

March 7, 2016

Ms. Katie Carleo  
Principal Planner  
City of Colorado Springs  
Planning & Community Development Land Use Review  
30 South Nevada Avenue, Suite 105  
Colorado Springs, CO 80903  
Direct: (719) 385-5060

Via Email

Regarding: Public Comments for:  
CPC DP 05-00092-A5MN16 - Amendment to Approved Cumbre Vista  
Development Plan

Dear Mr. White and Ms. Carleo,

We object to the City of Colorado Springs approving the proposed Amendment to Approved Cumbre Vista Development Plan at this time. The development property is adjacent to easements that are subject to ongoing litigation initiated by the applicant, KF 103-CV LLC (“KF-103”), and currently pending a petition for writ of certiorari before the Colorado Supreme Court. We anticipate a ruling on the petition within the next six to eight weeks. In all probability, the Supreme Court will deny the petition and thus end this protracted litigation. In the interest of fairness and efficiency for all parties, we respectfully request the City abstain from granting administrative approval until the Supreme Court rules on our petition. No parties will be prejudiced by this brief six to eight week delay of the City’s approval of Cumbre Vista Development.

The poor quality of the project documents posts on the City ldrs website reflect the burnout that burdens all parties involved with this unfortunate project. We renew all objections previous expressed regarding the Cumbre Vista Development and incorporate by reference as if fully written in this letter of objection including but not limited to:

2014/01/06 Appeal to City Planning Commission

2013/11/13 Letter to Larry Larsen re: Public Comments For:  
CPC DP 05-00092-A4MN13 - Amendment to Approved Cumbre Vista  
Development Plan  
AR FP 13-00533 – Cumbre Vista Filing 4A Final Subdivision Plat

2009/10/23 Appeal to City Council – Re Sorpresa Lane Filing No. 1 Plat

2006/06/26 Letter to Dave Lethbridge City of Colorado Springs Subdivision Engineering  
review Manager – notifying the City of the disastrous effects of the then  
proposed lowering of Sorpresa Lane

My residential property in unincorporated El Paso County is located at 6355 Sorpresa Lane, Colorado Springs, CO at the southwest corner of Ski Lane and Sorpresa Lane is directly south and adjacent to the proposed Cumbre Vista residential development in northeast Colorado Springs. I am a named defendant in the ongoing litigation initiated by KF-103 and WHMD. My comments are based on my professional expertise as a civil and structural engineer and my review of the proposed Cumbre Vista Subdivision Development Plan Amendment 2016 dated February 8, 2016 prepared by Nine Design, Ltd.

### **Background**

#### Status of the Development

The Cumbre Vista Development Plan was originally approved November 2, 2005. Currently, the proposed development is approximately 50-percent complete with all construction currently located to the west of Ski Lane. Deeded right-of-way easements and prescriptive easements that extend through the east half of the proposed development are the subject of protracted litigation initiated by KF-103 and the Woodmen Heights Metropolitan Districts 1, 2, and 3 (WHMD) against various neighbors as easement owners (the “Neighbors”). At this time no portion of the proposed Cumbre Vista development property located on or east of Ski Lane has been platted and construction is limited to rough grading completed in 2007 and construction of a roughly-cut field road along the proposed De Anza Peak Trail in response to a Court Order to provide direct access from Cowpoke Road to Sorpresa Lane to restore emergency vehicle access to the Neighbors’ properties located south of Sorpresa Lane.

#### Status of the Litigation

The litigation initiated by KF-103 and WHMD involves a distinct, stand alone, tract of land that was specifically cut out of the original ranch property and granted by a certain Right of Way Deed to be a “strip of land 30 feet in width for use as a road right of way and for utility service lines or pipes...” with a metes and bounds specific property description. The terms of this 1956 Right of Way Deed conveys a permanent and irrevocable easement to the defendant Neighbors and creates a permanent restrictive covenant that the “only proper use” of this strip of land is for a road right of way and for utility lines and pipes.<sup>1</sup> The Trial Court has repeatedly ruled that the easement is location certain and therefore *Roaring Fork* does not support the easement’s relocation.<sup>2</sup>

The Neighbors as defendants in the litigation have endured five years of constant battering by the developers’ attorneys. The Neighbors have prevailed at two separate week-long trials where the Trial Court repeatedly ruled that the developers have no legal right to make any

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<sup>1</sup> Peck Trial Exhibit B and Trial Transcript October 13, 2010, P111, L17-P113, L11.

<sup>2</sup> *WHMD v. Peck Summary of Findings and Order of October 13, 2010* at page 19, lines 21-25, (Transaction No. 35653993); *WHMD v. Peck Order Re: Motion for Post-Trial Relief*, page 2, dated December 22, 2010, (Transaction No 35037771); and *WHMD v Marchant Order Re: Second Group of Post-Hearing Motions* at page 2-3, dated June 21, 2013.

