

DISTRICT COURT, MINERAL COUNTY, COLORADO Mineral County Courthouse North First Street Creede, CO 81130 Phone: (719) 658-2575	
PLAINTIFFS: Colorado Wild, Inc. and the San Luis Valley Ecosystem Council v. DEFENDANT: Board of County Commissioners of Mineral County and INDISPENSABLE PARTY: Leavell-McCombs Joint Venture	
ATTORNEYS FOR PLAINTIFF: Anna N. Ulrich, #33367 P.O. Box 1101 South Fork, CO 81154 Phone: (719) 873-5585 Fax: (719) 873-5585 UlrichAnna@direcway.com Jeffrey C. Parsons, #30210 P.O. Box 4041 Boulder, CO 80306 Phone: (303) 665-2485 Fax: (303) 786-8054 parsonsje@hotmail.com	? COURT USE ONLY? Case Number: Div: Courtroom:
COMPLAINT	

Plaintiffs, Colorado Wild, Inc. (“Colorado Wild”) and the San Luis Valley Ecosystem Council (“Ecosystem Council”), by and through their undersigned legal counsel, hereby states and avers the following as its Complaint for declaratory and certiorari relief against the Defendant, Board of County Commissioners of Mineral County (“Board”) and Indispensable Party, Leavell-McCombs Joint Venture (“Leavell-McCombs” or “Applicant”).

PARTIES, JURISDICTION AND VENUE

1. Colorado Wild is a not-for-profit corporation headquartered in Durango, Colorado.

2. Colorado Wild is an environmental conservation organization whose primary interests and goals are the protection and restoration of forested wildlife habitat, as well as the promotion of sustainable economies throughout the Southern Rocky Mountains.

3. Colorado Wild is a member-based organization with over 400 members, comprised of avid skiers, recreationists, wildlife enthusiasts and business owners who support a sustainable economy that preserves the splendor of the Colorado mountains. Although Colorado Wild has members from many states, its membership also includes residents of Mineral County, Archuleta County, Alamosa County and Rio Grande County, Colorado.

4. Colorado Wild's members regularly use and enjoy the Rio Grande and San Juan National Forests, including the specific lands proposed for development as the Village at Wolf Creek Planned Unit Development Project ("Village" or "Development Project") and the public lands surrounding the Village property, for hiking, camping, wildlife watching and other recreational and aesthetic purposes. Those uses and interests are harmed by development on the Village property approved by Mineral County.

5. The Ecosystem Council is a non-profit organization dedicated to protecting and restoring the biological diversity, wildlife and natural resources of the Upper Rio Grande bioregion, through a balance of ecological values and human needs.

6. The Ecosystem Council is headquartered in Alamosa, Colorado, and its membership primarily consists of residents and property owners within the San Luis Valley, including citizens of Mineral County, Alamosa County and Rio Grande County, Colorado.

7. The Ecosystem Council seeks to protect over 8,100 square miles of land, including the land on and surrounding the proposed Village. Specifically, the Ecosystem Council advocates for the Rio Grande National Forest in order to preserve its natural resources, to restore its wildlife migration corridors and to protect the Upper Rio Grande watershed and the San Luis Valley's water supply.

8. The Ecosystem Council's members regularly use and enjoy the Rio Grande and San Juan National Forests, including the specific lands proposed for development as the Village and the public lands surrounding these lands, for hiking, camping, wildlife watching and other recreational and aesthetic purposes. Those uses and interests are harmed by development on the Village property approved by Mineral County.

9. Both Colorado Wild and the Ecosystem Council, and these organizations' membership, have legally-cognizable interests which are threatened and directly injured as a result of the decision of the Board of County Commissioners of Mineral County ("Board") to enact Mineral County Resolution # 04-19 (Oct. 4, 2004); Mineral County Resolution # 04-21 (Oct. 26, 2004); and Mineral County Resolution # 04-23 (Nov. 1, 2004) (collectively "Final Approval").

