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February 9, 2006

Via Facsimile: 303-866-3855

Mr. Kirk Mlinek, Director
Colorado Legislative Council Staff
Room 029
State Capitol Building
Denver, Colorado 80203

Re: Proposed Initiative No. 79.

Dear Mr. Mlinek,

I am resubmitting proposed initiative measure 2005-2006 No. 79 for additional review and comment. As before, the two ballot proponents for this measure remain:

William G. Mohrman, Jr.
567 Twinning Flats Road
Aspen, CO 81611

Betty S. LaMont
0085 Elliot Way
Meredith, CO 81642

Attached is the revised text. Please contact me if I may be of further assistance.

Sincerely,

HACKSTAFF GESSLER LLC

Scott E. Gessler

Be it enacted by the People of the State of Colorado:

Section 15 of article II of the constitution of the state of Colorado is amended to read:

Section 15. Taking property for public use – compensation, how ascertained

(1) Private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

(2) IF ANY PUBLIC ENTITY ENACTS OR ENFORCES ANY LAND USE REGULATION OR ANY COMBINATION OF LAND USE REGULATIONS THAT DIMINISHES THE FAIR MARKET VALUE OF ANY PORTION OF PRIVATELY-OWNED REAL PROPERTY BY TWENTY PERCENT OR MORE, THE PUBLIC ENTITY SHALL EITHER PROVIDE JUST COMPENSATION TO THE OWNER OF THE AFFECTED PORTION OF REAL PROPERTY OR EXEMPT THE OWNER FROM THE LAND USE REGULATION.

(a) THIS SUBSECTION (2) SHALL NOT APPLY TO ANY LAND USE REGULATION THAT:

(I) IS ENACTED:

(A) PRIOR TO 1970; OR

(B) AFTER 1970 BUT PRIOR TO ACQUISITION OF THE PROPERTY BY THE OWNER OR A FAMILY MEMBER OF THE OWNER; OR

(II) IS NECESSARY TO:

(A) RESTRICT OR PROHIBIT ACTIVITIES HISTORICALLY RECOGNIZED AS NUISANCES UNDER COMMON LAW;

(B) PROTECT THE PUBLIC HEALTH AND SAFETY; OR

(C) COMPLY WITH FEDERAL LAW.

(b) THE FOLLOWING SHALL APPLY TO ANY EFFORT TO ENJOIN ENFORCEMENT OF A LAND USE REGULATION OR OBTAIN JUST COMPENSATION FROM ANY PUBLIC ENTITY UNDER THIS SUBSECTION (2);

- (I) THE OWNER SHALL PROVIDE WRITTEN DEMAND FOR COMPENSATION OR EXEMPTION TO THE PUBLIC ENTITY AT LEAST ONE HUNDRED EIGHTY DAYS PRIOR TO COMMENCING ANY COURT ACTION. THE DEMAND SHALL IDENTIFY THE AFFECTED PORTION OF REAL PROPERTY, ANY LAND USE REGULATION, AND THE AMOUNT OF DIMINUTION;
- (II) WRITTEN DEMAND SHALL BE MADE WITHIN FIVE YEARS OF:
 - (A) THE EFFECTIVE DATE OF THIS MEASURE;
 - (B) THE DATE OF THE ENACTMENT OF THE LAND USE REGULATION; OR
 - (C) THE DATE THE PUBLIC ENTITY SEEKS TO ENFORCE THE LAND USE REGULATION, TO INCLUDE USE OF THE LAND USE REGULATION AS AN APPROVAL CRITERIA TO AN APPLICATION SUBMITTED BY THE OWNER.
- (III) WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE WRITTEN DEMAND IS SENT, THE PUBLIC ENTITY SHALL:
 - (A) EXEMPT THE OWNER FROM ENFORCEMENT OF THE LAND USE REGULATION;
 - (B) PROVIDE JUST COMPENSATION; OR
 - (C) SUBMIT TO THE OWNER A STATEMENT THAT IDENTIFIES APPROVED USES OF THE AFFECTED PROPERTY. THIS STATEMENT SHALL BIND THE PUBLIC ENTITY.
- (IV) AN OWNER MAY ENJOIN ENFORCEMENT OF THE LAND USE REGULATION OR OBTAIN JUST COMPENSATION BY BRINGING AN ACTION IN DISTRICT COURT IN THE DISTRICT WHERE THE REAL PROPERTY IS LOCATED. THE OWNER'S CLAIM SHALL BECOME RIPE FOR JUDICIAL REVIEW ONE HUNDRED EIGHTY DAYS AFTER THE WRITTEN DEMAND. THE OWNER SHALL COMMENCE LEGAL ACTION NO LATER THAN TWO YEARS FROM THE DATE THE OWNER'S CLAIM BECOMES RIPE FOR JUDICIAL REVIEW. THE OWNER NEED NOT COMPLETE ANY ADMINISTRATIVE PROCEDURES BEFORE INSTITUTING COURT ACTION.
- (V) THE OWNER SHALL ESTABLISH A DIMINUTION OF VALUE OR JUST COMPENSATION BY A PREPONDERANCE OF THE EVIDENCE. THE OWNER MAY SUBMIT EVIDENCE IN ADDITION TO EVIDENCE PRESENTED TO A PUBLIC ENTITY OR ADMINISTRATIVE BODY.

