

August 20, 2018

**SENT VIA EMAIL AND CERTIFIED MAIL**

Nansi Crom  
Mayor, Town of Pierce  
P.O. Box 57  
Pierce, Colorado 80650  
[tqb@frii.com](mailto:tqb@frii.com)

Don Hoff  
Town Attorney, Town of Pierce  
1812 56th Avenue  
Greeley, Colorado 80634  
[dhoff@nocoattorneys.com](mailto:dhoff@nocoattorneys.com)

***Re: Opposition to Rimrock Proposal (a/k/a the "REP Annexation")***

Dear Mayor Crom and Mr. Hoff:

This law firm represents Jason Legler, a homeowner who lives near the Town of Pierce and within approximately 2,400 feet of the proposed annexation territory (the "Property") on which NWC Development LLC, REP Processing LLC, REP Gas Holdings LLC, and/or Rimrock Energy Partners LLC (collectively "Rimrock") has asked the Town of Pierce for permission to operate a heavy industrial natural gas processing facility (the "Proposed Use"). As part of the annexation and in order to accommodate the Proposed Use, Rimrock has presented an omnibus proposal that asks the Town to rezone the Property as I-3 (which will first require Pierce to take the extraordinary step of creating a new I-3 zoning designation), to approve a special use permit for the operation of an electric substation and the gas processing facility, to approve a minor subdivision for the Property, and to amend Pierce's Comprehensive Plan Map (the "Rimrock Application").

The purpose of this letter is to formally express Mr. Legler's strenuous opposition to the Rimrock Application and to raise several critical legal issues that Pierce must consider before the Board of Trustees takes up the Rimrock Application at the hearing that is presently set for August 27, 2018. If approved, the Rimrock Application will likely spark years of contentious litigation. Conversely, Pierce is under no obligation to annex the Property, and Rimrock would have no recourse if the Town simply declined to do so.

Initially, it does not appear that the Town has undertaken any independent analysis of the relative expected costs and benefits of the Rimrock proposal. The Trustees should delay any final on the Rimrock Application until such an analysis has been completed by an outside

consultant. It would be political malpractice of the highest order for the Trustees to double the size of the Town without any independent analysis of the expected costs and benefits.

Please provide each of the Trustees with a copy of this letter in advance of the hearing and please also include this letter as part of the administrative record for the Rimrock Application.

### **Relevant Background**

As you know, the proposed annexation will more than double the existing size of the Town of Pierce and, if the Rimrock Application is approved, will result in the conversion of agricultural land into a heavy industrial cryogenic freezing plant owned and operated by a company out of Dallas, Texas. Per Rimrock's own description, the Proposed Use will include "various tanks, pumps, condensers, oxidizers, compressors, filers, skids, coolers, heaters, absorbers, separators, and scrubbers" as well as "an electrical building, a control building, and a tall flare." At full buildout, the Proposed Use will include one or more demethanizers that will tower approximately 115 feet over the site and be visible from miles away. The Proposed Use is also slated to include 63 new buildings or other large equipment, including a gas flare, transloading equipment, a control room and shop, a construction yard, a regional office building, and an electric switch station. Rimrock has suggested that it will plant some trees to screen the Proposed Use, but Rimrock has not committed to a final landscape plan and has not proposed any earthen berms or other screening to reduce noise and visual impacts. The Proposed Use will operate year-round and 24 hours per day.

The 638.6-acre Property is currently zoned for exclusively agricultural uses under the Weld County Land Use Code. According to Rimrock's application materials, the current and historic use of the Property has always been agricultural. Rimrock intends for the main access point to the Proposed Use to be from an unpaved section of WCR 29. All of the unincorporated properties near the Property are zoned for agricultural use under the Weld County Code:



There are no industrial uses similar to Rimrock's Proposed Use anywhere near the Property. All of the surrounding uses are very low intensity and include a mix of farmland and dispersed single-family residences. According to Weld County records, the closest oil and gas well is approximately 1.4 miles east of the Property.