10. Defendant Board is the governing body of Mineral County, Colorado, and is responsible for granting Final Approval of the Development Project.

11. Leavell-McCombs, created under the laws of the State of Texas, is the entity which applied for and received Final Approval for the Development Project. Accordingly, Leavell-McCombs is an indispensable party to this action. *See Norby v. City of Boulder*, 577 P.2d 277, 280 (Colo. 1978).

12. Venue is proper in this Court pursuant to C.R.C.P. 98(a), as this action affects real property and franchises located in Mineral County, and C.R.C.P. 98(b)(2) because this action is brought against public officers of Mineral County.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

13. On or about August 24, 2000, the Board adopted Mineral County Resolution # 00-13 (recorded Oct. 12, 2000), a preliminary approval resolution for a planned unit development (“PUD”) governing the Village.

14. Resolution # 00-13 § 1.3.5 states that “Final Approval” is approval by the Board of various documents and materials including, among others, the Final Plat; the Articles of Incorporation of Village at Wolf Creek Mutual Water Company (“Company Articles”); the Articles of Incorporation the Village at Wolf Creek Property Owners Association (“POA Articles”); the Master Declaration of Covenants, Conditions and Restrictions for the Village at Wolf Creek (“Master Covenants”); and the Application for Designation of New Phase (“ADNP”)–Phase One.

15. On or about June 14, 2004, Leavell-McCombs submitted its Final Planned Unit Development Plan, including the ADNP–Phase One (collectively “Final Application”). The Applicant supplemented the Final Application up until, and possibly following, the Board’s conditional approval of the ADNP-Phase One on November 1, 2004, discussed below.

16. Without providing notice or a public hearing, on or about July 15, 2004, the Mineral County Planning Commission (“Planning Commission”) recommended approval of the Final Application at its regularly scheduled meeting.

17. Following correspondence between counsel for the Wolf Creek Ski Corporation and the Mineral County attorney, the Planning Commission conducted a public meeting on the Final Application on or about September 16, 2004, at which meeting the Planning Commission recommended approval of the Final Application, conditioned upon the Applicant providing a Final Plat of the Development Project.

18. At its next regular meeting, on or about October 21, 2004, the Planning Commission recommended approval of the Final Application without conditions. The Planning Commission refused to hear any comments on the ADNP-Phase One at this meeting.

19. Without publishing notice or accepting public comment, on or about October 4, 2004, the Board approved the governing documents of the Village, including the Company Articles, the POA Articles and the Master Covenants.

20. On or about October 26, 2004, following notice published in the Mineral County Miner, the Board held the only public hearing on the Final Application. After receiving comments from Mineral County staff, the Applicant's representatives and Wolf Creek Ski Corporation's representatives, the Board allowed the public to comment, granting four minutes to each person, including counsel for Colorado Wild and the Ecosystem Council.

21. Almost immediately following the public hearing on or about October 26, 2004, the Board deliberated briefly and then unanimously voted to grant Final Approval for the Village.

22. On or about November 1, 2004, the Board voted to approve the ADNP-Phase One at its regularly scheduled meeting, conditioned upon the Applicant revising the plat which it submitted. The Board did not provide notice of this meeting.

23. Prior to the Board's decision to grant Final Approval, numerous individuals and organizations, including members of Colorado Wild and the Ecosystem Council, submitted written documents into the record commenting on the Development Project. On or about October 20, 2004, counsel for Colorado Wild and the Ecosystem Council submitted written comments on the Final Application in the form of a letter mailed to each member of the Board, Mineral County's Land Use Administrator and Mineral County's attorney.

24. Upon information and belief, as of November 26, 2004, Mineral County has not published notice of the Board's grant of Final Approval.

PLAINTIFFS' CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF:

(Declaratory Judgment Pursuant to the Colorado Declaratory Judgments Act, C.R.S. §§ 13-51-101 to -115, and C.R.C.P. 57 that the Board's grant of Final Approval violates State and local law with respect to process)

25. Colorado Wild and the Ecosystem Council incorporates by reference each and every allegation contained in paragraphs 1 through 24 of this Complaint.

