

**FINDINGS AND RESOLUTION DENYING  
THE THORNTON WATER PROJECT 1041 PERMIT**

The Petition of the City of Thornton for approval to allow 26 miles of 48-inch waterline, pumping facility and other appurtenant facilities in the location initially described on Exhibit "A" attached hereto has been filed with the Board of County Commissioners of the County of Larimer.

The Planning Commission reviewed the proposed 1041 permit on May 16, 2018 and having duly considered the same recommended that it be denied.

On July 9, 2018, July 23, 2018, August 1, 2018, December 17, 2018, January 28, 2019, February 4, 2019 and February 11, 2019, in the County Board Hearing Room of the Larimer County Courthouse, Fort Collins, Colorado, the Board of County Commissioners conducted public hearings on the 1041 Permit Application. The Board of County Commissioners, having heard the testimony and evidence adduced at said hearing and having considered and carefully weighed the same, now makes the following findings:

**I. Notice and Property**

1. The 1041 Permit request upon the route described on Exhibit "A" was advertised in a local newspaper of general circulation.

2. Written notice of the initial hearing was delivered or mailed, first class, postage prepaid, to landowners within 500 feet of the proposal.

3. The general characteristics of the property are as follows:

- |    |                             |   |
|----|-----------------------------|---|
| a. | Location:                   | New water line easement and construction along approximately 26 miles in the County in new easements of 50 feet, and/or in existing ROW |
| b. | Area:                       | New water line easement and construction along approximately 26 miles in the County in new easements of 50 feet, and/or in existing ROW |
| c. | Proposed Land Use:          | 48-inch waterline, pump station, 1 MG tank and appurtenant facilities   |
| d. | Existing Zoning:            | Various   |
| e. | Adjacent Zoning:            | Various   |
| f. | Adjacent Land Uses:         | Residential, agricultural   |
| g. | Services:                   |   |
|    | Access:                     | County Roads 54, 56 & Larimer<br>County Road 1/Weld County Road 13  |
|    | Water:                      | N/A   |
|    | Sewer:                      | N/A   |
|    | Fire Protection:            | Several authorities   |
| h. | No. Trips Generated by Use: | Construction activity   |

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**II. Nature of the Application**

1. C.R.S. Sections 24-65.1-101 *et seq.* titled Areas and Activities of State Interest was adopted by the Colorado General Assembly in 1974 and is generally referred to as “1041 powers.” This statute provides:

(2) It is the purpose of this article that:

(a) The general assembly shall describe areas which may be of state interest and activities which may be of state interest and establish criteria for the administration of such areas and activities;

(b) Local governments shall be encouraged to designate areas and activities of state interest and, after such designation, shall administer such areas and activities of state interest and promulgate guidelines for the administration thereof; and

(c) Appropriate state agencies shall assist local governments to identify, designate, and adopt guidelines for administration of matters of state interest.

C.R.S. Section 24-65.1-204, Colorado Revised Statutes, states components of water facilities “shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water systems...of adjacent communities;” and “emphasize the most efficient use of water...including recycling and reuse of water.”

2. As authorized by this statute, Larimer County adopted 1041 regulations in 2008. (Larimer County Land Use Code (LUC), Chapter 14 attached as Exhibit B). Among the areas and activities regulated by Larimer County are transmission pipelines:

Siting and development of new or extended domestic water or sewer transmission lines which are contained within new permanent easements greater than 30 feet or within new permanent easements greater than 20 feet that are adjacent to existing easements. Domestic water transmission lines include those used to transport both raw and treated water. This designation shall not include the maintenance, repair, adjustment or removal of an existing pipeline or the relocation, replacement or enlargement of an existing pipeline within the same easement or right-of-way, provided no additional permanent property acquisitions are required. The designation shall also not include the addition,

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replacement, expansion or maintenance of appurtenant facilities on existing pipelines. LUC 14:4 (J).

3. In the 1980's the City of Thornton, Colorado, (Thornton) purchased farms and water rights in Larimer County and other counties for municipal purposes, including provision of drinking water to the residents of the City. To further this purpose, Thornton pursued court proceedings in District Court Water Division No. 1, State of Colorado, Consolidated Cases Nos. 86CW401, 86CW402, 86CW403, and 87CW332, and ultimately obtained a decree dated March 9, 1998. This decree imposed on Thornton a number of conditions and restrictions for use of the water rights.

4. The City of Thornton now seeks approval of a 1041 permit for the construction of a 48-inch diameter water line, a 40 million gallon per day pumping facility, one million gallon above-ground water tank and other appurtenant facilities.

### **III. Procedural History**

1. 2014-May 2016: Thornton begins preliminary discussions with County Community Development, Engineering and Health Department staff about its proposed pipeline project, including possible alignments and corridors.

2. May 2016: A pre-application conference for a 1041 permit is held with Thornton and County staff. Public outreach through a series of mailings and open houses begins in late 2016 and continues through 2017.

At the time of the pre-application conference and during the initial development of alternatives the location of public facilities such as this are not contemplated to be located within a County Right of Way (ROW). At some of the early public meetings there is significant concern about proposed alignments through subdivisions. As a result, County staff meets with Thornton and its consultants and encourages them to review multiple alternatives in the western most area of the proposed corridor (the Douglas Road Corridor). At that time County staff also indicates that alignment in the existing ROW will be considered. In the case of Douglas Road there are sections which are designated on the Transportation Master Plan for future improvement. Although, no plans for improvements to this section of road are contemplated in the near term, if those plans change and improvements are scheduled to be made earlier, Thornton will need to coordinate its work in the ROW with Larimer County.

In the "Douglas Road Corridor" (CR17-Turnberry) the original alignment identifies a ¼ mile. This is subsequently reduced to a 500-foot-wide corridor. This creates a significant concern for many property owners in the area--specifically, that their homes, improvements and/or landscaping will be at risk with the final easements and construction.

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For the balance of the segments, the alignment is still 500 feet to ¼ mile in width. The intent is to allow for easement negotiation which would avoid property conflict and not require revisiting the application. There may be locations which will require or necessitate the use of roadway ROW.

3. January 5, 2018: Thornton submits its application for 1041 approval of water conveyance pipelines and a pump house. The application is initially scheduled for hearing with the Larimer County Planning Commission in February and March 2018. However, the hearings are postponed to allow additional information requested by the County to be developed and submitted by Thornton. That additional information specifically relates to the proposed alignment in Douglas Road.

4. May 16, 2018: The Planning Commission holds a public hearing to consider Thornton's application. At the conclusion of the hearing the Commission votes 4-2 to deny the application. The Commission's decision and a summary of the information presented was set out in the Commission's minutes.

5. July 8, and 23, and August 1, 2018: The Board holds public hearings to consider Thornton's application. Thornton identifies its proposed route and/or corridor for its pipelines and location of a pump station. The proposed locations are shown on Exhibit C (referred to as the Douglas Road Route). Thornton testifies why the proposed project meets the applicable review criteria. Many area residents appear and testify in opposition to the project. Residents, including owners of properties south of Douglas Road, assert Thornton had no to minimal outreach or notice to them and they had little or no opportunity for input into the project in advance of the hearings. Citizens further testify that negative impacts from the project, including impacts of construction on area properties and landscaping, limitations on the future use of property, restricted and limited access for them and for emergency and school buses, and unwanted and unneeded improvements to Douglas Road are untenable. Citizens opine that the project fails to meet the County's 1041 review standards, including standards 2, 4, 8 and 9.

The Board makes initial verbal findings that Thornton has inadequately engaged the public in an effort to reach a preferred alternative and address adverse impacts from the project, that the Douglas Road route brings with it many adverse impacts as described by citizens, and that insufficient information has been presented as to alternative routes (including routes initially presented to the Thornton City Council), the pros and cons of other routes and why the other routes are not viable. In lieu of denying Thornton's application, the Board elects to continue the hearing to December 17, 2018 and directs Thornton to engage in a public outreach process to better address area residents' concerns and to present alternative project routes at the December hearing.

6. August through November 2018: A working group (Group) is formed to examine the project. A public engagement webpage ([larimerwaterprojects.org](http://larimerwaterprojects.org)) is also created and two

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public meetings are held. The Group reviews possible alignments. Matters discussed by the Group include alternative alignments for the pipelines. The Group also questions the legal and practical feasibility of using the Poudre River and canals for conveyance of the water. About half of the Group advocate for an alignment that would require Thornton to use the Poudre River in lieu of pipes to convey the water for a portion of the project.

7. December 10, 2018: Thornton submits Supplement 3 to the Application. The route for the pipeline is now proposed to be from Reservoir 4 to a pump station north of Douglas Road, then north to the southeast corner of the Braidwood community following optional routes along the west shore of Reservoir #4 or Lake Vista Drive to Travis Road, then north to the dam for Reservoir 3, then east to the east shoreline of Reservoir 3 to the north edge of the Eagle Lake subdivision, then east to Highway 1, then south east to CR 56 then following the ROW for CR 56 to I-25. The proposed location is shown on Exhibit D (referred to as the County Road (CR) 56 Route). Thornton states that this route is a 500 foot wide corridor anywhere within which the pipes will potentially be laid. The location for the pumphouse remains the same.

8. December 17, 2018, January 28, 2019, February 4, 2019 and February 11, 2019: The Board holds public hearings to consider Thornton's Supplemental Application. (The Board also considers Thornton's additional supplemental materials entitled "City of Thornton Rebuttal Statement(s)"). After considering all information provided by Thornton and the public, the Board votes to deny Thornton's application.

**IV. Standards of Review and Findings**

1. In order to approve a 1041 application, the Board must find that Thornton has met each of the twelve review criteria set out in LUC 14:10 (B) and (D)(1-12). The Board finds that Thornton has or has not met each of the twelve review criteria as follows:

*i. The proposal is consistent with the master plan and applicable intergovernmental agreements affecting land use and development.*

**Not met.**

The Larimer County Master Plan (Master Plan) is a policy document that establishes goals, visions and a long-range framework for the unincorporated area of Larimer County. The Master Plan identifies as one of its missions: "Larimer County is developing the Partnership Land Use System to maintain and enhance our county's quality of life and to be fundamentally fair to all our citizens and to respect their individual rights.

The Master Plan has many themes and principles implicated by Thornton's application, including:

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- a. Natural and cultural resources shall be identified, conserved and protected, and long-term cumulative impacts shall be monitored;
- b. Agriculture will remain a viable long-term segment of Larimer County's economic, cultural and social fabric;
- c. Logical settlement patterns that reflect the existing character of Larimer County and protect existing neighborhoods will be supported;
- d. The planning and development review process shall be fair, open and predictable, and meet the needs and interest of the community without infringing on the rights of individuals.
- e. Agriculture shall be recognized as an important economic, cultural and environmental resource value-provider for the County;
- f. Agricultural land and water in Larimer County shall be protected through incentives, voluntary participation and measures to strengthen viable agriculture.

Thornton's proposed pipeline route is a yet-to-be-determined location within a 500 foot to ¼ mile wide corridor. The Board's ability to assess specific impacts to private property along the route is unreasonably limited because of the breadth of the corridor. Testimony was provided about the pipeline potentially splitting a private property in two, going through front or backyards, and traversing through significant amounts of private property.

