards.** ([Section 5-250.B.3](#)) The proposed Special Use shall comply with the standards of the zone district in which it is located and any standards applicable to the particular use, as identified in Section 3-310, [Review Standards Applicable to Particular Residential, Agricultural and...](#)
Resource Uses and Section 3-330, Review Standards Applicable to Particular Commercial and Industrial Uses.

With the exception of the stream setback, the existing single family residence satisfies all currently applicable Commercial General Zone district lot and building standards.

Based upon the attached email dated February 17, 2011, the subject property has been and/or continues to be utilized in part for a ‘garbage dump’, storage space, seasonal garden centers, Christmas tree lots, boat/raft storage, taxi cab parking and fleet parking for Bachelor Gulch buses.

In the Commercial General Zone District:

- ‘Junk Yards’ and ‘Construction and Demolition Debris Facilities’ require Special Use Permit review and approval.
- ‘Vehicle storage’, including boats/rafts and motor vehicles likewise require Special Use Permit review and approval.
- ‘Parking lots’ as a principal use of the property, and ‘Transportation Services’ also necessitate Special Use Permit review and approval.
- Seasonal uses, such as Christmas tree lots, require Special Use Permit approval for a ‘Temporary Building or Use’.
- ‘Garden Supply and Plant Materials/Greenhouses/Nurseries’ are uses-by-right in the Commercial General Zone District; however, the regulations contemplate that these uses would occur in a fixed location, as such, seasonal garden centers should be permitted as ‘Temporary Use’.

<table>
<thead>
<tr>
<th>EXCEEDS MINIMUM STANDARDS</th>
<th>X MEETS MINIMUM STANDARDS</th>
<th>MEETS THE MAJORITY OF MINIMUM STANDARDS</th>
<th>DOES NOT MEET MINIMUM STANDARDS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STANDARD: Design Minimizes Adverse Impact.</strong> [Section 5-250.B.4] The design of the proposed Special Use shall minimize adverse impacts, including visual impact of the proposed use on adjacent lands; furthermore, the proposed Special Use shall avoid significant adverse impact on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration, and shall not create a nuisance.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Exceeds ECLUR Requirements</th>
<th>Trash</th>
<th>Traffic</th>
<th>Service Delivery</th>
<th>Parking &amp; Loading</th>
<th>Odors</th>
<th>Noise</th>
<th>Glare</th>
<th>Vibration</th>
<th>Potential Nuisance?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satisfies ECLUR Requirements</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does Not Satisfy ECLUR Requirements</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not Applicable</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The existing single-family residence is provided with adequate services, and parking. The single-family use does not generate undue odors, noises, glare or vibrations. Extraneous uses of the property should be brought into regulatory conformance as a condition of approval.

<table>
<thead>
<tr>
<th>EXCEEDS MINIMUM STANDARDS</th>
<th>X MEETS MINIMUM STANDARDS</th>
</tr>
</thead>
</table>
MEETS THE MAJORITY OF MINIMUM STANDARDS
DOES NOT MEET MINIMUM STANDARDS

STANDARD: Design Minimizes Environmental Impact. [Section 5-250.B.5] The proposed Special Use shall minimize environmental impacts and shall not cause significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

<table>
<thead>
<tr>
<th>Hydrology</th>
<th>Atmosphere</th>
<th>Geology</th>
<th>Biologic Environment</th>
<th>Wastes, Noise &amp; Odors</th>
<th>Visual</th>
<th>Circulation &amp; Transportation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exceeds ECLUR Requirements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Satisfies ECLUR Requirement</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Does Not Satisfy ECLUR Requirement</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Not Applicable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Special Use recognition of the existing single-family residential use as a permissible use on the subject property in the Commercial General Zone District is not anticipated to cause significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources. Extraneous uses of the property should be brought into regulatory conformance as a condition of approval.