26. An actual controversy exists with regard to the legality and validity of the Board's grant of Final Approval for the Development Project.

27. The rights of Colorado Wild, the Ecosystem Council and these organizations' members are adversely affected by the Board's grant of Final Approval.

28. The Board acted contrary to State and local law in granting Final Approval without providing adequate process.

29. Before the Board could approve or disprove the Final Application, including all documents and materials which constitute Final Approval as defined in Resolution # 00-13 § 1.3.5, it was required to hold a public hearing following adequate notice to the public and adjacent landowners. *See* C.R.S. §§ 24-67-104(1)(e); 30-28-116.

30. Mineral County Subdivision Regulations (“M.C.S.R.”) § 2.4.2.3 provides that “all members of the public will be given an opportunity to present evidence for and against the [Final] Application.” *See also* M.C.S.R. § 1.3.7 (the Board must consider evidence by affected citizens to make “informed decisions . . . so that it may protect all of the citizens of Mineral County.”); Mineral County Zoning Regulations (“M.C.Z.R.”) § 6.14(A).

31. The Board failed to publish notice of its meeting on October 4, 2004, at which it approved the Master Covenants, the Company Articles and the POA Articles. The Board also failed to allow the public to comment prior to adoption of these documents.

32. Upon information and belief, the final drafts of the Master Covenants, the Company Articles and the POA Articles were, for the first time, presented to the Board by the Applicant at the October 4, 2004 meeting and, thus, only made available to the public after approval by the Board on that date.

33. Despite approving the Master Covenants, the Company Articles and the POA Articles, at least one Board member failed to read these document prior to approving them, as stated at the meeting on October 4, 2004.

34. On or about November 1, 2004, the Board conditionally approved the ADNP-Phase One for the Development Project. The Board did not publish notice of this meeting.

35. The notices published by the Board on September 23, 2004, and October 7, 2004, stated that the Board would “consider the Final Plat and Final Development Plan” for the Village at a public hearing on October 26, 2004.

36. The notices of September 23, 2004, and October 7, 2004, failed to inform Colorado Wild, the Ecosystem Council, their members and the general public that the Board would consider materials, such as the Master Covenants, the Company Articles, the POA Articles and the ADNP-Phase One, at meetings on October 4, 2004, and November 1, 2004. Therefore, approval of these documents occurred without notice both before and after the public hearing on October 26, 2004.

37. Because the Board failed to provide adequate process, including notice and a public hearing, prior to approving the Master Covenants, the Company Articles and the POA Articles on October 4, 2004, and the ADNP-Phase One on November 1, 2004, the Board lacked jurisdiction to take any action with respect to these documents.

38. At the public hearing on October 26, 2004, the Board failed to provide the Ecosystem Council, the Ecosystem Council's and Colorado Wild's members and these organizations' counsel sufficient time to present their comments on the Final Application to the Board. *See* C.R.S. § 24-67-105.5.

39. The Board granted Final Approval on October 26, 2004, with little to no deliberation and only 10 minutes after numerous concerned individuals and groups, including Colorado Wild and the Ecosystem Council, presented comments.

40. Colorado Wild, the Ecosystem Council and their members were not granted a fair and impartial tribunal, as the Board was predisposed to vote in favor of Final Approval: “‘They *will be* approving the developer’s agreement to build the infrastructure,’ Mineral County attorney John Wilder said of Monday’s expected commission vote.” Joanne Kelley, *Texas Developer Dreams Big at Wolf Creek Site*, ROCKY MOUNTAIN NEWS, Oct. 20, 2004 (available at http://www.rockymountainnews.com/drmn/business/article/0,1299,DRMN_4_3291966,00.html) (emphasis added).

