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Pg 1 of 6, 03/08/2019 at 03:27:34 PM  
Janice K. Vos Caudill, Pitkin County, CO

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS (“BOCC”) OF PITKIN COUNTY, COLORADO GRANTING APPROVAL OF THE WINDSTAR VALLEY RANCH LLC ACTIVITY ENVELOPE AND SITE PLAN REVIEW**

Resolution No. 015-2019

**RECITALS**

1. Pursuant to Section 2.8.4 (Actions) of the Pitkin County Home Rule Charter (“HRC”), all matters not required to be acted upon by ordinance or formal resolution may be acted upon by informal resolution.
2. Windstar Valley Ranch LLC (hereafter "Applicant") has applied to the Board of County Commissioners of Pitkin County (“BOCC”) to establish an Activity Envelope and obtain Site Plan review approval to restore a section of an unnamed tributary to Capitol Creek which runs through valley of the property.
3. The restoration activities will be performed in phases overall several years during the spring, summer and fall seasons when the activity will not disrupt agricultural activities, wildlife movement patterns, and runoff events. To accommodate the proposed phasing of the project, the Applicant is seeking extended vested rights associated with the approval of the Activity Envelope and Site Plan for a period of ten (10) years pursuant to Section 2-20-170.
4. The property is located at 2317 Snowmass Creek Road, and is more specifically described in Attachment A.
5. The parcel contains 957.43 acres and is conforming in size in the RS-30 zone district.
6. Historically the parcel has been utilized for agricultural purposes with the stream corridor providing a water conveyance system to support those purposes. Due to past agricultural practices, the stream corridor has become channelized, disconnected from its floodplain, and has resulted in significant bank erosion.
7. In 1996, the Windstar Land Conservancy was encumbered by a conservation easement recorded at Reception No. 400406. The conservation easement was granted to Pitkin County, is administered by Pitkin County Open Space and Trails (“POST”), and is co-held by Aspen Valley Land Trust (“AVLT”) The purpose of the conservation easement is for the preservation of the critical elk migration corridor and critical wildlife habitat, significant agricultural lands, scenic and ecological features and to provide for limited public access to the property.
8. In 2001, a Wetland Banking Instrument was initiated with an ambitious goal of over 60 acres of wetland. During that time, the wetlands were supported by supplemental flood irrigation flows from the Walker Wonder Ditch. The bank boundary was never definitively mapped with USACE and the banking instrument had ambiguous performance standards. After selling 3.27 acres of wetland bank credits, the bank fell out of compliance.