EXCEEDS MINIMUM STANDARDS
X MEETS MINIMUM STANDARDS
MEETS THE MAJORITY OF MINIMUM STANDARDS
DOES NOT MEET MINIMUM STANDARDS

STANDARD: Impact on Public Facilities. [Section 5-250.B] The proposed Special Use Permit shall be adequately served by public facilities and services, including roads, pedestrian paths, potable water and wastewater facilities, parks, schools, police and fire protection, and emergency medical services.

<table>
<thead>
<tr>
<th>Roads</th>
<th>Pedestrian Paths</th>
<th>Potable Water Supply</th>
<th>Waste Water Supply</th>
<th>Parks</th>
<th>Schools</th>
<th>Emergency Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exceeds ECLUR Requirements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Satisfies ECLUR Requirements</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Does Not Satisfy ECLUR Requirement</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not Applicable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

The subject property is adequately served by public facilities and services including roads, pedestrian paths, potable water and wastewater facilities, parks, schools, police and fire protection and emergency medical services. ECO Trails has requested that the applicant provide a fifteen (15) foot wide trail easement across the subject property to accommodate the future route of the Eagle Valley Core Trail through Edwards, connecting to the Eagle River Preserve; this is a suggested condition of approval.

EXCEEDS MINIMUM STANDARDS
STANDARD:  Site Development Standards.  [Section 5-250.B.7] The proposed Special Use shall comply with the appropriate standards in Article 4, Site Development Standards.

<table>
<thead>
<tr>
<th>Standard</th>
<th>Requirement</th>
<th>Requirement</th>
<th>Requirement</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Off-Street Parking and Loading Standards (Division 4-1)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Landscaping and Illumination Standards (Division 4-2)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sign Regulations (Division 4-3)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wildlife Protection (Section 4-410)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Geologic Hazards (Section 4-420)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wildfire Protection (Section 4-430)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wood Burning Controls (Section 4-440)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ridgeline Protection (Section 4-450)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial and Industrial Performance Standards (Division 4-5)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Noise and Vibration (Section 4-520)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Smoke and Particulates (Section 4-530)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Heat, Glare, Radiation and Electrical Interference (Section 4-540)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Storage of Hazardous and Non-hazardous Materials (Section 4-550)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Quality Standards (Section 4-560)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Roadway Standards (Section 4-620)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sidewalk and Trail Standards (Section 4-630)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Irrigation System Standards (Section 4-640)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drainage Standards (Section 4-650)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grading and Erosion Control Standards (Section 4-660)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utility and Lighting Standards (Section 4-670)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water Supply Standards (Section 4-680)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sanitary Sewage Disposal Standards (Section 4-690)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>*Impact Fees and Land Dedication Standards (Division 4-7)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*to be applied to new structures only.

Single-family residential use of the subject property is not subject to the Commercial and Industrial Performance Standards; however, the Standards are applicable in the Commercial General Zone District. As described in the attached emails from adjacent property owners, extraneous uses of the property are not presently in compliance with the requirements of the land use regulations.

☐ EXCEEDS MINIMUM STANDARDS
STANDARD: Other Provisions. [Section 5-250.B.8] The proposed Special Use shall comply with all standards imposed on it by all other applicable provisions of these Land Use Regulations for use, layout, and general development characteristics.

The existing single-family residence satisfies all applicable provisions of the land use regulations with the exception of the non-conforming stream setback.

Finding of No Significant Impact: [Section 3-340.C.6] Stream Setbacks and Water Resource Protection. For the purpose of protecting water resources, including wetlands and riparian areas, the following shall be observed in all zone districts: 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. No grading or removal of vegetation may occur within the stream setback. If necessary to protect the stream, wetlands, or riparian areas, additional width may be required. PUD zoned areas shall also comply with this standard unless either granted a Variance by the Zoning Board of Adjustment or a variation has been granted by the Board of County Commissioners. There shall be no projections into either a 100 year floodplain or stream setback. (orig 03/12/02) (am. 07/17/06)

Pursuant to Section 3.340.C.6.b, Exceptions, the applicant has requested that the Community Development Director or the Board of County Commissioners 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 through a Finding of No Significant Impact process.