41. M.C.S.R. § 2.3.3.1 provides that “at least fifteen (15) days prior to a regular County Commission meeting, the original tracing and five (5) prints of the final plat together with the required supplemental material shall be submitted by the subdivider to the County Clerk.”

42. The notices of September 23, 2004, and October 7, 2004, each stated that the Plaintiff had “submitted a Final Plat,” that “may be examined” at the office of Mineral County’s Land Use Administrator.

43. In contradiction to the language in the notices of September 23, 2004, and October 7, 2004, the Applicant continually revised the plats of the Village, and submitted new plats to the County, after the notices were published. Because the Applicant continued to revise and re-submit plats, Colorado Wild, the Ecosystem Council and their members were never able to adequately assess the Development Project.

44. Because approval for the ADNP-Phase One granted on November 1, 2004, was conditional on a revised plat, Colorado Wild, the Ecosystem Council and their members never had an opportunity to review the Final Plat before it was approved, contrary to M.C.S.R. § 2.3.3.1.

45. Upon information and belief, the Board has failed to publish notice of its decision granting Final Approval in a newspaper of general circulation within 14 days of the decision as required by C.R.S. § 24-68-103(c).

46. A member of the Planning Commission invited a representative from the Army Corps of Engineers (“Corps”) to its meeting on October 21, 2004, in order to solicit the Corps’ position on the destruction of wetlands on the Development Project site, a topic of great concern to Colorado Wild and the Ecosystem Council. Prior to that meeting, however, the County attorney stifled discussion on this topic by unilaterally directing the Corps representative not to come.

SECOND CLAIM FOR RELIEF:

(Declaratory Judgment Pursuant to the Colorado Declaratory Judgments Act, C.R.S. §§ 13-51-101 to -115, and C.R.C.P. 57 that the Board’s grant of Final Approval violates State and local law with respect to amendment to the PUD)

47. Colorado Wild and the Ecosystem Council incorporate by reference each and every allegation contained in paragraphs 1 through __ of this Complaint.

48. The Board acted contrary to law when it granted Final Approval despite several amendments to the PUD resolution, Resolution # 00-13, which failed to conform to the requirements of State and local law.

49. C.R.S. § 24-67-106(3)(b) provides that no substantial amendment or removal of a provision in a PUD plan shall occur without a public hearing and a finding that the change is “consistent with the efficient development and preservation of the entire planned unit development, does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across a street from the planned unit development or the public interest, and is not granted solely to confer a special benefit upon any person.”

50. M.C.S.R. § 6.1 describes the limited circumstances in which a waiver of subdivision requirements may be granted. “Such variances, modification, or waivers may be granted only by the affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners.” *Id.*

51. Resolution # 00-13 § 4.6.40 provides: “The Plan of Augmentation approved by the Water Court in 1990 must be amended as required by the Water Court decree or Colorado law to recognize the changes in the Development, as proposed, subsequent to the approval of such Plan. Such Amended Decree is a condition of Final Approval. . . .” Despite this provision, the Applicant did not seek an amendment of the Water Decree obtained in 1990 and, consequently, did not satisfy this requirement for Final Approval.

52. The plain language of Resolution # 00-13 § 4.6.40 required the Applicant to obtain an amendment to the 1990 Water Court Decree. Accordingly, the Board unlawfully waived this requirement when it granted Final Approval without compelling the Applicant to obtain an amendment to the 1990 Decree in Water Court, or meeting the conditions of C.R.S. § 24-67-106(3)(b) and M.C.S.R. § 6.1.

53. Resolution # 00-13 § 4.6.31 provides: “The Subdivision Improvements Agreement for phase 1 shall be executed prior to or at the time of Final Approval.” Resolution # 00-13 § 4.6.32 states: “Each Subdivision Improvements Agreement shall require separate security to secure its performance. The form of security shall be a letter of credit in the amount of 125% of the total cost of the infrastructure for that phase . . .” Further, Resolution # 00-13 § 4.6.55.4 provides that “[t]he approved Subdivision Improvements Agreement will be executed and the approved security for such Agreement shall be delivered to the Board prior to the adoption of the resolution approving the ADNP.”

