



July 21, 2023

PCD File No.: MS-206

**LETTER OF INTENT
FOREST HEIGHTS
MINOR SUBDIVISION**

Owner/Applicant:

Jon P. Didleaux and Phyllis J. Didleau Revocable Trust
7935 Forest Heights Circle
Colorado Springs, CO 80908

update access/road
section per
comments provided
on the deviation
and CD's.

Consultant:

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Colorado Springs, CO
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Site Location Size and Zoning:

The proposed minor subdivision to be known as “Forest Heights Estates” is located within the Southwest ¼ of Section 9, Township 12 South, Range 65 west of the 6th principal meridian in El Paso County, Colorado. The site is situated on the east side of Herring Road, north of Shoup Road. The site consists of two unplatted parcels having El Paso County Tax ID Numbers 52090-00-120 and 52090-00-121 with total acreage of 32.168 acres. The property is zoned RR-5 (Residential Rural 5 acre). The site is undeveloped except for an existing gravel private road extending east from Herring Road with an existing 50' long asphalt apron located at the Herring Road access point.

Request and Justification:

The request is for approval of the Minor Subdivision of the property to create four (4) rural residential single family lots and two (2) tracts. Lots 1 through 4 will range in size from 5.000 acres to 12.108 acres. Tracts A and B will contain the private roadway and allow access to the four new lots as well as the existing adjacent parcels that use the private road for access.

The Minor Subdivision application for Forest Heights Estates is consistent with the requirements of the land development and zoning requirements such as: land use (single-family residential), lot size (5 acres or greater), minimum building setbacks, water supply sufficiency, and wastewater disposal. The proposed lots are compatible with the surrounding land uses and neighborhood. The proposed land use coincides with the adjacent zoning and platted lot sizes found in all directions being approximately 5 acres or larger. Each of the four proposed lots will be illegible for development of a single family residence in accordance with the Land Development Code and can be served by individual well & septic systems.

Engineers • Surveyors
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Access for proposed Lots 1-4 shall be by way of the existing private gravel road named Forest Heights Circle, which extends to the east from Herring Road. Existing Forest Heights Circle currently serves as access to six existing single family residences that are adjacent to the subject property. Improvements will be made to the the existing private road to enhance the accessibility of the site and adjacent properties.

The El Paso County Land Development Code (LDC) states that “*A division of land shall have a minimum of 60 feet frontage on a public road*” as found in Section 8.4.3(A)(1). One of the proposed lots has more than 60 feet of frontage on Herring Road. However, it is desired that all four individual lots take access from private Forest Heights Circle which connects to Herring Road at proposed Tract B. Therefore, a waiver is requested from LDC Sections 8.4.3(A)(1) and 8.4.3(B)(2)(e) “*Lots shall have a minimum of 30 feet of frontage on and have access from a public road, except where private roads are approved by the BoCC pursuant to waiver granted under Section 8.4.4 (E)*”. The applicant requests a private road waiver to allow the proposed lots access by way of a private road. LDC 8.4.4(E)(2) allows for consideration of private road with provision of a Private Road Maintenance Agreement between the subject lot owners. The applicant also requests alternative design standards according to LDC 8.4.4(E)(3) to allow modified Right-of-way width, design speed and pavement type. The responsibility and maintenance of said access shall be carried out as described in the separate private access maintenance agreement. The private road waivers are addressed below, following the general subdivision justification.

This application meets the Minor Subdivision submittal requirements, the standards for Divisions of Land in Chapter 7, and the standards for Subdivisions in Chapter 8 of the El Paso County Land Development Code (2021) with the consideration of the requested waivers. Minor Subdivisions are reviewed and approved in consideration of the review criteria found in the El Paso County Land Development Code. Each criteria is listed below followed by the appropriate justification.