In order to be considered for an exception, the applicant must clearly demonstrate compliance with all the following criteria through the submittal of a report prepared by a resource biologist or other qualified professional. At the discretion of the Community Development Director, the report may be referred to outside agencies for comment, including but not limited to the Eagle County Department of Environmental Heath, Colorado Geological Survey, the Colorado Division of Wildlife, the Army Corps of Engineers, or any other applicable agency. The report must specifically address all of the following:

(a) Water Quality. That the setback reduction will not degrade water quality of the stream or ground water.

(b) Erosion. That the setback reduction will not impact shoreline and stream banks, or cause erosion.

(c) Habitat. That the setback reduction will not degrade fish and wildlife habitat.

(d) Scenic and Recreational Values. That the setback reduction will not negatively impact scenic and recreational value associated with the stream.

(e) Alternative Design. That the proposal for improvements on the site results in a design that more adequately preserves unique characteristics of the site, protects public view sheds, enhances public recreational enjoyment of the stream, or creates a design that results in greater public benefit than would be created by adhering to the 75 foot setback.
(f) Other circumstances. That other circumstances prevent adherence to the 75 foot setback, including but not limited to: lot depth, lot dimensions, existing development; lot topography.

**Determination.** Based upon review of the application material the Director has determined that a Finding of No Significant Impact (FONSI) is not justified in this instance. If the existing residence were to be destroyed to an extent of 50% or greater of its value, sufficient space exists within the lot to reconstruct a single-family residence in conformance with the 75-foot stream setback requirement. Further, information provided in the FONSI application did not adequately address the above criteria to warrant FONSI approval.

Pursuant to Section 3.340.C.6.(c), Reconsideration of Director’s Determination of a FONSI: the Board of County Commissioners shall consider the application, the relevant support materials, and any public testimony. After the close of the public hearing, the Board may approve, approve with conditions or disapprove of the proposed exception to the stream setback regulation.

**B. REFERRAL RESPONSES:**

**Eagle County Engineering Department:** In the attached response dated February 10, 2011, the Engineering Department offers no comments regarding this application.

**ECO Trails:** In the attached response dated January 3, 2011, ECO Trails is requesting a 15 foot wide trail easement to accommodate the future route of the Eagle Valley Core Trail through Edwards, connecting to the Eagle River Preserve. The final trail design will accommodate and not block the access driveway to the residential property.

**Colorado Division of Wildlife:** In the attached response dated January 7, 2011, CDOW did not provide comment regarding the proposed regulation amendment and rather, focused on the companion Finding of No Significant Impact stream setback request.

**Colorado Geological Survey:** In the attached response dated January 18, 2011, the CGS does not see any issues with allowing dwelling units on commercial property. A geologic hazard review is still required via the special use permit process.

**Town of Basalt:** In the attached response dated January 3, 2011, the Town offers the following suggestions:

- **c)** Require larger properties over a certain size to meet the cap unless they are reviewed through the PUD process so the decision makers get a more thorough review of development proposals on the large commercially-zoned properties that do not want to provide a minimum amount of commercial. *The Eagle County Land Use Regulations already require commercially zoned properties (not PUD’s) to obtain Special Use Permit approval for all construction of 22,000 square feet or greater. Historically, the PUD process has been the only way to achieve mixed-use development in Eagle County (other than a residential unit or two in a primarily commercial development via special use permit). The existing Special Use Permit standards provide complete discretion to the appointed and elected decision makers in determining the appropriateness of a given request and whether or not to approve, approve with conditions or deny any Special Use Permit application.*

- **d)** Exempting stand-alone, single-family and duplex units from the residential cap on properties that receive a special use permit but maintain a relaxed residential cap for multi-family development. The Town suggests a relaxed residential cap around 70% on smaller commercially zoned properties to be consistent with the relatively new mortgage lending requirements that preclude conventional mortgages from the FHA, VA, Fannie Mae or Freddie Mac on condominiumized residential units that are part of a mixed use buildings containing more than 30% non-residential space. *Every*
Special Use Permit application for residential development on a commercially zoned property will be evaluated on its own merit; including the appropriateness of the amount and type of residential development proposed. It is staff’s preference to not create artificial thresholds which may not adequately anticipate all possibilities. The county is not responsible for ensuring that land use development will ultimately be financeable; rather, that is a business decision.