9. In 2017 pursuant to Administrative Decision No. 39-2017, an Activity Envelope and Site Plan was approved for the replacement of an agricultural structure. The agricultural structure was completed in 2018.
10. The application was referred to Pitkin County Open Space and Trails, Pitkin County Attorney, Pitkin County Planning Engineer, Aspen Valley Land Trust, U.S. Army Corps of Engineers, Upper Snowmass Creek Caucus, and Colorado Parks and Wildlife. Comments were provided from Aspen Valley Land Trust, Pitkin County Open Space and Trails, and the Pitkin County Planning Engineer and are incorporated herein.
11. The BOCC considered this application at a duly noticed public hearing on February 27, 2019, at which time evidence and testimony were presented with respect to the application.
12. The BOCC finds that the application for an Activity Envelope and Site Plan is consistent with the applicable provisions of the Pitkin County Land Use Code as follows:
  - A. The applicant engaged Biohabitats, a company specializing in conservation planning and ecological restoration, who assessed the subject corridor and provided restoration recommendations. Based on the recommendations, the Applicant has designed a plan which will be implemented in phases over a ten year period.
  - B. The proposed Activity Envelope encompasses the appropriate areas recommended for restoration per the Biohabitats reports. All grading and revegetation activities will occur within the Activity Envelope. Only native trees and appropriate native plant material will be utilized. In order to ensure the establishment of the woody over-story, temporary wildlife exclusion fencing will be erected.
  - C. The existing established road and primitive gravel roads established to support the agricultural uses will be utilized to perform the restoration activities. The Applicant has stated that additional temporary construction access may be needed to implement the plan outside of the defined Activity Envelope. Any area outside of the established Activity Envelope needed for temporary construction access shall be defined with each corresponding earthmoving permit which shall be reviewed and approved by the Community Development Department.
  - D. A primary goal of the project is to improve water flow and drainage and address erosion issues. A preliminary grading plan was submitted with the application. Detailed drainage and erosion control plan will be required with each earthmoving permit. No additional runoff will be created.
  - E. The parcel is not located within a FEMA identified floodplain. A primary goal of the project is to reconnect the stream to its floodplain thereby improving the flood carrying capacity.
  - F. Pursuant to Section 7-20-80(c)(2) and (d), bank stabilization, and restoration of natural dynamic riverine functions is permitted within the riparian and wetland buffer areas.
  - G. The Applicant has appropriately obtained a Nationwide Permit from the U.S. Army Corps of Engineers for the proposed project.
13. The BOCC finds that it is not appropriate to grant extended vested rights for a period of ten (10) years given anticipated initiation of the work before the expiration of three years. If unforeseen problems arise with commencing work, a request for an enlargement of vesting period can be brought to the BOCC. The vested rights for the Activity Envelope and Site Plan shall be the statutory vesting period of three (3) years.
14. The BOCC further finds the restoration plans will not diminish or impair the Conservation Values of the Conservation Area. POST and AVLT have reviewed the application, and concluded the proposed activities are consistent with the terms of the Conservation Easement.

15. The BOCC further finds that it is in the best interests of the citizens of Pitkin County to approve this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Pitkin County, Colorado that it does hereby approve the Windstar Valley Ranch LLC Activity Envelope and Site Plan Review, and denies the request for Extended Vested Real Property Rights, and authorizes the Chair to sign on behalf of the County.

**BE IT FURTHER RESOLVED** by the BOCC that this approval is subject to the following conditions, which shall run with the land and be binding on all successors in interest.

1. The Applicant shall adhere to all material representations made in the current or prior applications or in public meetings or hearings and shall consider those representations to be conditions of approval, unless amended by other conditions.
2. Prior to submission of an earthmoving permit for the restoration of the wetland bank and the steam and pond system, the Applicant shall be required to submit for approval by the County Attorney and Community Development an Activity Envelope and Site Plan in accordance with Land Use Code Section 2-30-20(g) and Application Manual Section 2.1.12. The above referenced approvals shall be a condition precedent to finalization and recordation of them.
3. The Applicant shall be responsible for obtaining or amending any local, state and federal permits and approvals for the work proposed in the application, if required.
4. The Applicant shall comply with all terms and conditions of the U.S. Army Corp of Engineers Nationwide Permit.
5. Any work permitted under this approval shall not close the property to public access as provided under the Conservation Easement burdening the property, and shall minimize disturbance to the adjacent property burdened by the access easement..
6. The Applicant shall submit an earthmoving permit for each phase of work clearly delineating the extent of each phase. POST shall be notified by Community Development when each earthmoving permit is submitted. With each earthmoving permit application, the Applicant shall:
  - A. Submit an affidavit or a copy of a certified letter confirming that the owner of Parcel No. 264502200005 has been notified of the proposed scope of work and the proposed construction management plan.
  - B. Submit a copy of this recorded Resolution with the associated recorded Activity Envelope and Site Plan.
  - C. Submit a drainage and erosion control plan and an accompanying drainage report demonstrating that historical flow patterns and runoff amounts will be maintained, and identify specific measures designed to reduce erosion and stream sedimentation. If the total development disturbs one acre or more, a Colorado Department of Public Health and Environment permit for Stormwater discharges associated with construction activities shall be applied for and obtained prior to issuance of a permit.
  - D. Provide plans and documentation of how the wetland bank will be brought into compliance.