Mr. Legler owns approximately 54 acres of land less than half a mile north of the Property.<sup>1</sup> Mr. Legler's property includes the Legler's family home, which was newly completed in 2017, as well as a shop, a horse shed, productive farmland, and other support buildings. There is a direct line of sight from Mr. Legler's property to the Property that Rimrock has slated for its Proposed Use. As the Proposed Use is currently presented, Mr. Legler and his family will be directly impacted by the many negative externalities of the Proposed Use, including but not limited to negative viewshed impacts, noise, dust, air pollution, and increased truck traffic on and around WCR 29, which is currently unpaved and completely unsuitable for construction equipment and large haul trucks. Mr. Legler has already been injured by Rimrock's Proposed Use as Mr. Legler's home is currently listed for sale and several potential buyers have elected not to make offers after learning about the Rimrock proposal. If approved, the Proposed Use will result in a substantial injury to the value of Mr. Legler's residential and agricultural property.

### Analysis

As explained in detail below, the Application is unlawful or otherwise legally deficient in at least **five** distinct ways. First, the **proposed rezoning** for the singular benefit of Rimrock and to the detriment of all surrounding landowners amounts to unlawful spot zoning. This issue is further compounded by the fact that Pierce does not have any criteria for evaluating a rezoning request and, consequently, an approved rezoning will necessarily be arbitrary and capricious.

Beyond these zoning issues, the **proposed annexation** violates the state law requirement that any annexation that includes a portion of a public right of way must take the entire width of the road. Here, Rimrock has proposed a series of three annexations, but the very first annexation only includes a portion of WCR 90 (as opposed to the entire width) and therefore violates state law. Moreover, there is no indication that Pierce has adopted a current "three-mile plan" as required under state law before land may be lawfully annexed.

Moreover, as proposed, Rimrock has not provided sufficient evidence to justify approval of its **special use permit**, its **minor subdivision plan**, or its **proposed amendments to the Town of Pierce's Comprehensive Plan**. The Proposed Use is fundamentally incompatible with the existing surrounding uses and the rural/agricultural character that is central to Pierce's identity and mandated throughout the Town's Municipal Code. Rimrock has made no serious effort to mitigate any of the substantial negative impacts that will directly injure the property rights of Mr. Legler and all surrounding landowners.

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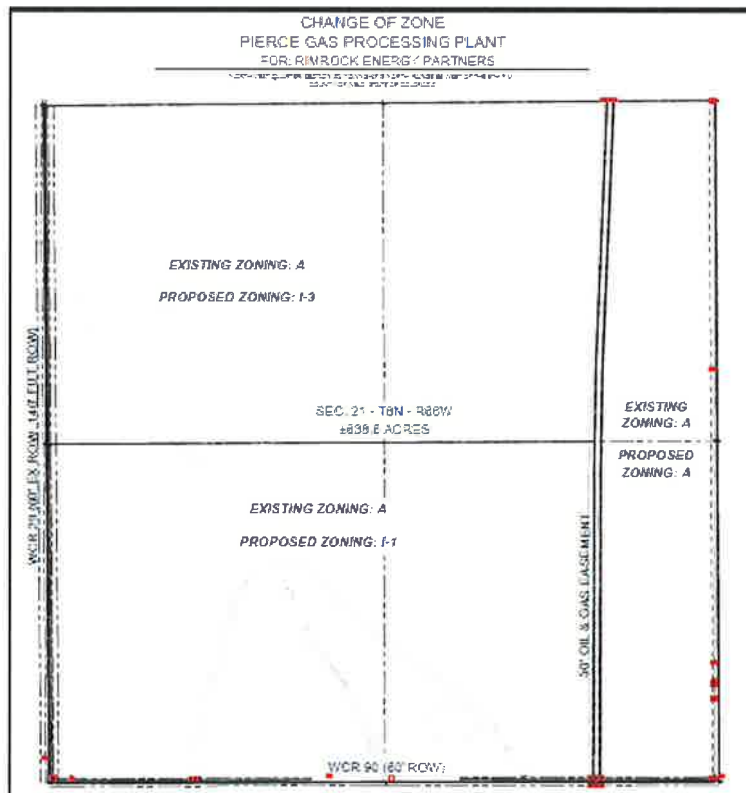
<sup>1</sup> Mr. Legler's property is closer to the Property than Pierce is to the Property. As it exists today, Pierce is more than 2,600 feet to the east of the Property.