1. *The subdivision is in conformance with the goals, objectives, and policies of the Master Plan. “Your El Paso Master Plan” (2021) is a comprehensive document communicating a vision for many factors that influence the quality of in El Paso County, including Land Use. The Master Plan provides a strategy to achieve the vision by putting forth goals and policies that can be used as a framework for decision-making regarding development of the County.*

The site is located in the Key Area designated “Forested Area” of the county located east of Black Forest Road, north of Shoup Road, and south of Hodgen Road. The property is also located within an area of Minimal Change: Undeveloped. The proposed plat is in keeping with the established zoning and compatibility with the surrounding land use. The site is designated as a Large-Lot Residential Placetype. The Primary Land Use of this placetype is Single Family Detached Housing with Agriculture, Commercial Retail, Commercial Service, and Parks/Open Space as Supporting Land Uses. The location of this site and existing infrastructure is suited to single family residential use. In the Land Use category, Goal 1.1 is “*Ensure compatibility with established character and infrastructure capacity*”. This area of the County is conducive to rural residential development that allows residential use of property but preserves the natural character of the landscape. The proposed subdivision is compatible and identical to the existing neighborhood and surrounding development. The existing community character is preserved with this proposed plat. The proposed density is less than allowed by zoning. The proposed density is unlikely to overburden the existing roadway infrastructure or capacity of the land to support the water and wastewater needs of the development. The proposed Minor Subdivision will not create the need for additional public roadways or facilities. Goal 2.2 is “*Preserve the character of rural and environmentally sensitive areas*”. The proposed subdivision will keep the forested nature of the area intact. The five-acre lot density has reduced impact on environmental conditions.

Density and land use are compatible with the surrounding area and the natural features of the site will remain preserved, even with the addition of three more residences on the site. The private driveways to be used for access will have minimal impact on the existing terrain.

No new public roads are proposed with this subdivision since access for these lots are through an existing private road that will be improved to allow proposed Lots 1 through 4 to have access to public Herring Road. In this way, lot access is provided while eliminating the need for additional access points and additional public roadway. The existing private road presents a reduced impact on the natural terrain, land forms, and vegetation. Therefore, this project's access road maintains the rural character of site and neighborhood.

The proposed subdivision is in compliance with the **2040 Major Transportation Corridors Plan (MTCP)**. Access to the site will be by way of Forest Heights Circle, an existing private gravel road. Improvements are planned for the private roadway. Forest Heights Circle connects to Herring Road, a paved two-lane county road designated as a collector in the 2040 Major Transportation Corridors Plan. The proposed subdivision will not significantly impact the traffic on this roadway. Traffic impacts are further discussed below.

The proposed Minor Subdivision is in compliance with the **Parks Master Plan (2022)**. A secondary regional trail is shown on the Parks Masterplan through the subject property. The applicant is concerned about potential establishment of a public trail through the private property of the residential lots in the subdivision on the grounds of resident personal safety, resident privacy, protection of resident private property rights, and sanitation. However to comply with the masterplan, an because the proposed lots are 5 acres and greater, a 25' wide trail easement in the location of an existing gas line easement is included on the plat as requested by Parks Advisory Board. Any required park fees will be paid at the time of plating. The proposed subdivision is also in compliance with the Master Plan for Mineral Extraction and the severed mineral right owners for this property have been notified.

The proposed subdivision is in compliance with the **El Paso County Water Master Plan (2018)**. The District Court, Water Division 2 Colorado, has decreed certain water rights and approved a plan for augmentation as necessary to allow the drilling of four wells in this subdivision in Case No. 22CW3060 recorded under reception number 223022220 of the records of El Paso County. The owner seeks a finding of sufficiency from the Colorado Division of Water Resources and the eventual granting of the four well permits based on the decreed water rights.

