

## **Memorandum**

Date: May 27, 2025  
To: San Juan County Commissioners  
Re: Approval of Sky Ranch Estates Subdivision, Phase 2, on February 16, 2021.

### **Parties**

Karl Spielman (“Spielman”) is the Plaintiff / Petitioner. Spielman owns property adjacent to the Sky Ranch Estates Subdivision (“Sky Ranch” or “the Subdivision”) and opposes approval of Phase 2 of said Subdivision.

San Juan County (“County”) is the Defendant / Respondent. The County is a party due to its approval of Phase 2 of the Subdivision.

Business Resolutions, LLC as Trustee of the Moab Development Trust and Mike Bynum as Manager, and John Ransey, an individual, are Intervenors. Intervenors are the applicant for Phase 2 of the Subdivision and /or owners of the property and / or business entities with a business interest in the Sky Ranch development.

### **Background**

This matter comes to the County Commission (“Commission”) on remand by Seventh District Court Judge Don M. Torgerson (“Judge Torgerson”) and further remand by Administrative Law Judge, Cheryl D. Luke (“ALJ Luke”).<sup>1</sup>

The County believes that the following background items are not disputed by the parties:

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<sup>1</sup> Copies of Judge Torgerson’s Order and ALJ Luke’s Order are attached hereto for reference.

1. Sky Ranch Estates is a residential subdivision located in the Spanish Valley area of San Juan County.
2. Phase 1 of the Subdivision was approved in the year 2000<sup>2</sup>. At that time, the Subdivision was a six-lot residential subdivision with an adjacent private airstrip.
3. The date of first use of the private airstrip has not been determined, but it is believed by applicant and the County to be in the 1970's. Intervenor may dispute the date of first use.
4. In the 1980s, the airstrip was registered with the FAA as a private airstrip and known on the FAA's records as UT53.
5. Phase 2 of the Subdivision is intended to add additional lots to the overall Sky Ranch development.<sup>3</sup>
6. Phase 2 of the Subdivision was approved by the County's Planning and Zoning Commissioners ("P&Z") on February 11, 2021.
7. Phase 2 was approved by the County Commission on February 16, 2021.
8. The Commission's approval was appealed to ALJ Luke, who heard argument from all parties and upheld the Commission's decision.
9. ALJ Luke's decision was then appealed to the Seventh District Court.
10. Judge Torgerson heard argument from all parties and remanded the matter back to ALJ Luke for further findings, as follows:

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<sup>2</sup> A copy of Phase 1 is attached hereto.

<sup>3</sup> A copy of Phase 2 is attached hereto.

First, and contrary to the ALJ's finding, the record shows that the airstrip is included in the formal subdivision boundaries of the proposed new subdivision. By overlaying the airstrip onto the new lots and imposing a permanent easement, Intervenor has raised issues related to the airport that do not appear to have been addressed by the ALJ's decision or the County Commission. As proposed, the airstrip is more than just an adjacent feature. It would be incorporated into the new subdivision. And that might impact property tax obligations, easements, potential safety concerns, and other considerations that should be considered by the Commission as part of its decision.

Second, the ALJ's opinion significantly references aviation safety experts reports and "... finds that the safety concerns expressed in the reports were the same as those that were being voiced at the commission meeting." While true – petitioner and others voiced airport safety concerns to the County Commission – there is insufficient evidence in the record to demonstrate the Commission's decision was based on substantial evidence rather than mere conjecture about the airport's safety. The ALJ recognized this, acknowledging that the Commission never heard the expert recommendations about safety before making its decision. But the ALJ's decision implies that the public clamor about safety concerns was sufficient, even though the opinions of the safety experts did not feature in the Commission's decision in any way.

11. ALJ Luke, upon receiving Judge Torgerson's order of remand, further remanded the matter to the Commission, as follows:

IT IS HEREBY ORDERED that the San Juan County Commission shall reopen proceedings in this matter to reconsider their decision. The County Commission SHALL accept the corrected findings of the District Court that:

1. The airstrip in controversy is included in the formal subdivision boundaries of the proposed new subdivision. The County Commission shall consider that as part of this decision.

