

GUNNISON COUNTY PLANNING COMMISSION
AGENDA: JUNE 2, 2006

- 8:45 a.m.**
- **Call to order; determine quorum**
 - **Approval of Minutes**
- Unscheduled citizens:** A brief period in which the public is invited to make general comments or ask questions of the Commission or Planning Staff about items which are not scheduled on the day's agenda.
- 9:00 a.m.** **Walker (formerly the Pitt application)** work session/no action, request for a duplex in compliance with Section 5-207: Protection of Water Quality, Lot RNT-4, Skyland River Neighborhood
- 9:45 a.m.** **Larkspur Subdivision, represented by Gary Garland,** work session /possible action, single family and recreational park development, on a 35.6-acre parcel that lies along the Brush Creek Road, approximately 1 ½ miles south of the Town of Crested Butte, in the E ½ NE ¼ of Section 12, Township 14 South.
- Adjourn**

GUNNISON COUNTY PLANNING COMMISSION
Regular Meeting Minutes
June 2, 2006

The Gunnison County Planning Commission conducted a regular meeting, the Commissioners' Meeting Room in the Blockstock Government Center. Present were:

Chairman-Dave Houghton	Director of Planning-Joanne Williams
Vice-Chairman-Jeff Wilkinson	Assistant Director of Planning- Neal Starkebaum
Commissioner- Ramon Reed	Planner- Cathie Pagano
Commissioner-Ian Billick	Administrative Assistant- Michelle Spain
Commissioner-Nick Lypps	
Commissioner-Richard Karas	

Chairman Dave Houghton opened the regular meeting of the Gunnison County Planning Commission June 2, 2006, and determined that a quorum was present.

UNSCHEDULED CITIZENS: Robert Stuplich presented a possible future request to install nine windmills, on his property, south of Crested Butte. He presented a photo for the Commission to review. This area has historically been agricultural in use. A 30' tower would be used to replace the gas-powered engine now used to pump water; Nine 8' towers would be proposed for rodent control. The current use of the property is residential. Commercial wind farms and noise levels were discussed.

Staff noted that the *Gunnison County Land Use Resolution* (LUR) is not structured to review all situations. Chairman Dave Houghton suggested the current requirements of the LUR could be used, or that an amendment could be proposed to address installation of windmills. Commissioner Ian Billick suggested using the current LUR to address this type of application. Staff has not had time to do research for the Commission on this type of application. Commissioner Ramon Reed said this was not a Land Use Change request at all. Staff will research other counties that allow this type of structure. Free fall areas for potential downed towers need to be reviewed. It was noted a wind farm could be a major impact but that Stuplich's proposal might be classified as an administrative review.

WALKER/ PROTECTION OF WATER QUALITY: The Commission met with applicant Todd Walker for a work session to reviewed his application for a duplex on Lot RNT-4, Skyland River Neighborhood that, as proposed, would not comply with Section 5-207: *Protection of Water Quality*. Houghton requested that the applicant provide a good picture of the property. The Skyland River Neighborhood must also approve plans for this lot; the applicant indicated he has not yet approached that organization for approval to locate a single-family home, rather than a duplex on the property; the Commission has expressed the opinion that a single-family home can be configured on the lot so that it complies with the LUR section on water quality.

Walker said he has received a report from Bio Environs which agrees with the Army Corps of Engineers report; locating the proposed duplex structure would cause a minimal amount of disturbance. A written report from Bio-Environs has not yet been submitted. Prior applications in this area were discussed. Walker reviewed proposed mitigations, including location of a silt fence. Commissioner Ramon Reed requested a review of the elevations and a discussion on the roof line extension over the required buffer

area. Planner Cathie Pagano indicated a French drain could be used in this area for runoff. Commissioner Ian Billick requested a review from the Skyland HOA concerning reduction of the front setback requirements. Commissioner Jeff Wilkinson asked about a retaining wall in this area. Commissioner Richard Karas discussed prior approvals and the items that were asked for in prior meetings.

Wilkinson requested that there be more flexibility used on this request, because the subdivision lots were approved by the County, before the section on water quality was added to the *Gunnison County Land Use Resolution*.

The Commission directed Walker to meet with the Skyland River Neighborhood HOA, to propose location of a single-family home on the lot. They also asked Walker to consider decreasing the size of this structure. The application was tabled until action by the Skyland HOA is taken and documented.

LARKSPUR SUBDIVISION: The Commission met with applicant Gary Garland for a work session; reviewed his request for a single family and recreational park development, on a 35.6-acre parcel that lies along the Brush Creek Road, approximately 1 ½ miles south of the Town of Crested Butte, in the E ½ NE ¼ of Section 12, Township 14 South.

The Commission reviewed draft minute notes from the May 19, 2006 meeting as a checklist of items to be reviewed again today:

- The cross-walk has been indicated on the plan.
- Full cut-off lighting, in addition to any requirements of the Gunnison County Land Use Resolution language has been required within the protective covenants.
- Whetstone Vista is junior water right. Reed noted he believes O'Rourke and Whetstone Vista. Language is needed as a condition that any cost that might be incurred to O'Rourke and Whetstone Vista because of an as yet unknown requirement by the Colorado Department of Health and Environment will be borne by the applicant and such requirement be addressed in a document satisfactory to the County Attorney.
- Houghton is not satisfied with language addressing the airport location; he has contacted a private pilot's association for recommended language which can then be included in the Acknowledgement.
- Acknowledgement to be signed by property purchasers now includes references to the location of the airport, development of the recreation center, the County's requirement that special events needing more than 68 parking spaces will be required to secure Special Events Permits.
- Language regarding essential housing restrictions has been added; language will be changed regarding the initial purchase.
- The final water decree has been signed by District 4 Water Court Judge Steven Patrick; initial water source for Larkspur, which generates approximately 40 percent greater than those required by the LUR.
- Recreation lot can be subdivided into three condominium units if one is used for employee housing, and that language has been included relative to that in the protective covenants.

The Commission again introduced the location of an employee unit in the recreation center. The Commission agreed it was acceptable just to encourage the applicant to include an employee unit, but not require it.

The Commission encouraged the applicant to include the opportunity for ground-source heat pump usage for heat generation by the pond.

The Commission inquired if the applicant is willing to limit the number of solid fuel-burning uses to one per unit; Commission and applicant agreed to leave the covenant language as proposed within the May 23, 2006 version.

Commissioner Ramon Reed was seated as a voting member.

MOVED: Jeff Wilkinson moved and Ian Billick seconded a motion to approve the recommendation of LUC-2005-23. The motion passed unanimously.

“PRELIMINARY PLAN PROVIDES DETAILED SOLUTIONS AND DESIGN. Preliminary Plan review requires the applicant to formulate detailed, designed/engineered solutions to the issues and concerns identified during Sketch Plan review, and to address, in a site-specific manner, all other issues that are relevant to the Preliminary Plan. The burden in the Preliminary Plan review is on the applicant to provide detailed information and mitigation proposals for evaluation.”

Section 4-504: B., Gunnison County Land Use Resolution

PROJECT DESCRIPTION

Gary F. Garland submitted the Larkspur Neighborhood Preliminary Plan January 17, 2006. The application is the second step of a multi-tiered review of an application to develop a subdivision that includes free-market single-family homesites, essential (deed-restricted affordable) homesites, and commercial recreation amenities open to the public. The property is located adjacent to the Brush Creek Road (County Road 738), in the S ½ NE ¼ NE ¼ and N ½ SE ¼ NE ¼, Sec. 12, Twn 14 S R 86 W.

The Planning Commission recommended approval of the Sketch Plan October 21, 2005, which was followed by Board of County Commissioners' approval December 6, 2005 (*Resolution #2005-59*), including all conditions of approval recommended by the Planning Commission and two additional conditions, reiterated below.

The plan, as represented by the original and subsequent related submittals, includes the development and subdivision of the parcel into 46 free-market single family lots; one lot that will remain the property of the Homeowner Association to include an employee unit, an office and maintenance barn; eight deed-restricted single-family essential housing lots; two deed-restricted (essential housing) lots, each of which will have one four-plex; and one deed-restricted (essential housing) lot allowing one duplex. Lot sizes range from one seventh to one third of an acre.

