

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 06-cv-02089-JLK-DLW

COLORADO WILD, INC.,
SAN LUIS VALLEY ECOSYSTEM COUNCIL,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE, a Federal Agency within the U.S. Department of
Agriculture;

Defendant,

LEAVELL-McCOMBS JOINT VENTURE,

Intervenor-Defendant.

STIPULATED SETTLEMENT AGREEMENT

Plaintiffs, Colorado Wild and San Luis Valley Ecosystem Counsel (collectively
“Plaintiffs”); Defendant, United States Forest Service (“Forest Service”); and Intervenor-
Defendant, Leavell-McCombs Joint Venture (LMJV”), by and through their undersigned counsel,
hereby enter a Stipulated Settlement Agreement (“Agreement”) under the following terms and
conditions:

WHEREAS, LMJV submitted an application to the Forest Service requesting special use authorizations for rights-of-way for access and utilities across National Forest System lands from U.S. Highway 160 to LMJV's private property, located within and surrounded by Rio Grande National Forest lands;

WHEREAS, the purpose of LMJV's application was to facilitate the landowner's plan to develop its 287.5 acre property as a year-round resort village, to be known as the Village at Wolf Creek;

WHEREAS, on March 15, 2006, pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 to 4370e, ("NEPA"), Rio Grande National Forest Supervisor, Peter Clark, entered a Record of Decision ("ROD") for the *Application for Transportation and Utility Systems and Facilities for the Village at Wolf Creek Final Environmental Impact Statement* ("FEIS");

WHEREAS, on May 26, 2006, LMJV filed a timely administrative appeal of the ROD, which was denied on July 13, 2006, by Deputy Regional Forester Greg Griffith; after which on July 28, 2006, LMJV requested that the Forest Service perform a discretionary review of the denial of its administrative appeal;

WHEREAS, on August 3, 2006, the Forest Service declined to accept LMJV's request for discretionary review of the denial of its administrative appeal;

WHEREAS, on August 28, 2006, Forest Supervisor Clark issued a letter to LMJV in response to certain issues raised in LMJV's request that the Forest Service conduct a discretionary review of the denial of LMJV's administrative appeal;

WHEREAS, on May 30, 2006, Plaintiffs filed a timely administrative appeal of the ROD pursuant to 36 C.F.R. §§ 215.9, 215.7 and 215.13, which appeal was denied in its entirety in a written decision dated July 13, 2006, by Deputy Regional Forester Greg Griffith, thereby exhausting Plaintiffs' administrative remedies;

WHEREAS, on October 19, 2006, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief (Dkt # 1) challenging the 2006 Final Environmental Impact Statement ("FEIS") and ROD, and the August 28, 2006 letter, on the grounds that the decisions and approvals contained therein were arbitrary and capricious under the Administrative Procedure Act, ("APA"), 5 U.S.C. §§701, *et seq.*, and in violation of NEPA, 42 U.S.C. § 4332 *et seq.*, as well as NEPA's implementing regulations. Defendant and Intervenor Defendant have denied the claims set forth in the complaint;

WHEREAS, on October 4, 2007, Senior Federal District Judge, John L. Kane granted Plaintiffs' request for a preliminary injunction;

WHEREAS, on November 1, 2007, Magistrate Judge David West granted in part Plaintiffs' motion to complete and supplement the administrative record, and subsequently extended the deadline for compliance with or for filing objections to such order, which deadline has yet to expire;

WHEREAS, Plaintiff and Defendants, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs' claims, have agreed that dismissal of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The Forest Service shall withdraw the 2006 ROD; the August 28, 2006 letter from Forest Supervisor Clark to LMJV; and LMJV shall voluntarily relinquish the November 2006 Tranquility Road special use authorization within seven (7) calendar days of the filing of this Agreement. The parties agree that the Forest Service withdrawal of these documents provides a reasonable basis for Plaintiffs' voluntary dismissal of the present lawsuit in order to avoid unnecessary litigation proceedings, without any admission of liability or concessions by any party.

2. The Forest Service shall initiate a new NEPA process which will include a new scoping process and preparation of a new draft EIS and final EIS, in connection with LMJV's application.