2. The County Commission shall consider evidence in this matter and shall take evidence regarding safety concerns under applicable law.

All proceedings shall be held consistent with the County Land Use, Development, and Management Act.

12. The parties now come before the County Commission to comply with the orders of ALJ Luke and Judge Torgerson.

#### **Recommendation by San Juan County Attorney's Office**

The San Juan County Attorney's Office recommends approval of Phase 2 of the Sky Ranches Subdivision for the reasons set forth in this memorandum. We additionally recommend that the Commission remain focused on the issues remanded by Judge Torgeson and ALJ Luke, namely safety. To make this determination, you may look at the record already created and also make inquiries of the parties and also make inquiries of independent professionals.

#### **Argument**

San Juan County has already approved the Phase 2 application because it complied with all requirements associated with residential subdivision lots. This was explained by Scott Burton, then acting director of the P&Z, when he appeared before the Commission on February 16, 2021, as follows:

Thanks, Mr. Maryboy and commissioners [inaudible] and Grayeyes. My purpose in being here is the County has received application for the sky ranch estates subdivision phase 2. That application was received the end of October 2020. Since that time, the county staff has reviewed the subdivision application [inaudible] and the plat. Um, several changes were made with the developer as we went back and forth with the subdivision application. For three months, it was, once we felt that it met the

requirements of the current zoning that was in place, we recommended, we placed this on the agenda for the San Juan County Planning Commission, which they, um, considered at their February 11<sup>th</sup> meeting and approved this subdivision phase 2. There have been some questions with a couple of comments about lot sizes. The lot sizes, do meet the county requirement of 10,890 minimum square feet even with the even when you subtract the easements for the runway. There was also some things brought up about buffer zones at each end of the runway. None of those zones exist in our current zoning, um, so as staff as we reviewed this, we feel that it does meet the requirements of current zoning in place, so it is now on your agenda for your approval...."<sup>4</sup>

And

Yea, so the airport, the airport had their FAA license was, has been in effect since 1985, so they've had their, they've operated the airport, the airport was in operation which, I think, predates most of the housing in that area. Um, so, that's where ... We're not necessarily going back to 1985 to consider the airport.<sup>5</sup>

Safety concerns related to the airstrip became a factor at the meeting, and so the Commission requested that the applicant provide safety data,<sup>6</sup> which it did in the form of a report by an FAA inspector with over 30 years of experience.<sup>7</sup> This report was presented to the P&Z at its meeting of November 18, 2021.<sup>8</sup> Petitioner also submitted a safety report in opposition to that of the applicant's.<sup>9</sup>

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<sup>4</sup> R at 397 (Burton's comments at 2:37:14).

<sup>5</sup> R at 398 (Burton's comments at 2:41:35).

<sup>6</sup> R at 398-409 includes discussion about safety concerns and the requirement for applicant to provide safety data.

<sup>7</sup> R at 471-551.

<sup>8</sup> R at 469-551.

<sup>9</sup> R at 574-593.

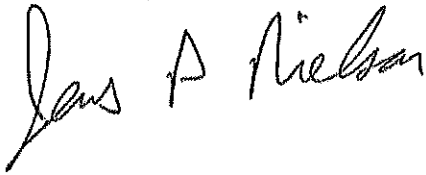
It is the opinion of the County that the airstrip can be operated safely as part of the Phase 2 residential concept, if appropriate safety measures are implemented as development begins. Appropriate such measures can be determined by safety experts selected by the County or the applicant, such as restrictive covenants regarding management of flying activities associated with the airstrip, storage of airplanes on the premises, frequency of landing and takeoff, compliance with appropriate guidelines for private "fly in" and "fly out" communities, implementation of any FAA guidelines as may be appropriate, and other measures deemed appropriate by the Commission. It is the County's belief that safe practices already in use at numerous private "fly in" and "fly out" communities can be replicated for Sky Ranches, and that allowing the applicant to pursue its development plan is in keeping with right of a landowner to make the best and desired use of his/her property.

