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| District Court, Saguache County, Colorado Court Address: 501 4th Street, Saguache, CO 81149 | <div style="text-align: center;">Δ COURT USE ONLY Δ</div> Case No.: 2022CV000005 Division: C |
| In the Matter of: CITIZENS FOR PROPOSED TOWN OF BACA GRANDE | |
| <i>Attorneys for Intervenor Baca Grande Property Owners Association</i> MOELLER GRAF, P.C. K. Christian Webert, #43739 385 Inverness Parkway, Suite 200 Englewood, Colorado 80112 Office: (720) 279-2568 FAX: (720) 279-2569 | |
| MOTION TO INTERVENE | |

Comes Now, Intervenor Baca Grande Property Owners Association, by and through its counsel, Moeller Graf, P.C., and hereby moves this Court, pursuant to C.R.C.P. 24 for an order allowing intervention, and as grounds therefore, states as follows:

CERTIFICATE OF CONSULTATION

Undersigned counsel conferred with petitioner Desiree Marceau, one of 73 petitioners, in an attempt to comply with C.R.C.P. Rule 121, § 1-15(8). Undersigned counsel conferred with Ms. Marceau because she signed the Petition and provided her phone number on the Petition. During the conferral, Ms. Marceau’s position was that conferral would be better by conferring with all petitioners. Given the number of petitioners and the logistical difficulties in conferring with all petitioners, undersigned counsel has decided not to undertake an attempt to confer with all petitioners. Further, doing so appears to be beyond the requirement of the rule. That said, based on the conversation with Ms. Marceau, it appears safe to say that this Motion is opposed.

1. On August 8, 2022, the petitioners filed their Petition for Incorporation of the Town of Baca Grande (“Petition”) seeking to incorporate the Town of Baca Grande.

2. In accordance with C.R.C.P. 24(a)(2), upon timely application, anyone shall be permitted to intervene in an action when (1) the applicant claims an interest relating to the property or transaction which is the subject of the action and (2) is so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest, and (3) the applicant's interest is not adequately represented by existing parties.

3. As follows, Intervenor satisfies all of the requirements of C.R.C.P. 24(a) and, accordingly should be permitted to intervene.

- a. *The applicant claims an interest relating to the property or transaction which is the subject of the action.* The Association owns numerous parcels of real property that appear to be included within the boundaries of the proposed Town of Baca Grande which is sought to be incorporated by the Petition. (See attached **Exhibit 1**) Additionally, the Association is the nonprofit corporation organized to manage and operate the Baca Grande common interest community, which appears to be generally coterminous with the proposed Town of Baca Grande.
- b. *Applicant is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest.* Because the Association's property is included within the proposed Town of Baca Grande, this Court's ruling on the Petition seeking incorporation of the town will have an impact on that real property. The property will be incorporated into the town and subjected to the new ordinances and other regulations promulgated by the town. Accordingly, the Association's property rights will be

significantly impacted if the Petition is granted by the Court. This element too, therefore, is satisfied.

c. *The Applicant's interest is not adequately represented by existing parties.*

Finally, this element also is satisfied because there are no parties challenging the Petition and, accordingly, no existing party can adequately represent the interests of the Association in challenging the Petition.

4. In similar situations, courts have held that a property owner has the right to intervene in a petition seeking incorporation of the intervenor's land or affecting the intervenor's land. *See In the Matter of the Incorporation of the Town of Eastridge v. City of Aurora*, 590 P.2d 72, 72 (Colo. App. 1978); *see also, Dillon Companies, Inc. v. The City of Boulder*, 515 P.2d 627, 630 (Colo. 1973) (property owner has a right to intervene in a lawsuit regarding zoning which affects the intervenor's land).

5. As required by C.R.C.P. 24(c) the pleading which the Intervenor initially seek to file, a Motion to Dismiss, is tendered with this Motion to Intervene.

WHEREFORE, Intervenor Baca Grande Property Owners Association requests the Court to enter an order permitting it to intervene in the action as a party. A proposed order is attached for the court's consideration.

Date signed: September 30, 2022.

MOELLER GRAF, P.C.



K. Christian Webert

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September 2022, a true and correct copy of the foregoing **MOTION TO INTERVENE** was placed in the U.S. Mail, postage prepaid and addressed as follows:

Citizens of Proposed
Town of Baca Grande
c/o Desiree Marceau
P.O. Box 365
Crestone, CO 81131

MOELLER GRAF, P.C.