A 2.78-acre parcel is proposed to house a recreation center, to be owned separately from either the applicant or the Larkspur Homeowners' Association. The center would be allowed by the subdivision's protective covenants to include year-round tennis facilities (i.e. indoor and outdoor), clubhouse, health club, swimming center, bathrooms and showers, climbing wall, batting cages, golf practice area, basketball courts, pro shops, parking , food and bar service ancillary to the tennis facilities, and accompanying offices and services. The lot may be resubdivided by its owner to create two condominium units or a maximum of three condominium units only if one of the three is restricted to a residence for an employee of the facility. That subdivision may occur without obtaining the consent of the Larkspur Community Association or the owner of any lot within the subdivision. Approval for the condominiumization is required to be obtained from Gunnison County.

The applicant will not be constructing any of the proposed residences or recreation center.

Conduct of activities and of special events. The recreation center is intended to occasionally host special events. As noted below, events that generate numbers of vehicles that exceed the 68 parking spaces included in the recreation center design plan will be required to secure a Special Events Permit from Gunnison County. As many as 12 special events may be conducted annually.

Affordable or “essential” housing residences. Gunnison County currently has no adopted regulations requiring developers to provide affordable or “essential” housing within proposed developments. However, amendments to the *Gunnison County Land Use Resolution* are proposed, and are currently being considered by the public and the Board of County Commissioners in the public hearing process. The applicant has voluntarily proposed the number of essential, deed-restricted units proposed within this plan, has been working with the Gunnison County Housing Authority to perfect deed-restrictions to ensure that essential housing residences will remain affordable, and has indicated that the restrictions designed by the Authority will be placed upon those residences. A copy of the deed-restrictions will be an attachment to the *Declaration of Protective Covenants*.

Article IV: 7. a.: requires that, “All essential lots and/or essential units shall be charged an initial assessment fee equal to fifty (50) percent of that assessment all non-essential lots and units. Any general assessment, special assessment, or any other assessed charge for all essential housing lots and units shall be subject to an annual assessment increase limitation equal to 3% of the prior year’s general annual assessment for the essential housing lot or unit.”

Disclosure of conditions for property purchasers. A document to be presented to property purchasers will disclose the possibility of future development around the Larkspur parcel, and includes the following disclosures:

“Development on Adjacent Property: That a parcel of property exists, approximately 13 acres in size, that lies immediately to the West of Larkspur, between a portion of Larkspur and Brush Creek Road. That this parcel is owned by Gunnison County, the Towns of Crested Butte and Mt. Crested Butte and Crested Butte Mountain Resort and that these entities plan to develop the property in the future. Proposals for development include, but are not limited to, an affordable (essential) housing project, intercept or park and ride parking lot. Some or all of this property may be sold and/or partitioned off.

“Project near Crested Butte Airport: Crested Butte Airport lies approximately one mile to the east of Larkspur. Low flying aircraft will be encountered flying over Larkspur.

“Recreation Parcel: 1. The Recreation Parcel within Larkspur is being sold to an entity that is not owned, operated or controlled by the developer of Larkspur, Garland Properties, Inc. There is NO guarantee that any recreation facility, ie pool, fitness center, tennis courts, will ever be built. If this facility is built then there is NO guarantee that it will be able to operate as a viable business enterprise and NO guarantee that the facility will remain open. 2. Gunnison County, through the Land Use Process, will hold as a condition of approval that the Recreation Parcel has 68 parking spaces. The County is allowing any event that does not require more than the 68 parking spaces to take place without a special events permit. The County is also allowing the Recreation Parcel to be used for events, not to exceed 12 times a year, that will use roadside parking within Larkspur. These twelve (or less) events will still have to be approved by the Larkspur Community Association if roadside parking is anticipated.”

[Commission Chair Houghton will research and separately recommend additional language as is available from the Aircraft Owners and Pilots Association (AOPA) to include in this Acknowledgement regarding development in proximity to existing airports.]

PHASING AND RELATIONSHIP TO APPROVED SKETCH PLAN

A Preliminary Plan is required to address all of the area presented in the approved Sketch Plan, to be consistent with the approved Sketch Plan and to specifically address and comply with the conditions stated in the Board's approval. If the Preliminary Plan represents a significant variation from the approved Sketch Plan, that variation must be clearly and completely identified or described. The Preliminary Plan may address phases that are projected to be phases of the Final Plan, though all studies and engineering design are required to address the entirety of the project.

No phasing is proposed for the Larkspur subdivision.

DOCUMENTS INFORMING THIS REVIEW AND ACTION

This review and recommendation incorporates, but is not limited to, all the documentation submitted to the County and included within the Planning Office file relative to this Preliminary Plan application, including all exhibits, references and documents. Among them are these site plans and narrative submittals that inform this review:

- *Larkspur Preliminary Water Right Application*, undated and unattributed, submitted May 9, 2006 by the applicant who indicated the documents were prepared by the applicant's attorney, with attached schematic of the Lacy pipe, Lacy Ditch, showing location of the Larkspur Diversion, which lies approximately 400' south and approximately 8.5 feet lower in elevation of the Whetstone Vista Diversion.
- Artist's rendering of 35,000 square foot recreation center exterior with landscaping and parking areas, dated as received April 6, 2006, unattributed.
- Letter of May 10, 2006 from Gary Garland, detailing changes to the Preliminary Plan subsequent to its original submittal, and in response to issues raised during work sessions and the public hearing.
- *Preliminary Site and Landscaping Plan*, prepared by NCW and Associates dated 5/5/06.
- *Preliminary Sanitary Sewer Profiles*, prepared by NCW and Associates dated 1/16/06.
- *Preliminary Grading, Drainage and Erosion Control Plan*, prepared by NCW and Associates dated 1/16/06.
- *Preliminary Utility Plan*, prepared by NCW and Associates dated 1/16/06.
- *Preliminary Roadway Profile and Larkspur Loop*, prepared by NCW and Associates dated 1/16/06.
- *Intersection Improvements*, prepared by NCW and Associates, dated 5/12/06.
- *Declaration of Protective Covenants Larkspur*, dated May 23, 2006.
- *Design Guidelines for Larkspur*, dated May 23, 2006.
- *Acknowledgement*, dated as received 5/31/06, draft document of acknowledgement of existing and potential conditions surrounding the Larkspur development, to be signed by prospective property purchasers.
- *Pre-Inclusion Agreement*, dated as received 5/16/06, agreement between Garland Properties, Inc. "by and through Gary Garland, its President, as successor in interest to Brush Creek Holdings, LLC, and the East River Regional Sanitation District.
- *General Warranty Deed* changing ownership of the Larkspur property from Brush Creek Holdings, LLC and Garland Properties, Inc.

COMPLIANCE WITH CONDITIONS OF SKETCH PLAN APPROVAL

The following include all conditions of Sketch Plan approval, followed by the applicant's corresponding submittal in the Preliminary Plan:

- 1. Models/storyboards shall be required to be submitted in the Preliminary Plan, to include site design impacts demonstrated, at a minimum from the following points if property owners grant permission: The Michael Wright parcel; center of the building envelope for Lot 8 in Butte Pastures; both entrances to Skyland/The Club at Crested Butte, and a point half way between those entrances.**

An analysis of visual impacts of Larkspur at full buildout was done by superimposing digital building images on photos taken from the required vantage points. Photos were included in the Preliminary Plan of current views and views with computer-generated building profiles as proposed in the Plan. Viewpoints included: 1) From the Larkspur entrance to Skyland Drive towards Round Mountain, 2) From the Larkspur entrance to Skyland Drive towards Whetstone, 3) From mid-point of Fairway Drive towards Round Mountain, 4) View from Slate River Drive toward Cement Mountain, 5) View from Mike Wright's porch toward Gothic, and 6) View from Lot 8 in Butte Pastures toward Paradise Divide. The Commission utilized these renderings in its onsite visits, and in reaching a determination that visual impacts have been reasonably mitigated.

- 2. Language has been cited in [the Sketch Plan] Recommendation regarding specific items that are to be addressed within the draft protective covenants to be submitted at Preliminary Plan. Those items are each to be included within that document.**

The staff affirmed at the Planning Commission meeting June 2, 2006 that a "search" for each of those subjects had been conducted of the May 23, 2006 electronic versions of the *Declaration of Protective Covenants* and *Design Guidelines* and confirmed that each of the cited issues has been addressed.

- 3. Submittal of Preliminary Plan shall include documentation of consultation with the Colorado Division of Wildlife, as well as the required wildlife habitat analysis.**

Consultation was conducted as part of the Sketch Plan review process itself. A subsequent letter from J Wenum, CDOW Area Wildlife Manager, dated December 15, 2005, noted that CDOW had visited the site. "The proposed subdivision is located within mapped elk winter range, Canada goose winter and nesting areas, and is identified as potential sage grouse habitat (DOW WRIS Mapping, 2003). Black bears reside in the area, which has resulted in frequent human/bear conflicts. Prairie dogs, cotton tail rabbits, striped skunks, red fox, and coyotes would also be expected to inhabit the area, along with numerous other small mammals and occasional mountain lion..."