As explained in turn below, each of these legal defects is a fatal flaw and each provides an independent basis to deny the Rimrock Application in its entirety.

**1. The Proposed Rezoning of the Property—Including Pierce’s Extraordinary Accommodation to First Create a New Zone Designation—Is Illegal.**

Rimrock’s Proposed Use is so fundamentally out of character with Pierce’s existing land use scheme that the approval of the Proposed Use will first require Pierce to amend its zoning code and create an entirely new zoning designation of I-3, Heavy Industrial. Although the existing Municipal Code includes land use designations for light industrial (I-1) and medium industrial (I-2), Pierce has never allowed heavy industry anywhere within its borders. As drafted, the proposed I-3 Heavy Industrial District appears to have been tailor-made for Rimrock’s unique land use proposal. In other words, Pierce is poised to take the extraordinary step of amending its generally-applicable Municipal Code solely to the benefit of one narrow special interest.

Once this change has been made to the Municipal Code, Rimrock then asks Pierce to rezone more than 40 percent of the Property from its existing exclusively agricultural land use designation to allow for Pierce to operate a heavy industrial oil and gas processing facility. Rimrock also has requested that Pierce rezone another approximately 40 percent of the site from agricultural to light industrial:



Rimrock's rezoning application does not include any discussion of what impact this proposed rezoning will have on the neighboring agricultural and residential uses that surround the Property—all of which will remain with Weld County's agricultural zone district. Similarly, there is nothing in Rimrock's application materials that would suggest that there has been a material change in character with respect to land use patterns surrounding the Property.

Ultimately, the proposed rezoning is illegal for two distinct reasons. First, the rezoning constitutes unlawful spot zoning in that it is inconsistent with broader land use patterns and is proposed solely for the narrow benefit of one land owner and to the detriment of all surrounding land users. Second, because the Town of Pierce has not adopted any criteria for evaluating a rezoning request, any rezoning will necessarily amount to an arbitrary and capricious abuse of the Town's police power.

*a. The Proposed Rezoning Constitutes Unlawful Spot Zoning that Would Create an Island of Heavy Industrial Zoning.*

Colorado's prohibition on spot zoning is rooted in the fundamental tenet that “unless a zoning line is drawn somewhere there can be no zoning at all.” *Clark v. Boulder*, 362 P.2d at 162. In order to protect neighboring land owners and ensure the predictability of a comprehensive scheme of land use planning, an allegation of spot zoning examines “whether the change in question was made with the purpose of furthering a comprehensive zoning plan or [was] designed merely to relieve a particular property from the restrictions of the zoning regulations.” *Id.* at 162. Colorado law prohibits unlawful spot zoning that “creates a small island of property with restrictions on its use different from those imposed on surrounding property.” *Whitelaw v. Denver City Council*, 2017 COA 47, ¶ 63 (quoting *Little v. Winborn*, 518 N.W.2d 384, 387 (Iowa 1994)).

Colorado's prohibition on spot zoning was first recognized in *Clark v. Boulder*. There, the Colorado Supreme Court rejected an attempt to rezone property from residential to commercial to permit the operation of a gas station. 362 P.2d at 163. In reversing the reclassification from residential to commercial, the *Clark* Court refused to consider the fact that “the property may not be used as profitably for residential purposes as for commercial use” and instead focused on the neighbors’ “right to rely on existing zoning regulations where there has been no material change in the character of the neighborhood which may require re-zoning in the public interest.” *Id.* at 162-63. The *Clark* Court further confirmed that such a change in the permissible land use would only be legitimate:

[I]f the character and use of a district or the surrounding territory have become so changed since the original [zoning designation] was enacted that the public health, morals, safety and welfare would be promoted if a change were made in the boundaries or in the regulations prescribed for certain districts; but mere economic gain to the owner of a comparatively small area is not a sufficient

cause to involve an exercise of this amending power for the benefit of such owner.

*Id.* at 162. (quoting *Leahy v. Inspector of Bldgs.*, 31 N.E.2d 436, 439 (Mass. 1941)). Consistent with this reasoning, the *Clark* Court reversed the reclassification from residential to commercial use on the grounds that “there is no indication that the [decision] was intended to further the comprehensive general plan” and instead “has all the earmarks of a special act enabling the [applicant] to build” an incompatible land use. *Id.* at 161.