**Basalt & Rural Fire Protection District:** In the attached response dated December 30, 2010, The District states that from a building and fire code standpoint they have the tools necessary to evaluate mixed use occupancies that have greater residential activity that the 33 percent cap presently in place. The District wants assurance that the Special Use Permit process will provide the mechanism to ensure that an adequate evaluation and conditions are administered. All Special Use Permit applications are referred to the appropriate emergency service responders for review, comment and recommendation. The District through its review of proposed special uses can provide recommendations regarding water storage, adequate water flow distribution for fire suppression, proper street design and traffic circulation, or any other pertinent comments as may be applicable.

**NWCCOG:** In the attached response dated December 14, 2010, NWCCOG offers no comments on the proposed regulation amendment; Special Use Permit proposal or stream setback variance request.

**Mauriello Planning Group, LLC:** In the attached response dated December 27, 2010, support for the proposed amendment is provided.

**Newland Project Resources:** In the attached response dated December 15, 2010, it is questioned where the 33% restriction originated to begin with and further supports the proposed amendment.

**Stan Clauson Associates:** In the attached response dated December 13, 2010, it is acknowledged that the proposed amendment would provide additional flexibility in the code but cautions against squeezing out commercial development with more lucrative residential development or interrupt commercial continuity with residential pockets thereby creating less compact development. *The Special Use Permit standards allow full discretion in considering the appropriateness of proposed residential development within commercial zone districts.*

**Adjacent Property Owners:**

1) Chris & Cathryn Cooper  
   
   202 Old County Lane  
   In the attached e-mail dated February 17, 2011, the Coopers question whether the proposed applications should be approved given the manner in which the subject property has been and continues to be utilized.

2) Reed Powers  
   214 Old County Lane  
   In the attached e-mail dated February 18, 2011, Mr. Powers indicates that he is not concerned with the applicant’s existing residence or non-conforming stream setback, however; the reduced setback should not apply to any future development of the subject property. Mr. Powers also notes that the “lot is already an eyesore from the River with Mountain Taxi vehicles and Bachelor Gulch Buses and Vans”.

**C. PLANNING COMMISSION / BOARD OF COUNTY COMMISSIONERS’ OPTIONS:**

1. **Approve the [SPECIAL USE PERMIT and/or FONSI] request without conditions** if it is determined that the petition will not adversely affect the public health, safety, and welfare and the proposed use is attuned with the immediately adjacent and nearby neighborhood properties and uses.
and the proposal is in compliance with both the Eagle County Land Use Regulations and with the guidelines of the Eagle County Comprehensive Plan (and/or other applicable master plans).

2. **Deny the [SPECIAL USE PERMIT and/or FONSI] request** if it is determined that the petition will adversely affect the public health, safety, and welfare and/or the proposed use is not attuned with the immediately adjacent and nearby neighborhood properties and uses and the proposal is not in compliance with both the Eagle County Land Use Regulations and with the guidelines of the Eagle County Comprehensive Plan (and/or other applicable master plans).

3. **Table the [SPECIAL USE PERMIT and/or FONSI] request if additional information is required** to fully evaluate the petition. Give specific direction to the petitioner and staff.

4. **Approve the [SPECIAL USE PERMIT and/or FONSI] request with conditions and/or performance standards** if it is determined that certain conditions and/or performance standards are necessary to ensure public, health, safety, and welfare and/or enhances the attunement of the use with the immediately adjacent and nearby neighborhood properties and uses and the proposal is in compliance with both the Eagle County Land Use Regulations and with the guidelines of the Eagle County Comprehensive Plan (and/or other applicable master plans).

D. **SUGGESTED CONDITIONS:**

1) Except as otherwise modified by this development permit, all material representations made by the Applicant in this application and in public meeting shall be adhered to and considered conditions of approval.

