Gautam, Nawodit

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Attorney
Client

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

Ref: EPR-EP

April 23, 2008

Greg Sparks
Town Manager
Town of Mountain Village
455 Mountain Village Blvd
Mountain Village, Telluride, CO 81435

RE: Mountain Village's Land Use Ordinance and Wetlands Protection

Dear Mr. Sparks:

In 2005, Region 8 of the Environmental Protection Agency (EPA) expressed its concern to Mollye Wolahan of the Town of Mountain Village (MV) that the MV might not be ensuring that all wetlands covered by the October 1996 Consent Decree are protected under the existing Mountain Village Land Use Ordinance (Ordinance). At that time, Ms. Wolahan indicated that if the U.S. Army Corps of Engineers (COE) did not require a federal Clean Water Act (CWA) Section 404 permit or regulate the wetland, then the MV similarly would not regulate the wetland. EPA disagreed, noting that the MV's Ordinance does not distinguish between jurisdictional and non-jurisdictional wetlands, and that the Consent Decree contemplates avoidance of impacts to all wetlands in the Project Area. After Ms. Wolahan left her position with the MV, EPA attempted to resolve this issue with Kathy Mahoney and Stephanie Fanos, but was unsuccessful in obtaining their position on the intent and application of the Ordinance. We have enclosed the relevant emails and letter regarding this issue.

It remains EPA's position that any wetland located on property owned by Telluride Ski and Golf Company (Telski) at the time the Consent Decree was signed and located within the Project Area should be preserved, regardless of whether it is jurisdictional or nonjurisdictional (i.e., a regulated wetland vs. a nonregulated wetland). We believe this is consistent with the MV's Ordinance and the Consent Decree. As you may know, a 1996 EPA study of wetlands in the area revealed that cumulative losses of wetlands within the Town of Mountain Village have exceeded 50 acres since 1979. Nearly half of the wetlands that were present in the area in 1979 have been destroyed, and even with mitigation efforts under the Consent Decree settling *U.S. v. Telluride Company, et al.*, only 19 acres of the wetlands in the MV will be restored or enhanced. Accordingly, the COE has revoked certain regional general permits and modified certain nationwide permits in the MV (see Public Notice No. 199775487 attached).

The EPA and COE are in agreement that even if we determine that any wetland is not jurisdictional under the CWA, it is nonetheless a wetland providing important watershed functions and values, and should be protected under the Ordinance. As a result of our last meeting with MV on the Ordinance, a wetlands management fact sheet was produced by Telski staff that we believe would provide valuable outreach information for MV residents and prospective property owners. Our edits to this document are enclosed with this letter. We believe this Fact Sheet would be extremely useful in informing the regulated public of the important land use limitations present in the Project Area due to the enforcement action and resulting Consent Decree.

EPA has recently heard that the MV's reading of its Ordinance is aligned with that of EPA and the COE: that is, that the Ordinance applies to all wetlands within the Project Area. We are encouraged by this, and would appreciate confirmation from you that this is indeed the case. As we are receiving complaints from local citizens that wetland impacts are allegedly occurring in the MV that may be/should be protected under the Consent Decree, applicability of the Ordinance is of paramount interest to us,

We appreciate your time and effort on this matter and will answer any questions you have concerning our comments. Please contact Sarah Fowler at 303-312-6192 for wetland specific questions. You or your attorney may also contact and Wendy Silver of our legal enforcement staff at 303-312-6637 regarding legal concerns.

Sincerely,

Brian S. Caruso, Chief
Wetlands and Watersheds Unit
Ecosystems Protection Program

Enclosures

Cc: Mike Jewell, COE, Sacramento CA (w/out attachments)
Ken Jacobson, COE Grand Junction (w/out attachments)
Jeffrey Proteau, Telluride Ski and Golf (w/out attachments)
Lori Wood, Town of Mountain Village, Telluride

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