

Sheryl Rogers, Esq.
La Plata County Attorney
1099 Main Avenue, Suite 311
Durango, CO 81301

Via email and United States Mail

March 11, 2016

COMMENTS ON ROAD IMPROVEMENT AGREEMENT

Dear Sheryl:

We thank you very much for soliciting our comments on the proposed Road Improvement Agreement. Our clients, Crosscreek Ranch, LLC, and Southwest Colorado Advocates are pleased to have this opportunity and to know their ideas and concerns will be considered.

This matter is a very deep concern to our clients and other area residents. We acknowledge that there are many people with legitimate interests in this project, and we reject any attempt to divide our community and set one group against another. We are willing to work with anyone who is willing to work with us to resolve this. We appreciated the idea of mediation and remain willing to engage, however, we deeply regret GCC's unwillingness to sit down and try to work this through in mediation. We hope the company will have a change of heart.

Let us say that we have just received from you the new GCC proposal for additional mitigation/100 trucks. We obviously have not reviewed that and it obviously is not included in these comments.

Overall Issues

We would like to make these points at the outset.

- A. First, these comments are directed solely at the Road Improvement Agreement. We all know there are many very important issues apart from the Road Improvement

Agreement that are still unresolved. We will send you another set of comments, directed to those issues, Monday morning. We are working hard on them.

- B. Second, we are clear that all the technical and anecdotal evidence is clear that for safety reasons, control of dust, and related concerns, there should be an absolute maximum of 55 loaded trucks per day (110 individual truck trips) on CR 120N until the road is improved to the *local, 10 plus units* standards (LPLUC Secs. 74-91 & 82-161). Whether GCC runs additional trucks on another route, or simply sticks to this limit, is up to GCC. But to accept any higher limit, prior to improvements being made, is to depart from a technical number in favor of a negotiated number.
- C. Third, we would far prefer having this permit application denied to getting a RIA that does not contain immediate strong safety improvements and real rebuilding of the road soon. We believe that without the reduction in truck traffic to 55 loaded trucks per day (110 individual truck trips), the permit application is not compatible and should be denied. We are under no illusions here that a paper document is the equivalent of paving. We anticipate that an RIA or permit approval will change little or nothing. Stalling and delay pre-permit will turn into stalling and delay post-permit. Therefore the best alternatives from our point of view are either a strong permit that increases the County's leverage, or no permit at all. A weak permit – one that imposes no real short term limits, and provides for improvements five or six years from now, if and when, is our clients' very worst case scenario.
- D. Fourth, We believe that the current road design is conceptual and incomplete; until there is a full and complete plan, this also is grounds for the denial of the Permit Application.
- E. Finally, all involved agree that the current traffic levels are not safe or appropriate until improvements are made. Nor will they be safe during construction on 120 North. The Company should therefore immediately cut back traffic while this is all resolved – to the 55 loaded trucks number.

Specific Comments

Point 1

The RIA says:

“E. Pursuant to the terms of GCC's approved land use permit for the Mine

Project, the trucks are required to utilize an approximately 6.4 mile stretch of County Road 120 ("CR 120"), which contains approximately 3.9 miles of a gravel segment, and 2.5 miles of a paved segment."

So use of CR 120N may be GCC's preference. *Why on Earth should it be a requirement in the land use permit?* We oppose this in the strongest possible terms. Most important, we see no rationale for the County to ally itself with GCC by agreeing to this; the provision is just unnecessary.

Point 2

"F. The County is responsible for the ongoing maintenance of CR 120."

Since 99% of all wear and tear on the road is occasioned by GCC, shouldn't GCC in fact pay 99% of the maintenance costs? If we are really fortunate and all these improvements are made, we do not want ten years from now to be in a situation where the road is deteriorating and the County is complaining it does not have adequate maintenance funds.

- Do we have an estimate for annual maintenance costs? What is it?
- What portion of that does the \$0.12 charge pay?

Point 3

Section 1.2

"Unless otherwise identified or noted, all plans and specifications submitted shall be assumed to comply with the provisions of the LPCC."

- Why agree to this? Change the words "shall be assumed to comply with" to "must comply"
- What opportunity is there for local affected people to view and comment on such plans? If the plans are "assumed" to comply with the code, that is a land use decision, isn't it?