The CR 56 route will have "[m]ost of the alignment . . . constructed in private easements . . . ." Unless an owner is willing to sell his/her private property to Thornton, Thornton will be required to acquire the property by eminent domain—a process generally disfavored by property owners.

Within these private easements, Thornton has noted that property owners will not be permitted to construct permanent structures or other improvements or install landscaping with deep roots that may interfere with the pipeline and its future maintenance. Testimony from private property owners along potential pipeline routes expressed concern about short-term construction impacts in addition to long-term impacts from maintenance crews on private property. One citizen noted concern about her children being exposed to strangers and equipment on her private property.

Thornton's water currently flows through the Water Supply and Storage Company (WSSC) canal system and is used to irrigate farms in Larimer County. Thornton owns approximately 47% of the water shares in the WSSC. Much of the remaining water in WSSC is also owned by municipalities, and WSSC expects that most of the water will be removed from farms in Larimer County in the future. While the fate of Thornton's application does not rest on

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how other municipalities use their water in the future, the Board finds it important to have information about and consider the cumulative impacts of irrigated farmland turning to dryland. A significant reduction in the amount of irrigated farmland is concerning to the Board and conflicts with the goals of the Master Plan. The long-term viability of Larimer County's agricultural communities, and the economic, cultural and environmental impacts of drying up irrigated farmland are valid considerations under the Master Plan. As these impacts are not adequately described or analyzed by Thornton, the Board cannot conclude that Thornton's proposal is consistent with the Master Plan.

*ii      The applicant has presented reasonable siting and design alternatives or explained why no reasonable alternatives are available.*

**Not met.**

Prior to applying for a 1041 permit from Larimer County, Thornton considered and presented to its council, a number of possible alternatives for conveyance of its water. Several of the pipeline routes had water being withdrawn from Reservoir 4 and proceeding east to the County line, then south through several corridors east and west of I-25, as well as the possibility of withdrawing water from other points along the Cache La Poudre River including as far as Windsor.

In its initial application materials, Thornton discussed its broad analysis of alternatives to convey the water to the City. These were then refined based on conversations with all of the affected jurisdictions to three generalized corridors all which commenced at Water Supply and Storage Reservoir 4 (WSS 4) thence east to the Weld Larimer County line thence south following alignments proceeding south to the City. Thornton defined three distinct corridors to review. Thornton examined the three alternatives from which the Douglas Road Route was chosen and presented to the Board. The Board was not convinced that this Route was the best option. Douglas Road is a high traffic generator. For some adjacent residential subdivisions, Douglas Road serves as the only access out of the subdivision. The Thornton project would take approximately 2-5 years to complete during which traffic would have to be diverted causing considerable inconvenience to area residents. There were no guarantees that the pipeline construction would remain within the right-of-way. Additionally, there would be safety and emergency access conflicts during construction. Area residents opposed the resulting improvements to Douglas Road (widening it) which they believed would increase traffic and speeds.

Thornton's Supplemental Application was based on the CR 56 Route. This Route was problematic in its imprecision, identifying a 500-foot corridor in some places where the pipeline might ultimately be installed. The corridor of 500' to ¼ mile in width prevents meaningful evaluation of the two alternatives presented. Impacts can vary

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significantly depending where within this corridor the pipeline is actually located, and at a minimum Thornton should identify where the 50' wide permanent pipeline easement will be located. Without this level of specificity, the siting alternatives proposed by Thornton are not reasonable and cannot be sufficiently evaluated by the Board.

With respect to design, Thornton identified the use of tunneling rather than open-ditch construction as the primary method of installation and proposes to bore under certain sensitive areas. Some alternative design options were mentioned, such as lake taps to avoid private property and other construction disruptions, but were not presented as design alternatives.

The Board finds Thornton failed to present reasonable siting alternatives. Thornton self-selected two routes and then summarily concluded other possible alternatives (including those presented to the Thornton City Council) were not feasible. At the August 1, 2018 hearing, the Board specifically mentioned interest in the Shields Street alternative. Options vetted and rejected by Thornton have positive attributes which, in combination with the two alternatives presented, could lead to a route that satisfies the approval criteria by better mitigating adverse impacts and ensuring the orderly and efficient development of Thornton's water pipeline.

*iii. The proposal conforms with adopted county standards, review criteria and mitigation requirements concerning environmental impacts, including but not limited to those contained in Section 8 of this Code.*

**Not met.**

**8.2. Wetland Areas:**

Thornton proposes to bore under all designated wetland areas. Wetland areas that are affected by the proposal are non-jurisdictional. A Nationwide Permit from the Army Corps of Engineers may be required for the City to confirm that no jurisdictional wetland areas are affected by construction.

**8.3. Hazard Areas:**

There are hazard areas, flood plains on the Poudre and Big Thompson Rivers and Boxelder Creek identified along the preferred route. The City of Thornton proposes to bore under these river corridors.

**8.4. Wildlife:**

Thornton's environmental analysis for the preferred route identifies that there were possible conflicts with wildlife both listed and other species of concern, including disruption of nesting birds. The Board is not convinced that mitigation, including avoidance, seasonal limitations or prohibitions on activities is adequate.



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**8.8. Irrigation Facilities:**

There are multiple irrigation ditches which will need to be bored or cut with this proposal. Thornton may be required to obtain agreements or licenses associated with this activity. The Board would seek alternative alignments that eliminate or reduce impacts on irrigation ditches.

**8.11. Air Quality Standards:**

Given the potential disturbed area of this request, an Air Quality permit will be necessary which permitting will require compliance with the standards.

**8.12. Water Quality Management Standards:**

Thornton will need to obtain a storm water quality permit for the construction impacts.

*iv. The proposal will not have a significant adverse affect on or will adequately mitigate significant adverse affects on the land on which the proposal is situated and on lands adjacent to the proposal.*

**Not Met.**

Portions of Thornton's proposed routes are in areas with significant residential development. There will be adverse impacts to thirty-six properties on the east side of Reservoirs 3 and 4. There will be adverse impacts on eight homes and private properties along County Road 56 and eight homes and private property in Eagle Lake. There will be typical construction impacts to vegetation in the project area or adjacent to the pipeline. There will also be impacts on groundwater and drainage in the area of any bore or cut. The pipelines will not be able to be installed solely within County public right-of-way. This will necessitate acquisition of private property which may result in eminent domain proceedings. Neighbors are unclear as to whether Thornton will acquire their property as an easement or as a fee interest. There are rattlesnakes in the area of the proposed CR 56 Route. These snakes will likely be driven into adjacent subdivisions as a result of construction. Noise and visual impacts from the pumphouse are of concern. Well established trees exist along the east side of Reservoir 4. These trees will be lost or their health threatened as a result of construction. These impacts will significantly impair residents' quality of life and use of their properties.

The Douglas Road route would require an unreasonably lengthy construction cycle, up to four years, which neighbors of the route testified would cause significant disruption to their homes and daily lives. Traffic detours along this route would funnel additional traffic to some intersections that are already overburdened. The added detour traffic would further degrade the function of these intersections to an unacceptable level.

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The CR 56 route would have less impact on traffic because current volumes are much lower than Douglas Road. However, the CR 56 route will have a greater detrimental impact on private property because less public right of way is available. Also, as the pipeline moves north from Reservoir No. 4, the Braidwood Neighborhood and Eagle Lake neighborhoods will suffer significant disruption to private property. Further along this route, a private property will be bisected by the pipeline between the house and the barn. The sheer size and uncertainty of the proposed 500' to ¼ mile wide corridor prevents the Board and private property owners from reasonably considering all impacts. This uncertainty is, in itself, a significant impact of this project.

The particular impacts on the Braidwood and Eagle Lake neighborhoods could potentially be mitigated through use of a lake tap to tunnel the pipeline under certain reservoirs, but Thornton did not propose this as an available mitigation option. Robin Dornfest, an engineer with Lithos Engineering, was hired as a consultant to Larimer County and concluded lake taps, while more expensive and having certain risks, are feasible for Thornton's project and are increasingly more common for water conveyance projects in Colorado and across the United States.

Thornton's application addresses a single 48" water pipeline, however, two additional pipelines are part of Thornton's overall project plan. Thornton acknowledges the full extent of its project, which includes three phases with one pipeline per phase. Thornton believes its current 48" pipeline, phase I, is all that is relevant now. The problem with this approach is it does not account for cumulative impacts of the project as a whole. Thornton has a specific plan that includes three water pipelines in Larimer County that will collectively operate as a single water supply system. A purpose of Larimer County's 1041 permit process is to consider the broad impacts of public projects, and this purpose is also reflected in 1041 state statutes. By presenting phase I in isolation, Thornton deprives the Board and public of the opportunity to consider cumulative impacts and the effectiveness of mitigation. A route that may be appropriate for a single pipeline may be inappropriate for additional pipelines. If this information is not considered now, future pipelines may not be able to co-locate which would result in the disorderly development of Thornton's project and compound the impacts on Larimer County through multiple different pipelines in separate locations. An important factor in Thornton preferring the CR 56 route over the previously preferred Douglas Road route is that Douglas Road may be insufficient for co-location of multiple pipelines. This does not mean Douglas Road could not be a viable route, but consideration of the adverse impacts and a balancing of those impacts with benefits must be performed.

v. *The proposal will not adversely affect any sites and structures listed on the State or National Registers of Historic Places.*

**Met.**

R006836

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The environmental analysis includes a review of all known and designated historic structures or places within the proposed alignments. There are not historic structures known to exist along or in the alignment of this pipeline that would be negatively affected by the construction of these facilities.

vi. The proposal will not negatively impact public health and safety.

**Not Met.**

Residents adjacent to Douglas Road spoke of safety concerns related to limited access from their neighborhoods which could delay emergency services. Other residents spoke of concerns arising from strangers on their property during both initial construction and future monitoring.

vii. The proposal will not be subject to significant risk from natural hazards including floods, wildfire or geologic hazards.

**Met.**

The preferred alignment has mitigated any risks principally by avoidance, or there are no risk factors associated with the preferred alignment.

viii. Adequate public facilities and services are available for the proposal or will be provided by the applicant, and the proposal will not have a significant adverse effect on the capability of local government to provide services or exceed the capacity of service delivery systems.

**Met.**

Thornton presented evidence showing it has the physical and financial capability to carry out and complete the project. The project will not impair Larimer County's ability to provide needed governmental services.

ix. The applicant will mitigate any construction impacts to county roads, bridges and related facilities. Construction access will be re-graded and re-vegetated to minimize environmental impacts.

**Met.**

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Thornton has represented it will mitigate construction impacts to County roads, bridges and related facilities and that construction access will be re-graded and re-vegetated to minimize environmental impacts. Notwithstanding these representations, construction will significantly inconvenience and disrupt citizens.

**Met.**

x. *The benefits of the proposed development outweigh the losses of any natural resources or reduction of productivity of agricultural lands as a result of the proposed development.*

**Not met.**

Thornton's proposal will cause significant reduction in the productivity of agricultural lands within Larimer County. The benefits of Thornton's proposal are also significant, as clean and sufficient water supply is of critical importance. At this time, the Board finds the significant detrimental impact to agricultural productivity in Larimer County outweighs the benefits of Thornton's current proposal. Additional mitigation may help Thornton satisfy this criterion, but the current proposal falls short.