Forest Heights Estates is located within Region 2 in the Water Master Plan. The region is comprised of the northwest corner of the county including the tri-lakes area. The site is not located in a designated Growth Area as determined in the Water Master Plan. The Water Master Plan contains estimates of the demands and available supply by region at the years 2018, 2040 and 2060 Build-Out. The 2018/2040/2060 demands in Region 2 are estimated to be 7,532 acre-feet per year, 11,713 acre-feet per year, and 13,254 acre-feet per year, respectively. The 2018/2040/2060 supplies in Region 2 are estimated to be 13,607 acre-feet per year, 20,516 acre-feet per year, and 20,756 acre-feet per year, respectively, indicating a surplus of supply for the region at each time. However, a significant portion of the supply is derived from non-renewable Denver Basin groundwater. Considering only Forest Heights Estates, demands are estimated to be 3.08 acre-feet of water per year for the current, 2040 and 2060 time frames, respectively. Water supply available by decree to the subdivision is 7.56 acre-feet per year for each of the current, 2040 and 2060 time frames. The decree allows up to 0.57 acre-feet of water per year per lot for irrigation of lawns and gardens for watering of livestock. In practice, every lot owner may

not keep livestock and residents in the county limit water use for landscape irrigation in favor of natural grasses.

A listing of some of the policies of the Water Master Plan that are supported by the proposed development follow: *Policy 4.1.3 – Support enhanced monitoring of sources of surface and tributary groundwater in the County.* The referenced decree requires use of metering for the wells to insure compliance with the terms of the permit; *Policy 6.2.1.2 – Encourage re-use of treated wastewater for irrigation and other acceptable uses when feasible.* Both the existing residence and the new single-family residences on all proposed lots will utilize onsite wastewater treatment systems which will provide “Return Flows” to the environment as a condition of the groundwater findings and order and the well permit.

2. *The subdivision is in substantial conformance with the approved preliminary plan.*
This is a proposed Minor Subdivision and requires no Preliminary Plan for Plat approval. The subdivision will be developed in accordance with the currently proposed land use applications.
3. *The subdivision is consistent with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analyses, studies, reports, plans, designs, documents, and other supporting materials.*
The proposed Minor Subdivision Plat is prepared in accordance with applicable subdivision design standards. No public improvements are required for this subdivision. This application includes request for waivers to allow private roads and alternate roadway design standards as discussed below.
4. *A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in the water supply standards [C.R.S. §30-28-133(6)(a)] and the requirements of Chapter 8 of this Code.*
Water service is to be provided by individual on site wells operated under a State approved Water Augmentation Plan.
5. *A public sewage disposal system has been established and, if other methods of sewage disposal are proposed, the system complies with State and local laws and regulations, [C.R.S. §30-28-133(6)(b)] and the requirements of Chapter 8 of this Code.*
Wastewater is intended to be treated via individual on site septic systems designed, constructed and operated under State and County Health Department rules and regulations and in accordance with the Water Decree.
6. *All areas of the proposed subdivision which may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified and that the proposed subdivision is compatible with such conditions [C.R.S. §30-28-133(6)(c)].*
A soils report has been prepared for the site and the owner will comply with the recommendations of the report. Areas were encountered where the geologic conditions will impose some constraints on development and land use. These include areas of potentially seasonal shallow and shallow groundwater and expansive soils, all of which can be satisfactorily mitigated through avoidance or proper engineering design and construction practices. Based on the proposed plat, it appears that these areas will have minor impacts on the development. These conditions are discussed in

further detail in the Soil, Geology, and Geologic Hazard Study produced by Entech Engineering, Inc.

7. *Adequate drainage improvements are proposed that comply with State Statute [C.R.S. §30-28-133(3)(c)(VIII)] and the requirements of this Code and the ECM.*

The proposed Minor Subdivision is consistent with the submitted Final Drainage Report. There are no public drainage facilities needed or proposed with this development. Private road culverts will be installed in the private road by the applicant and any required private driveway culverts will be installed by the future lot owners. The owner/applicant will comply with the requirements of the drainage report.

8. *Legal and physical access is provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with this Code and the ECM.*

With the approval of requested waivers, Forest Heights Estates Lots 1-4 shall have access to private Forest Heights Circle connecting to Herring Road. The private road is contained within proposed Tracts A and B and 60 foot wide access easement as well as an access easement. The roadway will be maintained by the lot owners in accordance with an Access and Maintenance Agreement established for the subdivision and adjacent existing residences.