- E. Provide a copy of the Nationwide Permit from the U.S. Army Corps of Engineers.
  - F. Provide detailed design plans of all pond improvements (as applicable).
  - G. Provide detailed design plans of the stream system restoration.
  - H. Submit a detailed Landscape/ Re-vegetation Plan with appropriate native plant materials.
  - I. Submit a construction management plan. The plan shall specifically address continued public access during construction and signage for public notification during construction.
  - J. Any area outside of the established Activity Envelope needed for temporary construction access shall be defined with each corresponding earthmoving permit for review and approval by the Community Development Department.
7. The Applicant shall demonstrate and ensure that the flood carrying capacity within the altered or relocated section of any watercourse is maintained, or provide a letter from an engineer explaining why this is unnecessary due to the site conditions.
8. Contractors shall be prohibited from bringing their dogs on-site.
9. The Applicant shall comply with the County's Noxious Weed Management Plan.
10. All plants used for landscaping and revegetation shall be native species. Disturbed areas shall be re-vegetated within one growing season of the initial disturbance.
11. Ponds shall be constructed to meet the following Colorado Parks and Wildlife standards:
- A. Ponds should have at least 2 banks with side slopes of at least 3:1, preferably 5:1, to allow for ingress and egress of wildlife.
  - B. If a liner is to be used, a minimum of 18" of soil should be used on top of the liner.
  - C. If ponds are stocked with any non-native, non-salmonid species, a CPW stocking permit is required.
  - D. If ponds are stocked with any fish species, consider screening the outlet and inlet with ¼ inch screens to prevent fish passage into nearby waterways.
12. No development including grading, excavation, fill placement, berming, landscaping, vegetation removal or disturbance, shall occur outside of the approved activity envelope, except as necessary to comply with the wildfire and noxious weed mitigation measures.
13. Failure to comply with the conditions of this approval may result in revocation of this approval, or any subsequent permit(s) or approval(s) related to this property, or vested rights associated with this property.
14. Statutory vested rights for the Activity Envelope and Site Plan approval referenced herein are granted pursuant to the Pitkin County Land Use Code and Colorado Statutes, subject to the exceptions set forth in Pitkin County Land Use Code, § 4-140 and C.R.S., § 24-68-105. The statutory vested rights granted herein shall expire on February 27 2022.

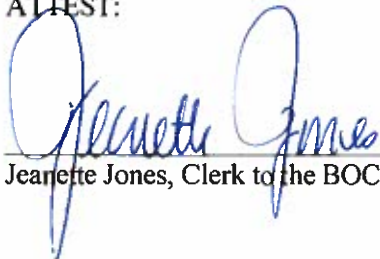
NOTICE OF PUBLIC HEARING PUBLISHED IN THE ASPEN TIMES WEEKLY on the 27<sup>th</sup> day of January, 2019.

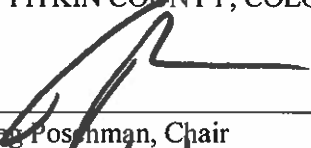
APPROVED this 27<sup>th</sup> day of February, 2019.

PUBLISHED AFTER ADOPTION FOR VESTED REAL PROPERTY RIGHTS in the Aspen Times Weekly on the 9<sup>th</sup> day of March, 2019.

BOARD OF COUNTY COMMISSONERS  
OF PITKIN COUNTY, COLORADO

ATTEST:

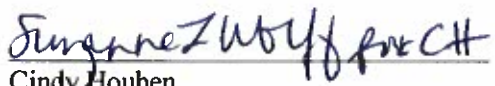
  
Jeannette Jones, Clerk to the BOCC

By   
Greg Posnman, Chair  
Date 3/8/19

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

  
John Ely,  
County Attorney

  
Cindy Houben,  
Community Development Director

**ATTACHMENT A**

A PARCEL OF LAND BEING PART OF SECTIONS 2,3,10,11,14 AND 15, TOWNSHIP 9 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN, SAID PARCEL IS MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT BEING A FOUND NO.5 REBAR & CAP MARKED LS 15710, WHENCE THE SOUTH 1/4 CORNER OF SECTION 34, TOWNSHIP 9 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN BEARS N280°07'W 3756.45 FEET;