As part of Thornton's acquisition of water rights in Larimer County in the 1980's, Thornton bought approximately 21,000 agricultural acres on which its water rights were historically used for irrigation. Over time, Thornton has dried up some of the irrigated acreage to meet the needs of its growing population, leaving approximately 53% of its acreage in irrigated agriculture production in 2018. Thornton's proposal is designed to convey more of Thornton's water from these remaining irrigated acres to residents in Thornton, resulting in the irrigated farms being dried up and converting to dryland grasses. The shift of irrigated farmland to dryland grass will significantly reduce the agricultural productivity of those lands and will, unless sufficiently mitigated, jeopardize the long-term viability of the agricultural segment of Larimer County from an economic, cultural and social perspective.

Thornton's proposal considers any agricultural impacts to be temporary- the Board disagrees. The conversion of irrigated agricultural land to dryland grasses is not temporary and the resulting reduction in productivity of such lands is lasting. It appears Thornton's focus has been on physical impacts on agricultural lands caused by construction activity, but the Board's considerations go beyond those temporary impacts.

xi. *The proposal demonstrates a reasonable balance between the costs to the applicant to mitigate significant adverse affects and the benefits achieved by such mitigation.*

**Not met.**

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Thornton has stated that certain functions related to other alternatives will be cost prohibitive and/or result in degradation in the quality of water. The Board is not convinced that the costs associated with an improved alignment or associated adverse impacts with such alignment will outweigh the benefits to Thornton of receiving water of sufficient quality and quantity. Thornton is currently treating water downstream of the Denver Metro area from the Platte River by ultra filtration, a 50-million gallon/day plant (the Wes Brown Water Treatment Plant. The Board finds there would be less degradation of the water through Fort Collins than through the Denver metro area.

The Board further finds that other alternative routes may result in fewer adverse impacts to the County which would reduce or equal the costs of mitigating impacts to the CR 56 Route or Douglas Road Route.

*xii. The recommendations of staff and referral agencies have been addressed to the satisfaction of the county commissioners.*

**Met.**

In large part the agency referral comments are directed to the need for Thornton to obtain additional permits, permissions and coordination. There is no evidence that Thornton will not seek all necessary permits and permissions and coordinate as needed at the relevant time.

2. The Board is cognizant that it may not deny Thornton the use and benefit of its water rights and that the Board's authority is limited to approving the siting and development of pipelines. The Board is not yet convinced, however, that the two proposed routes for the pipelines and the location for the pump house are the only and/or best and least impactful and that other routes are not viable.

**V. Resolution**

WHEREAS, the Board of County Commissioners has made its findings upon the petition and upon the recommendation of the Larimer County Planning Commission, which findings precede this Resolution, and by reference are incorporated herein and made a part hereof; and

WHEREAS, the Board of County Commissioners has carefully considered the petition, evidence and testimony presented to it, and has given the same such weight as it in its discretion deems proper, and is now fully advised in the premises;

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NOW, THEREFORE, BE IT RESOLVED that the petition of the City of Thornton for approval of a 1041 permit to allow a 26 mile 48-inch diameter waterline, pumping facility and other appurtenant facilities for the Douglas Road Route and the County Road 56 Route be and the same hereby is denied.

Commissioners Johnson, Donnelly and Kefalas voted in favor of the Findings and Resolution, and the same were duly adopted.

DATED this 19<sup>th</sup> day of March, 2019.

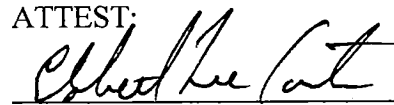
BOARD OF COMMISSIONERS OF  
LARIMER COUNTY, COLORADO

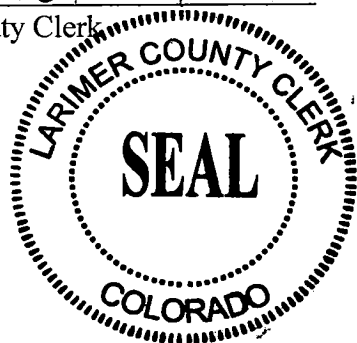
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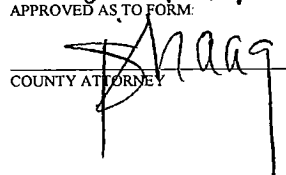
  
Chair

(SEAL)

ATTEST:

  
Deputy Clerk



DATE: 3 14 19  
APPROVED AS TO FORM:  
  
COUNTY ATTORNEY

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PERSONS:

Please take notice that on Monday, July 9, 2018, at 6:30 pm, the Larimer County Board of County Commissioners will hold a public hearing in the Hearing Room of the Larimer County Courthouse Offices, 200 West Oak, Fort Collins, Colorado, concerning the following:

Applicant: City of Thornton Water Project

Request: To locate and construct a raw water pipeline and appurtenant facilities including pump stations and storage tanks. The pipeline commences north of Fort Collins at WS&S reservoir #4 following along the alignment of Douglas Road to CR 9/Turnberry Rd. thence north to CR 56 thence east to the County line to a water tank thence south along the county line to the Weld County through Timnath, Windsor and Johnstown.

Property Description: A pipeline route commencing at Water Storage and Supply reservoir # 4 proceeding east along the Douglas Road alignment to CR 9 north to CR 56 East to the Larimer County Line thence south along the County line to the Weld County line at Johnstown.

File Name/Number: Thornton Water Project 1041, 18-ZONE2305

The File and relevant documents may be examined in the Office of Planning Services of the County of Larimer at the Larimer County Courthouse, Fort Collins, Colorado during regular business hours.

**EXHIBIT "A"**

R006841

Thornton Water Project

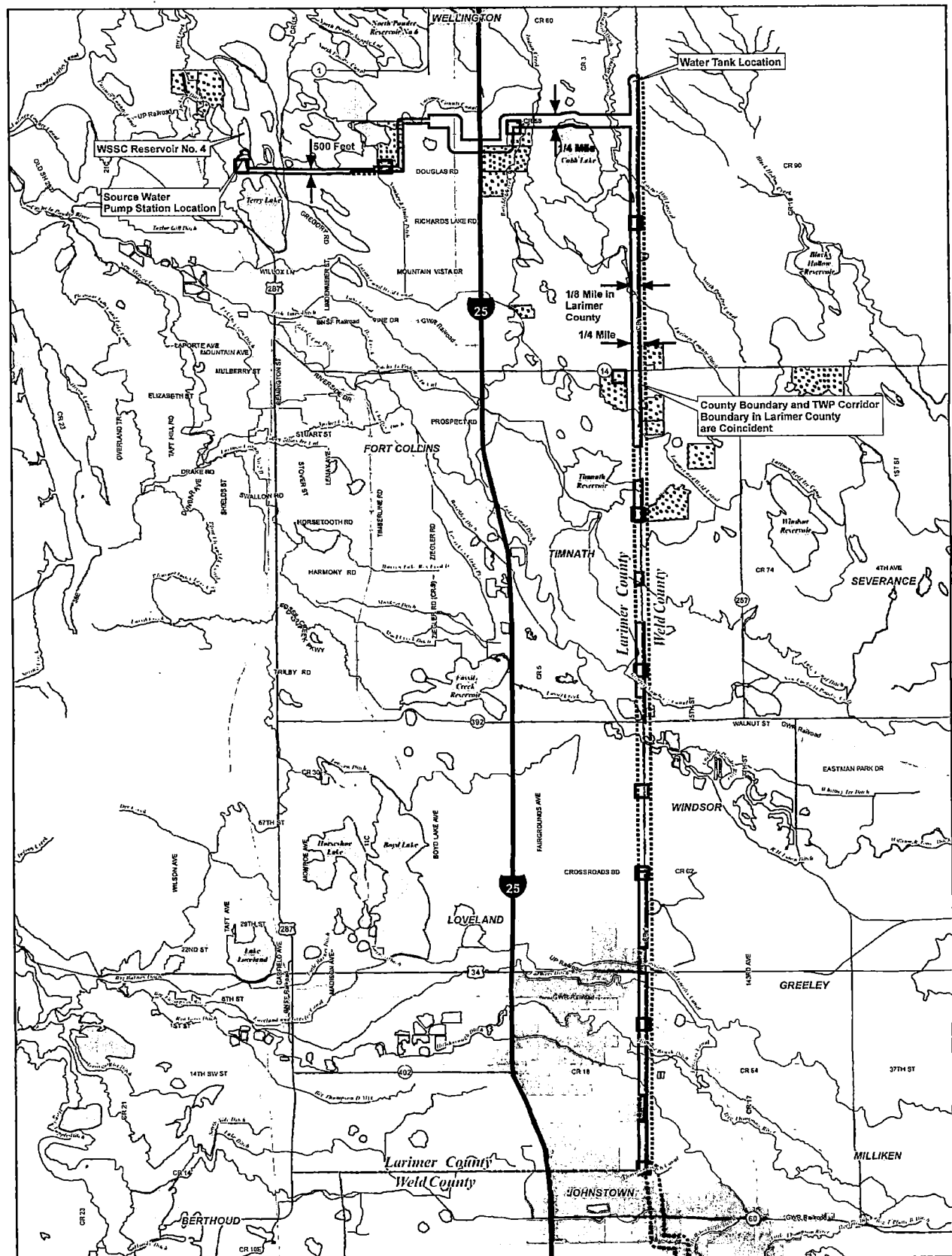


EXHIBIT "B"

**CITY OF THORNTON COLORADO**

12450 WASHINGTON ST  
 THORNTON, CO 80241-2405

12/29/2017

1 inch = 1.8 miles

0 0.9 1.8 Miles

<ul style="list-style-type: none"> <li><span style="display: inline-block; width: 15px; height: 10px; border: 1px solid black; margin-right: 5px;"></span> TWP Corridor in Unincorporated Larimer County</li> <li><span style="display: inline-block; width: 15px; border-bottom: 1px dashed black; margin-right: 5px;"></span> TWP Corridor outside Unincorporated Larimer County</li> <li><span style="display: inline-block; width: 15px; border-bottom: 1px solid black; margin-right: 5px;"></span> Railroad</li> <li><span style="display: inline-block; width: 15px; height: 10px; border: 1px solid black; margin-right: 5px;"></span> Thornton Farm</li> <li><span style="display: inline-block; width: 15px; border-bottom: 1px solid black; margin-right: 5px;"></span> County Boundary</li> <li><span style="display: inline-block; width: 15px; height: 10px; border: 1px solid black; margin-right: 5px;"></span> Lake/Reservoir</li> <li><span style="display: inline-block; width: 15px; border-bottom: 1px solid black; margin-right: 5px;"></span> River/Stream/Canal/Ditch</li> <li><span style="display: inline-block; width: 15px; height: 10px; border: 1px solid black; margin-right: 5px;"></span> Potential Staging Area</li> </ul>	<p><b>Boundaries Crossed by the Proposed Corridor</b></p> <table border="0"> <tr> <td>Corporate Boundary</td> <td>GMA Boundary</td> </tr> <tr> <td>Fort Collins</td> <td>Fort Collins</td> </tr> <tr> <td>Johnstown</td> <td>Johnstown</td> </tr> <tr> <td>Loveland</td> <td>Loveland</td> </tr> <tr> <td>Timnath</td> <td>Timnath</td> </tr> <tr> <td>Wellington</td> <td>Wellington</td> </tr> <tr> <td>Windsor</td> <td>Windsor</td> </tr> </table>	Corporate Boundary	GMA Boundary	Fort Collins	Fort Collins	Johnstown	Johnstown	Loveland	Loveland	Timnath	Timnath	Wellington	Wellington	Windsor	Windsor
Corporate Boundary	GMA Boundary														
Fort Collins	Fort Collins														
Johnstown	Johnstown														
Loveland	Loveland														
Timnath	Timnath														
Wellington	Wellington														
Windsor	Windsor														

**Figure 2.a-1 TWP Corridor Map**

Source: City of Thornton, Larimer County, Weld County, CODOT, City of Thornton





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**FINDINGS AND RESOLUTION DENYING  
THE THORNTON WATER PROJECT 1041 PERMIT**

The Petition of the City of Thornton for approval to allow 26 miles of 48-inch waterline, pumping facility and other appurtenant facilities in the location initially described on Exhibit "A" attached hereto has been filed with the Board of County Commissioners of the County of Larimer.

