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Gunnison County Planning Commission
Blackstock Government Center
214 N. Wisconsin Avenue
Gunnison, CO 81230

Hand Delivered

RE: Pillow Rock Financial, LLC

Dear Planning Commission Members,

Pillow Rock Financial, LLC has applied for retroactive approval of a 4,400 foot long bike track that it constructed last fall on Lot 33A of Trappers Crossing at Wildcat without seeking or obtaining approval from the Trappers Crossing homeowners association or Gunnison County. Because Pillow Rock Financial's application does not comply with the applicable locational standards of Section 10-104 nor with the standards for approval of minor impact projects of Section 6-103 of the Gunnison County Land Use Resolution ("LUR"), Trappers Crossing at Crested Butte Association, the homeowners association for all five Trappers Crossing phases ("Association"), urges you to deny Pillow Rock Financial's application and require that the applicant remove the bike track and re-vegetate all disturbed ground.

LOCATIONAL STANDARDS.

LUR Section 10-104 provides the locational standards for commercial, industrial and other non-residential development. Pillow Rock Financial's application does not comply with the primary locational standard of LUR Section 10-104:B because Lot 33A is not located adjacent to an incorporated municipality and the private bike track is not consistent with any municipal three mile plan.

Therefore, we must focus on the alternative locational standards of LUR Section 10-104:C, which provides:

> **C. *ALTERNATIVE LOCATIONAL STANDARDS.*** *When the applicant has demonstrated that a proposed commercial, light industrial, industrial or other non-residential development cannot satisfy the primary locational standard, the location may be approved if the Board finds that in addition to meeting all of the other applicable requirements of this Resolution, the cumulative impacts of the proposed development and existing development*

will result in no significant net adverse impact to neighborhood uses, wildlife, visual quality, air or water quality, and the proposed use complies with the following:

1. ***LOCATIONAL CONSIDERATIONS.***

   a. ***NECESSARY LOCATION.*** *The location is necessary because of specific circumstances including location of minerals, unique transportation needs or geologic conditions; or*

   b. ***NO SITE IS REASONABLY ATTAINABLE IN OR ADJACENT TO THE NEAREST MUNICIPALITY OR EXISTING PERMITTED BUSINESS OR INDUSTRIAL PARK.*** *There is no site reasonably attainable within or adjacent to the municipality or existing permitted businesses or industrial park nearest the proposed development site, in an area that qualifies for annexation, or is consistent with a municipal Three Mile Plan area. Evaluation of suitability shall consider size of parcel needed, reasonable availability of necessary utilities and other infrastructure, and the applicant shall provide documentation of comparable sites. Economic feasibility or practicability of comparable sites may be considered, but shall not be the deciding factor in determining suitability; or*

   c. ***LOCATION WELL-SUITED TO SPECIFIC USE.*** *The proposed location is particularly well-suited for the specific use (recreational facilities, including dude ranches or resorts); provided, however, that location in a high traffic area or on a highway artery shall not, in and of itself, qualify a proposed commercial development for approval; or*

   d. ***NEED OR USE IS WELL-SUITED IN A PARTICULAR AREA.*** *There is a documented need for the specific use in the proposed location; or*

   e. ***USE IS DESIGNED TO SERVE A SPECIFIC RESIDENTIAL AREA.*** *The development will be located and designed primarily to serve an integral part of a specific residential area or development, and shall provide services that are reasonably likely to reduce vehicle trips between the residential area and population centers.*

2. ***COMPATIBILE WITH EXISTING USES ESTABLISHED IN IMPACT AREA.*** *The proposed use is compatible with uses established in the impact area.*

3. ***NO SIGNIFICANT NET ADVERSE EFFECT***. *There will be no significant net adverse effect, including cumulative impacts when there is a reasonable probability that there are cumulative impacts, of the proposed and existing developments on adjacent land uses, County or other infrastructure, or public health, safety or welfare, or the environment.*

Pillow Rock Financial's purportedly "private" bike track will not be private, unless Pillow Rock Financial posts guards on the bike track to keep local mountain bikers from using the bike track. The Association is already aware that uninvited members of the public have accessed the property and used the bike track without permission, and the bike track is already well known in the local mountain biking community.

Ralph R. Allen and Sons, Inc., operator of a major local ranching operation, reports that mountain bikers routinely ignore "NO TRESPASSING" signs above Long Lake and "CLOSED" signs on the Snodgrass Trail. While fixing fence, Curtis and Bruce Allen recently observed about 40% of the mountain bikers who approached a "NO TRESPASSING" sign and barricade above Long Lake on private Allen land going over the barrier and continuing on their way. Only 60% of the mountain bikers turned back.

Mountain bikers routinely ignore signs prohibiting public access over Trappers Way, a private road in Trappers Crossing at Crested Butte, to ride the "Plunge," which is conveniently accessed from the top of Trappers Way. Smartphone applications, like the running and cycling GPS tracker Strava, increase the probability that Pillow Rock Financial's purportedly "private" bike track will be publicized and used by local mountain bikers, who are always boasting about and looking for new rides. In light of the mountain bike community's well documented practice of ignoring signs, gates and fences, designating Pillow Rock Financial's bike track as "private" will not exclude the public.