"During winter months, elk utilize southern facing slopes and valleys for feeding and loafing...Although Larkspur is mapped as elk winter range, and is labeled as critical habitat, the suitability of this parcel of land for wintering elk is negligible. The value as 'winter range' has been degraded by the existing development, which essentially surrounds the proposed subdivision. As a result, it is doubtful that wintering elk will be directly affected by the development of this parcel. Conflicts with elk are still likely to arise, however, especially if homeowners landscape with nonnative flowers, shrubs or trees...[R]esidents should not be allowed to chase, scare, disturb, or otherwise harass elk in an attempt to move them off open space areas within the development during the winter months. The real threat from development will occur from uncontrolled dogs harassing, chasing or killing wintering elk.

"...The ponds identified in the proposal will enhance usage by geese...The proposed Larkspur subdivision lies within potential Sage Grouse habitat...[which] does not reflect actual or potential value for sage grouse. Historically, grouse may have occasionally used this area during summer months, however, with the existing heavy development of Skyland to the north and west, the moderately heavy development down valley and limited utilization potential, it is doubtful that GSG will be severely impacted by development of this parcel..."

Wenum further identified Black Bear as being resident in the area, and noted that fences should be minimized to facilitate wildlife movement (a perimeter fence to be constructed by the applicant will comply with wildlife-

friendly design required by the Land Use Resolution); and urged that dogs and cats be required to be controlled. (Language is included in the *Declaration of Protective Covenants* restricting numbers of domestic animals and requiring their confinement.)

4. Sign elements as allowed by [Section 13-109] may be proposed within the Preliminary Plan.

The Preliminary Plan notes that a logo is being prepared for Larkspur, to be submitted within the Final Plan. The logo would be used on an entry sign, the design for which may be submitted with, and approved as part of the Final Plan.

5. Location of building envelopes, and requirements included in protective covenants/design guidelines are required to address limitations on outside storage, appearance of structures and related elements, to specifically mitigate visual impacts.

Building envelopes are addressed within the narrative of the Declaration of Protective Covenants; the building envelopes within the subdivision are constituted by the buildable area on each lot, minus required setbacks, a configuration allowed by the *Land Use Resolution*.

6. Integrating the standards of Section 5-419 [recodified Land Use Resolution Section 13-119]: *Standards to Ensure Compatible Uses*, as well as other measures to mitigate issues raised during this Sketch Plan review, is required within the Preliminary Plan submittal. Mitigation must address: density, clustering open space, buffering the neighbors from impacts, define the commercial uses, building concepts, sketch elevations, trails, water plan, review of Town of Crested Butte's Three Mile Plan in the context of the proposed density, mix to include multi family structures, design standards and a new intersection alignment with Slate River Drive.

At the Planning Commission meeting of May 19, 2006, the applicant agreed to add requirements within the *Declaration of Protective Covenants* that all exterior lighting requires full-cutoff fixtures; that language has been added to the May 23, 2006 version of the Covenants.

Heights of buildings have been limited within the *Declaration of Protective Covenants* to minimize visual impacts to existing subdivisions and their residents: No building within Larkspur may exceed 30 feet in height. The maximum height of houses on Lots E8, S9 and S11 is 22 feet. Heights are to be measured in compliance with the applicable building codes adopted and amended by Gunnison County.

Building square footages is limited to the following, also to minimize visual impacts: The total gross residential floor area (GRFA) on all single family lots, essential or otherwise cannot be less than 800 square feet excluding garages and not more than 4,000 square feet, including garages, excluding porches. Buildings of more than one story are required to have a main floor footprint, as determined by the Design Review Committee, including garage, of not less than 800 square feet, excluding decks. The maximum GRFA for the entire structure on the essential duplex lot is 3,600 square feet. The maximum GRFA for the structure on each essential four-plex lot shall be 4,400 square feet. The maximum GRFA of all structures on the Association/Maintenance Lot shall be 8,000 feet. The maximum size of all structures on the Recreation Lot is limited to 39,000 square feet.

A trail easement has been added. Lots originally proposed along the Brush Creek Road across the road from Skyland's Fairway Trail residences, have been moved farther away from the road to buffer between those existing and new uses. The recreation center has been relocated into the lowest portion of the parcel, away from the Brush Creek Road, to minimize visual impacts.

A public hockey facility, proposed in the original Sketch Plan, has been removed from the plan along with all references to it within the protective covenants, in response to concerns from residents of the neighborhood that such a facility would create unmitigable traffic and noise impacts, and affect the character of the area.

Design guidelines require that wood shingles, vertical and horizontal boards with wood corner and trim boards, and stone siding are encouraged all housing units and garages. Asbestos shingle, vinyl, concrete or cinder block, poured concrete and aluminum or metal exterior siding will not be permitted. At the discretion of the Design Review Board, core-ten type metal siding may be used as an accent on exterior walls. Fibre cement planking is allowed in earth tone colors that have been pre-approved by the Design Review Board. T-III siding is not allowed. Manufacture modular homes are not prohibited.

- 7. The applicant is required to timely and fully obtain and comply with all applicable federal, state, municipal and other permits and terms and conditions of any municipal, state, federal permits required for the project.**

Submittals of copies of applicable completed permits are required to be submitted as part of the Final Plan.

- 8. Approval of this Sketch Plan application shall constitute a final decision of approval for the general development concept only, but shall not constitute approval of any detailed design or engineering submittals or proposed solutions to specific problems revealed during the Sketch Plan review or later in the review process. Such approval does not constitute approval at this stage of review of the density or number of lots proposed within this application; determination of the compatibility of density on this parcel with the impact area.”**

No submittal response required by the applicant.

- 9. Sketch Plan approval by the Board shall not constitute approval of the Major Impact project, or permission to proceed with construction of any aspect of the proposed land use change. Approval at this stage only authorizes the applicant to submit a Preliminary Plan application. If, during the Preliminary and Final Plan reviews, the applicant is unable to fulfill all of the requirements of this Resolution, then the application shall be denied at the Preliminary or Final Plan review stage.”**

No submittal response required by the applicant.

- 10. The applicant shall be required to submit and actively pursue the completion of the Preliminary Plan application within 12 months after the date of approval of the Sketch Plan. Failure to submit a complete Preliminary Plan application within this time period shall render the Sketch Plan approval null and void, and require the applicant to begin the Sketch Plan review process again. “**

The Preliminary Plan has been submitted within the requisite period.

- 11. A draft legal mechanism by which the costs of construction, operation and maintenance of the proposed developed recreational facilities shall be borne solely by the owner/operator of the recreational facilities shall be required to be submitted in the Preliminary Plan, and in a final, recordable form in the Final Plan, if the Preliminary Plan is approved.**

The following language is included within Article VI: 1.D. of the protective covenants: “This unit shall be for the use of persons employed within the boundaries of LARKSPUR. Ownership of, and development on, the parcel designated as "Recreation Parcel" (Lot No.R-1) on the within plat shall be by a third party, unrelated to the owners of lots in LARKSPUR. The lot owners of other lots and the Homeowners Association shall NOT be burdened with the construction, operation or maintenance of the recreational and other facilities on said parcel nor of the costs related thereto. This lot can be re-subdivided into a maximum of three condominium units provided one of the units is an employee housing unit. If no employee unit is included then only two condominium units are allowed. No townhomes are allowed.”