The Planning Commission reviewed the proposed 1041 permit on May 16, 2018 and having duly considered the same recommended that it be denied.

On July 9, 2018, July 23, 2018, August 1, 2018, December 17, 2018, January 28, 2019, February 4, 2019 and February 11, 2019, in the County Board Hearing Room of the Larimer County Courthouse, Fort Collins, Colorado, the Board of County Commissioners conducted public hearings on the 1041 Permit Application. The Board of County Commissioners, having heard the testimony and evidence adduced at said hearing and having considered and carefully weighed the same, now makes the following findings:

**I. Notice and Property**

1. The 1041 Permit request upon the route described on Exhibit "A" was advertised in a local newspaper of general circulation.

2. Written notice of the initial hearing was delivered or mailed, first class, postage prepaid, to landowners within 500 feet of the proposal.

3. The general characteristics of the property are as follows:

- a. Location: New water line easement and construction along approximately 26 miles in the County in new easements of 50 feet, and/or in existing ROW
- b. Area: New water line easement and construction along approximately 26 miles in the County in new easements of 50 feet, and/or in existing ROW
- c. Proposed Land Use: 48-inch waterline, pump station, 1 MG tank and appurtenant facilities
- d. Existing Zoning: Various
- e. Adjacent Zoning: Various
- f. Adjacent Land Uses: Residential, agricultural
- g. Services:
  - Access: County Roads 54, 56 & Larimer  
County Road 1/Weld County Road 13
  - Water: N/A
  - Sewer: N/A
  - Fire Protection: Several authorities
- h. No. Trips Generated by Use: Construction activity

**\*Re-recorded to correct Exhibits**

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**II. Nature of the Application**

1. C.R.S. Sections 24-65.1-101 *et seq.* titled Areas and Activities of State Interest was adopted by the Colorado General Assembly in 1974 and is generally referred to as "1041 powers." This statute provides:

(2) It is the purpose of this article that:

(a) The general assembly shall describe areas which may be of state interest and activities which may be of state interest and establish criteria for the administration of such areas and activities;

(b) Local governments shall be encouraged to designate areas and activities of state interest and, after such designation, shall administer such areas and activities of state interest and promulgate guidelines for the administration thereof; and

(c) Appropriate state agencies shall assist local governments to identify, designate, and adopt guidelines for administration of matters of state interest.

C.R.S. Section 24-65.1-204, Colorado Revised Statutes, states components of water facilities "shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water systems...of adjacent communities;" and "emphasize the most efficient use of water...including recycling and reuse of water."

2. As authorized by this statute, Larimer County adopted 1041 regulations in 2008. (Larimer County Land Use Code (LUC), Chapter 14 attached as Exhibit B). Among the areas and activities regulated by Larimer County are transmission pipelines:

Siting and development of new or extended domestic water or sewer transmission lines which are contained within new permanent easements greater than 30 feet or within new permanent easements greater than 20 feet that are adjacent to existing easements. Domestic water transmission lines include those used to transport both raw and treated water. This designation shall not include the maintenance, repair, adjustment or removal of an existing pipeline or the relocation, replacement or enlargement of an existing pipeline within the same easement or right-of-way, provided no additional permanent property acquisitions are required. The designation shall also not include the addition,

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replacement, expansion or maintenance of appurtenant facilities on existing pipelines. LUC 14:4 (J).

3. In the 1980's the City of Thornton, Colorado, (Thornton) purchased farms and water rights in Larimer County and other counties for municipal purposes, including provision of drinking water to the residents of the City. To further this purpose, Thornton pursued court proceedings in District Court Water Division No. 1, State of Colorado, Consolidated Cases Nos. 86CW401, 86CW402, 86CW403, and 87CW332, and ultimately obtained a decree dated March 9, 1998. This decree imposed on Thornton a number of conditions and restrictions for use of the water rights.

4. The City of Thornton now seeks approval of a 1041 permit for the construction of a 48-inch diameter water line, a 40 million gallon per day pumping facility, one million gallon above-ground water tank and other appurtenant facilities.

### **III. Procedural History**

1. 2014-May 2016: Thornton begins preliminary discussions with County Community Development, Engineering and Health Department staff about its proposed pipeline project, including possible alignments and corridors.

2. May 2016: A pre-application conference for a 1041 permit is held with Thornton and County staff. Public outreach through a series of mailings and open houses begins in late 2016 and continues through 2017.

At the time of the pre-application conference and during the initial development of alternatives the location of public facilities such as this are not contemplated to be located within a County Right of Way (ROW). At some of the early public meetings there is significant concern about proposed alignments through subdivisions. As a result, County staff meets with Thornton and its consultants and encourages them to review multiple alternatives in the western most area of the proposed corridor (the Douglas Road Corridor). At that time County staff also indicates that alignment in the existing ROW will be considered. In the case of Douglas Road there are sections which are designated on the Transportation Master Plan for future improvement. Although, no plans for improvements to this section of road are contemplated in the near term, if those plans change and improvements are scheduled to be made earlier, Thornton will need to coordinate its work in the ROW with Larimer County.

In the "Douglas Road Corridor" (CR17-Turnberry) the original alignment identifies a ¼ mile. This is subsequently reduced to a 500-foot-wide corridor. This creates a significant concern for many property owners in the area--specifically, that their homes, improvements and/or landscaping will be at risk with the final easements and construction.

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For the balance of the segments, the alignment is still 500 feet to ¼ mile in width. The intent is to allow for easement negotiation which would avoid property conflict and not require revisiting the application. There may be locations which will require or necessitate the use of roadway ROW.

3. January 5, 2018: Thornton submits its application for 1041 approval of water conveyance pipelines and a pump house. The application is initially scheduled for hearing with the Larimer County Planning Commission in February and March 2018. However, the hearings are postponed to allow additional information requested by the County to be developed and submitted by Thornton. That additional information specifically relates to the proposed alignment in Douglas Road.

4. May 16, 2018: The Planning Commission holds a public hearing to consider Thornton's application. At the conclusion of the hearing the Commission votes 4-2 to deny the application. The Commission's decision and a summary of the information presented was set out in the Commission's minutes.

5. July 8, and 23, and August 1, 2018: The Board holds public hearings to consider Thornton's application. Thornton identifies its proposed route and/or corridor for its pipelines and location of a pump station. The proposed locations are shown on Exhibit C (referred to as the Douglas Road Route). Thornton testifies why the proposed project meets the applicable review criteria. Many area residents appear and testify in opposition to the project. Residents, including owners of properties south of Douglas Road, assert Thornton had no to minimal outreach or notice to them and they had little or no opportunity for input into the project in advance of the hearings. Citizens further testify that negative impacts from the project, including impacts of construction on area properties and landscaping, limitations on the future use of property, restricted and limited access for them and for emergency and school buses, and unwanted and unneeded improvements to Douglas Road are untenable. Citizens opine that the project fails to meet the County's 1041 review standards, including standards 2, 4, 8 and 9.

The Board makes initial verbal findings that Thornton has inadequately engaged the public in an effort to reach a preferred alternative and address adverse impacts from the project, that the Douglas Road route brings with it many adverse impacts as described by citizens, and that insufficient information has been presented as to alternative routes (including routes initially presented to the Thornton City Council), the pros and cons of other routes and why the other routes are not viable. In lieu of denying Thornton's application, the Board elects to continue the hearing to December 17, 2018 and directs Thornton to engage in a public outreach process to better address area residents' concerns and to present alternative project routes at the December hearing.

6. August through November 2018: A working group (Group) is formed to examine the project. A public engagement webpage ([larimerwaterprojects.org](http://larimerwaterprojects.org)) is also created and two

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public meetings are held. The Group reviews possible alignments. Matters discussed by the Group include alternative alignments for the pipelines. The Group also questions the legal and practical feasibility of using the Poudre River and canals for conveyance of the water. About half of the Group advocate for an alignment that would require Thornton to use the Poudre River in lieu of pipes to convey the water for a portion of the project.

7. December 10, 2018: Thornton submits Supplement 3 to the Application. The route for the pipeline is now proposed to be from Reservoir 4 to a pump station north of Douglas Road, then north to the southeast corner of the Braidwood community following optional routes along the west shore of Reservoir #4 or Lake Vista Drive to Travis Road, then north to the dam for Reservoir 3, then east to the east shoreline of Reservoir 3 to the north edge of the Eagle Lake subdivision, then east to Highway 1, then south east to CR 56 then following the ROW for CR 56 to I-25. The proposed location is shown on Exhibit D (referred to as the County Road (CR) 56 Route). Thornton states that this route is a 500 foot wide corridor anywhere within which the pipes will potentially be laid. The location for the pumphouse remains the same.

8. December 17, 2018, January 28, 2019, February 4, 2019 and February 11, 2019: The Board holds public hearings to consider Thornton's Supplemental Application. (The Board also considers Thornton's additional supplemental materials entitled "City of Thornton Rebuttal Statement(s)"). After considering all information provided by Thornton and the public, the Board votes to deny Thornton's application.

#### **IV. Standards of Review and Findings**

1. In order to approve a 1041 application, the Board must find that Thornton has met each of the twelve review criteria set out in LUC 14:10 (B) and (D)(1-12). The Board finds that Thornton has or has not met each of the twelve review criteria as follows:

i. *The proposal is consistent with the master plan and applicable intergovernmental agreements affecting land use and development.*

**Not met.**

The Larimer County Master Plan (Master Plan) is a policy document that establishes goals, visions and a long-range framework for the unincorporated area of Larimer County. The Master Plan identifies as one of its missions: "Larimer County is developing the Partnership Land Use System to maintain and enhance our county's quality of life and to be fundamentally fair to all our citizens and to respect their individual rights.

The Master Plan has many themes and principles implicated by Thornton's application, including:

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- a. Natural and cultural resources shall be identified, conserved and protected, and long-term cumulative impacts shall be monitored;
- b. Agriculture will remain a viable long-term segment of Larimer County's economic, cultural and social fabric;
- c. Logical settlement patterns that reflect the existing character of Larimer County and protect existing neighborhoods will be supported;
- d. The planning and development review process shall be fair, open and predictable, and meet the needs and interest of the community without infringing on the rights of individuals.
- e. Agriculture shall be recognized as an important economic, cultural and environmental resource value-provider for the County;
- f. Agricultural land and water in Larimer County shall be protected through incentives, voluntary participation and measures to strengthen viable agriculture.