9. *Necessary services, including police and fire protection, recreation, utilities, and transportation systems, are or will be made available to serve the proposed subdivision.*

The site is located within the jurisdiction of the El Paso County Sheriff's Office. The sheriff's office currently provides police protection for the site and surrounding area. The site is located within the Black Forest Fire Protection District which already provides fire protection for the site and has agreed to serve this subdivision. Water and sanitary sewer provisions are discussed in items 4 & 5 above. The property is located within the service areas of Mountain View Electric Association, Blackhills Energy Corporation, and Lewis Palmer School District 38 which will serve the subdivision. Transportation is being facilitated by the existing adjacent roadway system and an improved private road.

10. *The Minor Subdivision plans provide evidence to show that the proposed methods for fire protection comply with Chapter 6 of this Code.*

Foprest Heights Estates is located within the Black Forest Fire Protection District which is providing fire protection for the site and the surrounding area. The district has agreed to serve this subdivision. Building permits for each structure shall be in accordance with the requirements of the fire district as administered by the Pikes Peak Regional Building Department.

11. *Off-site impacts were evaluated and related off-site improvements are roughly proportional and will mitigate the impacts of the subdivision in accordance with applicable requirements of Chapter 8.*

All offsite impacts are determined to be insignificant with the platting of four residential lots. The applicants will be responsible to pay park, school and drainage fees. Future lot owners will pay Traffic Impact Fees at time of building permit.

12. *Adequate public facilities or infrastructure, or cash-in-lieu, for impacts reasonably related to the proposed subdivision have been constructed or are financially guaranteed through the SLA so the impacts of the subdivision will be adequately mitigated.*

There are no public facilities or infrastructure required or proposed for this subdivision. The private roadway is proposed to be improved by the applicants with the required facilities as needed for access. The platting of the site will include the collection of the applicable School Fees, Park Fees, Drainage Fees and Traffic Impact Fees due for this project.

13. *The subdivision meets other applicable sections of Chapter 6 and 8.*

Upon approval of waivers to the LDC Section 8.4.3 (A)(1) stating “*A division of land shall have a minimum of 60 feet frontage on a public road*” and 8.4.3(B)(2)(e) stating “*Lots shall have a minimum of 30 feet of frontage on and have access from a public road, except where private roads are approved by the BoCC pursuant to waiver granted under Section 8.4.4 (E)*”, the subdivision will meet the requirements of the Land Development Code. The subdivision is in accordance with the Land Development Code with respect to zoning, lot size, building setbacks, provision of utilities and storm drainage. The waiver is requested with this application to allow access by each of the four proposed lots via a private road without the required 30 feet of frontage on a public road for each lot. The code allows consideration of access by private roads by waiver according to Section 8.4.4(E)(2) and consideration of certain alternative road design standards according to Section 8.4.4(E)(3). The waivers are more fully discussed below.

14. *The extraction of any known commercial mining deposit shall not be impeded by this subdivision [C.R.S. §§34-1-302(1), et seq.].*

A search of El Paso County Clerk and Recorder's records revealed the existence of no severed mineral estate owners.

Requested Waiver:

As previously mentioned, a waiver from LDC Section 8.4.3(A)(1) “*Minimum Frontage for Division of Land: A division of land shall have a minimum of 60 feet frontage on a public road.*” along with Section 8.4.3(B)(2)(e) is requested. The referenced code provision requires that “*Lots shall have a minimum of 30 feet of frontage on and have access from a public road, except where private roads are approved by the BoCC*”. Proposed Lots 1-4 will gain access by way of the existing private road, Forest Heights Estates, connecting the site to Herring Road in the northwestern portion of the site. The responsibility and maintenance of said access shall be carried out as described in a separate private access maintenance agreement. Additional code references for the requested waiver are Section 8.4.4(E)(2) “*Private Roads Require Waiver. The use of private roads is limited and allowed only by waiver. In granting a waiver to allow private roads, the BoCC shall make written findings supporting the use of private roads and may require the owner to enter into a Private Road Maintenance Agreement or create covenants whereby the lot owners are required to maintain the private roads.*” and Section 8.4.4(E)(3) “*Private Roads to Meet County Standards. Generally, private roads shall be constructed and maintained to ECM standards except as may be otherwise determined in the waiver. Private road waivers may only include design standards for the following:• Right-of-way width where suitable alternative provisions are made for pedestrian walkways and utilities;• Design speed where it is unlikely the road will be needed for use by the general public;• Standard section thickness minimums and pavement type where suitable and perpetual maintenance provisions are made;• Maximum and minimum block lengths; and• Maximum grade.*”