- 12. A draft proposed agreement detailing must-build and resale limitations related to lower-priced free-market lots to reasonably ensure sales of those lots to local persons shall be required to be submitted in the Preliminary Plan, and in a final, recordable form in the Final Plan, if the Preliminary Plan is approved.**

Article IX within the protective covenants addresses this condition as follows:

1. Construction of a residence, or related improvements, on Lots S3,S4,S5,S6,S7,S8,S10, and S22, must commence on or before a date which is not later than three years following the date of recording of the deeds in connection with the closing of the initial purchase and sale of each of said lots. If such construction is not timely commenced on any of said lots, Declarant shall have the right to repurchase such lot for a price equal to the purchase price paid by such lot owner, not adjusted for tax prorations or other similar items, plus an amount equal to three percent (3%) per annum of such purchase price, not compounded. Such right to repurchase shall be prior to any liens that may be placed on such lot either at the time of the closing of the purchase and sale of such lot or subsequent thereto. If the Declarant elects to exercise such right to repurchase any of said lots, it must furnish written notice of its intention to repurchase delivered to such lot owner not later than 90 days following the end of said three year period and by recording such notice in the office of the Gunnison County Clerk and Recorder. If the lot owner cannot be located, developer shall mail a copy thereof to the lot owner at his last known address. If such notice is not timely given, said lot shall no longer be subject to said right of repurchase. If the Declarant elects to repurchase said lot, it shall obtain a commitment for a policy of title insurance within 15 days following the date such notice of intention is recorded. If such commitment discloses any liens on such lot the amount of which is in excess of the amount of said repurchase price, developer shall notify the lot owner and the lien holder who shall have 30 days to make arrangements to release such lien. If satisfactory arrangements are not made within said 30 days period to satisfy any such lien at the closing, the Declarant shall deposit the amount of such purchase price with the title insurance company which issued the commitment with instructions to disburse the same to the lot owner and lien holder(s), as is appropriate, when it is satisfied that the title has been transferred to the Declarant free of all liens and encumbrances.

There shall be included in each of the deeds from the developer to the lot owners the following language relating to the provisions described above:

The within conveyance is subject to the provisions of Article IX, Section 1 of the Covenants relating to the requirement that the lot owner must commence construction of a residence, or related improvements, on the lot on or before a date which is not later than three years following the date of recording of the deeds in connection with the closing of the purchase and sale of said lot. The within conveyance is also subject to the provisions of Article IX, Section 2 of the Covenants relating to the restriction on resale of said lot until a date which is not earlier than three years following the date of recording of the deed in connection with the closing of the purchase and sale of said lot.

2. Lots S1,S2, S3,S4,S5,S6,S7,S8,S9 S10,,S11,S17,S18,S19,S21, and S22 may not be sold following their purchase from the developer until a date which is not earlier than three years following the date of recording of the deeds in connection with the original closing of the purchase and sale of each of said lots. The within restriction shall not be construed to prohibit a sale to the immediate members of the lot owner's family, to an entity owned by the lot owner or a transfer pursuant to an estate proceeding upon the death of the lot owner.

There shall be included in each of the deeds from the developer to the lot owners the following language relating to the provisions described above:

The within conveyance is subject to the provisions of Article IX, Section 2 of the Covenants relating to the restriction on resale of said lot until a date which is not earlier than three years following the

original date of recording of the deed in connection with the closing of the purchase and sale of said lot.”

ADJACENT LAND USES

The Club at Crested Butte (a.k.a. “Skyland”), which lies within the Skyland Metropolitan District, is located to the northwest, across the Brush Creek Road from the proposed project site; single-family lots. Gunnison County jointly owns an undeveloped 13-acre vacant parcel directly to the west. (Public discussion of possible uses have included selling the property, developing it with affordable housing residences, and as a park-and-ride parking area. Rivergreen and Silver Sage subdivisions (single-family lots and homes that allow an efficiency residence in each single-family residence) lie to the north of Skyland. An undeveloped 37+-acre parcel is immediately adjacent to the east used for grazing. with Whetstone Vista (single-family homesites) and Buckhorn Ranch subdivision (single-family, multiple-family, 32 deed-restricted affordable residences, private airstrip open to limited public use, and airport-related commercial uses) located farther east. Large single-family parcels (10+ to 18+ acres in size) are located immediately south and to the southeast.

Skyland is a mixed-use development that includes lots and constructed single-family homes, townhomes, duplexes and triplexes, a commercial golf course and retail golf shop, three outdoor tennis courts and year-round heated, domed tennis court providing services for tennis clinics, tournaments, leagues and team drills; an aerobics and fitness center with indoor pool, full-service spa and dining facilities, and provides the setting and services for weddings, banquets and other special events for as many as 200 people throughout the year. Lake Grant, a man-made lake, exists in the subdivision.

SUBMITTALS RELATED TO LOCATIONAL STANDARDS, RESOURCE PROTECTION, DEVELOPMENT INFRASTRUCTURE AND PROJECT DESIGN STANDARDS

As noted during Sketch Plan review and approval, there are no flood hazards and no geological hazards identified by County mapping or independent review by the applicant’s engineers related to this property.

LANDS BEYOND SNOWPLOWED ACCESS. The site is located along an existing County road and state highway, both of which are snowplowed.

DEVELOPMENT ON INHOLDINGS IN NATIONAL WILDERNESS: The site is not located within a Wilderness inholding.

DEVELOPMENT ON PROPERTY ABOVE TIMBERLINE: The site is not located above timberline.

ROAD AND TRAILS.

Traffic Impact Study. The “Larkspur Neighborhood Traffic Impact Report” was prepared by NCW Associates, undated, and is included in the Preliminary Plan submittal. Institute of Transportation Engineers (ITE) *Trip Generation Manual* was referenced to provide project trip generation rates; for single-family residences and the proposed commercial uses; the Gunnison County Land Use Resolution requires 10 tpd be applied to multiple-family residences. NCW notes that ITE figures may be high for the proposed commercial uses, given assumed larger user populations in ITE traffic estimates, and the real population figures of the upper East River Valley. The development is estimated to generate 1210 average daily trips at full buildout. The Commission determined that traffic mitigation measures are sufficient for full buildout of Larkspur.

NCW summarizes: “Brush Creek Road from Highway 135 to just beyond the Larkspur property is a two-lane paved roadway with shoulders and is in good condition. The Gunnison County Road and Bridge standards set a lower limit roadway capacity of 3,000 ADT for a two-lane paved road, with no defined

upper limit. However, in other communities two-lane limited access paved roadways with no on-street parking allowed have upper limit capacities in excess of 12,000 ADT. Therefore, no capacity issues are anticipated on Brush Creek Road as a result of the Larkspur development proposal.”

Dust control. NCW and Associates have submitted a “Dust Control Plan” within the Preliminary Plan submittal, requiring that a water truck be onsite during infrastructure installation and construction. “The contractor shall be required to stop surface work if winds exceed 25 mph (per typical State requirements).”

Certification of driveway availability. NCW and Associates, via letter within the Preliminary Plan submittal, have attested that each proposed lot within the subdivision has frontage along and access to the proposed street network in the subdivision.[Locations for driveways have been included on the submitted engineered plans, as required by the *Land Use Resolution*.

Access design and installation. The *Preliminary Roadway Profile and Larkspur Loop*, prepared by NCW and Associates dated 1/16/06 provides engineered design for access to and streets within the proposed subdivision. Streets are designed to be 26 feet wide asphalt. A geotechnical engineer and a project engineer from NCW and Associates will be onsite during construction. *Intersection Improvements*, prepared by NCW and Associates, dated 5/12/06 was submitted subsequent to the original Preliminary Plan submittal, identifying reconfiguration of elevations and the entrance of the Brush Creek Road to Colorado Hwy 135. Because the Brush Creek Road is a County Road, securing any required Highway Access Permit is a County, not a developer’s responsibility. However, cost to engineer and improve the intersection is to be shared on a *pro rata* basis among developments.

The western access of the Larkspur property onto Brush Creek is now proposed to cross the 13-acre parcel jointly owned by Gunnison County, the municipalities of Crested Butte and Mt. Crested Butte, and Crested Butte Mountain Properties. An easement agreement, effecting that access, will allow an improved access for Larkspur, adjacent landowner Mike Wright, and Butte Pastures subdivision onto the Brush Creek Road by juxtaposing it with Skyland’s Slate River Drive entrance onto the Brush Creek Road. A copy of the easement agreement is required to be submitted in the Final Plan.

Trails. A 10-foot wide perpetual easement has been dedicated on the plat along the western, southern and eastern boundaries of Larkspur. Such easement allows walking or pedestrian use, horseback riding, bicycling and cross-country skiing to access public lands or any dedicated public trail connecting Larkspur to other lands. Internal pathways have been added next to the road and an easement from Lexie Court southeast to the recreation center to allow safe pedestrian access.

The Gunnison County Public Works Department submitted no written comment; final approval by the Department is required of Final Plan.

WATER SUPPLY PLAN.