Thornton's proposed pipeline route is a yet-to-be-determined location within a 500 foot to ¼ mile wide corridor. The Board's ability to assess specific impacts to private property along the route is unreasonably limited because of the breadth of the corridor. Testimony was provided about the pipeline potentially splitting a private property in two, going through front or backyards, and traversing through significant amounts of private property.

The CR 56 route will have "[m]ost of the alignment . . . constructed in private easements . . . ." Unless an owner is willing to sell his/her private property to Thornton, Thornton will be required to acquire the property by eminent domain—a process generally disfavored by property owners.

Within these private easements, Thornton has noted that property owners will not be permitted to construct permanent structures or other improvements or install landscaping with deep roots that may interfere with the pipeline and its future maintenance. Testimony from private property owners along potential pipeline routes expressed concern about short-term construction impacts in addition to long-term impacts from maintenance crews on private property. One citizen noted concern about her children being exposed to strangers and equipment on her private property.

Thornton's water currently flows through the Water Supply and Storage Company (WSSC) canal system and is used to irrigate farms in Larimer County. Thornton owns approximately 47% of the water shares in the WSSC. Much of the remaining water in WSSC is also owned by municipalities, and WSSC expects that most of the water will be removed from farms in Larimer County in the future. While the fate of Thornton's application does not rest on

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how other municipalities use their water in the future, the Board finds it important to have information about and consider the cumulative impacts of irrigated farmland turning to dryland. A significant reduction in the amount of irrigated farmland is concerning to the Board and conflicts with the goals of the Master Plan. The long-term viability of Larimer County's agricultural communities, and the economic, cultural and environmental impacts of drying up irrigated farmland are valid considerations under the Master Plan. As these impacts are not adequately described or analyzed by Thornton, the Board cannot conclude that Thornton's proposal is consistent with the Master Plan.

*ii The applicant has presented reasonable siting and design alternatives or explained why no reasonable alternatives are available.*

**Not met.**

Prior to applying for a 1041 permit from Larimer County, Thornton considered and presented to its council, a number of possible alternatives for conveyance of its water. Several of the pipeline routes had water being withdrawn from Reservoir 4 and proceeding east to the County line, then south through several corridors east and west of I-25, as well as the possibility of withdrawing water from other points along the Cache La Poudre River including as far as Windsor.

In its initial application materials, Thornton discussed its broad analysis of alternatives to convey the water to the City. These were then refined based on conversations with all of the affected jurisdictions to three generalized corridors all which commenced at Water Supply and Storage Reservoir 4 (WSS 4) thence east to the Weld Larimer County line thence south following alignments proceeding south to the City. Thornton defined three distinct corridors to review. Thornton examined the three alternatives from which the Douglas Road Route was chosen and presented to the Board. The Board was not convinced that this Route was the best option. Douglas Road is a high traffic generator. For some adjacent residential subdivisions, Douglas Road serves as the only access out of the subdivision. The Thornton project would take approximately 2-5 years to complete during which traffic would have to be diverted causing considerable inconvenience to area residents. There were no guarantees that the pipeline construction would remain within the right-of-way. Additionally, there would be safety and emergency access conflicts during construction. Area residents opposed the resulting improvements to Douglas Road (widening it) which they believed would increase traffic and speeds.

Thornton's Supplemental Application was based on the CR 56 Route. This Route was problematic in its imprecision, identifying a 500-foot corridor in some places where the pipeline might ultimately be installed. The corridor of 500' to ¼ mile in width prevents meaningful evaluation of the two alternatives presented. Impacts can vary

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significantly depending where within this corridor the pipeline is actually located, and at a minimum Thornton should identify where the 50' wide permanent pipeline easement will be located. Without this level of specificity, the siting alternatives proposed by Thornton are not reasonable and cannot be sufficiently evaluated by the Board.

With respect to design, Thornton identified the use of tunneling rather than open-ditch construction as the primary method of installation and proposes to bore under certain sensitive areas. Some alternative design options were mentioned, such as lake taps to avoid private property and other construction disruptions, but were not presented as design alternatives.

The Board finds Thornton failed to present reasonable siting alternatives. Thornton self-selected two routes and then summarily concluded other possible alternatives (including those presented to the Thornton City Council) were not feasible. At the August 1, 2018 hearing, the Board specifically mentioned interest in the Shields Street alternative. Options vetted and rejected by Thornton have positive attributes which, in combination with the two alternatives presented, could lead to a route that satisfies the approval criteria by better mitigating adverse impacts and ensuring the orderly and efficient development of Thornton's water pipeline.

*iii. The proposal conforms with adopted county standards, review criteria and mitigation requirements concerning environmental impacts, including but not limited to those contained in Section 8 of this Code.*

**Not met.**

**8.2. Wetland Areas:**

Thornton proposes to bore under all designated wetland areas. Wetland areas that are affected by the proposal are non-jurisdictional. A Nationwide Permit from the Army Corps of Engineers may be required for the City to confirm that no jurisdictional wetland areas are affected by construction.

**8.3. Hazard Areas:**

There are hazard areas, flood plains on the Poudre and Big Thompson Rivers and Boxelder Creek identified along the preferred route. The City of Thornton proposes to bore under these river corridors.

**8.4. Wildlife:**

Thornton's environmental analysis for the preferred route identifies that there were possible conflicts with wildlife both listed and other species of concern, including disruption of nesting birds. The Board is not convinced that mitigation, including avoidance, seasonal limitations or prohibitions on activities is adequate.

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**8.8. Irrigation Facilities:**

There are multiple irrigation ditches which will need to be bored or cut with this proposal. Thornton may be required to obtain agreements or licenses associated with this activity. The Board would seek alternative alignments that eliminate or reduce impacts on irrigation ditches.

**8.11. Air Quality Standards:**

Given the potential disturbed area of this request, an Air Quality permit will be necessary which permitting will require compliance with the standards.

**8.12. Water Quality Management Standards:**

Thornton will need to obtain a storm water quality permit for the construction impacts.

*iv. The proposal will not have a significant adverse affect on or will adequately mitigate significant adverse affects on the land on which the proposal is situated and on lands adjacent to the proposal.*

**Not Met.**

Portions of Thornton's proposed routes are in areas with significant residential development. There will be adverse impacts to thirty-six properties on the east side of Reservoirs 3 and 4. There will be adverse impacts on eight homes and private properties along County Road 56 and eight homes and private property in Eagle Lake. There will be typical construction impacts to vegetation in the project area or adjacent to the pipeline. There will also be impacts on groundwater and drainage in the area of any bore or cut. The pipelines will not be able to be installed solely within County public right-of-way. This will necessitate acquisition of private property which may result in eminent domain proceedings. Neighbors are unclear as to whether Thornton will acquire their property as an easement or as a fee interest. There are rattlesnakes in the area of the proposed CR 56 Route. These snakes will likely be driven into adjacent subdivisions as a result of construction. Noise and visual impacts from the pumphouse are of concern. Well established trees exist along the east side of Reservoir 4. These trees will be lost or their health threatened as a result of construction. These impacts will significantly impair residents' quality of life and use of their properties.

The Douglas Road route would require an unreasonably lengthy construction cycle, up to four years, which neighbors of the route testified would cause significant disruption to their homes and daily lives. Traffic detours along this route would funnel additional traffic to some intersections that are already overburdened. The added detour traffic would further degrade the function of these intersections to an unacceptable level.

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The CR 56 route would have less impact on traffic because current volumes are much lower than Douglas Road. However, the CR 56 route will have a greater detrimental impact on private property because less public right of way is available. Also, as the pipeline moves north from Reservoir No. 4, the Braidwood Neighborhood and Eagle Lake neighborhoods will suffer significant disruption to private property. Further along this route, a private property will be bisected by the pipeline between the house and the barn. The sheer size and uncertainty of the proposed 500' to ¼ mile wide corridor prevents the Board and private property owners from reasonably considering all impacts. This uncertainty is, in itself, a significant impact of this project.

The particular impacts on the Braidwood and Eagle Lake neighborhoods could potentially be mitigated through use of a lake tap to tunnel the pipeline under certain reservoirs, but Thornton did not propose this as an available mitigation option. Robin Dornfest, an engineer with Lithos Engineering, was hired as a consultant to Larimer County and concluded lake taps, while more expensive and having certain risks, are feasible for Thornton's project and are increasingly more common for water conveyance projects in Colorado and across the United States.

Thornton's application addresses a single 48" water pipeline, however, two additional pipelines are part of Thornton's overall project plan. Thornton acknowledges the full extent of its project, which includes three phases with one pipeline per phase. Thornton believes its current 48" pipeline, phase I, is all that is relevant now. The problem with this approach is it does not account for cumulative impacts of the project as a whole. Thornton has a specific plan that includes three water pipelines in Larimer County that will collectively operate as a single water supply system. A purpose of Larimer County's 1041 permit process is to consider the broad impacts of public projects, and this purpose is also reflected in 1041 state statutes. By presenting phase I in isolation, Thornton deprives the Board and public of the opportunity to consider cumulative impacts and the effectiveness of mitigation. A route that may be appropriate for a single pipeline may be inappropriate for additional pipelines. If this information is not considered now, future pipelines may not be able to co-locate which would result in the disorderly development of Thornton's project and compound the impacts on Larimer County through multiple different pipelines in separate locations. An important factor in Thornton preferring the CR 56 route over the previously preferred Douglas Road route is that Douglas Road may be insufficient for co-location of multiple pipelines. This does not mean Douglas Road could not be a viable route, but consideration of the adverse impacts and a balancing of those impacts with benefits must be performed.

v. *The proposal will not adversely affect any sites and structures listed on the State or National Registers of Historic Places.*

Met.

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The environmental analysis includes a review of all known and designated historic structures or places within the proposed alignments. There are not historic structures known to exist along or in the alignment of this pipeline that would be negatively affected by the construction of these facilities.

vi. The proposal will not negatively impact public health and safety.

**Not Met.**

Residents adjacent to Douglas Road spoke of safety concerns related to limited access from their neighborhoods which could delay emergency services. Other residents spoke of concerns arising from strangers on their property during both initial construction and future monitoring.

vii. The proposal will not be subject to significant risk from natural hazards including floods, wildfire or geologic hazards.

**Met.**

The preferred alignment has mitigated any risks principally by avoidance, or there are no risk factors associated with the preferred alignment.

viii. Adequate public facilities and services are available for the proposal or will be provided by the applicant, and the proposal will not have a significant adverse effect on the capability of local government to provide services or exceed the capacity of service delivery systems.

**Met.**

Thornton presented evidence showing it has the physical and financial capability to carry out and complete the project. The project will not impair Larimer County's ability to provide needed governmental services.

ix. The applicant will mitigate any construction impacts to county roads, bridges and related facilities. Construction access will be re-graded and re-vegetated to minimize environmental impacts.

**Met.**

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Thornton has represented it will mitigate construction impacts to County roads, bridges and related facilities and that construction access will be re-graded and re-vegetated to minimize environmental impacts. Notwithstanding these representations, construction will significantly inconvenience and disrupt citizens.