54. For the first time at the Planning Commission meeting on September 16, 2004, the Applicant proposed an amendment to the PUD resolution with regard to the Subdivision Improvement Agreement, offering to provide a letter of credit for approximately 25% of the total cost of the infrastructure for Phase One within 30 days *after* the Board approved the ADNP-Phase One, and providing the rest of the security prior to construction. Presumably based upon this offer, the Planning Commission recommended and the Board granted Final Approval without requiring the Applicant to submit a letter of credit in the amount of 125% of the total cost of the infrastructure for Phase One.

55. In failing to meet the conditions of C.R.S. § 24-67-106(3)(b) and M.C.S.R. § 6.1, the Board unlawfully modified the PUD resolution when it granted Final Approval even though the Applicant had not provided a letter of credit in the amount of 125% of the total cost of the infrastructure for Phase One.

56. M.C.S.R. §§ 2.3.2.1 to 2.3.2.19 list the requirements and materials that must accompany a Final Plat. Such requirements include, among others, plans for all streets and roads, M.C.S.R. § 2.3.2.1; plans for sanitary and sewer systems, M.C.S.R. § 2.3.2.2; and a description of existing and proposed grades, M.C.S.R. §§ 2.3.2.5 to 2.3.2.7.

57. In a letter dated October 1, 2004, Mineral County’s Land Use Administrator unilaterally waived these requirements when he informed the Applicant that it need not comply with these regulations in submitting the Final Plat.

58. The Board violated its own Subdivision Regulations when it granted Final Approval even though the Land Use Administrator had unlawfully waived certain requirements of the Subdivision Regulations.

THIRD CLAIM FOR RELIEF:

(Declaratory Judgment Pursuant to the Colorado Declaratory Judgments Act, C.R.S. §§ 13-51-101 to 13-51-115, and C.R.C.P. 57 that the Board’s grant of Final Approval was contrary to the terms of Resolution # 00-13)

59. Colorado Wild and the Ecosystem Council incorporate by reference each and every allegation contained in paragraphs 1 through 58 of this Complaint.

60. The Board acted contrary to law when it granted Final Approval in contradiction to numerous standards, procedures and conditions of Resolution # 00-13.

61. A PUD must meet all standards, procedures and conditions of the PUD ordinance or resolution which, in this case, is Resolution # 00-13. *See Coleman v. Gormley*, 748 P.2d 361, 363 (Colo. Ct. App. 1987); *Applebaugh v. Board of County Comm'rs of San Miguel County*, 837 P2d 304, 308 (Colo. Ct. App. 1992).

62. The Board failed to comply with Resolution # 00-13 § 4.6.9 when it granted Final Approval because it approved development that will affect wetlands without requiring the Applicant to obtain a 404 permit from the Corps.

63. The Board failed to comply with Resolution # 00-13 § 4.6.39 when it granted Final Approval because the Applicant had not demonstrated adequate snow storage.

64. The Board failed to comply with the provisions of Resolution # 00-13 addressing the Amended Scenic Easement (Dec. 11, 1998), including but not limited to § 4.6.21 regarding prohibitions on building heights greater than 48 feet, when it granted Final Approval.

65. The Board failed to comply with Resolution # 00-13 § 4.6.25.2 when it granted Final Approval because the Applicant had failed to provide water storage facilities, and easements to and from such facilities, on the Final Plat other than for Phase One.

66. The Board failed to comply with Resolution # 00-13 §§ 1.3.1, 4.6.32 when it granted Final Approval because the Applicant did not to include numerous costs in its itemized list of costs of the entire infrastructure for ADNP-Phase One to be included in the Subdivision Improvements Agreement.

67. The Board failed to comply with Resolution # 00-13 §§ 2.7.2, 4.6.54 when it granted Final Approval because all documentation submitted by the Applicant failed to comply with applicable laws, and all permits required by applicable law were not obtained prior to Final Approval.