The County acknowledges that there are some controversial factors associated with this application for Phase 2. One is whether the airstrip can be operated safely at all. The County feels that this issue is best left to the experts with experience and know-how, and that the Commission should follow their recommendations.

### **Conclusion**

For the reasons stated above, the County recommends that the application for Phase 2 of the Sky Ranches Estates Subdivision be approved and that appropriate safety measures regarding the airport be determined by those with expertise and be made a requirement of development of Phase 2.

Dated this 27<sup>th</sup> day of May 2025.

A handwritten signature in black ink, reading "Jens P. Nielson". The signature is written in a cursive style with a large initial "J" and a distinct "P".

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Jens P Nielson  
Deputy County Attorney

IN THE SEVENTH JUDICIAL DISTRICT COURT  
SAN JUAN COUNTY, STATE OF UTAH

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KARL SPEILMAN,

Petitioner,

vs.

SAN JUAN COUNTY, BOARD OF  
SAN JUAN COUNTY  
COMMISSIONERS,

Respondents,

BUSINESS RESOLUTIONS, LLC, as  
Trustee for MOAB DEVELOPMENT  
TRUST; JOHN RAMSEY,

Intervenors.

RULING AND ORDER

Case No. 230700026

Judge Don M. Torgerson

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This is a petition for judicial review of a decision from the San Juan County Appeal Authority affirming the County's approval of the Sky Ranch Phase II residential subdivision. The parties filed the record of the proceedings and presented the merits of their arguments by full briefing and oral argument on June 20, 2024. Petitioner was represented by Shaunda L. McNeill. San Juan County was represented by Jens P. Nielson. And Intervenors were represented by Justin P. Matkin. Following oral argument, the court took the matter under advisement. Having reviewed the record and arguments, the petition is now ready for decision.

**BACKGROUND**

The Sky Ranch subdivision was approved in 2001 as a 6-lot residential subdivision adjacent to a private airstrip. Only one residence has been constructed in the subdivision so far, but Intervenors have improved the airstrip runway and want to develop additional residences next to the airstrip for a "fly-in-fly-out" community. Their application for phase 2 of the subdivision is the application before the court and was filed in 2020.



The airport has existed in some form for a long time and the Administrative Law Judge (ALJ) determined it had been recognized by the FAA as a private airport since at least 1985. It was a dirt strip until 2017 when it was extended, slightly moved, and paved.

On February 16, 2021, the County Commission approved the subdivision with the condition that “the community is being consulted with the party that’s going to be developing is being consulted and bring that information to the planning commission.” About nine months later, the County Commission received additional information when it first heard from Intervenor’s expert about the airport safety. And the ALJ also received a report from Petitioner’s expert. But the County Commission did not act on any of that additional information since it had approved the subdivision earlier in the year.

As part of her decision, the ALJ :

- found that “[t]he airstrip is not included in the subdivision boundaries of Sky Ranch Estates phase II.”, and
- concluded that “subdivision approval ...was not a review of the legal status of the airstrip as it was not even included in the formal boundaries of the subdivision plat map and had been previously acknowledged and approved in the original Sky Ranch Estate development.”

But those findings are erroneous on the record before the court. The proposed subdivision incorporates the existing airstrip into the subdivision lots. The centerline of the runway travels along the rear property lines of the abutting lots and will only exist on the lots by perpetual easement. And the runway location within the boundaries of the proposed new subdivision significantly affects the habitable portion of each building lot.<sup>1</sup>

### **RULING AND CONCLUSIONS OF LAW**

Under the County Land Use, Development, and Management Act (“CLUDMA”), this court reviews the appeal authority’s decision to determine whether it was arbitrary

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<sup>1</sup> R. 367-369.

and capricious, or illegal.<sup>2</sup> And a land use decision is arbitrary and capricious if it is not supported by substantial evidence in the record.<sup>3</sup>

Here, the ALJ characterized Petitioner's appeal as a collateral attack on the airstrip that was not properly at issue since the airstrip was approved long ago and was not a relevant consideration for this straightforward subdivision approval. Accordingly, the airstrip's proximity to the subdivision did not affect the County's determination that the subdivision complied with existing land use law. Without deciding the propriety of that decision, the court finds two errors in how the ALJ arrived at that conclusion that are not supported by substantial evidence in the record.