Estimated demands. The “Central Water System Report,” prepared by NCW and Associates and included in the Preliminary Plan provides the required estimated gallons per day based on estimated average demand (residential based on 350 gpd year-round per residence, based on 55 single-family residential lots including the housing unit on the association lot plus 10 multi-family units= 22,750 gpd; commercial uses based on comparative figures from the Skyland clubhouse facility: 75,000 gal per month/30 days/month=250 gpd, maximum daily demand based on three times the average daily demand=75,750 gpd), estimated peak hour demand (6,312 per hour; 105 gpm) and estimated averaged daily demand for commercial/industrial uses (2500 gpd for the tennis and fitness facility). A hydraulic analysis to verify that distribution system pressures maintain a minimum working pressure of 40 pounds per square inch (psi), and a minimum 20 psi residual pressure during fire flow demands.

"The water system is supplied by the developed Lacy #4 Spring which is currently being delivered to the Larkspur site by a 6" PVC pipe. the measured flow rate is approximately 45 gpm (64,800 gpd)...approximately 2.57 times the estimated average daily demand. Excess water will be diverted to the proposed lakes for fire and irrigation purposes. When the lower lake is full, the excess water will be diverted to Lacy's property via an existing 8" PVC pipe."

Hydraulic analysis. A hydraulic analysis was completed using U.S. Environmental Protection Agency Net software to model the system, to maintain a minimum working pressure of 40 psi and minimum 20 psi residual pressure during fire flow demands, as required. "Two 50 hp pumps and two 10 hp pumps will be installed to maintain the working and residual pressures...for the fire and irrigation water system...In addition, a back-up generator of sufficient size to provide power to the pumps will be provided on site or a secondary looped electric service will be provided to serve as an alternative power source to the pump station."

Storage. The report further notes that storage capacity is capable of providing the specified peak hour demands for periods of six hours or a maximum day demand plus the required fire flow demands. NCW proposes 100,000 gallons of stored potable water; fire flow storage is proposed to be 15 acre-feet (4,887,430 gallons) within the proposed lake.

Potability. The potable portion of the water supply system of chemical and bacteriological tests demonstrating the potability of the water and its suitability for the proposed use has been included in the Preliminary Plan submittal. Contact chlorination will be used to purify the water.

Landscaping. Lawns are limited to 500 square feet of irrigated lawn per residence. Trees are required to be drip-irrigated. Estimated demand is less than 100 gpd/residence. Estimates for landscaping the recreation center, public park and open space and road islands is 8-10,000 gpd. Non-potable water is to be drawn from two ponds through a pressurized metered system.

Fire prevention and fire suppression. Water will be drawn from a lake and pressurized through pumps and water lines to fire hydrants in the project. Pumps and lines have been sized to deliver fire flows meeting standards of the *Uniform Fire Code*. A letter from the Crested Butte Fire Protection District approving the final utility plan for the subdivision and for the requisite number of fire hydrants and storage shall be required to be submitted as part of the Final Plan.

Attorney's Opinion and legal source. In a November 11, 2005 letter, attorney John R. Hill, Jr., noted that , "The physical supply of water will be a surface water right of 0.15 cfs applied for in Case No. 05CW88. The water will be diverted from Lacy Spring No. 4 (called Larkspur Spring and Pipeline...) pursuant to a contract with William J. Lacy, Jr. The spring is tributary to the East River. Brush Creek Holdings has applied for a conditional water right for domestic, irrigation, recreation an piscatorial uses....I do not believe that there is any serious question as to Brush Creek's ability to satisfy the 'can and will' requirement for a conditional decree. Consequently I expect the Water Court will enter a decree for the claimed conditional water right.

"The depletions resulting from the proposed Larkspur Subdivision will be replaced by augmentation certificates purchased from the Upper Gunnison River Water Conservancy District. By purchasing the augmentation certificates, Brush Creek is, in effect, 'buying in' to the Plan for Augmentation decreed in Case No. 03CW107. That case is a general plan for augmentation filed by the District to provide augmentation water for users in the East ad Gunnison River drainages. The question of injury to vested rights of others has been addressed and decided in that case. There is no need for a separate plan for augmentation for the Larkspur subdivision. I believe that the junior water right from Larkspur Spring and

Pipeline augmented by the augmentation certificates will provide a lawful and adequate water supply for this project.”

In a May 18, 2006 follow-up letter, Hill noted that the referenced contract with William J. Lacy, “...was finalized and signed by all parties on May 17,” but that, “It turned out that Lacy Spring No. 4 and Vieh Spring No. 1 do not produce the 0.15 cfs originally contemplated. After supplying Whetstone Vista’s prior right to 20 gpm, that spring produces approximately 0.069 cfs (31 gpm). That amount is sufficient per the County requirements to supply the Larkspur Subdivision as now planned...The contract with Lacy provides that he will sell a secondary amount of water to make up the total 0.15 cfs that Brush Creek is purchasing. This supplemental water will come from Lacy Springs Nos. 1 and 3 and Vieh Springs Nos. 2, 4 and 5. That water will be used as a supplemental supply for the presently proposed subdivision and any possible future uses.

“The application for conditional water rights in Case No. 05CW88 is still pending.” Hill indicated that agreement had been reached with opposers, who include the O’Rourke family and Whetstone Vista Estates...The pipeline supplying the Larkspur Subdivision is already connected to Lacy Spring No. 4 and Vieh Spring No. 1. The agreement with Lacy provides that Lacy will carry the water being purchased in his pipeline from the springs to the connection with the Larkspur Subdivision pipeline. In the event that O’Rourkes and Whetstone have an issue with that and assert that Brush Creek/Garland Properties is in trespass for carrying water in the pipeline over their land, Brush Creek/Garland Properties can and will exercise its private right of condemnation found in...the Colorado Constitution and [statute, allowing]...’Any person owning a water right or conditional water right shall be entitled to a right-of-way through the lands which lie between the point of diversion and point of use or proposed use for the purpose of transporting water for beneficial use in accordance with said water right or conditional water right.”

The O’Rourkes have publicly expressed concern that they not be personally burdened with costs that might result from as yet unidentified requirements of Larkspur imposed by the Colorado Department of Public Health and Environment related to Larkspur’s installation of a community water supply system. The O’Rourke and Whetstone water supply source lie above the point where Larkspur will collect its water supply.

The final decree, and/or other relevant documented court action is required to be submitted as part of the Final Plan.

Within the *Preliminary Inspection and Testing Plan*, NCW and Associates, Norman Whitehead P.E.-P.L.S. indicated that, “The current manager of several water and wastewater districts in the Gunnison Valley, Jack Dietrich has been retained by the developer to manage the Larkspur Water and Sanitation District...Along with a project engineer...Mr. Dietrich will be involved with construction observation and testing of the water system facilities.”

The *Declaration of Protective Covenants for Larkspur*, Article XIII, establishes the Larkspur Water Association to oversee and administer the water supply. Establishing documents for that Association are subject to review and approval of the County Attorney.

SEWAGE DISPOSAL/WASTEWATER TREATMENT.

Sewage treatment will be provided by the East River Regional Sanitation District. Via letter of May 23, 2005, Frank Alfone, Director of the District, noted that because the development lies outside the District’s service area, “...service would require an out of district service contract...[The District] believes it has the ability to provide this service, subject to appropriate engineering and feasibility studies, water plan approval, and approval by the District’s Board...the District must satisfy itself that Larkspur’s plans

are adequate to fulfill the purposes of the proposed contract and that the District's service to Larkspur will not impair the service it currently provides its customers.

"The District will require Larkspur to make adequate capital contributions as necessary. With the addition of Larkspur to the District's service area, the need to expand the District's treatment plant will likely arise sooner than initially expected. Larkspur must be willing to pay its share of the expansion costs...Larkspur's proposed water plan...contemplates a change in the District's currently existing discharge point...Any prospect of out of district service agreement will be contingent on Larkspur's receipt of a decree or decrees permitting any necessary changes in the District's point of diversion.

"In addition, Larkspur must provide and pay for any infrastructure necessary to connect the subdivision to the District's existing facilities."

At the Planning Commission meeting of May 5, 2006, Alfone, said that because of changing State requirements, the plant would have had to expand, whether or not Larkspur were added to it.

Larkspur's *Preliminary Sanitary Sewer Profiles and Preliminary Utility Plan*, prepared by NCW and Associates dated 1/16/06 illustrate the development's physical tie-in to the ERRSD plant. The Development Improvement Agreement will include the required collateral to fund that construction.

Requirements of the Colorado Department of Public Health and Environment relative to this proposal have not yet been received from the Department by the applicant or County. Final design of the sewage treatment design and water plan is subject to requirements of that Department, and are required to be submitted as part of the Final Plan.

GENERAL SITE PLAN STANDARDS AND LOT MEASUREMENTS. The narrative, map and design layout comply with the requirements of Section 13-103: *General Site Plan Standards and Lot Measurements*.