THENCE S 89° 51'43"W 1773.60 FEET TO A FOUND NO.5 REBAR AND CAP MARKED LS 9184;  
THENCE S 31° 47'41"E 2452.35 FEET TO A FOUND NO.5 REBAR AND CAP MARKED LS 16129;  
THENCE S 58° 04'01"E 331.24 FEET TO A POINT WHENCE A FOUND DISTURBED NO.5 REBAR & ILLEGIBLE RED CAP BEARS S65°02'13"E A DISTANCE OF 0.59 FEET;  
THENCE S 08° 56'39"W 234.30 FEET TO A FOUND NO.5 REBAR AND CAP MARKED LS 16129;  
THENCE S 27° 29'29"W 411.00 FEET TO A FOUND NO.4 REBAR & CAP MARKED LS 25947;  
THENCE S 20° 04'58"W 403.10 FEET TO A FOUND NO.5 REBAR AND CAP MARKED LS 16129;  
THENCE S 01° 21'30"W 628.79 FEET TO A FOUND NO.5 REBAR AND CAP MARKED LS 16129;  
THENCE S 08° 27'21"E 773.23 FEET TO A FOUND NO.5 REBAR AND CAP MARKED LS 16129;  
THENCE S 18° 36'22"E 519.48 FEET TO A FOUND NO.5 REBAR AND BROKEN RED CAP;  
THENCE S 05° 01'24"E 2174.86 FEET TO A FOUND NO.5 REBAR;  
THENCE S 39° 47'04"W 1189.66 FEET TO A FOUND NO.5 REBAR;  
THENCE S 40° 10'47"W 828.13 FEET TO THE SOUTH LINE OF THE NW 1/4 OF THE NW 1/4 OF SAID SECTION 14;  
THENCE ALONG SAID LINE S 89° 47'38"W 1186.40 FEET TO THE NE1/16 CORNER, SECTION 15, TOWNSHIP 9 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN, A FOUND NO.6 REBAR AND 3 1/2" ALUMINUM CAP MARKED LS 16598, 2011;  
THENCE ALONG THE NORTH LINE OF THE S1/2 OF SAID SECTION 15 S89° 25'17"W 2667.14 FEET TO THE N1/16 CORNER, SECTION 15, TOWNSHIP 9 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN, A FOUND NO.6 REBAR AND 3 1/2" ALUMINUM CAP MARKED LS 16598, 2011;  
THENCE ALONG THE WEST LINE OF THE NW1/4 OF SAID SECTION 15 N00°41'13"E 1328.48 FEET TO THE N1/4 OF SAID SECTION 15;  
THENCE ALONG THE NORTH LINE OF SAID SECTION 15 S89°38'59"W 158.33 FEET TO A POINT ON THE WESTERN BOUNDARY OF LAZY O RANCH AS DESCRIBED IN PLAT BOOK 34 AT PAGE 11;  
THENCE ALONG SAID BOUNDARY THE REMAINING FIVE (5) COURSES;  
N 01° 44'10"W 3031.04 FEET WHENCE A FOUND NO.4 REBAR BEARS N81°26'29"E 13.78 FEET;  
THENCE N 15° 03'09"E 1226.67 FEET WHENCE A FOUND NO.4 REBAR BEARS S42°10'40"E 1.69 FEET ;  
THENCE N 37° 25'09"E 1850.45 FEET TO A FOUND NO.4 REBAR;  
THENCE N 30° 28'45"E 1140.39 FEET TO A FOUND NO.4 REBAR;  
THENCE N 08° 28'28"W 800.21 FEET TO THE POINT OF BEGINNING.