Unlike the proposal that was found to be unlawful in *Clark*, Rimrock is not merely proposing to erect a gas station on a formerly residential site. Instead, Rimrock proposes to convert longstanding agricultural land into an island of the highest intensity industrial use surrounded by a sea of established agricultural and rural residential uses. The Property has always been used for agricultural purposes similar to all of these surrounding uses. There has been no change in the character of the neighborhood—an objective fact that Rimrock does not even attempt to dispute.

Like the proposal in *Clark*, Rimrock’s proposal is nothing more than an *ad hoc* reclassification of a solitary island of land for the narrow self-interest of a single landowner which will result in immediate and undisputed negative impacts to all surrounding landowners. The Rimrock proposal is the very definition of unlawful spot zoning under Colorado law. If Pierce approves the rezoning, it will almost certainly be met with an immediate and vigorous legal challenge.

*b. The Town of Pierce Has Not Adopted Any Criteria for Evaluating a Rezoning Application and Any Change in Zoning Will Be Arbitrary and Capricious.*

Rimrock’s proposed rezoning is also fatally flawed because of Pierce’s failure to enact any substantive criteria regarding rezoning within its Municipal Code. Unlike the process for approving a special use approval or a subdivision plan, the Municipal Code appears to be devoid of any particularized criteria with which the Trustees are required to apply to a rezoning proposal. Consequently, the Rimrock rezoning proposal asks the Trustees to approve the rezoning request for completely arbitrary reasons—or perhaps for no reason at all.

Without any specific criteria to guide this quasi-judicial process, Pierce’s rezoning process amounts to an unconstitutionally vague system that is ripe for abuse of the Town’s police power. Conversely, members of the public and opponents of the proposed rezoning are not provided with any guidance as to what factors may or may not be considered by the Trustees in weighing Rimrock’s proposed rezoning.

Colorado law provides that a judicial process (that is, the application of law to facts) is unconstitutionally vague when the applicable law:

[E]ither forbids or requires the doing of an act in terms so vague that men of ordinary intelligence must necessarily guess as to its meaning and differ as to its application. Two basic interests underlie this principle. First, the interest in fair notice requires the law to be sufficiently definite to alert the populace to the nature of the proscribed conduct so that they may control their actions accordingly. Second, the interest in even-handed treatment requires that the law provide specific standards for those charged with its enforcement so that arbitrary and discriminatory application will be avoided.

*People ex rel. City of Arvada v. Nissen*, 650 P.2d 547, 550 (Colo. 1982) (citations omitted).

Here, because it appears that Pierce has never adopted any criteria for rezoning, any application of the Town's rezoning process (as outlined in Section 16-19-70 of the Pierce Municipal Code ("P.M.C.)) will necessarily result in an arbitrary, capricious, and unlawful action. The absence of any controlling law on rezoning is unfair to both applicants and opponents as well as the Trustees themselves who are apparently asked to make a decision without any legal framework to guide their decision.

A legitimate quasi-judicial process requires clear standards to create a replicable process through which the factfinder can fairly apply the objective law to the particular facts of a given rezoning proposal. Without a well-defined approval criteria, the Trustees are left with an unbounded—and ultimately unlawful—amount of discretion, which will necessarily result in the disparate treatment of different parties under color of law.

In the present case, Rimrock has proposed to rezone an island of agricultural property so that it may erect the highest intensity industrial use amongst a sea of longstanding farms and rural homes. This is a quasi-judicial process that demands clearly articulated standards by which the Trustees may fairly and objectively measure every rezoning petition that comes before them without bias or favor. Unless and until Pierce enacts the requisite guardrails, any rezoning that results from this process will be unconstitutional.