FOURTH CLAIM FOR RELIEF:

(Declaratory Judgment Pursuant to the Colorado Declaratory Judgments Act, C.R.S. §§ 13-51-101 to 13-51-115, and C.R.C.P. 57 that the Board's grant of Final Approval was contrary to State law with regard to access)

68. Colorado Wild and the Ecosystem Council incorporate by reference each and every allegation contained in paragraphs 1 through 67 of this Complaint.

69. The Board acted contrary to State and local law in granting Final Approval despite the Applicant's failure to demonstrate adequate access to the Development Project.

70. Resolution # 00-13 § 4.6.11 requires that the access road to the Development Project be determined prior to Final Approval. This provision also requires that the Final Application include pertinent provisions on the issue of the main access road. *Id*; *see also* §§ 2.7.2, 4.6.54.

71. Furthermore, additional requirements in Resolution # 00-13 are impossible to fulfill until the exact location and form of the main access road is determined. *See, e.g.*, Resolution # 00-13 §§ 1.3.1; 3.2.6.

72. C.R.S. § 24-67-105(7) requires that PUD requirements substantially comply with the statutory subdivision provisions found in C.R.S. §§ 30-28-101 to 30-28-138. Those statutory subdivision provisions specifically provide that “[n]o person may submit an application for subdivision approval to a local authority unless the subdivision plan or plat provides, pursuant to section 43-2-147, C.R.S., that all lots and parcels created by the subdivision will have access to the state highway system in conformance with the state highway access code.” C.R.S. § 30-28-133.1.

73. M.C.S.R. § 3.6.1 requires that a proposed street layout be made “in accordance to sound land planning practice for the type of development proposed.” M.C.S.R. § 3.6 provides that “the arrangement, character, extent, width, grade and location of all streets shall conform to existing topographical conditions to enhance public convenience and safety.”

74. Since the main access road for the Village must cross National Forest land, the Applicant is required to obtain permission for access from the United States Forest Service (“Forest Service”) through the process of an Environmental Impact Statement (“EIS”). The Forest Service published a draft EIS on its website on October 4, 2004, and mailed copies of the document on or about October 8, 2004. The Forest Service will receive comments on the Draft EIS until at least December 6, 2004. At the close of the comment period, the Forest Service will consider the comments received and issue a Final EIS and Record of Decision. The Forest Service grants no access until issuance of the Final EIS and a Record of Decision, and all appeals are resolved.

75. The access relied upon by the Applicant in its Final Application was Forest Service Road 391 (“FSR 391”). The Applicant is only entitled to use FSR 391 in the summer months and cannot transport construction vehicles over the road. Therefore, it is practicably and legally impossible for the Applicant to use such access to build or service the Village in the manner proposed in the Final Application. *See* Letter from Peter L. Clark, Forest Supervisor, Rio Grande Nat’l Forest, to Stephen D. Harris, Merrill, Anderson, King & Harris, LLC (July 6, 2004) (“[The private landowner’s] use is limited to dry weather use (generally from June through September) by vehicles not exceeding eight feet in width and/or 80,000 pounds in gross vehicle weight.”); Letter from Peter L. Clark, Forest Supervisor, Rio Grande Nat’l Forest, to Stephen D. Harris, Merrill, Anderson, King & Harris, LLC (Oct. 21, 2004).

76. The Board violated State and local law as well as Resolution # 00-13 in granting Final Approval despite the Applicant's failure to demonstrate access adequate to support the Development Project as contemplated in Resolution # 00-13.

FIFTH CLAIM FOR RELIEF:

(Declaratory Judgment Pursuant to the Colorado Declaratory Judgments Act, C.R.S. §§ 13-51-101 to 13-51-115, and C.R.C.P. 57 that the Board's grant of Final Approval fails to comply with the Master Plan)

77. Colorado Wild and the Ecosystem Council incorporate by reference each and every allegation contained in paragraphs 1 through 76 of this Complaint.