- (VI) ALL EXCEPTIONS IN SUBSECTION (2)(a)(II) SHALL BE NARROWLY CONSTRUED AND SHALL BE PROVEN BY THE PUBLIC ENTITY BY CLEAR AND CONVINCING EVIDENCE. A PUBLIC ENTITY'S DETERMINATION SHALL BE INSUFFICIENT TO ESTABLISH AN EXCEPTION CONTAINED IN SUBSECTION (2)(a)(II), AND A DISTRICT COURT'S APPLICATION OF AN EXCEPTION CONTAINED IN SUBSECTION (2)(a)(II) SHALL BE SUBJECT TO *DE NOVO* REVIEW UPON APPEAL.
- (VII) THE OWNER SHALL BE ENTITLED TO REASONABLE COSTS AND ATTORNEY FEES:
 - (A) INCURRED IN OBTAINING INJUNCTIVE RELIEF OR JUST COMPENSATION; OR
 - (B) INCURRED IN SEEKING INJUNCTIVE RELIEF OR JUST COMPENSATION IF THE PUBLIC ENTITY PROVIDES RELIEF WITHOUT FINAL COURT ACTION.
- (c) AS USED IN THIS SUBSECTION (2):
 - (I) "FAMILY MEMBER" SHALL INCLUDE:
 - (A) ANY DESCENDANT OR ANCESTOR, BY BIRTH, ADOPTION OR MARRIAGE, OF AN OWNER;
 - (B) AN UNCLE, AUNT, NIECE OR NEPHEW;
 - (C) AN ESTATE OR TRUST BY ANY OF THE FOREGOING; OR
 - (D) A LEGAL ENTITY OWNED BY THE OWNER, ANY OF THE FOREGOING FAMILY MEMBERS, OR A COMBINATION OF THE OWNER OR ANY OF THE FOREGOING FAMILY MEMBERS.
 - (II) "JUST COMPENSATION" SHALL BE THE DIMINUTION IN FAIR MARKET VALUE CAUSED BY ANY LAND USE REGULATION OR COMBINATION OF LAND USE REGULATIONS.
 - (III) "LAND USE REGULATION" INCLUDES ANY PERMANENT OR TEMPORARY ACTIONS TAKEN BY ANY PUBLIC ENTITY THAT AFFECTS OWNERSHIP OF, OR AN INTEREST IN, REAL PROPERTY. THE TERM SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LAW, REGULATION, MORATORIUM, ORDINANCE, RULE, GUIDELINE, ENFORCEMENT ACTION, DEED RESTRICTION, OR OTHER ACTION TAKEN IN CONNECTION TO AN APPLICATION OR PERMIT, TO INCLUDE THE

DENIAL OF AN APPLICATION OR PERMIT. "LAND USE REGULATION" SHALL INCLUDE TWO OR MORE LAND USE REGULATIONS.

- (IV) "OWNER" SHALL INCLUDE THE PRESENT OWNER OF REAL PROPERTY OR ANY INTEREST IN REAL PROPERTY. "OWNER" SHALL NOT INCLUDE A PUBLIC ENTITY, OR THE UNITED STATES, OR ANY AGENCY, DEPARTMENT OR DIVISION OF THE UNITED STATES.
- (V) "PUBLIC ENTITY" INCLUDES THE STATE OF COLORADO, ANY POLITICAL SUBDIVISION OF THE STATE, ANY AGENCY OR DEPARTMENT OF THE STATE GOVERNMENT, A COUNTY, CITY AND COUNTY, CITY, TOWN, SERVICE AUTHORITY, SCHOOL DISTRICT, LOCAL IMPROVEMENT DISTRICT, LAW ENFORCEMENT AUTHORITY, CITY OR COUNTY HOUSING AUTHORITY, OR WATER, SANITATION, FIRE PROTECTION, METROPOLITAN, IRRIGATION, DRAINAGE, OR OTHER SPECIAL DISTRICT, OR ANY OTHER KIND OF MUNICIPAL, QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED PURSUANT TO LAW, OR ANY ENTITY THAT INDEPENDENTLY EXERCISES GOVERNMENTAL AUTHORITY. "PUBLIC ENTITY" SHALL INCLUDE TWO OR MORE PUBLIC ENTITIES. "PUBLIC ENTITY" SHALL NOT INCLUDE A COURT OF RECORD.
- (VI) "REAL PROPERTY" MEANS ANY INTEREST IN REAL PROPERTY RECOGNIZED BY THE LAWS OF COLORADO.