Pillow Rock Financial's bike track is like an "attractive nuisance." In the real world of the upper East River Valley, the bike track will be public because it will be used by the public. And a public, or "private," bike track on Lot 33A will cause nearby homeowners and the private residential subdivision that is Trappers Crossing at Wildcat the "significant net adverse impact to neighborhood uses" proscribed by LUR Section 10-104:C.

Furthermore, the bike track is not compatible with the exclusively private and residential uses established in Trappers Crossing, as required by LUR Section 10-104:C.2, nor is it free of significant net adverse effect on adjacent residences, as required by LUR Section 10-104:C.3.

Finally, the bike track does not satisfy the locational considerations of LUR Section 10-104:C.1:

a. Lot 33A is not a necessary location for a bike track.
b. There are many, many mountain bike trails in the area.
c. Lot 33A is not particularly well-suited for a bike track.
d. There is no documented need for a bike track on Lot 33A.
e. The bike track is not designed to serve a specific residential area.

Rudy Rozman, owner of adjacent Wildcat Lot 36, picking mushrooms in early August, discovered a recently created bike path cut through downed timber on an old timber road on adjacent public land. Whoever cut the downed timber created a path for bikers to ride from the heavily used bike path that links Kebler Pass and Green Lake to Pillow Rock Financial's bike track.

Rudy said that the downed timber, which rendered the old timber road impassable when he went mushrooming last year, must have been cut contemporaneously with or after the Pillow Rock Financial bike track on Lot 33A. So, Pillow Rock Financial's "private" bike track is already spurring a proliferation of trails on public land. Unless Pillow Rock Financial's bike track is removed, it could also lead to a proliferation of new trails on private land.

The Association does not want the Pillow Rock Financial bike track to increase public access to and use of Wildcat Trail, the private access road through Trappers Crossing at Wildcat, that is already subject to poaching by users of the Green Lake Trail.

STANDARDS FOR APPROVAL OF MINOR IMPACT PROJECTS.

LUR Sections 6-103:A and B require compliance with the following standards:

SECTION 6-103: STANDARDS FOR APPROVAL OF MINOR IMPACT PROJECTS

A Land Use Change Permit for a Minor Impact Project shall comply with the following:

***A. ALL APPLICABLE STANDARDS**. The proposed land use change shall comply with, and the burden shall be on the applicant to demonstrate through competent evidence that the proposed land use change complies with all applicable requirements of this Resolution; and*

***B. COMPATIBILITY WITH COMMUNITY CHARACTER**. The proposed land use change shall be compatible with, or an enhancement of, the character*

of existing land uses in the area, and shall not adversely impact the future development of the surrounding area;. . . .

Section 6-103:A places "the **burden . . . on the applicant** to demonstrate through competent evidence that the proposed land use change complies with all applicable requirements of [the LUR]." For the reasons outlined above, Pillow Rock Financial cannot meet that burden. To do so would require that it alter the entitled mountain biking culture of the Crested Butte area, a culture exemplified by Pillow Rock Financial's own violation of the requirements of Gunnison County regulations and Trappers covenants.

Nor can Pillow Rock Financial meet its burden of showing that the attractive nuisance it has created is "compatible with . . . the character of existing land uses in the area. . . ."

DECLARATION OF PROTECTIVE COVENANTS

Trappers Crossing is not an amusement park. It is a secluded 35 acre lot residential subdivision. The Trappers Crossing Declaration of Protective Covenants recorded in 1990, years before the Colorado Common Interest Ownership Act, provides:

"**All Lots shall be used exclusively for residential purposes . . . .** "

"Exclusively" means "solely."

The meaning of "residential" is not obscure or ambiguous. It means, according to the Merriam-Webster Dictionary, "used as a residence or by residents" or "occupied by or restricted to residences." A nearly mile long bike track is not a residential use.

The Declaration of Protective Covenants requires that every "Improvement," defined to include "excavation, and all other site work" and "removal of trees or plantings," requires approval by the Association. Approval by the Association for Pillow Rock Financial's bike track was never sought nor obtained.

The Declaration provides that "[n]o excavation shall be made on any Lot, except in connection with a building approved in accordance with this Declaration of Protective Covenants." Even if the Association's board of directors had been inclined to approve a 4,400' long bike track, the Declaration prohibits excavation for any purpose, "except in connection with a building".

Finally, the Declaration provides that "[t]he Lot and all landscaping thereon shall be maintained in its natural condition to the extent possible." An obvious

purpose of that requirement is to prevent buildings from being seen and activities from being heard from neighboring lots.

Prior to constructing the bike track, Pillow Rock Financial actually applied for Association approval to build a cabin on Lot 33A. However, the Pillow Rock Financial plans submitted to the Association contained no mention or description of the bike track that was subsequently constructed.

The foregoing unambiguous provisions suggest that Pillow Rock Financial's mindset was that it's better to ask for forgiveness than to request permission. The Association urges the Planning Commission to deny Pillow Rock Financial's application and require removal and revegetation of the bike track. That is the only outcome that will preserve the integrity of the Gunnison County's land use regulations and protect the important authority of local homeowners associations.

Many thanks for your consideration.

Best regards,

David Leinsdorf

DL/lms

cc: Trappers Crossing at Crested Butte Association
Marcus Lock, Esq.