

DISTRICT COURT, WELD COUNTY, COLORADO
915 10th Street, Greeley, CO 80631
P.O. Box 2038 Greeley, CO 80632
Phone Number: (970) 475-2400

PLAINTIFFS:

MOTHERLOVE HERBAL COMPANY, a Colorado Certified B Corporation; INDIANHEAD WEST HOMEOWNERS ASSOCIATION, INC., a Colorado Nonprofit Corporation; ROCKIN S RANCH LLC, a Colorado Limited Liability Company; JOHN CUMMINGS, an Individual; DAVID KISKER, an Individual; GARY OPLINGER, an Individual; WOLFGANG DIRKS, an Individual; and JAMES PIRAINO, an Individual

v.

DEFENDANTS:

THE BOARD OF COUNTY COMMISSIONERS OF WELD COUNTY, COLORADO (including all of the individual Commissioners in their official capacities: Chair Barbara Kirkmeyer, Pro-Tem Michael Freeman, Sean Conway, Steve Moreno, and Julie Cozad); MARTIN MARIETTA MATERIALS, INC., a North Carolina corporation; GERRARD INVESTMENTS, LLC, a Colorado limited liability company; WELD LV, LLC, a Nevada limited liability company; and WELD LV II, LLC, a Nevada limited liability company

Attorney for the Board of County Commissioners of Weld County, Colorado (including all of the individual Commissioners in their official capacities)
Bruce T. Barker, No. 13690
Weld County Attorney
Frank N. Haug, No. 41427
Assistant County Attorney
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Case Number: 2015CV30776

Division 4

RESPONSE TO MOTION FOR AMENDED JUDGMENT AND STAY

COMES NOW the Board of Weld County Commissioners (“Board”), by and through its attorney, the Assistant of Bruce T. Barker, Weld County Attorney, below-named, and Responds to Defendant Martin Marietta Materials, Inc.’s (“Martin Marietta”) Motion to Amend and for Stay of Judgment, as follows:

1. The Board agrees with the legal arguments set forth in paragraphs 1-8 of Martin Marietta’s Motion. However, the Board has no knowledge of the factual averments made by Martin Marietta in paragraphs 7 and 8 regarding the ability of the facility to now meet residential noise standards and, therefore, the Board neither agrees nor disagrees with such statements. The Board agrees that the relief sought by Martin Marietta is proper.

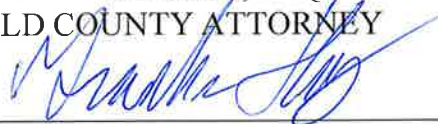
2. In a C.R.C.P. 106(a)(4) proceeding, a court is tasked with making a single determination: whether there was an abuse of discretion or exceedance of jurisdiction by the lower administrative body. Once the court determines that an abuse of discretion or exceedance of jurisdiction has occurred, how to address that deficiency on remand is within the discretion of the administrative body. *Wolf Creek Ski Corp. v. Board of County Com’rs of Mineral County*, 170 P.3d 821 (Colo. App 2007); citing *Carney v. Civil Serv. Comm’n*, 30 P.3d 861, 866–67 (Colo. App.2001).

3. In this case, the Colorado Court of Appeals has instructed the Court to reverse its previous judgement in favor of the Plaintiffs. The Board respectfully suggests that to do so and in accordance with the law stated in paragraph 2, above, the Court could modify the second sentence of its May 1, 2018, Order Entering Judgement in Favor of the Plaintiffs to the following:

“Accordingly, the prior judgment is hereby vacated; the Court enters judgment in favor of the Plaintiffs, as provided in the Court of Appeals opinion; and the Board’s Amended Resolution approval of USR 15-0027 is invalidated on the evidentiary ground set forth in the Court of Appeals’ opinion.”

WHEREFORE, the Board respectfully requests that the Court grant Martin Marietta’s Motion to Amend and for Stay of Judgment, and modify the second sentence of its May 1, 2018, Order Entering Judgement in Favor of the Plaintiffs to that stated in paragraph 3, above.

BRUCE T. BARKER, ESQ.
WELD COUNTY ATTORNEY



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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2018, I filed a true and correct copy of the foregoing document, titled FILING OF CERTIFIED RECORD, via the Integrated Colorado Courts E-filing System (ICCES) which will provide notice of the filing and availability of such document by electronic mail to the following recipients:

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