First, and contrary to the ALJ's finding, the record shows that the airstrip is included in the formal subdivision boundaries of the proposed new subdivision. By overlaying the airstrip onto the new lots and imposing a permanent easement, Intervenor's have raised issues related to the airport that do not appear to have been addressed by the ALJ's decision or the County Commission. As proposed, the airstrip is more than just an adjacent feature. It would be incorporated into the new subdivision. And that might impact property tax obligations, easements, potential safety concerns, and other considerations that should be considered by the Commission as part of its decision.

Second, the ALJ's opinion significantly references the aviation safety experts reports and "...finds that the safety concerns expressed in the reports were the same as those that were being voiced at the commission meeting." While true — Petitioner and others voiced airport safety concerns to the County Commission — there is insufficient evidence in the record to demonstrate the Commission's decision was based on substantial evidence rather than mere conjecture about the airport's safety. The ALJ recognized this, acknowledging that the Commission never heard the expert recommendations about safety before making its decision. But the ALJ's decision implies that the public clamor about safety concerns was sufficient, even though the opinions of the safety experts did not feature in the Commission's decision in any way.

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<sup>2</sup> Utah Code § 17-27a-801(3)(b).

<sup>3</sup> *Id.* at (3)(c)(i).

Those two findings were not supported by substantial evidence in the record. This case is remanded to the ALJ to reconsider its decision in light of those corrections. And on remand, the ALJ may consider remanding to the County Commission for further proceedings if additional findings are necessary.

Dated: 8/19/2024

By: \_\_\_\_\_  
Don M. Torgerson  
District Court Judge

Cheryl D. Luke  
Attorney at Law  
Utah State Bar 2013  
PO Box 187  
Marysville, UT 84750  
801-828-8140  
cdluke@live.com

BEFORE THE SAN JUAN COUNTY ADMINISTRATIVE LAW JUDGE

KARL SPIELMAN:

Plaintiff,

vs.

ORDER OF REMAND

SAN JUAN COUNTY, UTAH,

Respondents

BUSSINESS RESOLUTIONS, LLC, as Trustee of Moab  
Development Trust, MIKE BYNUM, as Manager, and  
JOHN RAMSEY, as individual

Intervenors

The case is subject to a Ruling and Order from District Court Judge Don Torgerson. Judge Torgerson found that the previous Order issued in this case by Administrative Law Judge, Cheryl Luke contained two findings that were not supported by the substantial evidence in the record. Judge Torgerson therefore remanded the matter back to the ALJ for reconsideration in light of the corrected findings.

Judge Torgerson also suggested that the ALJ consider remanding the matter back to the County Commission for further proceedings if additional findings were necessary to reach a decision.

I hereby find that the current record is not sufficient to make a final determination and that the matter must be remanded back to the County Commission to take evidence and make findings that support a decision to grant or deny the subdivision permit at issue in this matter.

IT IS HEREBY ORDERED that the San Juan County Commission shall reopen proceedings in this matter to reconsider their decision. The County Commission SHALL accept the corrected findings of the District Court that;

1. The airstrip in controversy is included in the formal subdivision boundaries of the proposed new subdivision. The County Commission shall consider that as part of its decision.

2. The Commission shall consider evidence in this matter and shall take evidence regarding safety concerns under applicable law.

All proceedings shall be held consistent with the County Land Use, Development, and Management Act .

Dated this 16th day of December, 2024.