SETBACKS FROM PROPERTY LINES AND ROAD RIGHTS-OF-WAY. The narrative, map and design layout comply with the setback requirements of Section 13-104: *Setbacks from Property Lines and Road Rights-of-Way*.

STRUCTURAL DESIGN AND ELEVATIONS. A preliminary architectural rendering of the proposed recreation center has been submitted, illustrating facades, roofs, decks, and other primary elements of the structure. (No structural elevations are required to be submitted unless the developer is proposed to construct buildings; the applicant has indicated no construction by the applicant is proposed as part of this plan.)

LANDSCAPING PLAN. A detailed landscaping plan has been submitted, pursuant to Section 13-111: *Landscaping and Buffering*. Installation of improvements detailed within the plan will be covered by collateral within the Development Improvements Agreement. Forty percent of the project is now open space.

RECLAMATION AND NOXIOUS WEED CONTROL. The Preliminary Plan application includes an *Noxious Weed Control Plan*, as designed and/or approved by the Gunnison Basin Weed Specialist pursuant to Section 13-115: *Reclamation and Noxious Weed Control*.

WATER IMPOUNDMENTS. The Preliminary Plan application narrative, map and design layout addresses locations and sizes of a lake and pond, and the plans for water augmentation shall address

such storage, pursuant to the requirements of the Colorado State Engineer, and relative to the land uses proposed in the Preliminary Plan that the stored water is intended to serve.

COMMON AREAS.. Maintenance of the open spaces, on which parks are allowed to be constructed, is charged to the Larkspur Community Association in the protective covenants.

SOLID AND HAZARDOUS WASTES. Normal residential and construction trash will be generated by the project. By letter of January 3, 2006 Waste Management has expressed that they have the capacity to provide pickup services for trash to be generated by the development.

PROTECTIVE COVENANTS OR RESTRICTIONS: Issues raised within the Sketch Plan approval required to be addressed within the protective covenants have been addressed, and the following are also, as required by the *Gunnison County Land Use Resolution*:

- **HOMEOWNERS ASSOCIATION RESPONSIBILITIES.** Responsibilities of the Larkspur Community Association have been iterated, to collect dues, maintain common areas, improve infrastructure common to the development, and to oversee the maintenance of the general appearance of the development. The Larkspur Water Association is charged by the protective covenants to oversee and administer the water supply system. Subject to action by the District 4 Water Court regarding the Larkspur application defined above, either association may be required to ensure that conditions of Larkspur's water decree are complied with. Finalization of related language is required to be included, as applicable, with the final version of the protective covenants. The applicant will provide the Larkspur Community Association with the list of capital equipment to be provided by the applicant, and that listing is to be included within the Development Improvement Agreement.
- **ENFORCEMENT OF COVENANTS BY COUNTY.** Language that allows and requires enforcement of the protective covenants by property owners, and names Gunnison County as a party to enforcement.
- **AMENDMENT OR TERMINATION OF COVENANTS SUBJECT TO COUNTY APPROVAL.** Amendment or termination of the protective covenants is subject to approval by Gunnison County.
- **BUILDING SCALE AND LOCATION.** Language is included defining building heights, compatibility with terrain, and sizes of all structures that will be allowed by the protective covenants.
- **ARCHITECTURAL STYLE AND EXTERIOR APPEARANCE.** Language is included describing the architectural style that will be required of all structures in the proposed development, and the types and colors of exterior materials to be used, including siding, roofing.
- **ENERGY AND RESOURCE CONSERVATION.** Language is required to be included within the final version of the protective covenants advising lot owners that an application to Gunnison County for a residential Building Permit must comply with all applicable building codes adopted and amended by Gunnison County, and with any applicable energy and resource conservation standards currently required by the County.
- **SOLID-FUEL-BURNING DEVICES.** The covenants direct that, "No open fireplaces either indoor or outdoor are allowed in Larkspur. Solid fuel burning devices as approved by Gunnison County will be allowed if it is determined by the Design Review Committee that operation and approval with such devices will not adversely affect any neighboring properties."
- **USE AND MAINTENANCE OF OPEN SPACE AREAS.** Language is included that lists uses allowed on, and requires maintenance of common open space areas by the Larkspur Community Association.
- **SIGNS.** Language is included that no signs, including advertising signs, "for sale" signs, or billboards may be erected or permitted on any lot or tract. Signs "reasonably required within a Recreational Tract must be approved by the Design Review Committee prior to installation. Exception: The developer of Larkspur is permitted to place any sign it deems necessary for a period of four years from filing of these covenants." Language is required to be added in the final version of the protective covenants that informs property owners or other land users within the proposed development that installation of signs requires compliance with the *Gunnison County Land Use Resolution*, and may require a Gunnison County Sign Permit, pursuant to Section 13-109: *Signs*.
- **RULES CONCERNING PARKING.** Language has been included in Article IX of the Design Guidelines, but has not been included within the protective covenants. As compliance with Section 13-110: *Off-Road Parking and*

Loading is a requirement for County approval, any changes to parking standards included within the *Design Guidelines* for Larkspur would require approval by Gunnison County.

- **LANDSCAPING AND BUFFERING.** Language is included in the protective covenants addressing maintenance of open space, and requiring Design Review Committee approval of landscaping on individual lots. Language is required to be added to the final version of the protective covenants requiring that the Larkspur Community Association be responsible for maintenance and replacement, as applicable, of features included in the final *Site and Landscaping Plan* approved as part of the Final Plan.
- **PROVISION FOR SNOW REMOVAL AND SNOW STORAGE.** Language is included charging the Larkspur Community Association with the responsibility for the proper maintenance of all private roads and drives, including the resurfacing, grading, drainage and snow removal and including any construction after the initial construction by the applicant.
- **FENCING.** Language is included within the *Design Guidelines* about fencing of individual lots. Language must be added in the protective covenants within the list of responsibilities of the Larkspur Community Association acknowledging Colorado's "fence out" requirements, and placing responsibility for construction and maintenance of the fence with the Association.
- **EXTERIOR LIGHTING.** Language has been included that is more stringent than current County standards, requiring that all lighting be full cut-off.
- **RECLAMATION AND NOXIOUS WEED CONTROL.** Language is required to be added in the final version of the protective covenants that includes requirements that comply with those specified by Section 13-115: *Reclamation and Noxious Weed Control*, particularly that any construction must secure a Gunnison County Reclamation Permit, which may involve control of noxious weeds, subject to approval by the Gunnison County Public Works Department, and/or approval by the Gunnison Basin Weed Specialist.
- **GRADING AND EROSION CONTROL.** Language has been included in the *Design Guidelines*, but has not been included within the protective covenants. As compliance with Section 13-116: *Grading and Erosion Control*. is a requirement for County approval, any changes to erosion control and grading/drainage standards included within the *Design Guidelines* for Larkspur would require approval by Gunnison County.
- **DOMESTIC ANIMAL CONTROL.** Language is included within the Design Guidelines that requires, "Only normal household pets may be kept within Larkspur. No animals such as horses or other livestock is allowed. If any owner or tenant within Larkspur keeps dogs or cats on their property then the owner of that lot shall be responsible for installing and maintaining in good working order an "invisible" pet restraint system. Prior to installing any driveway, all owners, whether they have pets or not shall install a one (1) inch PVC conduit under the planned driveway at the point where the driveway meets the roadway. It shall be marked on a set of plans that is given to the Community Association office. Pets will NOT be allowed to run at large on any property other than that owned by the pet's owner. Any pets running at large will be caught and fines will be levied and assessed against the owner's property. The fines and levies will be reviewed and adjusted from time to time by the Community Association. All pets must have a collar on at all times that contains, in legible form, the owner's name, address and telephone number."

Language in the protective covenants requires that, "No animals or poultry shall be kept in LARKSPUR except ordinary household pets (normally maintained within a dwelling) belonging to a property owner or resident. The Larkspur Community Association may require any owner or resident to remove any animals that are in violation of this provision. All dogs must be kept in a dog run area, on a leash or chain, or under direct control of a person at all times. Not more than two domestic household pets shall be permitted per dwelling unit. The owner of any pet shall at all times be personally liable and responsible and liable for all actions of any pet and any damage caused by that pet. No pet shall create a nuisance or noise problem within LARKSPUR. The owner of any pet shall be personally responsible for the clean up of any excrement left by any such pet left within Larkspur."