## **2. The Proposed Annexation Would Violate State Law.**

As you know, the Property is not adjacent to the Town of Pierce, and Rimrock proposes that Pierce should annex the Property through a process that is commonly referred to as "flagship annexation." Under Colorado law, a municipality may not annex property unless one-sixth of the perimeter to be annexed is contiguous with the annexing municipality. C.R.S. § 31-12-104(1)(a). Nevertheless, flagship annexations are theoretically legal under Colorado law by virtue of the fact that the annexation statute also provides that the contiguity requirement for a larger annexation may be accomplished by simultaneously completing a series of smaller annexations. *Id.*

Here, Rimrock proposes that the Town of Pierce do exactly this. Because the Property is more than half a mile from the existing town limits—and thus completely non-contiguous with Pierce—Rimrock’s proposed annexation is actually a series of three annexations. “Annexation No. 1” would have the Town annex the southern half of WCR 90 along the northern border of the Town (to the center line of the road). “Annexation No. 2” would have the Town annex the other, northern half of WCR 90 along the total length of Annexation No. 1, and then add in the total width of WCR 90 to its intersection with WCR 29 to the west. “Annexation No. 3” would then include the Property which is directly to the north of and contiguous with WCR 90 as previously annexed through Annexation No. 2. These separate annexations are designed to achieve the legal prerequisite of one-sixth contiguity between the border of the property to be annexed and Pierce (as it continues to expand through each subsequent annexation).

The legal flaw in Rimrock’s proposal, however, begins with the very first proposed annexation (Annexation No. 1), which proposes to take some but not all of WCR 90. The annexation statute is unambiguous that “[i]n establishing the boundaries of any area proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of said street or alley shall be included within the area annexed.” C.R.S. § 31-12-105(1)(f). As proposed by Rimrock, Annexation No. 1 will include some but not all of the street (WCR 90) in direct violation of Section 31-12-105(1)(f), C.R.S. Because Rimrock only included the southern half of WCR 90 (which runs east-west) in this first step, the annexation as proposed by Rimrock will violate Colorado law and must be rejected. Rather than build out the town with a series of thoughtful and legitimate annexations involving willing landowners, Rimrock has asked Pierce to create an illegal “satellite” of new municipal land (*see* C.R.S. § 31-12-104(2)(b)) connected by nothing more than a tenuous, and ultimately unlawful, flagpole along WCR 90. The annexation request must be denied because it is illegal.

Separate and apart from the legal issues regarding the method of Rimrock’s proposed annexation, the annexation proposal is itself incomplete. Before a municipality may annex any territory, it must first “have in place a plan for that area that generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area.” C.R.S. § 31-12-105(1)(e)(1). The plan must be updated each year. *Id.*

Here, however, it does not appear that Pierce has promulgated any plan that might comport with the very specific criteria set forth in Section 31-12-105(e)(1), C.R.S. If such a plan does exist, there is certainly no evidence that Pierce has updated the plan on an annual basis. If Pierce had such a plan, it would necessarily include additional terms and conditions on the annexed area that would take into account the needs of the Town, its citizens, and the population and area surrounding the annexed land. *See* C.R.S. § 31-12-107(4). A plan could also take into consideration the valid concerns of the public, as expressed at any public hearings and throughout the application process. Here, because there is no such plan, Pierce appears poised to



rubberstamp an annexation and Proposed Use that is fundamentally inconsistent with land use patterns in the Town of Pierce and in the unincorporated areas surrounding the Property.

The requirement that Pierce first adopt and update a “three-mile plan” before approving an annexation is absolute. Because Pierce has apparently failed to adopt and update such a plan, any annexation will be subject to immediate legal challenge as having been adopted in violation of the state annexation statute.

### **3. Rimrock Has Not Met Its Evidentiary Burden to Obtain a Special Use Permit.**

Although Rimrock has already asked the Town to undertake the extraordinary step of enacting an entirely new land use designation (I-3) to accommodate its heretofore unprecedented heavy industrial use, Rimrock’s proposed land use is so intense that even this statutory change is insufficient to accommodate the Proposed Use. Accordingly, the Rimrock Application separately includes a request for a special use permit to allow it to construct an electric substation and oil and gas storage and support facilities at the Property.

Unlike the rezoning application, which is apparently unbounded by any legal criteria, the Municipal Code does include a number of explicit factors which an applicant’s land use proposal must satisfy before the Trustees can approve a special use permit. Here, Rimrock has failed to provide any evidence sufficient to satisfy these legally required elements, and the Trustees have no discretion to do anything by deny Rimrock’s proposed special use permit.