3. The Forest Service reserves the right to use any product or analysis previously undertaken or relied upon in the 2006 NEPA process, however, such product or analysis shall be presented in new NEPA documents, the new administrative record or new decision documents which shall not tier to, attach or incorporate by reference the 2006 FEIS.

4. The Forest Service shall not issue any new special use authorizations or authorize any other activities related to the proposed access, other than those required to complete the new NEPA process, unless and until a new NEPA process is completed which results in a new FEIS and ROD.

5. The parties agree that the resolution of this litigation does not establish, confirm or change the scope or extent of existing authorized uses of Forest Service Road ("FSR") 391.

6. Upon approval of this Agreement by the Court, all counts of Plaintiffs' Complaint shall be dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1).

7. Notwithstanding the foregoing dismissal, the parties recognize Plaintiffs' right to challenge any new NEPA process, NEPA documentation, and any agency decision documents arising from the new NEPA process.

8. Further, the foregoing dismissal of Plaintiffs' claims shall not bar Plaintiffs from challenging the Forest Service's future reliance on or incorporation of analysis from the 2006 NEPA process and FEIS where it is alleged that the analysis being carried forward into the new NEPA process is flawed.

9. Without in any way admitting that its position in this action was not substantially justified or that Plaintiffs are prevailing parties, Defendant agrees to pay to the Plaintiffs the sum of \$250,000.00 in full satisfaction of any and all claims for attorneys' fees, costs, and other expenses related to this action. Payment shall be made via electronic wire transfer to the Western Environmental Law Center ("WELC"). Within 20 days of receipt of the signed court order approving this stipulation, the Forest Service will submit all necessary paperwork to the Albuquerque Service Center for payment. Plaintiffs will provide Defendant all necessary account information to make the electronic fund transfer including: (1) WELC's tax identification number; (2) payee account name; (3) routing/transit number; (4) account number; (5) type of account; and (6) name and address of banking institution. Tax identification information for Brad A. Bartlett, Esq. and Travis E. Stills, Esq. shall also be provided to Defendant. All information regarding the transfer and tax identification shall be held confidential by Defendant and used only for purposes of making the payment.

10. Notwithstanding the foregoing dismissal, the parties request that the Court retain jurisdiction to ensure compliance with paragraph 9. Upon receipt of payment, Plaintiffs shall have no further recourse against the Defendant for any additional payment of attorneys' fees, costs, or other expenses related to this action and the Court shall have no further jurisdiction over this lawsuit.

11. The parties agree that this Agreement was negotiated in good faith and resolves claims that were vigorously contested, denied, and disputed by the parties. By entering into this Agreement, neither Plaintiffs, Federal Defendant nor Defendant-Intervenor, waive any claim or defense on any grounds. This Agreement is executed solely for the purpose of compromising and settling this litigation and nothing herein shall be construed or offered in evidence in any proceeding as an admission or concession of any issue of fact or question of law concerning the claims settled under this Agreement.

12. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the Defendant take actions in contravention of NEPA, the National Forest Management Act ("NFMA"), the Administrative Procedure Act ("APA"), or any other law or regulation, either substantive or procedural.

13. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to the Forest Service by NEPA, the APA, NFMA, the Alaska National Interest Lands Conservation Act ("ANILCA") or any other applicable law with respect to the analysis of LMJV's application for special use authorizations for rights-of-way for access and utilities across National Forest System lands from U.S. Highway 160 to LMJV's private property relating to the proposed Village at Wolf Creek or any other proposed use of that land.

14. Nothing in this Agreement shall be interpreted as, or shall constitute, a commitment or requirement that Defendant obligate or pay funds, or take any other action in contravention of the Anti-Deficiency Act, 13 U.S.C. § 1341, or any other applicable appropriations law.

15. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of this Agreement and do hereby agree to the terms herein.

16. The terms of this Agreement shall become effective upon entry of an Order by the Court ratifying this Agreement.

RESPECTFULLY SUBMITTED this 19th day of February, 2008.

s/ Geoff Hickcox

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on February 19, 2008, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Stacey Bosshardt

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Joseph Michael Klise

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James Robert Moriarty

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I also certify that I have mailed or served the document or paper to the following non-CM/ECF participants in the manner (mail, hand-delivery, etc.) indicated by nonparticipant's name:

None required.

s/ Geoff Hickcox

Geoff Hickcox