COST ESTIMATES AND METHOD OF FINANCING. The Preliminary Plan application includes cost estimates by a qualified professional engineer licensed in the State of Colorado and/or contractors and suppliers of road construction costs and period of construction, materials, equipment, and labor costs, and proposed method of financing of roads and related facilities, the water supply and wastewater treatment systems, storm drainage facilities, and other improvements as may be required of the developer by the County. The proposed method of financing these facilities is via letter of credit as

evidenced via a letter from Community Banks of Colorado, dated January 3, 2006 attesting that financing will be available for the proposed development.

ONSITE VISIT:

The Planning Commission visited the Larkspur and water supply sites as a group, and as individuals during this Preliminary Plan review, and noted that there is a significant amount of vertical relief on the property to provide visual shielding to nearby properties. The Commission observed that the water source was not located within wetlands, so that drainages in Slate River would not be substantially harmed by the diversion

PUBLIC HEARING:

A public hearing was conducted jointly by the Board of Commissioners and Planning Commission May 5, 2006, and continued to May 19, 2006. All testimony, both written and oral, as well as all documents submitted during that hearing process, is hereby incorporated and referenced as part of this record of review.

REVIEW AGENCY COMMENTS.

Copies of the Preliminary Plan were submitted to review agencies. Of those who were sent copies, the following comments were received.

Crested Butte Fire Protection District: Scott Wimmer, Fire Inspector and Ric Ems, Fire Chief, of the Crested Butte Fire Protection District, in a February 24, 2006 letter, cited specifications that are required to be met concerning fire hydrants, fire suppression systems, the necessity of changing the name of duplicative Daisy Court [which has since been renamed to "Lexie Circle"] covenant language, et. al., and concluded, "The proposal appears to be well thought out regarding the overall concept and access. The fire flow and water storage requirements still need clarification with regards to the proposed [recreation center] structure. Having an approved monitored fire suppression system installed in a structure reduces the fire flow and water storage requirements."

A letter from the Crested Butte Fire Protection District approving the final utility plan for the subdivision and for the requisite number of fire hydrants and storage shall be required to be submitted as part of the Final Plan.

Office of the State Engineer, Division of Water Resources: Craig M. Lis, P.E., Water Resource Engineer, in a February 16, 2006 letter, cited reference in the Preliminary Plan's water supply narrative that, "...[T]he applicant is purchasing 0.15 cfs (approximately 95,000 gpd from the owner of the Lacy #4 spring. The application indicated that a water meter installed on the water line from the spring to the property shows an average production rate of 69,761 gpd. Storage of 100,000 gallons of potable water is also planned for the development. The Larkspur Ponds will provide irrigation water, with a total capacity of 30 AF. If the spring continues to produce at the current rate in conjunction with the proposed storage capacity, the water supply should be physically adequate.

The letter further cites the water court Case No. 05CW88 referenced above, which includes purchase of augmentation certificates from the Upper Gunnison River Water Conservancy District; "[N]o documentation of this purchase was provided in the submittal. Based on the above, it is our opinion, pursuant to CRS 30-28-136 (1)(h)(l), that the proposed water supply is physically adequate, how every material injury will occur to decreed water rights due to the lack of proof of participation in the above-referenced water court-approved augmentation plan." Proof of that purchase is required to be submitted in the Final Plan.

Colorado State Forest Service: In a January 30, 2006 letter, David Casey, Forester, CSFS Gunnison District, noted the need for defensible space around structures, and that the parcel is in an area classified to have a low wildfire risk.

Colorado Department of Transportation: In a January 30, 2006 e-mail Devin Drayton, EPST II CDOT Region 3 - Access Dept., wrote, "CDOT has received and reviewed the Larkspur Subdivision Packet. The included Traffic Impact Report mentions this development will not contribute 20% to the existing Hwy 135/Brush Creek Road intersection. Therefore, a new Hwy access permit for the Brush Creek Road/Hwy 135 connection will not be required. However, CDOT would like a general intersection & turn lane engineering inspection that would look at general traffic operation as well as pavement condition to ensure this intersection can handle the increase in traffic, and point out any pavement failures or unsafe conditions that currently exist."

Colorado Department of Public Health and Environment. A February 2, 2006 e-mail from Mike Havens, District Engineer with the Colorado Department of Public Health and Environment said," The project activities will disturb one or more acres of ground. Construction stormwater discharge permits will be required for all activities that exceed this amount. Alternatively, the Developer can apply for a construction stormwater discharge permit, and require all contractors to comply with that permit...Identify which approach will be used and how the Developer will assure compliance with this requirement.

"...A properly certified collection system operator will be required to maintain the Larkspur sewer system. It is unclear from the subdivision plan if the services from the East River Sanitation District will include maintenance of the sanitary sewer mains. Identification of the responsible party for collection system operations, and the budget to perform these services must be resolved prior to the start of operations.

"The Larkspur subdivision will construct a new Community Public Water System. This system must be approved by the Water Quality Control Division prior to the start of operations."

Havens also noted the need for a contract with the East River District, and for modification or technical justification for the design for the system of manholes.

(In an April 17, 2006 letter to Jack Dietrich, the certified operator who will oversee the sewage treatment and water supply system operations for Larkspur, Havens noted: "...Larkspur...will be served by a new water treatment plant under design. Piped water for this public water system (PWS) is from a source shared by the existing Whetstone Vista subdivision, a private water system. In your letter dated March 30, 2006, you asked the Water Quality Control Division to determine the regulatory status of the two systems.

"At issue is the extend of the proposed public water system." Citing applicable statutory requirements, Havens noted, "Because Larkspur and Whetstone are piped into the same source, Division precedent considers them a single PWS. However, these precedents are being reevaluated based on ownership of the water rights and other contractual issues. A final determination cannot be made until this information is provided." Submittal of Havens' written directive following his receipt of final water court action on the Larkspur "water rights and other contractual issues" is required to be submitted as part of the Final Plan.

FINDINGS:

The Commission finds, based on consideration of the submitted plan, site observations, the Planning Director's analysis, and testimony, that:

1. The Preliminary Plan application complies with the conditions imposed by the Board in the Sketch Plan approval.

2. At the Planning Commission meeting of May 19, 2006, the applicant agreed to add requirements within the *Declaration of Protective Covenants* that all exterior lighting requires full-cutoff fixtures. That requirement has been included in the May 23, 2006 revised version.
3. The recreation center is intended to occasionally host special events. As noted below, events that generate numbers of vehicles that exceed the 68 parking spaces included in the recreation center design plan will be required to secure a Special Events Permit from Gunnison County. No more than 12 special events may be conducted annually, subject to approval by the Larkspur Community Association.
4. The *Declaration of Protective Covenants for Larkspur*, Article XIII, establishes the Larkspur Water Association to oversee and administer the water supply. Establishing documents for that Association are subject to review and approval of the County Attorney.
5. The proposed land use change complies with all applicable requirements of the *Gunnison County Land Use Resolution*, subject to submittal of those final documents that are required to be submitted as part of the Final Plan, pursuant to Division 7-400: *Final Plan for Major Impact Projects* of the *Resolution*.
6. The proposed land use change is compatible with the character of existing land uses in the development area, and will not adversely impact the future development of the development area.
7. Specific uses on all lots have been identified in this Preliminary Plan.
8. Phasing is not proposed as part of this application.
9. Water is proposed to be provided via a central system, administered by the Larkspur Water Association. Approval of this association's structure, establishment and operational certainty for the protection of future buyers, is subject to approval by the Gunnison County Attorney.
10. Language is required to be included within the final version of the protective covenants advising lot owners that an application to Gunnison County for a residential Building Permit must comply with all applicable building codes adopted and amended by Gunnison County, and with any applicable energy and resource conservation standards currently required by the County.
11. Language is required to be added in the final version of the protective covenants that informs property owners or other land users within the proposed development that installation of signs requires compliance with the *Gunnison County Land Use Resolution*, and may require a Gunnison County Sign Permit, pursuant to Section 13-109: *Signs*.
12. Language has been included in Article IX of the *Design Guidelines*, but has not been included within the protective covenants regarding parking requirements and limitations. As compliance with Section 13-110: *Off-Road Parking and Loading* is a requirement for County approval, any changes to parking standards included within the *Design Guidelines* for Larkspur would require approval by Gunnison County.
13. Language regarding grading and erosion control has been included in several sections the *Design Guidelines*, but has not been included within the protective covenants. As compliance with Section 13-116: *Grading and Erosion Control*. is a requirement for County approval, any changes to erosion control and grading/drainage standards included within the *Design Guidelines* for Larkspur would require approval by Gunnison County.
14. Language is required to be added to the final version of the protective covenants requiring that the Larkspur Community Association be responsible for maintenance and replacement, as applicable, of features included in the final *Site and Landscaping Plan* approved as part of the Final Plan.
15. Language is required to be added in the final version of the protective covenants within the list of responsibilities of the Larkspur Community Association acknowledging Colorado's "fence out" requirements, and placing responsibility for construction and maintenance of the fence with the Association.
16. Language is required to be added in the final version of the protective covenants that any construction must secure a Gunnison County Reclamation Permit, which may involve control of noxious weeds, subject to approval by the Gunnison County Public Works Department, and/or approval by the Gunnison Basin Weed Specialist.
17. Traffic mitigation measures are sufficient for full buildout of Larkspur.
18. A letter from the Crested Butte Fire Protection District approving the final utility plan for the subdivision and for the requisite number of fire hydrants and storage shall be required to be submitted as part of the Final Plan.
19. The applicant will provide the Larkspur Community Association with the a list of capital equipment to be provided by the applicant, and that listing is to be included within the Development Improvement Agreement.
20. Final requirements of the Colorado Department of Public Health and Environment relative to this proposal have not yet been received from the Department by the applicant or County. Final design of the sewage treatment design and water plan is subject to requirements of that Department, and are required to be submitted as part of the Final Plan. Submittal of the Department's written directive following its receipt of final water court action on the Larkspur "water rights and other contractual issues" is required to be submitted as part of the Final Plan.