78. The Board acted contrary to law in granting Final Approval despite the Final Application's failure to comply with the Comprehensive Plan for Mineral County ("Comprehensive Plan"), and the Development Project's incompatibility with the zones from which it is created.

79. Resolution # 00-13 ¶ 4 at 1 stated that the Application for a Planned Unit Development submitted by the Applicant was consistent with the Comprehensive Plan.

80. As described in the record, the Development Project fails to conform with the Comprehensive Plan in numerous ways.

SIXTH CLAIM FOR RELIEF:

(Declaratory Judgment Pursuant to the Colorado Declaratory Judgments Act, C.R.S. § 13-51-101 to 13-51-115, and C.R.C.P. 57 that the Board's grant of Final Approval was arbitrary and capricious, an abuse of discretion and otherwise contrary to law)

81. Colorado Wild and the Ecosystem Council incorporate by reference each and every allegation contained in paragraphs 1 through 80 of this Complaint.

82. In granting Final Approval, the Board abused its discretion and acted in a manner that was arbitrary, capricious and not in accordance with law because it failed to comply with process requirements, including notice and public hearings, as set forth in State and local law.

83. In granting Final Approval, the Board abused its discretion and acted in a manner that was arbitrary, capricious and not in accordance with law because the Board allowed amendments to the PUD resolution without following the standards and procedures set forth in State and local law.

84. In granting Final Approval, the Board abused its discretion and acted in a manner that was arbitrary, capricious and not in accordance with law because the Board granted such approval despite numerous failures of the Final Application to comply with Resolution # 00-13.

85. In granting Final Approval, the Board abused its discretion and acted in a manner that was arbitrary, capricious and not in accordance with law because the Board granted such approval despite the Applicant's failure to demonstrate adequate access as required by State and local law, including Resolution # 00-13.

86. In granting Final Approval, the Board abused its discretion and acted in a manner that was arbitrary, capricious and not in accordance with law because the Final Application failed to comply with the Comprehensive Plan in numerous respects.

87. In granting Final Approval, the Board abused its discretion and acted in a manner that was arbitrary, capricious and not in accordance with law because the Final Application failed to substantially comply with the provisions of Resolution # 00-13.

88. The competent evidence in the record before the Board was insufficient to support the Board's grant of Final Approval for the Development Project.

SEVENTH CLAIM FOR RELIEF:

(Certiorari Relief Pursuant to C.R.C.P. 106(a)(4))

89. Colorado Wild and the Ecosystem Council incorporate by reference each and every allegation contained in paragraphs 1 through 88 of this Complaint.

90. In approving the Final Application, the Board may have acted in a quasi-judicial capacity.

91. If the Board acted in a quasi-judicial capacity, C.R.C.P. 106(a)(4) provides Colorado Wild and the San Luis Ecosystem Council with a basis for relief because, based upon the evidence in the record, the Board abused its discretion and acted in a manner that was arbitrary, capricious and not in accordance with law, when it approved the Final Application.

92. The competent evidence in the record before the Board was insufficient to support the Board's grant of Final Approval for the Development Project.

PRAYER FOR RELIEF

WHEREFORE, Colorado Wild and the Ecosystem Council respectfully request that this Court enter a declaratory judgment finding the Board's grant of Final Approval is void because the approval violated State and local law and, consequently, exceeded the Board's authority. Colorado Wild and the Ecosystem Council further request that the Court enter a declaratory judgment finding that the Board's action in granting Final Approval was arbitrary, capricious and an abuse of discretion.

In the alternative, Colorado Wild and the Ecosystem Council request that the Court grant certiorari relief, finding that the Board abused its discretion and exceeded its authority when it granted Final Approval.

Colorado Wild and the Ecosystem Council further pray that the Court grant their reasonable costs and attorneys fees, and for such other relief as the Court deems just and proper.

Respectfully submitted this 26th day of November, 2004.

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