*Cheryl D. Luke*

Administrative Law Judge

## Certificate of Delivery

This Order was sent to the following parties via e-mail:

"jmatkin@parrbrown.com" <jmatkin@parrbrown.com>

"jnielson@sanjuancounty.org" <jnielson@sanjuancounty.org>

"jwa@clydesnow.com" [jwa@clydesnow.com](mailto:jwa@clydesnow.com)

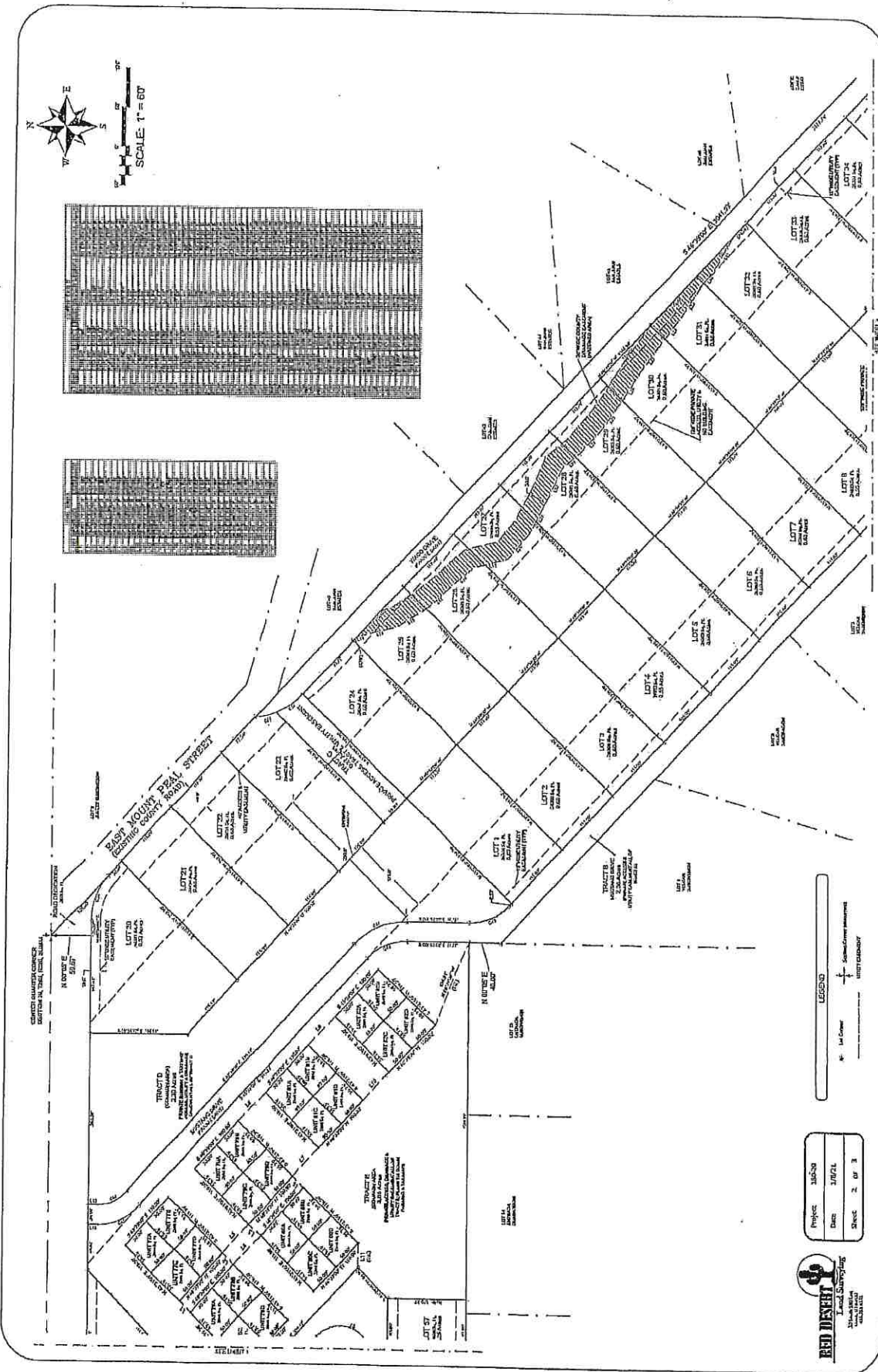
"mmcdonald@sanjuancounty.org" <mmcdonald@sanjuancounty.org>



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Airstrip runs between lots





Airstrip runs between lots

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