Point 4

Section 1.5

“Unless otherwise agreed to by the County Engineer in writing, in no event shall the Road Improvements be completed later than the date set forth in GCC’s plan submittal and accepted as reasonable by the County Engineer.”

What limit is there on the ability of the County Engineer to make extensions? What is the ability of the public to be informed of and comment on any contemplated extensions?

We would much prefer something that says in essence (you may have better wording):

“in the case of unanticipated unavailability of materials, adverse weather events, strikes, or other circumstances beyond GCC’s control, the County Engineer may extend the completion date by a maximum of thirty days. During the period of such extension the number of trucks permitted to use R120N shall be reduced by 20%. Any longer extension shall require a permit amendment, and the number of trucks shall similarly be reduced until the permit amendment is granted.”

Point 5

One of the major points made by local residents is that they have lost the ability to bicycle, jog, or walk their pets along the road. There needs to be a bike path or paved shoulder along the road. We realize this could have right of way consequences but are confident these can be minimized; this is something that is needed.

Point 6

“1.12 Right of Way Acquisition. In the event that additional right-of-way must be acquired in order to complete the Road Improvements, GCC shall exercise commercially reasonable efforts to negotiate in good faith with the owner of such property and shall be responsible for payment of the same.”

When will affected property owners get a map clearly showing what portion of their property is proposed for taking? They should have this information before final approval.

This is especially true in those cases where road realignment has repeatedly been discussed. We do not want to get into a situation where the company is now saying they cannot realign the road because the County has already approved the current alignment and that can’t now be changed.

Is it the intention that they get this before or after approval of the Land Use Permit?

When a land agent knocks on their door?

Point 7

Section 4.2

“GCC agrees to obtain and maintain, until the date of Final Acceptance, general liability insurance, naming the County as an additional insured, in the amount of Three Hundred-Fifty Thousand Dollars (\$350,000.00) per person and Nine Hundred Thousand Ninety Dollars (\$990,000.00) in aggregate.”

Are these amounts not rather low in light of the potential liability? How were they arrived at?

Point 8

Section 5.1

“Until January 1, 2018, the Maintenance Fee shall be \$0.12 per ton of coal removed”

$\$0.12 \times 100,000 = \$12,000$

$\$0.12 \times 700,000 = \$84,000$

Does the County have some estimates showing this is actually adequate?

See Point 2 above.

Point 9

6.2 Remedies of the County

It seems that the form of Road Improvement Agreement used is understandably a document drafted for the normal circumstance in which an applicant has strong incentives to perform the road improvements in order to be able to get a permit and operate.

As we all know, this is a backward situation where the applicant is already operating without a permit. The incentives for compliance are therefore quite different and weaker.

For that reason we believe there needs to be a serious rethink of the remedies available, knowing that this is not the usual situation for which this form of agreement was written.

Should these remedies not extend to imposing a 20% reduction in the truck limit numbers, at least if the default is not meeting the construction schedule for improvements?

Point 10

SECTION EIGHT

“certain minor interpretations or modifications of this Agreement (e.g., extension of a deadline, written waiver of a minor requirement) are allowed to be handled administratively by the County Manager or County Engineer, as applicable.”

Won't any such extension lead to public notice and hearing? Shouldn't it?

See Point 4 above.

Point 11

Section 11.8

“Furthermore, the Parties agree that the obligations of GCC contained herein are roughly proportional both in nature and extent to the impact of the use of the Property and the operations of the Mine Project.”

Isn't this permit material rather than a Road Improvement clause? Doesn't this depend on what the RIA and the permit together say? Should it, if at all, be something the Planning Commission pronounces after hearing all the evidence rather than part of a contract?

Point 12

Exhibit A

“Install noise and visual buffering, with McCue and Hunzeker agreement”

- Road alignment issues must be resolved before this can be sorted out.
- Is the County approving a set of plans of what this consists of, as part of the Land Use Permit? If not, then when are these plans going to be definite?
- The idea that the residents have to pay any costs in excess of \$30,000 is a non-starter.
- Will the residents get some technical or engineering support from someone chosen by them in making these decisions? How otherwise are they to know a “good” design from an ineffective lone?