**PARCEL B:**

TWO PORTIONS OF LOTS 4 AND 10, SECTION 2, AND LOTS 1,6,7,8,13 AND 15 IN SECTION 3, TOWNSHIP 9 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHENCE THE SOUTH ONE-QUARTER CORNER OF SECTION 34, TOWNSHIP 9 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN BEARS N85° 63'07" W 1289.88 FEET, A FOUND NO.4 REBAR AND CAP MARKED LS 15710, ALSO BEING A POINT ON THE WESTERN BOUNDARY OF LAZY O RANCH AS DESCRIBED IN PLAT BOOK 34 AT PAGE 11;  
THENCE ALONG SAID BOUNDARY THE FOLLOWING TWENTY-ONE (21) COURSES:  
S 53'17" W 420.93 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 31°44' E 148.55 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710 ;  
THENCE S 20° 09' E 213.00 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 23° 40' E 63.15 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 42° 06' E 261.40 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 28° 11' E 77.14 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 08° 23' W 171.65 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 40° 20' W 92.15 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 81° 21' W 241.64 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE N 84° 28' W 86.93 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 78° 07' W 102.47 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 97° 59' W 49.59 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 41° 35' W 184.40 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 47° 14' W 217.03 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 55° 31' E 327.07 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE N 57° 04' E 102.81 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 89° 37' E 188.85 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 80° 04' E 136.10 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 83° 10' E 251.73 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 38° 49' E 556.79 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 15710;  
THENCE S 10° 01' E 585.50 FEET TO A FOUND NO.5 REBAR AND CAP MARKED LS 15710, WHENCE A NO.5 REBAR & CAP MARKED LS 3317 BEARS N88°12'48"E 21.92 FEET;  
THENCE N 89° 51'43" E 1773.60 FEET TO A FOUND NO.5 REBAR AND CAP MARKED LS 9184;  
THENCE N 17° 14' W 848.11 FEET TO A FOUND NO.4 REBAR AND ILLEGIBLE;  
THENCE N 48° 33' W 65.00 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 25947;  
THENCE N 57° 00' W 110.67 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 25947;  
THENCE N 73° 51' W 116.63 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 25947;  
THENCE N 39° 08' W 133.20 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 25947;  
THENCE N 18° 23' W 80.00 FEET TO A FOUND NO.5 REBAR AND CAP MARKED LS 16129;  
THENCE N 43° 27' W 181.40 FEET TO A FOUND NO.4 REBAR AND CAP MARKED LS 25947;  
THENCE N 19° 27' W 187.00 FEET TO A FOUND NO.5 REBAR AND CAP MARKED LS 9184;  
THENCE N 31° 33' E 248.89 FEET;  
THENCE N 58° 38'11" W 2025.93 FEET TO THE POINT OF BEGINNING.

COUNTY OF PITKIN, STATE OF COLORADO.

**PARCEL C:**

EASEMENT AGREEMENT BETWEEN HARLD PABST AND THE WINDSTAR FOUNDATION RECORDED JUNE 28, 1979 IN BOOK 371 AT PAGE 555 AND DESCRIBED AS FOLLOWS:

A ROAD EASEMENT BEING LOCATED IN SECTION 3, TOWNSHIP 9 SOUTH, RANGE 86 WEST OF THE 6TH PRINCIPAL MERIDIAN. SAID EASEMENT IS 15 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT BEING THE INTERSECTION OF THE CENTERLINE OF THE SNOWMASS CREEK ROAD AND THE HEREAFTER DESCRIBED EASEMENT FROM WHENCE THE SOUTH 1/4 CORNER OF SECTION 34, TOWNSHIP 9 SOUTH, RANGE 86 WEST BEARS N 85 DEGREES 15'48" W 1014.45 FEET;  
THENCE S 43 DEGREES 15'47" W 219.27 FEET;  
THENCE S 20 DEGREES 18'02" W 292.89 FEET;  
THENCE S 22 DEGREES 33'48" E 291.03 FEET;  
THENCE S 31 DEGREES 17'18" E 215.18 FEET TO THE END OF SAID EASEMENT.