Proposed Lots 1-4 are proposed to be connected to Herring Road by private roadway located in proposed Tracts A and B along with an access easement. Existing private road named Forest Heights which is

already located in proposed Tracts A and B currently provides access to existing developed parcels that are adjacent to the site. The existing roadway will be improved to facilitate access to proposed Lots 1-4.

The applicant and adjacent residential owners wish to maintain the private character of the development by keeping the road within the neighborhood private. They also wish to maintain the rural residential character of the neighborhood by having a narrower gravel road. The private road for this development is appropriate as a public road is not needed for convenience or safety of the general public due to the small number of residential lots that will utilize it. The road will be maintained by the four new lot owners of Forest Heights Estates, and six other adjacent lot owners that currently access using the existing private road for a total of 10 lots. Since the code allows for access by private road through waiver, it is most practical for proposed Lots 1-4 to be able to access by the existing private roadway, rather than extending a public roadway into the site. The arrangement eliminates the need for additional public right-of-way and additional public maintenance to serve the 10 rural residential single family lots. The allowance of private roads, coupled with private maintenance agreements have been shown to be effective and efficient modes of access within the county. The proposed private road with approved alternative road design characteristics will also have a diminished impact on the natural terrain and landscape of the site compared to a public roadway which would be much larger dedication and require far more disturbance than a smaller private road.

LDC 8.4.4.E Private Roads to Meet County Standards - A waiver is requested from Land Development Code Section 8.4.4.E in consideration of the provisions of Section 8.4.4(E)(3) to allow modification of certain standards, to be considered with the Private Road Waiver. Modifications to right-of-way/road width, design speed, standard section thickness minimums and pavement type, block lengths and maximum grade are allowed as part of the private road waiver.

The applicant requests a narrower roadway surface consisting of two 10' wide drive lanes to promote the preservation of the existing natural terrain at the site and to highlight the private and rural nature of the development. The narrower width serves to preserve existing trees, natural vegetation and terrain. The proposed private roadway is low volume, serving only 10 potential residential lots. The narrower roadway is adequate to allow two-way traffic on this low volume roadway. Additionally, two turn-out area with wider surface will be provided as requested by Black Forest Fire Department.

The applicant requests a lower design speed of 20 mph for the private road. The lower design speed will allow further preservation of existing natural features and terrain by allowing the improved road surface to remain closer in elevation to the existing road surface and prevent unnecessary disturbance of the roadsides. The roadway is relatively short, promoting lower speeds and will be stop controlled at the connection with Herring Road. The road will be posted with a 20 mph speed limit sign.

The applicant requests the use of the existing gravel surface for the roadway. The existing gravel surface has proved adequate, reliable and stable over the several years. The existing asphalt apron extending 50 feet into the site from paved public Herring Road will remain in place, providing an appropriate transition from the paved public way. The private roadway surface will be maintained by the residents as noted above.

Each criteria for approval of waivers as stated in section 7.3.3 of the El Paso County Land Development Code (2021) is listed below followed by the appropriate justification.

1. *The waiver does not have the effect of nullifying the intent and purpose of this code;* The request for a waiver of the referenced LDC sections does not go against the intent and purpose of this code. This request is in line with the provisions and requirements set forth in the LDC, and the private roadway will comply with the applicable design standards as modified by the request.