2) Any commercial development on the subject property necessitates successful completion of a Special Use Permit or other applicable land use approvals.

3) The applicant shall work with ECO Trails to define and convey to Eagle County a fifteen (15) foot wide trail easement across the subject property for future connection of the Eagle Valley Core Trail to the Eagle River Preserve. The final trail alignment and design must accommodate and not block the driveway access to the subject property.

4) All commercial uses of the subject property shall be discontinued and/or brought into conformance with all applicable requirements of the Commercial General Zone District and land use regulation prior to resumption.

**DISCUSSION:**

Chairman Pro-Tem Runyon stated that all the files being considered were related to the Schmidt property. The first was a request to change the land use regulations. He believed that this was a decision for all the three commissioners to decide.

Mr. Narracci stated that this was a three-part request, the first of which was a Land Use Regulation amendment. If the amendment was not approved than the other two files could not move forward. He believed it was appropriate if all three commissioners were present.

Terrill Knight stated that they were missing a key member of their team as well and requested a tabling.

Commissioner Fisher asked if Mr. Knight could summarize the intent for the three files.

Mr. Knight stated that the Land Use Regulations had changed over the years and it had greatly effected prior approvals on the Schmidt property. They were trying to find a way to best deal with the status of his property. It was fairly complicated. The physical condition of the property had changed over the years. The setback overtook the house that was on the property, which created a setback issue. They had done a lot of research as the amendment affected many properties in the area.

Chairman Pro-Tem Runyon believed there might be other solutions that would not require an amendment to the regulations. He requested that the applicant explore all the avenues.

Mr. Knight stated that they considered all the consequences of other properties.
Chairman Fisher moved to **table** the file until May 10, 2011.  
Chairman Pro-Tem Runyon seconded the motion. Of the two voting Commissioners, the vote was declared unanimous.

Mr. Knight stated that staff had been very helpful. This was not a simple matter.  
Mr. Fritz expressed his frustration with the process. He has lived in Edwards for 40 years. He believed that there were Planning Commission members that just did not care. He was unable to build anything on his property and was unable to get any financing because the setback went through the middle of his house. He had done everything possible. He stated that his property was 14 feet higher than the property across the river that had only a 50-foot setback. His insurance carrier threatened to cancel his insurance. He was opposed to changing the zoning back to residential.  
Chairman Pro-Tem Runyon stated that he shared Mr. Fritz’s frustration with the 75 ft. setback. He believed that there were times and places when a variance was appropriate.

**Resolution 2011-035 Designating the Week of April 18 - 24, 2011 as Earth Awareness Week**

Chairman Fisher welcomed everyone who had come to recognize everybody who had taken place in the poster contest. She spoke about the importance of making the commitment to making the community a better place.

Commissioner Fisher read the resolution into the record and moved to **approve** the resolution designating the week of April 18 – 24, 2011 as Earth Awareness Week.  
Chairman Pro-Tem Stavney seconded the motion. Of the two voting Commissioners, the vote was declared unanimous.

**Earth Day Poster Contest Winners**  
**Ray Merry, Environmental Health**

Mr. Merry spoke about the contest. This was the 21st poster contest. He expressed appreciation to the parents who supported their children. He believed the world would be a better place because of everyone’s involvement. He thanked his staff for their work for moving Eagle County forward in green initiatives and sustainability efforts. He thanked all the community sponsors for their support. He spoke about the county’s efforts to be environmentally friendly and reduce its carbon footprint. This year’s poster contest theme was “actively green for health and streams”.  
Kris Friel stated that there were a number of organizations in the county that had embraced the thought of being actively green. Meaning, whatever you do and wherever you do it, it was up to every individual to keep our environment in pristine condition.  
Mr. Merry introduced the winners.
### 2011 Earth Day Poster Contest Winners