- Is this some kind of “take it or leave it” deal where GCC designs what it wants to build, and presents it to these families and they “take it or leave it?” Don’t they have some say in a decision of such importance to them, which apparently would be built on their property?
- It is highly likely that neither McCue nor Hunzeker believe that no level of mitigation is adequate, other than reduction in truck numbers. McCues and Hunzeker believe that a reduction in truck numbers to 55 loaded trucks per day is the only adequate mitigation of impacts until the road improvements and realignment are completed. Both McCues and Hunzeker have repeatedly expressed their concerns regarding the noise and visual buffering proposals as presented to date, and feel that they will not mitigate the impacts or make the proposed road improvements compatible.

Point 13

Exhibit A

There needs to be clearer language in the agreement about what Exhibit A is, what the numbers in it mean, and how it is to be applied and enforced. The agreement does not deal very robustly with these questions. Is it binding? How?

Point 14

Exhibit A

“Re-alignment, Construction, and Paving at 90 degree corner (approx. 1,500 feet)”

There is absolutely no reason we can see that this has to wait so long to be done. This is perhaps the most important safety improvement. Could the deadline be:

- December 31, 2016?
- June 30, 2017?

Point 15

Exhibit A

“Preparation for Phases 4 and 5”

Why on Earth is there no action at all in 2018?

Why on Earth is there no action at all in 2019 besides “planning?”

There is no justification for this. In fact the only justification is economics to the Company, which is irrelevant to the mitigation required to make the proposed use compatible. It is just a way of postponing having to do anything until all the uncertainties about federal coal leasing are resolved. That is the company's issue, not the local residents' issue. We would accept it only if there is an acceptable truck limit (55 loads a day) on CR 120N in the interim.

Point 16

Exhibit A

The 2020, 2021, and 2022 activities are unnecessarily spread out over three years. This is not building the Panama Canal or Hoover Dam. It is not that hard. This is just a way of postponing having to do anything until all the uncertainties about federal coal leasing are resolved.

There is no reason to have two years of inactivity (2018 and 2019) followed by a leisurely and protracted three year construction project. Again, if we are running no more than 55 round trips on CR 120N, this is less of a concern. If we are running one way truck traffic it is less of a concern.

Point 17

Exhibit A

GCC's truck numbers are all wrong, far too high; they are based on GCC's commercial objectives and have nothing to do with compatibility and mitigation.

Point 18

Exhibit A

The process by which there is reporting, monitoring and verification of truck numbers needs to be spelled out. We thought your ideas were very good. But they should be part of the Agreement.

Point 19

Exhibit A

We are very concerned about the truck batching concept and believe that it will require additional engineering of the road to address site distance and passing lane issues.

If the batching concept were coupled with a considerable reduction in trucks, we would at least be willing to listen to what it would look like.

But we would have to be convinced that this is not just a stalking horse for future construction of a truck plaza/staging area in the neighborhood, which our clients are strongly opposed to.

Point 20

Exhibit A

We are very concerned that some of the truck numbers presented by the County, including some of them that were attributed by staff to our clients, are not correctly portrayed. There is no reason why we and the County need to have any kind of visible gap between our positions on an issue like this. We would like to have a chance to talk with County staff and clear this up before there are future presentations of this nature.

Point 21

Exhibit A

There is no emergency response planning, no consideration of stepping up cell phone coverage to allow for better and quicker reporting of any emergency conditions.

This is particularly of concern before all the improvements are in place.

Point 22

Exhibit A

There is every reason to believe that the safety and congestion issues will be at a maximum during the construction of these various improvements which the company seems to want to stretch out over a period of years.

Truck numbers need to be reduced considerably during periods of active construction. They should in no case be higher than 55 loaded trucks per day, and during heavy construction that may need to be reduced, perhaps by 30%, either simply by reducing total truck numbers by that amount, or by temporary routing on alternate routes.

Again, we much appreciate the opportunity to comment.

And will do our best to comment by Monday on:

- GCC's latest mitigation proposals; and
- Other aspects of the permit application aside from the Road Improvement Agreement.

We hope that the County will insist on a robust permit, and in the absence of such an agreement will maintain its recommendation of denial.

Sincerely,

Jeff Robbins
Counsel, SW CO Advocates

A handwritten signature in black ink, appearing to read "Luke Danielson". The signature is fluid and cursive, with a large loop at the end.

Luke Danielson
Counsel for Crosscreek Ranch, LLC

cc: SW CO Advocates
Crosscreek Ranch LLC