2. *The waiver will not result in the need for additional subsequent waivers;* With the approval of the referenced waivers, the lots will each be provided the required access necessary for their development. There is no known need for additional waivers as all applicable requirements of the El Paso County Land Development Code will be met.
3. *The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property;* The private road will be improved to provide safe and reliable access to each lot on the site and adjacent users. The responsibility and maintenance of said driveway shall be carried out as described in a private access maintenance agreement. The driveway will not pose a threat to the public safety, health, or welfare, nor will it be injurious to any other property.
4. *The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable to other property;* This site has an existing private road that is in use by the applicants and adjacent residents. The parties desire that the road remain private with the platting of Forest Height Estates and that the roadway improvements create only minimum disturbance and modification to the existing natural terrain and vegetation. Therefore, due to very limited number of residences that will utilize the road and the agreement reached with adjacent owners, the waiver to allow the private road is preferable access to the entire site in lieu of a public road.
5. *A particular non-economical hardship to the owner would result from a strict application of this code;* With strict application of this code, the subdivision would be required to access by a public roadway in a 60-foot right-of-way constructed to El Paso County standards. The public road would significantly increase disturbance of the natural terrain and forest as well as the impervious area of the site while increasing the maintenance responsibility of the county. A public paved roadway would detract from the existing rural residential character of the site and intrude upon the property against the wishes of the residents.
6. *The waiver will not in any manner vary the zoning provisions of this code;* The proposed private road will comply with all zoning provisions of this code and does not produce violations.
7. *The proposed waiver is not contrary to any provision of the master plan;* The proposed private road is in harmony with the goals of the master plan with regard to preserving place type characteristics and preserving natural features.

Existing and Proposed Facilities:

Forest Heights Circle is an existing private gravel road used for access by residents of currently developed parcels adjacent to the site. The proposed subdivision establishes Tracts A and B to contain the existing private roadway. The applicants will make improvements to the roadway which is planned to be a private gravel roadway in accordance the proposed waivers mentioned above. The necessary road culverts will be replaced as part of the improvements.

Total Number Of Residential Units And Densities:

The gross area of Forest Heights Estates 32.618± acres and the site is proposed to contain four single-family residential units. Residential lots range in size from 5.000 to 12.108 acres. The average lot size for the four proposed lots is 7.48 acres. The gross density of the site is 0.12 units per acre.

Fire Protection:

The site is located within the Black Forest Fire Protection District. The Black Forest Fire Protection District already serves the property and surrounding residences and has provided a Service Commitment Letter for the proposed lots. The lots and homes are subject to the codes and policies adopted by the said district regarding fire protection.

Proposed Access Locations:

Access for proposed Forest Heights Estates Lots 1-4 shall be by way of the existing private gravel road, Forest Heights Circle, which connects to the east side of existing Herring Road with an existing 50' long asphalt apron at the connection point. Forest Heights Circle is to undergo modification and improvement according to construction plans prepared as part of the subdivision application but will remain a gravel road with the existing asphalt apron to remain in place. The private roadway will be contained within two tracts and access easements. Maintenance of the private roadway will be provided by the lot owners and in accordance with a Access and Maintenance Agreement, Herring Road is a paved two-lane public road designated a rural collector in the 2040 Major Transportation Corridors Plan. There are no topographical or alignment challenges limiting safety of the existing or proposed private road access to the proposed lots.

Traffic Impact and Traffic Impact Fees:

The four new single family rural residential lots will access private Forest Heights Circle and public Herring Road. The development is expected to generate a total of 38 trips per day (Average weekday trips ends) and 4 trips in the peak hour based on 9.44 trips per unit for Single Family Detached Housing (according to Trip Generation, 10th Edition, 2017 by the Institute of Transportation Engineers). This number of trips is below the County threshold of 100 trips per day or 10 trip during the peak hour. Therefore, a full Transportation Impact Study (TIS) is not required for the project. This development is subject to fees established by the El Paso County Road Impact Fee Program per El Paso County Resolution Number 19-471. The owners have elected to not be included in a Public Improvements District. Traffic Impact Fees will be paid at time of building permit.

Based on the current conditions of Herring Road and the low traffic volumes to be generated by the site, no new improvements to Herring Road or nearby area roadways. are required to serve this development. Where the site is adjacent to Herring Road, an additional 15 feet of road right-of-way will be dedicated by the subdivision plat document as required due to the classification of Herring Road as a collector road.

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