

ALESSI
AND ASSOCIATES, INC.



January 27, 2022

Letter of Intent

Minor Subdivision
11750 Green Acres Lane

OWNER: *Jerry and Sharon Lomax*
11750 Green Acres Lane
Colorado Springs, CO 80908

CONSULTANT:

Joseph Alessi PLS
Alessi and Associates, Inc.
2989 Broadmoor Valley Road, Suite C
Colorado Springs, CO 80906
Tele: 719-540-8832 fax# 719-540-2781

SITE LOCATION:

Property Address: 11750 Green Acres Lane, Colo. Springs
Property currently is a residential site. The existing land uses in the area are of rural residential/agriculture sites. The Three Lot subdivision proposes the use of wells and septic systems. Burgess Road via Green Acres Lane provides legal access to the site and an existing gravel road along the South boundary line currently provides access to property. The site is comprised of 15.18 Acres more or less. Three quarters of a mile East of the intersection of Vollmer Road and Burgess Road.

Legal description – A portion of The Northeast Quarter Southeast Quarter of Section 15, Township 12 South, Range 65 West of the 6th P.M., El Paso County, Colorado.

ZONING:

Parcel # 5215000035 is currently zoned
RR-5 – Rural Residential District.

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REQUEST:

Request to subdivide into three Lots comprised of proposed Lot 1 = 5.06 Acres, Lot 2 = 5.06 Acres and Lot 3 = 5.06 Acres = 15.18 Acres. Water wells and individual septic systems are proposed for rural/residential use on each Lot.

Green Acres Lane will provide access to the proposed Lots. Overhead utilities located along the South and West side provide electrical and communication service to the site.

Request a waiver under Land Development Code Section 8.4.3.B-2 and 8.4.4(E)

This provision requires that "Lots shall a minimum of 30 foot of frontage on and have access from a public road, except where private roads are approved by BOCC"

Lots 1, 2 and 3 gain access from an existing private access easement having access from Burgess Road. As described from the County Road (Burgess Road) to the subject property, 30 Ft. easement for ingress and egress as described in Exhibit A, Stewart Title Guaranty Company, File No. 85511ECS, dated July 31, 2021.

The current private access easement has existed for more than 30 years and has historically been maintained with snow removal, gravel and grading performed for drainage improvements. The continued responsibility and maintenance of the access drives shall be continued by the owners of Lots 1, 2 and 3 in accordance with the private access maintenance agreement. (See Attached Agreement) The private access drives with the private maintenance agreement have proven to be an effective and efficient method of providing access to the two additional Lots. The private access driveway will have a minimal impact on the natural terrain and minimal disturbance of the landscape as compared to a larger driveway width.

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 code section 8.4.3 (B) does not go against the intent and purpose of this code. This request is in line with the requirements set forth in the code, and the shared driveway will comply with all applicable design standards.

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2. The waiver will not result in the need for additional subsequent waivers; With the approval of this waiver the lots will each be provided the required access. There will be no need for additional waivers as all applicable requirements of the El Paso County Land Development Code and current zoning of minimum 5 acre Lots, 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 proposed shared driveway will be constructed to provide safe and reliable access to each lot on the site. The responsibility and maintenance of said driveway will be performed 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. Treasured Acres Subdivision Filing No. 1 contains 15.18± acres and three (3) lots. Because the site does not contain more than three lots, a single driveway may be used to provide access to the entire site via Green Acres Lane to a 60 foot public road, Burgess Road.

5. A hardship to the owner would result from a strict application of this code; the subdivision would be required to access by a public roadway in a 60' 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.

6. The waiver will not in any manner vary the zoning provisions of this code; The proposed shared driveway will comply with all zoning provisions of this code.

7. The proposed waiver is not contrary to any provision of the master plan; The proposed shared driveway is in harmony with the goals of the master plan with regard to preserving place type characteristics and preserving natural features.

This waiver will provide the additional two proposed properties to utilize and provide access via the current private Green Acres Lane to a 60 foot public road Burgess Road.

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JUSTIFICATION:

1. The El Paso County Master Plan is an expression of the community's desires for the future of El Paso County. The Plan establishes Core Principals in Housing and Communities to preserve the character of rural and environmentally sensitive areas. Black Forest is a community with one of the strongest and most well-established characters in El Paso County. This area is built around protecting the forest and preserving its rural quality. Due to this natural amenity, many new residents seek to live in this area when moving to the County areas. The Plan focuses primarily on Land Use as a fundamental core component of a comprehensive plan and represents the first building block upon which other plan components are structured. The approach to land use retains established places, identifies opportunities for growth, and provides strategies to mitigate impacts to the natural environment.
2. The request complies with the Master Plan and is in general conformance with the Land Use Applications.
 - a. The proposed minor subdivision is located in the Forested Key Area. This key area is where natural forests are a predominant feature
 - b. This is an area of minimal change undeveloped with significant natural area. Although, this area can see infill development by maintaining the overall character.
 - c. The Master Plan identifies this area as Large-Lot Residential. This place type consists mostly of residential development of single family homes of 2.5 acres or more. This type minor subdivision typically relies on wells and septic systems.

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- d. This proposed subdivision is limited with existing infrastructure to this property, i.e. gas, electric and communication services.