<table>
<thead>
<tr>
<th>School</th>
<th>Poster placement</th>
<th>Childs Name</th>
<th>Award given</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Brush Creek</strong></td>
<td>3rd</td>
<td>Madelyn Jaeger</td>
<td>t-shirt, Kidtopia gift card</td>
</tr>
<tr>
<td></td>
<td>2nd</td>
<td>Cloe Vega</td>
<td>t-shirt, fishing rod, bowling pass</td>
</tr>
<tr>
<td></td>
<td>1st</td>
<td>Kaikea Cavaliero</td>
<td>t-shirt, Costco gift card, 5 movie passes</td>
</tr>
<tr>
<td><strong>Edwards</strong></td>
<td>3rd</td>
<td>Madison Zastrow</td>
<td>t-shirt, Kidtopia gift card</td>
</tr>
<tr>
<td></td>
<td>2nd</td>
<td>Karen Gutierrez</td>
<td>t-shirt, fishing rod, bowling pass</td>
</tr>
<tr>
<td></td>
<td>1st</td>
<td>Hanna Heckman</td>
<td>t-shirt, Wal Mart gift card, 5 movie passes</td>
</tr>
<tr>
<td><strong>Gypsum</strong></td>
<td>3rd</td>
<td>Jessica Zuniga</td>
<td>t-shirt, Kidtopia gift card</td>
</tr>
<tr>
<td></td>
<td>2nd</td>
<td>Lizbeth Villalobos</td>
<td>t-shirt, fishing rod, bowling pass</td>
</tr>
<tr>
<td></td>
<td>1st</td>
<td>Yitzel Obeso</td>
<td>t-shirt, WECMRD 20 punch pass, fishing rod</td>
</tr>
<tr>
<td><strong>June Creek</strong></td>
<td>3rd</td>
<td>Paola Laguna</td>
<td>t-shirt, Kidtopia gift card</td>
</tr>
<tr>
<td></td>
<td>2nd</td>
<td>Emily Jimenez</td>
<td>t-shirt, fishing rod, bowling pass</td>
</tr>
<tr>
<td></td>
<td>1st</td>
<td>Ethan Pitcher</td>
<td>t-shirt, WalMart gift card, 5 movie passes</td>
</tr>
<tr>
<td><strong>Red Hill</strong></td>
<td>3rd</td>
<td>AnaMae Deere</td>
<td>t-shirt, Kidtopia gift card</td>
</tr>
<tr>
<td></td>
<td>2nd</td>
<td>Alessie Acosta</td>
<td>t-shirt, fishing rod, bowling pass</td>
</tr>
<tr>
<td></td>
<td>1st</td>
<td>Brian Baxter</td>
<td>t-shirt, WECMRD 20 punch pass, fishing rod</td>
</tr>
<tr>
<td><strong>Saint Clare</strong></td>
<td>3rd</td>
<td>Katie Kessenich</td>
<td>t-shirt, Kidtopia gift card</td>
</tr>
<tr>
<td></td>
<td>2nd</td>
<td>Jonathan Daly</td>
<td>t-shirt, fishing rod, bowling pass</td>
</tr>
<tr>
<td></td>
<td>1st</td>
<td>Caitlin Bishop</td>
<td>t-shirt, Pazzos gift card, 5 movie passes</td>
</tr>
<tr>
<td><strong>Stone Creek</strong></td>
<td>3rd</td>
<td>Stephanie Lasater</td>
<td>t-shirt, Kidtopia gift card</td>
</tr>
<tr>
<td></td>
<td>2nd</td>
<td>Mackenzie Mesch</td>
<td>t-shirt, fishing rod, bowling pass</td>
</tr>
<tr>
<td></td>
<td>1st</td>
<td>Jasmine Hartman-Budaik</td>
<td>t-shirt, Pazzos gift card, 5 movie passes</td>
</tr>
<tr>
<td><strong>Homeschool</strong></td>
<td><strong>Grand Prize</strong></td>
<td>Xaver Johnson</td>
<td>t-shirt, Nova Guides river trip, fishing rod</td>
</tr>
</tbody>
</table>

There being no further business before the Board, the meeting was adjourned until April 26, 2011.

Attest:

Clerk to the Board

Chairman

27

04/19/2011