

FILED

MAR 17 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)

DEQ'S MOTION TO DISMISS NORTHFORK GROUP'S PETITION
AND REQUEST FOR HEARING ON MOTION

Respondent, Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD), pursuant to Chapter II, Sections 3 & 14 of the DEQ Rules of Practice & Procedure and Rule 12(b)(1) & (6) of the Wyoming Rules of Civil Procedure (W.R.C.P.), moves the Wyoming Environmental Quality Council (Council) to dismiss Petitioner Northfork Group's (NFG or Petitioner) Petition for Review / Request for Hearing (Petition) in the above-captioned contested case for lack of subject matter jurisdiction and failure to state a claim upon which the requested relief can be granted. The grounds for this motion, which are more fully discussed in the DEQ's Memorandum in Support of Motion to Dismiss, are as follows:

1. The Petition (¶2, pp.1-2) identifies the contested DEQ action as an October 28, 2005 letter to the Park County Board of County Commissioners (Exhibit [B]¹ to NFG's Petition) communicating certain DEQ recommendations regarding the Copperleaf subdivision developer's application for a subdivision permit under WYO. STAT. ANN. § 18-5-306(c).

2. The Petition (¶4, p.5) requests a hearing before the Council and requests the Council to "reverse the October 28, 2005 decision of the Administrator of the Water Quality Division of the DEQ to the Park County Board of Commissioners regarding the Copperleaf Subdivision Application."

¹ The text of the Petition (pp.1-2) refers to this DEQ letter as Petition "Exhibit A," but it is actually marked as Petition "Exhibit B," and will be referred to as "Exhibit [B]" in this Motion.

3. The DEQ's October 28, 2005 "recommendations" to the Park County Board of County Commissioners regarding the Copperleaf subdivision permit application pursuant to WYO. STAT. ANN. § 18-5-306(c) do not constitute a final "decision" of the Administrator which would be subject to appeal to the Council under Chapter I, Section 16(a) of the DEQ Rules of Practice & Procedure.

WHEREFORE, Respondent DEQ respectfully requests that the Council enter an order dismissing NFG's Petition for lack of subject matter jurisdiction and/or failure to state a claim upon which the requested relief can be granted, and set a hearing on this motion prior to a prehearing scheduling conference or any other proceedings in this matter.

DATED this 17th day of March, 2006.



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CERTIFICATE OF SERVICE

True and correct copies of the foregoing DEQ'S MOTION TO DISMISS NORTHFORK GROUP'S PETITION AND REQUEST FOR HEARING ON MOTION, were served by United States mail, first class postage prepaid, this 17th day of March, 2006, addressed as follows:

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