**Met.**

x. *The benefits of the proposed development outweigh the losses of any natural resources or reduction of productivity of agricultural lands as a result of the proposed development.*

**Not met.**

Thornton's proposal will cause significant reduction in the productivity of agricultural lands within Larimer County. The benefits of Thornton's proposal are also significant, as clean and sufficient water supply is of critical importance. At this time, the Board finds the significant detrimental impact to agricultural productivity in Larimer County outweighs the benefits of Thornton's current proposal. Additional mitigation may help Thornton satisfy this criterion, but the current proposal falls short.

As part of Thornton's acquisition of water rights in Larimer County in the 1980's, Thornton bought approximately 21,000 agricultural acres on which its water rights were historically used for irrigation. Over time, Thornton has dried up some of the irrigated acreage to meet the needs of its growing population, leaving approximately 53% of its acreage in irrigated agriculture production in 2018. Thornton's proposal is designed to convey more of Thornton's water from these remaining irrigated acres to residents in Thornton, resulting in the irrigated farms being dried up and converting to dryland grasses. The shift of irrigated farmland to dryland grass will significantly reduce the agricultural productivity of those lands and will, unless sufficiently mitigated, jeopardize the long-term viability of the agricultural segment of Larimer County from an economic, cultural and social perspective.

Thornton's proposal considers any agricultural impacts to be temporary- the Board disagrees. The conversion of irrigated agricultural land to dryland grasses is not temporary and the resulting reduction in productivity of such lands is lasting. It appears Thornton's focus has been on physical impacts on agricultural lands caused by construction activity, but the Board's considerations go beyond those temporary impacts.

xi. *The proposal demonstrates a reasonable balance between the costs to the applicant to mitigate significant adverse affects and the benefits achieved by such mitigation.*

**Not met.**

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Thornton has stated that certain functions related to other alternatives will be cost prohibitive and/or result in degradation in the quality of water. The Board is not convinced that the costs associated with an improved alignment or associated adverse impacts with such alignment will outweigh the benefits to Thornton of receiving water of sufficient quality and quantity. Thornton is currently treating water downstream of the Denver Metro area from the Platte River by ultra filtration, a 50-million gallon/day plant (the Wes Brown Water Treatment Plant. The Board finds there would be less degradation of the water through Fort Collins than through the Denver metro area.

The Board further finds that other alternative routes may result in fewer adverse impacts to the County which would reduce or equal the costs of mitigating impacts to the CR 56 Route or Douglas Road Route.

*xii. The recommendations of staff and referral agencies have been addressed to the satisfaction of the county commissioners.*

**Met.**

In large part the agency referral comments are directed to the need for Thornton to obtain additional permits, permissions and coordination. There is no evidence that Thornton will not seek all necessary permits and permissions and coordinate as needed at the relevant time.

2. The Board is cognizant that it may not deny Thornton the use and benefit of its water rights and that the Board's authority is limited to approving the siting and development of pipelines. The Board is not yet convinced, however, that the two proposed routes for the pipelines and the location for the pump house are the only and/or best and least impactful and that other routes are not viable.

**V. Resolution**

WHEREAS, the Board of County Commissioners has made its findings upon the petition and upon the recommendation of the Larimer County Planning Commission, which findings precede this Resolution, and by reference are incorporated herein and made a part hereof; and

WHEREAS, the Board of County Commissioners has carefully considered the petition, evidence and testimony presented to it, and has given the same such weight as it in its discretion deems proper, and is now fully advised in the premises;

R006856

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**Findings and Resolution  
Thornton Water Project  
1041 Permit Denial  
Page 14**

NOW, THEREFORE, BE IT RESOLVED that the petition of the City of Thornton for approval of a 1041 permit to allow a 26 mile 48-inch diameter waterline, pumping facility and other appurtenant facilities for the Douglas Road Route and the County Road 56 Route be and the same hereby is denied.

Commissioners Johnson, Donnelly and Kefalas voted in favor of the Findings and Resolution, and the same were duly adopted.

DATED this 19<sup>th</sup> day of March, 2019.

BOARD OF COMMISSIONERS OF  
LARIMER COUNTY, COLORADO

By: \_\_\_\_\_

Chair

(SEAL)

ATTEST:

*Cheryl Lee Cort*  
Deputy Clerk



DATE: 3.14.19  
APPROVED AS TO FORM  
*[Signature]*  
COUNTY ATTORNEY

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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PERSONS:

Please take notice that on Monday, July 9, 2018, at 6:30 pm, the Larimer County Board of County Commissioners will hold a public hearing in the Hearing Room of the Larimer County Courthouse Offices, 200 West Oak, Fort Collins, Colorado, concerning the following:

Applicant: City of Thornton Water Project

Request: To locate and construct a raw water pipeline and appurtenant facilities including pump stations and storage tanks. The pipeline commences north of Fort Collins at WS&S reservoir #4 following along the alignment of Douglas Road to CR 9/Turnberry Rd. thence north to CR 56 thence east to the County line to a water tank thence south along the county line to the Weld County through Timnath, Windsor and Johnstown.

Property Description: A pipeline route commencing at Water Storage and Supply reservoir # 4 proceeding east along the Douglas Road alignment to CR 9 north to CR 56 East to the Larimer County Line thence south along the County line to the Weld County line at Johnstown.

File Name/Number: Thornton Water Project 1041, 18-ZONE2305

The File and relevant documents may be examined in the Office of Planning Services of the County of Larimer at the Larimer County Courthouse, Fort Collins, Colorado during regular business hours.

**EXHIBIT "A"**

R006858



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**14.1. - PURPOSE AND INTENT**

The purpose of this section is to facilitate the identification, designation and regulation of areas or activities of state interest consistent with applicable statutory requirements.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

**14.2. - APPLICABILITY**

These regulations shall apply to all proceedings concerning the designation and regulation of any development in any area of state interest or any activity of state interest which has been or may hereafter be designated by the board of county commissioners, whether located on public or private land.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

**14.3. - DESIGNATION PROCESS FOR MATTERS OF STATE INTEREST**

- A. The board of county commissioners may in its discretion designate and adopt regulations for the administration of any matter of state interest.
- B. *Public hearing required.*
  - 1. The board of county commissioners shall hold a public hearing before designating any matter of state interest and adopting regulations for the administration thereof. No less than 30 calendar days but no more than 60 calendar days before the designation hearing, the board shall publish notice in a newspaper of general circulation in the county.
  - 2. The planning commission shall hold a hearing and provide a recommendation to the board on the proposed designation prior to the board hearing. Notice of any hearing before the planning commission shall be published no less than 14 days before the planning commission hearing date in a newspaper of general circulation in the county.
- C. *Criteria for designations.* At the public hearings(s), the planning commission and board of county commissioners shall consider such evidence as they deem appropriate, including, but not necessarily limited to testimony and documents addressing the following considerations.
  - 1. The intensity of current and foreseeable development pressures.
  - 2. The reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.
  - 3. Applicable policies of the Larimer County Master Plan and any duly adopted intergovernmental agreements affected by the area or activity under consideration.
  - 4. The extent to which other governmental entities regulate the area or activity proposed to be designated.
  - 5. The testimony, evidence and documents taken and admitted at the public hearing.
  - 6. The recommendations of staff and the planning commission.
- D. *Adoption of designation and regulations.*
  - 1. At the conclusion of the hearing, or within 30 days thereafter, the board may, by resolution, adopt, adopt with modification, or reject the proposed designation and accompanying guidelines or regulations.
  - 2. Each designation order adopted by the board shall, at a minimum:
    - a. Specify the activity or area of state interest to be designated;
    - b. Specify the boundaries of the designated area of state interest, if applicable;

**EXHIBIT "B"**

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**R006859**

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- c. State reasons why the designation is appropriate in light of the review criteria considered at the public hearing above section; and
- d. Specify the regulations applicable to the designated matter of state interest.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

#### 14.4. - DESIGNATED MATTERS OF STATE INTEREST

The board of county commissioners, having conducted a public hearing consistent with the requirements of Section 24.65.1-404 C.R.S. and having considered the intensity of current and foreseeable pressures on and within Larimer County; the dangers that would result from uncontrolled conduct of such activity or development in an area of state interest; and the advantages of conduct of such activity in a coordinated manner, does hereby find and declare the following to be matters of state interest. A 1041 permit shall be required prior to any of the following activities, unless specifically exempted.

- A. Siting and development of any electrical power plant with a generating capacity of 50 megawatts or more, or any addition to an existing power plant which increases the existing design capacity by 50 megawatts or more. This designation shall not include use of temporary generators at an existing electrical power plant in an emergency situation.
- B. Conversion of an existing electrical power plant to a new type of fuel or energy, but not including a change from coal to natural gas, and also not including a change in start-up fuel.
- C. Siting and development of a nuclear power plant of any size, or any addition thereto.
- D. Siting and development of a wind power plant in which there are more than three wind towers or where any wind generator tower exceeds a hub height of 80 feet, or any addition thereto increasing the existing design capacity of the facility by ten percent or more or expanding the area of the plant.
- E. Siting of electric transmission lines and appurtenant facilities that are designed to transmit electrical voltages of 69,000 volts or greater, whether erected above ground or placed underground.
- F. Any existing transmission line upgrade that involves expanding an easement or right-of-way or increases the height of transmission structures by more than ten feet.
- G. Siting of an electrical substation or transition site designed to provide switching, voltage transformation or voltage control required for the transmission of electricity at 69,000 volts or greater.
- H. Siting and development of new pipelines designed for transmission of natural gas or other petroleum derivatives of ten inch diameter or larger. This designation shall include appurtenant facilities such as compressor stations, pipe valves and other mechanical controls that are part of the pipeline project. This designation shall not include the maintenance, repair, adjustment or removal of an existing pipeline or the relocation of an existing pipeline within the same easement or right-of-way. The designation shall also not include the addition, replacement, expansion or maintenance of appurtenant facilities on existing pipelines.
- I. Siting and development of new or expanded storage facilities of 50,000 cubic feet or more of natural gas or 35,000 barrels or more of petroleum derivatives.
- J. Siting and development of new or extended domestic water or sewer transmission lines which are contained within new permanent easements greater than 30 feet or within new permanent easements greater than 20 feet that are adjacent to existing easements. Domestic water transmission lines include those used to transport both raw and treated water. This designation shall not include the maintenance, repair, adjustment or removal of an existing pipeline or the relocation, replacement or enlargement of an existing pipeline within the same easement or right-of-way, provided no additional permanent property acquisitions are required. The designation shall also not include the addition, replacement, expansion or maintenance of appurtenant facilities on existing pipelines.
- K. Site selection and construction of a new water storage reservoir or expansion of an existing water storage

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reservoir resulting in a surface area at high water line in excess of 50 acres, natural or manmade, used for the storage, regulation and/or control of water for human consumption or domestic use and excluding a water storage reservoir used exclusively for irrigation. A water storage reservoir shall also include all appurtenant uses, structures and facilities, roads, parks, parking, trails and other uses which are developed as part of the water storage reservoir. This designation shall not include the maintenance and operation of irrigation ditches, canals or laterals nor shall it include the normal maintenance and operation of a reservoir solely used for irrigation or a reservoir serving both irrigation and domestic customers.