21. Pursuant to Section 16-117 of the *Gunnison County Land Use Resolution* a Development Improvement Agreement is required to be achieved during a Final Plan review, ensuring collateral and identified dates of completion to ensure the construction of: Roads, a potable water system, a water system for fire protection and landscaping, a sewer system, the installation of electrical, telephone and natural gas lines; and landscaping, as rendered within plans listed within the above "Documents Informing this Review and Action."
22. Pursuant to Section 7-302: K. of the *Gunnison County Land Use Resolution*, the Board has the option of conducting another public hearing to consider this Preliminary Plan application and the Planning Commission's recommendation. Within 20 days of receipt of the Planning Commission's recommendation, the Board is required to determine whether to conduct a public hearing. A decision to conduct or not to conduct such a hearing shall be based on the Board's determination of whether it is in the public interest to do so, and considering among other factors the following whether there has or has not been substantial public interest in the proposal; or whether it is reasonably probable that new issues related to the Preliminary Plan application of the proposed land use change will be identified; or whether it is reasonably probable that new information related to the Preliminary Plan of the proposed land use change will be provided. The Planning Commission is neither required nor prohibited from recommending that the Board conduct such a hearing.
23. The Commission finds that, given significant alterations in the plan during the course of Preliminary Plan review, concerns of public interest have been substantially mitigated; further, that issues have been addressed, discussed and considered in depth during this review and it is reasonably improbable that either new issues will be identified, or new information provided, should another hearing be conducted.

RECOMMENDATION:

The Gunnison County Planning Commission, having considered the submittals and record of the Larkspur Preliminary Plan, onsite observations and public testimony, has reached the above Findings, and recommends that the Preliminary Plan for LUC No. 2005-23 be approved with the following conditions:

1. All documents that are required to be submitted as part of the Final Plan, pursuant to Division 7-400: *Final Plan for Major Impact Projects* in the *Gunnison County Land Use Resolution*, shall be submitted within a Final Plan submittal.
2. Approval of the Larkspur Water Association's structure, establishment and operational certainty for the protection of future buyers, is subject to approval by the Gunnison County Attorney.
3. The recreation center is intended to occasionally host special events. Events that generate numbers of vehicles that exceed the 68 parking spaces included in the recreation center design plan will be required to secure a Special Events Permit from Gunnison County. As many as 12 special events may be conducted annually subject to approval by the Larkspur Community Association.
4. Language is required to be included within the final version of the protective covenants advising lot owners that an application to Gunnison County for a residential Building Permit must comply with all applicable building codes adopted and amended by Gunnison County, and with any applicable energy and resource conservation standards currently required by the County.
5. Language is required to be added in the final version of the protective covenants that informs property owners or other land users within the proposed development that installation of signs requires compliance with the *Gunnison County Land Use Resolution*, and may require a Gunnison County Sign Permit, pursuant to Section 13-109: *Signs*.
6. Language has been included in Article IX of the *Design Guidelines*, but has not been included within the protective covenants regarding parking requirements and limitations. As compliance with Section 13-110: *Off-Road Parking and Loading* is a requirement for County approval, any changes to parking standards included within the Design Guidelines for Larkspur would require approval by Gunnison County.
7. Language has been included in several sections of the *Design Guidelines*, but has not been included within the protective covenants. As compliance with Section 13-116: *Grading and Erosion Control*. is a requirement for County approval, any changes to erosion control and grading/drainage standards included within the *Design Guidelines* for Larkspur would require approval by Gunnison County.
8. Language is required to be added to the final version of the protective covenants requiring that the Larkspur Community Association be responsible for maintenance and replacement, as applicable, of features included in the final *Site and Landscaping Plan* approved as part of the Final Plan.

9. Language is required to be added in the final version of protective covenants within the list of responsibilities of the Larkspur Community Association acknowledging Colorado's "fence out" requirements, and placing responsibility for construction and maintenance of the fence with the Association.
10. Language is required to be added in the final version of the protective covenants that includes requirements that any construction must secure a Gunnison County Reclamation Permit, which may involve control of noxious weeds, subject to approval by the Gunnison County Public Works Department, and/or approval by the Gunnison Basin Weed Specialist.
11. Final requirements of the Colorado Department of Public Health and Environment relative to this proposal have not yet been received from the Department by the applicant or County. Final design of the sewage treatment design and water plan is subject to requirements of that Department, and are required to be submitted as part of the Final Plan. Submittal of the Department's written directive following its receipt of final water court action on the Larkspur "water rights and other contractual issues" is required to be submitted as part of the Final Plan.
12. The inclusion of deed-restricted essential housing residences as described in the *Declaration of Protective Covenants* and *Design Guidelines* are a condition of this approval, subject to approval by the County Attorney.
13. A letter from the Crested Butte Fire Protection District approving the final utility plan for the subdivision and for the requisite number of fire hydrants and storage shall be required to be submitted as part of the Final Plan.
14. The applicant will provide the Larkspur Community Association with the list of capital equipment to be provided by the applicant and that listing is to be included within the Development Improvement Agreement.
15. The applicant has agreed and it is a condition of approval that any costs that might result to Whetstone Vista Estates because of requirements imposed on Larkspur by the Colorado Department of Health and Environment shall be the responsibility of the applicant.
16. That the Board of Commissioners determine whether or not to conduct an additional public hearing, pursuant to Section 7-302: K. of the *Gunnison County Land Use Resolution*; such determination is required to be made within 20 days of receipt of this Recommendation.
17. Approval of this Preliminary Plan is subject to the applicant's timely and fully obtaining and complying with all applicable federal, state, municipal and other permits required for the project, and the conditions of those permits.
18. That a Development Improvement Agreement be required, ensuring collateral and identified dates of completion to ensure the construction of: Roads, a potable water system, a water system for fire protection and landscaping, a sewer system, the installation of electrical, telephone and natural gas lines; and landscaping, as rendered within final versions of the plans listed within the above "Documents Informing this Review and Action." As appropriate, or if not appropriate within the DIA, then within another document satisfactory to the County Attorney and the Board, a process by which to ensure that the recreation center structure and environs will be maintained, whether the business(es) in it remain successful or not.
19. The applicant shall be required to submit the Final Plan application within 12 months after the date of the approval of the Preliminary Plan. Failure to submit a complete Final Plan application within this time period shall render the Preliminary Plan approval null and void, and require the applicant to begin the Preliminary Plan review process again.
20. Approval of the Preliminary Plan application shall not constitute approval of the Major Impact project, or permission to proceed with construction of any aspect of the land use change. Approval shall only constitute authorization for the applicant to submit a Final Plan, in accordance with the representations made by the applicant and in response to any conditions placed on the Preliminary Plan by the Board.

Additionally, the Commission commended the Garland on his flexibility, follow-through and thoroughness in complying with requirements of the *Land Use Resolution*, with the result that the project has moved along at a reasonable pace and conflicts were resolved quickly.

Garland also acknowledged that the project is a good project, improved by the input of the Planning Commission and Board.

There being no further business before the Commission, the meeting was adjourned.

/S/ Michelle Spain
Administrative Assistant