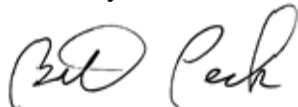
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changes, alterations, and closures to the Neighbors' legal easements, for developers to restore the easements, and to pay damages, and awarded costs to the Neighbors. Then in twelve more months of legal wrangling through post-trial motions, KF-103's attorney has succeeded in getting the Trial Court to ignore three years of previous rulings and order vacation of the Neighbors' easements by authority of the Court's "equitable powers" by arguing that completion of the Cumbre Vista development may not be financial viable unless the easements are vacated. The Trial Court issued its Judgment as final order on October 15, 2013. Trial Court's Order vacating El Glen directly contradicts all established Colorado case law on the subject, directly contradicts the Colorado constitutional prohibition against taking private property rights to benefit another private party, is manifestly unfair, and must be rescinded, which is what the Neighbors are asking of the Supreme Court to review.

We respectfully request the City abstain from granting administrative approval until the Supreme Court rules on our petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Peck". The signature is written in a cursive style with a large, stylized initial "B".

Bill Peck  
(951) 674-7848 wk  
(951) 283-5946 cell

## Carleo, Katie

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**From:** Bill Marchant <colobill@earthlink.net>  
**Sent:** Sunday, March 06, 2016 8:03 PM  
**To:** Carleo, Katie  
**Subject:** CPC DP 05-00092-A5MN16

**Categories:** REMINDER

Hello,

Please accept my objections to this amended plan. As you know, or should be aware of, this development has been the subject of an ongoing lawsuit for many years. The original lawsuit was filed in 2008 and went to trial in Oct. of 2010. The trial was bifurcated into two separate trials. At the conclusion of the second trial the Judge issued an order that what is called upper Sorpresa be widened to a 20foot driving surface and a retaining wall designed, approved by the City and built. We, the neighbors, appealed to the State Court of Appeals and they upheld the District Court's ruling.

Two reasons why this amended plan should be denied or least delayed are following:

- 1) This ruling by the District and Appellate Court has been appealed to the State Supreme Court. No actions should be taken until the full legal process runs its due course.
- 2) Sorpresa, lower Sorpresa, is a feeder road to the eastern half of the Cumbre Vista Development. The retaining wall must be designed and approved by the City prior to any approval being made in the development. The design of the retaining wall and how far it may encroach into the roadway is of major concern. Not only to the neighbors but to future residents as well.

Your approval of the amended plan at this point could impact the Court's authority and have serious implications in this ongoing legal issue. Please deny the request until the retaining wall has been approved and all know what it will look like.

Thank you in advance,

Bill Marchant  
719-337-9172  
[Colobill@earthlink.net](mailto:Colobill@earthlink.net)



This email has been checked for viruses by Avast antivirus software.

[www.avast.com](http://www.avast.com)

## Carleo, Katie

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**From:** Ross W. Clinger <peacockranchprop@yahoo.com>  
**Sent:** Monday, March 07, 2016 4:54 PM  
**To:** Carleo, Katie  
**Cc:** Nijkamp, Elizabeth; Daniel  
**Subject:** RE: CPC DP 05-000092 Cumbra Vista minor Amendment Public Comments  
**Attachments:** 1-24-2007 Infinity Letter re Developed Flows in CWcreek-1.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Katie Carleo,  
March 7th 2016

Our Public comments for the above subject matter are as follows: ***(UNFINISHED BUSINESS) from 2007 agreements***

Be it known that some time in early 2007 My self and previous owner of 6045 Cowpoke Rd. Mr. Steve Pedersen, brought to the attention of the Developers of Cumbra Vista Through Pedersen's Attorney Marc Francis that they were in violation of A 2005 Historic Flow Drainage Agreement for Cumbra Vista, Between Infinity Land Corp.

On January 24 2007 an Agreement was reached At the City Attorneys Office, Description in part By A ***letter from Charlie Williams Dated January 24th 2007Attached***

February 15th 2007 Steve and Patricia Pedersen Did Sign and tender A Special Warranty Deed as Agreed,

The long and short of all these Negations were Allow Infinity/Cumbra Vista to discharge Developed Flow Storm Waters into Pedersen's Properties on CottonWood Creek;But with other Special conditions, One being that the Developer would Add Rip Rap to armor the North banks of CottonWood Creek to protect that property out side that Sold property and down stream Properties from Damage caused By Developed Flow of Storm Waters,

To date the Developer of Cumbra Vista Got what they wanted But the north banks of CottonWood Creek have Not been protected Causing EXTREME Damage to.

The Pedersen Parcel and that of Tin Can Granny's just adjacent down stream to the west.

**(I Am not going to recite Case Law Yet)**

The City of Colorado Springs Has yet to Record That Special Warranty Deed (I have A Copy of this Deed) and copies of all the other documents related to the 2007 Agreements.

that received from Steve Pedersen mainly Because it was Me who brought all this to his attention by providing him A letter/Script to take to Marc Francis his attorney.

The balance of the Agreements Should be available in the City Files, and Also in the Minutes of ***That February 15th 2007 Board of City Planning Commissioners,***

***We object to any approval Requested by Keller's Cumbra Vista, Till We are satisfied that our properties are brought back to pre 2007 condition.***

***We are open to discussions with Elizabeth Nijkamp of the City and David Keller to try to bring some resolve to the Problem.***

***My doors are open;***

***Best Regards***

Ross W. Clinger  
719-359-0034  
Operations Manager  
for  
Tin Can Granny's LLC  
and  
Goetsch Peacock LLC  
"HISTORIC PEACOCK RANCH"