- L. Siting and development of any solar energy power plant, including solar energy collectors, power generation facilities, facilities for storing and transforming energy and other appurtenant facilities, that together disturb an area greater than five acres, or any addition thereto that expands the disturbed area. This designation shall not include roof mounted solar systems located on existing permitted principal and accessory buildings.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 08182009R001, Exh. A, 8-18-2009; Res. No. 01192010R004, 12-21-2009; Res. No. 01192010R005, 1-4-2010; Res. No. 08042015R001, § 1, 8-4-2015)

#### 14.5. - EXEMPT DEVELOPMENT ACTIVITIES

- A. *Statutory exemptions.* These regulations shall not apply to any development in an area of state interest or any activity of state interest if any one of the following is true as of May 17, 1974.
1. The specific development or activity was covered by a current building permit issued by the county.
  2. The specific development or activity was directly approved by the electorate of the state or the county, provided that approval by the electorate of any bond issue by itself shall not be construed as approval of the specific development or activity.
  3. The specific development or activity is on land which has been finally approved by the county, with or without conditions, for planned unit development or land use similar to a planned unit development.
  4. The specific development or activity is on land which was either zoned or rezoned in response to an application which contemplated the specific development or activity.
  5. The specific development or activity is on land for which a development plan has been conditionally or finally approved by the county.
- B. *Specific exemptions.* The regulatory provisions of this section shall not apply to any of the following.
1. Any activity which, as of the date of designation as a matter of state interest, meets one of the following criteria.
    - a. The activity is part of a final discretionary county land use approval and protected by a site specific development plan or agreement whose vesting period has not expired.
    - b. The activity has a complete application filed and in process for a discretionary county land use approval, provided the applicant (if a public entity) commits to being bound by any conditions of a final county approval or by denial of the application.
    - c. The specific activity has been acted upon by the planning commission as a location and extent application.
  2. An interstate natural gas utility regulated by the Federal Energy Regulatory Commission or its successor, provided the following requirements and procedures are complied with by the utility whenever site selection and construction of major facilities within Larimer County are proposed:
    - a. Copies of all materials (i.e., environmental impact statement, application for certification of public convenience and necessity) filed with a federal and/or state regulatory agency shall also be filed with the county commissioners within five days;

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- b. Written notice of all scheduled public proceedings before the federal and/or state regulatory agency shall be given by the county commissioners not less than 30 days prior to the proceedings, provided further, however, that if the public agency gives less than 30 days' notice it shall give written notice to the county commissioners within five working days after it is given.
3. A reservoir used exclusively for irrigation is not considered to be a water storage reservoir.
4. An entity that has an approved intergovernmental agreement with the county specific to the project in question, as provided for in Section 14.8 below.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 08182009R001, Exh. A, 8-18-2009; Res. No. 01192010R004, 12-21-2009; Res. No. 08042015R001, § 2, 8-4-2015)

#### 14.6. - RELATIONSHIP TO OTHER COUNTY, STATE AND FEDERAL REQUIREMENTS

- A. If a 1041 permit is required under this section 14, other sections of the Code shall not apply unless specifically stated in this section 14, or unless applied by the county commissioners as conditions of approval. If an appeal to the requirement for obtaining a 1041 permit is granted pursuant to section 14.7 below, other requirements of the Land Use Code shall apply.
- B. Review or approval of a project by a federal or state agency does not obviate, and will not substitute for, the need to obtain a 1041 permit for that project under this section.
- C. These regulations shall not be applied to create an operational conflict with any state or federal laws or regulations.
  1. The applicant may request that the county application and review process be coordinated with the applicable state or federal agency review process.
  2. To the extent practicable and appropriate, the county may coordinate its review and approval of the application, including the terms and conditions of such approval, with that of other agencies.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

#### 14.7. - APPEAL OF 1041 PERMIT REQUIREMENT

An applicant may appeal the requirement for obtaining a 1041 permit.

- A. Appeal process.
  1. Initiation of appeal. A written application for appeal must be submitted to the planning director on a form provided by the planning department. An application fee established by the county commissioners must be paid when the appeal is submitted.
  2. Contents of appeal. The appeal application must include a description of the scope of the proposed activity and evidence that supports the appeal including evidence that demonstrates how section 14.7.B. review criteria are met.
  3. Scheduling. Upon receipt of the appeal, the planning director will schedule the appeal on the next available agenda of the county commissioners, no later than 60 days after the date on which a properly completed application is filed.
  4. Notice. Notice shall be consistent with the requirements of section 12.3, notice of public hearing. Notice of the time and place of the appeal hearing must be published in a newspaper of general circulation at least 14 days before the hearing date.
  5. Action by the county commissioners.
    - a. At the appeal hearing the county commissioners will take relevant evidence and testimony from the person who filed the appeal, county staff and any interested party.
    - b. The applicant shall have the burden of proving that granting the appeal is consistent with the intent and purpose of this section 14.

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- c. The county commissioners may refer an appeal to the planning commission for a recommendation. The decision to refer an appeal to the planning commission will be made by the county commissioners within 14 days of the date the appeal was submitted.
  - d. The decision of the county commissioners shall be final.
- B. The county commissioners shall consider each of the following review criteria and make findings pertaining to each one which, in their discretion, applies to the appeal.
- 1. Approval of the appeal will not subvert the purpose or intent of this section 14.
  - 2. The development or activity has received approval through a state or federal permitting process which has utilized review criteria substantially the same as those contained in this regulation, and which has afforded a similar or greater amount of input by affected citizens and property owners of Larimer County.
  - 3. In the case of siting and development of a new domestic water or sewer transmission pipeline, evidence has been provided that:
    - a. The proposed pipeline is located entirely on property owned by the entity proposing the activity and/or within easements or rights-of-way that have been acquired from willing sellers, or
    - b. The proposed pipeline is located entirely within a special district organized under C.R.S. Title 32, or a public or local improvement district organized under C.R.S. 30-20-Parts 5 and 6, and
      - (1) The pipeline is intended to provide water or sewer service to properties located within that district in Larimer County; and
      - (2) Written notice of all scheduled public meetings of the district concerning the siting and development of the new pipeline has been given to all property owners who may be directly affected by the activity, and to the county commissioners, not less than 14 days prior to the meeting.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 01192010R004, 12-21-2009)

#### 14.8. - INTERGOVERNMENTAL AGREEMENTS

- A. Upon request of the State of Colorado or a political subdivision of the state proposing to engage in an area or activity of state interest, the requirements of this section 14 may be met by the approval of an intergovernmental agreement between the county and such applicant. The county commissioners may, but shall be under no obligation to do so, approve such an intergovernmental agreement in lieu of a permit application and review as provided by this section. In the event such an agreement is approved by the county commissioners, no 1041 permit application to conduct the activity or area of state interest shall be required, provided that all of the following conditions are met.
  - 1. The state or political subdivision applicant and the county must both be authorized to enter into such an agreement.
  - 2. The purpose and intent of this section 14 must be satisfied by the terms of the agreement.
  - 3. A public hearing must be conducted by the county commissioners. Notice of the hearing must be published once in a newspaper of general circulation in Larimer County not less than 30 nor more than 60 days before the date set for the hearing. Prior to the hearing, the county commissioners shall approve the form of any proposed intergovernmental agreement, subject, however, to final approval of the agreement at the conclusion of or subsequent to the public hearing and based upon the evidence presented there. The public hearing shall be for the purpose of taking comment upon the proposed intergovernmental agreement, the provisions of which have been determined to be acceptable to the applicant and to the county.

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4. Both the county commissioners and the state or the governing body of the political subdivision applicant must agree in the manner required of each of them by the state constitution, statutes and any applicable charter, resolution.
5. Memorandum of understanding (MOU). The county and the applicant shall execute a memorandum of understanding, prior to engaging in the process of forming an intergovernmental agreement, the purpose of which is:
  - a. To acknowledge the intent of the parties to begin joint discussions which may result in the approval of an intergovernmental agreement.
  - b. Establish the timeframe for those discussions and any significant milestones agreed upon.
  - c. Establish the timeframe for review, public input and public hearing before the county commissioners.
- B. Exercise of the provisions of this section by the state or an applicant that is a political subdivision of the state shall not prevent that entity from electing at any time to proceed under the permit provisions of this regulation. Additionally, any entity which has previously proceeded under the permit provisions of this regulation may at any time elect to proceed instead to seek the establishment of an agreement.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 08042015R001, § 3, 8-4-2015)

#### 14.9. - 1041 PERMIT APPLICATION AND REVIEW PROCESS

- A. No person may engage in development in a designated area of state interest or conduct a designated activity of state interest without first obtaining a 1041 permit, unless the county commissioners have granted an appeal to the requirement for a 1041 permit or have adopted an intergovernmental agreement per section 14.8 such that a permit is not required.
  1. If a development or activity subject to these regulations is proposed as an integral part of a land division process, the applicant shall comply with this section prior to obtaining final plat approval.
  2. No building permit shall be issued by the county for an activity or development subject to this section without the applicant having first obtained a 1041 permit, unless the county commissioners have granted an appeal to the requirement for a 1041 permit or have adopted an intergovernmental agreement per section 14.8 such that a permit is not required.
  3. 1041 permits issued under this section shall not be considered to be a site specific development plan and no statutory vested rights shall inure to such permit. A 1041 permit may specify a period of time for which the permit is valid or state additional criteria related to future validity of the permit.
- B. *General process outline.* The following is a general outline of the steps required for any permit decision under this section. More specific information regarding these referenced steps is contained in section 12 common procedures for development review and in the technical supplement to the Land Use Code.
  1. Pre-application conference.
  2. Complete and sufficient application received.
  3. Referral to affected agencies.
  4. Public hearing before the planning commission and county commissioners.
  5. Post-approval requirements.
- C. *Notice of 1041 permit hearing.* Notice shall be consistent with the requirements of section 12.3, notice of public hearing.
  1. Not later than 30 days after receipt of a completed application for a 1041 permit, the planning director shall set and publish notice of the date, time and place for a hearing before the county commissioners. The notice shall be published once in a newspaper of general circulation in Larimer County, not less than 30 nor more

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than 60 days before the date set for the hearing.