By definition, uses that require a special review are more intense than presumptively legal land uses and have the potential for greater impact when compared with other allowed uses in an area. P.M.C. § 16-14-20(a). Accordingly, before the Trustees may approve a special use, they must first ensure that the use is “designed, constructed, and operated in a manner that is compatible with the existing and planned uses for the neighborhood.” *Id.* This review also requires the Trustees to ensure that the use will not impair the “health, safety, convenience, and general welfare of present and future residents of the Town.” *Id.* Beyond these generalized requirements, the Trustees must then find that an applicant has met the following seven explicit approval criteria:

- a. The proposal is consistent with the Comprehensive Plan;
- b. The proposal is consistent with the intent of the zoning district in which the use is proposed to be located;
- c. The use which would be permitted will be compatible with the existing surrounding land uses and will not be substantially dissimilar from such uses;
- d. The use which would be permitted will be compatible with future development of the surrounding area as permitted by the existing zoning and with the future development as projected by the Comprehensive Plan;

- e. The use will not cause an unreasonably severe demand on Town services, such as police and fire protection, drainage control, water supply and sanitary sewer service;
- f. The use will not adversely affect traffic flow and parking in the neighborhood;
- g. There is adequate provision for the protection of the health, safety and welfare of the inhabitants of the neighborhood and the Town.

P.M.C. § 16-14-30(3).

Although Rimrock's Proposed Use falls far short of many of these materially required elements, the most glaring deficiencies in the Rimrock special use request relate to the project's objective incompatibility with the existing and future uses surrounding the Property. It cannot be disputed that all of the existing surrounding uses are uniformly comprised of farmland and farm houses. At present, there are no heavy industrial uses within a mile of the Property. All of the properties surrounding the Property are zoned exclusively for agricultural use and there are no plans for future industrial development that might be compatible with Rimrock's proposed heavy industrial use.

It is telling that neither the Rimrock Application nor the staff report prepared by the Town of Pierce's contract Planner make any attempt to demonstrate how or why the Proposed Use might be compatible with the existing and future uses surrounding the Property. Indeed, the *only* reference to compatibility in the Planner's Report is a statement of the legal framework for approval. The Planner's Report does not include any finding that the Proposed Use will be compatible with existing and future uses surrounding the Property. Accordingly, Rimrock has not met its burden to obtain the requested special use permit, and the Trustees cannot approve this proposal without abusing their discretion.

Separate and apart from this obvious deficiency, the Proposed Use also fails to demonstrate adequate protection for the health, safety, and welfare of the neighborhood surrounding the Property. Although the Pierce's Planner has recommended a number of conditions of approval, none of these conditions will be sufficiently protective of surrounding land owner's right to the continued quiet enjoyment of their existing agricultural and residential uses. For example, although the Proposed Use will be required to meet the residential noise standard, as it is currently proposed, the Proposed Use will not have any noise monitoring to assure compliance with this standard. In contrast to other similar facilities in Weld County, there is no indication that the processing facilities, which will operate 24-hours per day, will be shielded by soundproof buildings or earthen berms.

Similarly, the Proposed Use does not include a mandatory landscape plan to shield the unsightly Proposed Use from surrounding neighbors. The Proposed Use merely includes an aspirational landscape plan, which suggests that a minimal amount of trees will be installed to the north and west of the proposed oil and gas processing facility.

Finally, the proposed access point for construction (which is slated to begin almost as soon as Pierce's approval issues) and operation will enter the Property from WCR 29, which is currently an unimproved dirt road that is completely unsuitable for large construction equipment and haul trucks. Again, Rimrock aspires to convince Weld County to pave and improve the road, but as proposed, the Rimrock Application does not guarantee safe and reliable access to the Property sufficient to support the Proposed Use.

If Rimrock were serious about its alleged desire to mitigate adverse impacts on neighbors, additional safeguards and conditions could include an enforceable commitment to berming, fencing/screening (with natural color shielding), and extensive landscaping on all sides of the Property to ensure maximum noise and blight reduction for all neighboring properties. Similarly, as a condition of approval, Pierce could mandate the use of electric compressors and require that the machinery at the facility be housed in soundproof buildings to ensure that neighbors are not subject to constant noise from a plant that will operate every hour of every day. Lighting can be required to face away from passing motorists and residential neighbors and otherwise oriented to minimize light pollution, and Rimrock could be required to flare gas only during daylight hours. The Town could also require a reclamation and/or disaster recovery bond to ensure that the Property does not fall into permanent disrepair following abandonment, a hazardous materials leak, or some other disaster.

