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March 9, 2006

FILED

MAR 10 2006

**Terri A. Lorenzon, Director
Environmental Quality Council**

VIA UPS OVERNIGHT SERVICE

Terri A. Lorenzon
Director of the Environmental Quality Council
122 West 25th Street
Herschler Bldg., Room 1714
Cheyenne, Wyoming 82002

Re: Appeal of the Copperleaf Chapter 23 Subdivision Application
Docket No. 05-3805

Dear Ms. Lorenzon:

I am enclosing the original and one copy of the Response To Petition For Review/Request For Hearing From Worthington Group Of Wyoming, LLC As Developer Of Copperleaf Subdivision.

At your earliest convenience, please file the original Response, conform the copy and return the conformed copy to me in the enclosed, postage-paid envelope. If you have any questions, please do not hesitate to contact me. Thank you.

Very truly yours,



BARB CURLESS

Legal Assistant to **LAURENCE W. STINSON**

/bjc
Enclosures

FILED

MAR 10 2006

Terri A. Lorenzon, Director
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE APPEAL)
OF THE COPPERLEAF CHAPTER 23) Docket No. 05-3805
SUBDIVISION APPLICATION, #05-S-052)

**RESPONSE TO PETITION FOR REVIEW/REQUEST FOR
HEARING FROM WORTHINGTON GROUP OF WYOMING, LLC
AS DEVELOPER OF COPPERLEAF SUBDIVISION**

COMES NOW the Worthington Group of Wyoming, LLC as developer of the Copperleaf Subdivision (hereinafter referred to as "Worthington"), by and through their attorney, Laurence W. Stinson, of Bonner Stinson, P.C. and pursuant to the Order dated March 3, 2006 does hereby file its Response to the Petition For Review/Request For Hearing submitted by the Northfork Citizens For Responsible Development and David Jamison (hereinafter referred to as "Northfork Group").

I. OVERVIEW

The Petition of the Northfork Group is premature. The Department of Environmental Quality (DEQ) has not issued any "final decision" from which a Petition For Review or Appeal may be taken before the Environmental Quality Council. Importantly, the DEQ has issued a "no 'adverse' recommendation" to the Park County Board Of County Commissioners relative to the County's action on a final plat. DEQ has not, as represented in the Northfork Group's Petition, issued any final decision or final finding. Moreover, at the time of the Petition For Review filed by the Northfork Group, the only "decision" by the Park County Board Of County Commissioners (hereinafter "BOCC") was to issue a Special Use Permit

under Park County's Development Standards and Regulations For Subdivisions. The Special Use Permit was issued *prior* to the DEQ's letter stating "no 'adverse' recommendation".

Additionally, the Petition For Review by the Northfork Group is fatally deficient in several other regards. Namely, its failure to provide admissible proof that any member of the Northfork Group has standing to challenge any action taken by the DEQ thus far. Wyoming Statute 35-11-1001, cited as the authority allowing appeal by the Northfork Group, does not grant standing to the Northfork Group.

II. ANALYSIS

The Northfork Group has cited Wyoming Statute 35-11-1001 in support of its Petition For Review/Request For Hearing. That Statute essentially provides that an aggrieved party who has filed a complaint on which a hearing was denied, or a person who is denied a variance or permit, may obtain judicial review. The Statute goes on to state, under subsection (b), that any person having a legally interest in mineral rights may also seek review. Lastly, under subsection (c), the Statutes states that an order of decision of the department providing for regulation of surface coal mining may be reviewed. None of the circumstances set forth in W.S. § 35-11-1001 apply to the Northfork Group. The Northfork Group is alleged by the Petition to be made up of various individuals living in or around Wapiti, Wyoming. Wapiti, Wyoming is where Copperleaf Subdivision will be developed. It is also alleged that Mr. Jamieson is in a, "unique position to be adversely impacted by the decision for which review is requested". None of the allegations set forth in the Petition For Review, assuming they are true, grant standing on the Northfork Group to appeal a letter from the DEQ stating its "no 'adverse' recommendation" to the BOCC.

The proper method for challenging action taken by the BOCC is to appeal the issuance of the Special Use Permit and/or the final plat¹. In fact, the Northfork Group has appealed the issuance of the Special Use Permit to the District Court, which has decided that the Appeal was premature because the final plat had not yet been approved. Now that the final plat is approved, the Northfork Group is free to seek redress, if any is available, in the District Court.

At this time, DEQ has not issued any permit for any water or wastewater application within the Copperleaf Subdivision. Certainly, the DEQ has investigated the proposed water and wastewater system in determining that it would not issue any adverse recommendation to the Park County Board of County Commissioners. However, advising the BOCC that there is “no ‘adverse’ recommendation” is not the same as approving a water or wastewater system. By way of explanation, the proposed water and wastewater systems are of a municipal type and managed on site.

Worthington Group agrees with and adopts herein by incorporation the DEQ’s response to Northfork Group’s Petition served on March 1, 2006.

III. CONCLUSION


Worthington Group respectfully submits that the Northfork Group has provided insufficient admissible evidence to show its standing to challenge the State Engineer’s Office letter of September 30, 2005 advising of “no ‘adverse’ recommendation” to the Copperleaf Subdivision. More importantly, that letter does not qualify as a final decision which is appealable by any entity or person. The Statute cited in support of Northfork Group’s appeal, W.S. § 35-11-1001, likewise

¹ The final plat was approved by the Park County Board Of County Commissioners on March 7, 2006 by unanimous vote. At the time of writing this brief, the resolution was not yet available.

does not provide standing for the Northfork Group's appeal. The Petition For Review is premature. The Northfork Group does have an avenue for appeal, and that is to challenge the decision of the BOCC in the District Court. The Northfork Group has, in fact, taken that action.

Worthington Group respectfully requests that the Environmental Quality Council dismiss the Petition For Review/Request For Hearing filed by the Northfork Group.

DATED this 9th day of March, 2006.


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Attorney for the Worthington Group
of Wyoming, LLC

CERTIFICATE OF SERVICE

I, Laurence W. Stinson, attorney for Northfork Communities, Inc., hereby certify that on the 9th day of March, 2006 I served a true and correct copy of the foregoing by placing the same in the United States mail, postage prepaid, and correctly addressed to the following:

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