- a. The planning director shall be responsible for the determination that a complete and sufficient application has been received.
  - b. Not later than 60 days after receipt of the application, the planning director shall provide a written description of any application materials that are determined to be not complete and the additional materials that are necessary before application processing may begin.
2. Within the time constraints above, the planning director shall schedule the application for a hearing before the planning commission. Notice of the planning commission hearing shall be published in a newspaper of general circulation for the county at least 14 days before the hearing date.
  3. A notice will be mailed to property owners in the vicinity of the proposal at least 14 days prior to the hearing(s) according to the procedures and requirements of section 12.3.3 mailed notice.
  4. C.R.S. §§ 30-28-133(10) and 24-65.5-103(1) require an applicant for development to notify all owners and lessees of a mineral interest on the subject property of the pending application. The applicant must submit, to the planning department, a certification of compliance with this notice requirement, prior to the initial public hearing for a 1041 permit, except for those types of development applications specifically excluded below. Failure to submit the required certification of notice will result in the public hearing being rescheduled to a later date. According to C.R.S. §§ 24-65.5-102(2) an application for development does not include applications with respect to electric lines, crude oil or natural gas pipelines, steam pipelines, chilled and other water pipelines, or appurtenances to said lines or pipelines; therefore notification of mineral interest owners and lessees is not required for those activities.
- D. Any application for a 1041 permit which relates to the location, construction or improvements of a major electrical or natural gas facility as contemplated by 29-20-108 C.R.S. as amended shall be subject to the terms of that statute. In the event of an inconsistency between the statute and these regulations, the statute shall control.
  - E. The planning director may, when necessary, decide that additional expertise is needed to review a project, according to the procedure detailed in Section 8.01.A of this Code.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 01192010R004, 12-21-2009)

#### 14.10. - GENERAL REQUIREMENTS FOR APPROVAL OF A 1041 PERMIT APPLICATION

- A. The applicant must submit a complete and sufficient application that is consistent with the submittal requirements that are stated at the pre-application conference.
- B. A 1041 permit application may be approved only when the applicant has satisfactorily demonstrated that the proposal, including all mitigation measures proposed by the applicant, complies with all of the applicable criteria set forth in this section 14. If the proposal does not comply with all the applicable criteria, the permit shall be denied, unless the county commissioners determine that reasonable conditions can be imposed on the permit which will enable the permit to comply with the criteria.
- C. If the county commissioners determine at the public hearing that sufficient information has not been provided to allow it to determine if the applicable criteria have been met, the board may continue the hearing until the specified additional information has been received. The commissioners shall adopt a written decision on a 1041 permit application within 90 days after the completion of the permit hearing. The 1041 permit will be in the form of a findings and resolution signed by the board of county commissioners. The effective date shall be the date on which the findings and resolution is signed.
- D. Review criteria for approval of all 1041 permits.
  1. The proposal is consistent with the master plan and applicable intergovernmental agreements affecting land use and development.

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2. The applicant has presented reasonable siting and design alternatives or explained why no reasonable alternative
3. The proposal conforms with adopted county standards, review criteria and mitigation requirements concerning environmental impacts, including but not limited to those contained in this Code.
4. The proposal will not have a significant adverse effect on or will adequately mitigate significant adverse effects on the land or its natural resources, on which the proposal is situated and on lands adjacent to the proposal.
5. The proposal will not adversely affect any sites and structures listed on the State or National Registers of Historic Places.
6. The proposal will not negatively impact public health and safety.
7. The proposal will not be subject to significant risk from natural hazards including floods, wildfire or geologic hazards.
8. Adequate public facilities and services are available for the proposal or will be provided by the applicant, and the proposal will not have a significant adverse effect on the capability of local government to provide services or exceed the capacity of service delivery systems.
9. The applicant will mitigate any construction impacts to county roads, bridges and related facilities. Construction access will be re-graded and re-vegetated to minimize environmental impacts.
10. The benefits of the proposed development outweigh the losses of any natural resources or reduction of productivity of agricultural lands as a result of the proposed development.
11. The proposal demonstrates a reasonable balance between the costs to the applicant to mitigate significant adverse effects and the benefits achieved by such mitigation.
12. The recommendations of staff and referral agencies have been addressed to the satisfaction of the county commissioners.

(Res. No. 11182008R012, Exh. A, 11-18-2008; Res. No. 08042015R001, § 4, 8-4-2015)

#### 14.11. - ADDITIONAL SPECIFIC REVIEW CRITERIA AND STANDARDS

##### A. *Additional review criteria for power plants.*

1. Proposed transmission facilities have been identified and included as part of the power plant project.
2. Wind power plants must meet the following standards:
  - a. All towers must be set back at least 750 feet from property lines and public rights-of-way.
  - b. The wind generator turbines and towers must be painted or coated a non-reflective white, grey or other neutral color.
  - c. Facilities must not be artificially illuminated unless required by the FAA.
  - d. Facilities must not be used to display advertising.
  - e. Electrical controls must be wireless or underground and power lines must be underground except where the electrical collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.
  - f. Noise generated from the wind power plant must be in compliance with the Chapter 30, Article V, Noise of the Larimer County Code.
  - g. The operator of the plant must minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by the plant.
  - h. Towers for wind generators must be constructed of a tubular design and include anti-climb features.
  - i. The facility design must use best practices available to protect wildlife.

##### B. *Additional review criteria for electrical transmission lines.*



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1. The siting and design of the proposal addresses potential levels of electrical and magnetic fields (EMFs) by exercise "avoidance" to limit exposure.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

**14.12. - POST APPROVAL REQUIREMENTS**

Prior to the issuance of a 1041 permit approved under this section the follow conditions must be met, if applicable.

- A. The applicant may be required to obtain a construction permit from the county engineer.
- B. A development agreement may be required as a condition of approval of the 1041 permit and may include requirements for performance guarantees.
- C. An agreement concerning decommissioning, abandonment or reuse of the permitted facility may be required as a condition of approval of the 1041 permit.

(Res. No. 11182008R012, Exh. A, 11-18-2008)

**14.13. - TECHNICAL REVISIONS AND 1041 PERMIT AMENDMENTS**

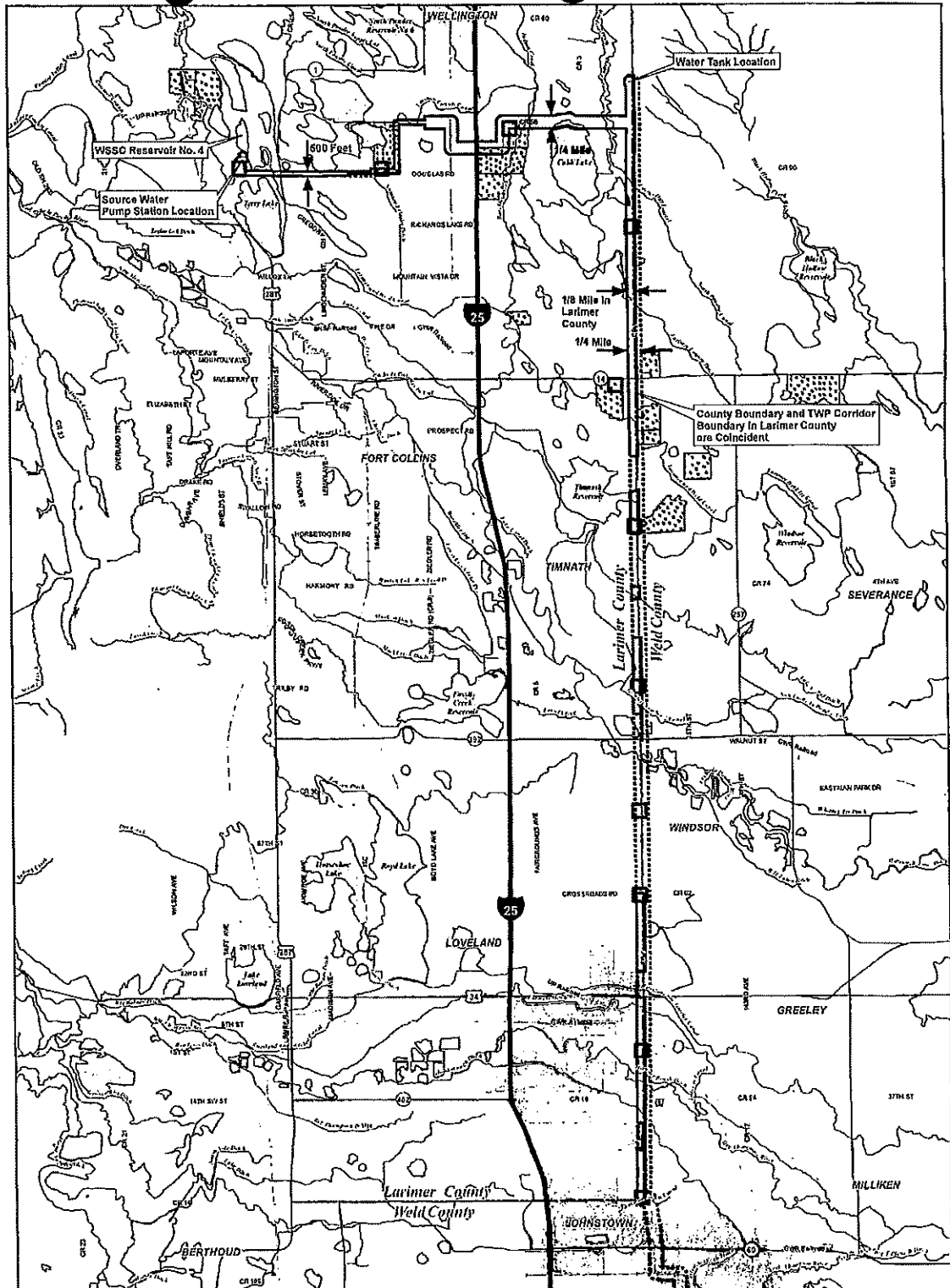
- A. Any change in the construction or operation of the project from that approved by the county commissioners shall require staff review and a determination made by the planning director in writing as to whether the change is a technical revision or 1041 permit amendment.
- B. A proposed change shall be considered a technical revision if the planning director determines that there will be no increase in the size of the area affected or the intensity of impacts as a result of the proposed change(s); or any increase in the area or intensity of impacts is insignificant.
- C. Changes other than technical revisions shall be considered 1041 permit amendments. A permit amendment shall be subject to review as a new permit application.


(Res. No. 11182008R012, Exh. A, 11-18-2008)




RECEPTION #20190014585, 3/25/2019 4:23:49 PM, 26 of 26, Angela Myers, Clerk & Recorder, Larimer County, CO

### Thornton Water Project





**CITY OF THORNTON  
COLORADO**  
12450 WASHINGTON ST  
THORNTON, CO 80241-2405  
12/28/2017



1 inch = 1.8 miles  
0 0.9 1.8 Miles

<ul style="list-style-type: none"> <li>▬ TWP Corridor in Unincorporated Larimer County</li> <li>▬ TWP Corridor outside Unincorporated Larimer County</li> <li>▬ Railroad</li> <li>▬ Thornton Farm</li> <li>▬ County Boundary</li> <li>▬ Lake/Reservoir</li> <li>▬ River/Stream/Canal/Ditch</li> <li>▬ Potential Staging Area</li> </ul>	<p>Boundaries Crossed by the Proposed Corridor</p> <table border="0"> <tr> <td>Corporate Boundary</td> <td>GSA Boundary</td> </tr> <tr> <td>Fort Collins</td> <td>Fort Collins</td> </tr> <tr> <td>Johnstown</td> <td>Johnstown</td> </tr> <tr> <td>Loveland</td> <td>Loveland</td> </tr> <tr> <td>Timnath</td> <td>Timnath</td> </tr> <tr> <td>Wellington</td> <td>Wellington</td> </tr> <tr> <td>Windsor</td> <td>Windsor</td> </tr> </table>	Corporate Boundary	GSA Boundary	Fort Collins	Fort Collins	Johnstown	Johnstown	Loveland	Loveland	Timnath	Timnath	Wellington	Wellington	Windsor	Windsor
Corporate Boundary	GSA Boundary														
Fort Collins	Fort Collins														
Johnstown	Johnstown														
Loveland	Loveland														
Timnath	Timnath														
Wellington	Wellington														
Windsor	Windsor														

**Figure 2.a-1  
TWP Corridor Map**

R006869