In order to ensure meaningful compliance with the foregoing, the Town should require Rimrock to establish a neighborhood advisory committee and require regular meetings to ensure that development proceeds consistent with all conditions of approval and that any unforeseen problems are immediately addressed. The Town should also require Rimrock to establish a community impact fund and require that any funds be used to mitigate against or otherwise compensate neighbors for the adverse effects that result from Rimrock's Proposed Use.

The foregoing is not an exhaustive list of necessary conditions of approval. Instead it is offered to highlight the many obvious shortcomings in the Rimrock proposal, which makes no serious effort to facilitate compatibility with obviously inconsistent surrounding uses.

Without sufficient mitigation, the Proposed Use presents an obvious threat to the health, safety, and welfare of the neighborhood, as the Proposed Use impairs neighbors' rights to quiet enjoyment and leads to an immediate and considerable loss in property values. Ultimately, Rimrock has fallen far short of providing the necessary evidence to obtain approval for its proposed special use. Without competent evidence sufficient to establish all of the legally required elements under the Municipal Code, the Trustees cannot approve the Proposed Use without abusing their discretion and risking immediate reversal by a court of competent jurisdiction.

#### **4. Rimrock Cannot Meet the Legal Criteria Necessary for Subdivision of the Property.**

Because the Proposed Use will require the subdivision of the Property into three parcels, Rimrock's Application also includes a request for a minor subdivision of the Property. Under

the Municipal Code, an applicant must demonstrate that a proposed minor subdivision (that is, a subdivision of one property into no more than eight subdivided parcels) meets six legally required elements. P.M.C. § 17-3-140. As relevant here, an applicant must specifically demonstrate that the proposed minor subdivision: (i) “promotes the Town’s small-town rural character”; (ii) “represents a functional system of land use and is consistent with the existing Town; and (iii) “[n]egative impacts on adjacent land uses have been identified and satisfactorily mitigated.” *Id.* On the evidence presented by Rimrock, Rimrock has failed to meet each of these three mandatory requirements. Accordingly, the Trustees must deny the minor subdivision request.

In its present configuration, the Town of Pierce is 0.84 square miles in area. The proposed annexation and minor subdivision will add more than one square mile of land to the existing town, which will cause the size of the Town to more than double. Under the Rimrock proposal, the vast majority of this new land will be designated for heavy and light industrial uses that will be completely incompatible and inconsistent with neighboring agricultural uses. The Rimrock proposal does not promote Pierce’ “small-town rural character” and instead does just the opposite—it will convert a small plains town into an industrial pocket with nearly 50 percent of the Town’s total land mass zoned for industrial uses. The Proposed Use will leave the Town of Pierce looking more like Commerce City and less like the rural hub for rail and farming that it has always been.

The Rimrock Application cannot be approved without demonstrating and taking advantage of a completely dysfunctional and unlawful system of land use planning whereby a municipality completely reinvents itself overnight for the narrow interests of a single landowner. As noted, the Proposed Use will have immediate, serious negative impacts for surrounding land users and, as presented, the Rimrock Application does not include any meaningful and enforceable requirements to mitigate the negative externalities that will result from an industrial corridor springing up in the middle of farmland overnight.

Ultimately, the Rimrock proposal cannot meet even the most basic legal requirements for a minor subdivision. Consequently, the Trustees do not have any discretion to approve Rimrock’s minor subdivision request and the Proposed Use should be completely denied.

**5. The Rimrock Proposal Is Fundamentally Inconsistent with Pierce’s Comprehensive Plan and Rimrock’s Proposed Amendment to the Comprehensive Plan Map Would Reverse a Half Century of Consistent, Predictable Land Use Planning.**

The Town of Pierce’s Comprehensive Plan has been in place (apparently without amendment) since June 1976. Although the Comprehensive Plan encourages a mix of land uses, it expressly provides that more intensive uses should be thoughtfully planned to limit the increasing pressures of urbanization on the Town. With respect to industrial uses in particular, the Comprehensive Plan provides that Pierce should “[e]ncourage industrial development which is small, light, and non-polluting” and “[e]ncourage industrial locations which are near other work areas, with sites of adequate size, and which create an aesthetically pleasing environment.”

The Comprehensive Plan also discusses the problems that Pierce had encountered at having industrial uses scattered throughout Town and strongly encourages the clustering of future industrial uses at sites with “proximity to rail, highway, and county road access” which would avoid a situation that might “allow[ ] industry to scatter arbitrarily among residential and other non-compatible land uses.” The Comprehensive Plan further provides: “The intent of the industrial policies is to ensure that future industrial development is compatible with adjacent land uses . . . .”

The Rimrock proposal directly contradicts each of these explicit and longstanding principles within the Comprehensive Plan. Beyond the various empty platitudes in Rimrock’s request to amend the Comprehensive Plan Map, Rimrock’s sole claim that the Proposed Use will be consistent with the Comprehensive Plan is that the Proposed Use will allegedly support the diversification of the local economy. This argument ignores all of the foregoing statements from the Comprehensive Plan regarding the need for compatibility and thoughtful, predictable planning in siting heavy industrial uses. Moreover, at full buildout, the Proposed Use is expected to employ no more than 15 employees and will provide minimal tax revenue to the Town of Pierce. Any increases in tax revenue will almost certainly be neutralized by this heavy industrial satellite’s demand for increased services, including but not limited to road maintenance, snow removal, and emergency response services.

Rimrock’s Application provides no reasonable explanation as to why the Proposed Use must be sited at the Property and within the Town of Pierce. If the Trustees deny Rimrock’s Proposed Use, then Rimrock will presumably find another site within the area—preferably one that is already zoned for industrial use and will not require any special laws or revisions to land use planning documents that have remained consistent for more than 50 years. The Comprehensive Plan explicitly recognizes the paramount importance of predictability and thoughtfulness in land use planning. Rimrock’s proposal would amount to a complete reimagining of the Town of Pierce in a manner that directly contradicts the Town’s longstanding Comprehensive Plan. The Rimrock proposal must be denied.

### **Conclusion**

Rimrock’s Proposed Use is fundamentally out of character with the Town of Pierce and all of the existing surrounding uses around the Property. The Proposed Use will result in substantial adverse impacts to all neighbors and Pierce residents, including but not limited to reductions in property values, viewshed impacts, constant noise, heavy truck traffic on unsuitable roads, air pollution, and other public safety concerns.

As discussed above, there are numerous, glaring legal flaws in the Rimrock proposal and approval of the Rimrock Application will likely result in years of legal battles surrounding this highly contentious and controversial proposal. Conversely, the Town is not under any legal obligation to annex the Property, and Rimrock will have no recourse if Pierce simply declines to annex the Property.

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Thank you and all of the Trustees for your time and careful consideration of these important matters. A proposed annexation that will double the size of Pierce and create a completely new industrial zone that does not exist anywhere else within the Town is a matter of the utmost importance and should not be undertaken without careful study into all of the pertinent facts. At a minimum, the Trustees should delay any final vote on the Rimrock Application until the Town has commissioned and review an independent economic analysis of the proposal from an outside consultant. At present, there is no basis for Pierce to assume that the proposed annexation and resulting heavy industrial use will be a net benefit to Pierce and its residents.

Please contact me if you have any questions or would like to discuss this matter further. I can be reached at 303-628-3632 or [jsilvestro@irelandstapleton.com](mailto:jsilvestro@irelandstapleton.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'J.R. Silvestro', is written over a light blue horizontal line. The signature is fluid and cursive.

James R. Silvestro, Esq.

Cc: Pat Larson, Town Clerk ([plarson@townofpierce.org](mailto:plarson@townofpierce.org))  
Tina Duran, Deputy Town Clerk ([kduran@townofpierce.org](mailto:kduran@townofpierce.org))  
Todd Hodges, Contract Planner ([toddhodgesdesign@qwestoffice.net](mailto:toddhodgesdesign@qwestoffice.net))