Core Principles and Goals

- i. Goal 1. Preserve and enhance the sensitive natural environment and unique community character of the Forested Area.
- ii. Goal 2. Recognize that agriculture, and other open lands are vital natural resources which should be protected from needless misuse and urban sprawl.
- iii. Goal 3. Promote a residential environment which perpetuates the rural-residential character of the Large Lot Area.
The promotion of residential subdivisions with a minimum lot area of 2.5 acres in designated portions of the planning area.

3. Water Master Plan

- i. The project is located within the Upper Black Squirrel Creek Ground Water Management District
- ii. The water supply for the proposed five acres plus lots is by the drilling of Private wells for each of the lots.
- iii. No Central supplier will be used for this project.

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- iv. The Standards of Section 4 are met by limiting the well ground water to the Dawson Aquifer and by obtaining a Ground Water Findings and as well as a Replacement Plan – Determination of Water Right No. 3668-BD
 - v. The Applicant has shown that the proposed wells for the 15.18 acre site has Water Rights for 3.5 Acre-feet and meets the requirements of the 300-year Rule for the County.
 - vi. The proposed 3 lot subdivision has ensured adequate water for the future by designing a low-density residential development for the 15.18-acre site.
4. The proposed Minor Subdivision is in conformance with the requirements of the Minor Subdivision requirements. Zoning Code minimum setbacks for RR 5 Front 25 Ft., Side 25 Ft., Rear 25 Ft., Lot width 200 Ft. maximum height 30 ft.
5. The water supply report provides sufficient information to identify probable compliance with the water supply standards and identifies any need for additional water supplies. Please review the replacement plan and court findings with adequate water supply.

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6. The proposed Minor Subdivision is not located within a central sewage system or within an organized sewage district with a municipal service area. In the opinion of the OWTS report both new Lots 2 & 3 have suitable areas for future individual on-site wastewater treatment systems within setbacks from water sources and easements. At time of building permit the OWTS evaluation and design will be based on the number of bedrooms for residential design.
7. Services are or will be available to meet the needs of the subdivision including existing public roads, commitment of service with Black Forest fire protection district, and Mountain View Electric, Black Hills Gas utility commitment services.
8. The soil is suitable for the subdivision see Soil and Geology Report. The foundation and floor slabs of the proposed structures should be designed using specific subsurface soil investigation performed on Lot 2 and 3. The surficial sand soils will classify as Type C materials and the clay soils will classify as Type B.
9. The geological hazards do not prohibit the subdivision or can be mitigated. See Soil and Geology Report. Based on the geological conditions the proposed development is feasible. Exterior, perimeter foundation drains should be installed around below-grade habitable or storage spaces. Positive grading should be installed around the building area to prevent infiltration into the subsurface soil.
10. The subdivision will not interfere with the extraction of any known commercial mining deposit

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11. The design of the subdivision protects the natural resources as a grass rangeland.
12. The proposed methods for fire protection are adequate to serve the subdivision. See Fire mitigation and protection reports. Homeowners should develop effective defensible space around each building including; dwelling, garage and out buildings. Desired conditions around structures include a 10 foot clearance out at least a recommended 30 feet.
13. The subdivision is appropriate, and the design is based on mitigating the constraints of topography, soil types, geologic hazards, aggregate resources, environmental resources, or other constraints. As described in the Soils and Geology Report, Storm water report etc.
14. A 30 ft. Access Easement from Burgess Road to the private drive known as Green Acres Ln, along with waiver request As described from the County Road (Burgess Road) to the subject property, 30 Ft. easement for ingress and egress as described in Exhibit A, Stewart Title Guaranty Company, File No. 85511ECS, dated July 31, 2021.
15. Encourage new single family housing as infill development within the areas of available vacant or underutilized agricultural land and continue the denser housing expansion of existing suburban residential areas.

Your consideration of this request will be greatly appreciated.

Respectfully Submitted

On behalf of the property owner

Joseph Alessi PLS

ACCESS EASEMENT MAINTENANCE AGREEMENT

This ACCESS EASEMENT MAINTENANCE AGREEMENT (“Agreement”) dated this _____ day of _____, 2022, is made by and among the owners of 11750, 11910 and 11930 Green Acres Lane, Colorado Springs, 80908, El Paso County, Colorado together with their respective successors in interest in the Properties as hereafter defined (collectively the “Owners”). 11750 Green Acres Lane known as Lot 1, 11910 Green Acres Lane known as Lot 2 and 11930 Green Acres Lane known as Lot 3, all in Treasured Acres Filing No. 1, Colorado Springs, El Paso County, Colorado according to the legal descriptions are herein referred to as the “Property”. The Owners are individually a “Party”.

RECITALS:

- A. Jerry and Sharon Lomax as owners of Lots 1, 2, and 3, Treasured Acres Filing No. 1
- B. The Property was platted as evidenced by the Subdivision Plat.
- C. The Plat provides access to and from Burgess Road over a private lane which is a private easement for access from Burgess Road to its point of terminus.
- D. The Owners wish to provide for the construction and maintenance of a roadway (“Roadway”) for access over the Access Easement from Burgess Road for the frontage of the parcels.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Design and Construction of Roadway.** The Owners of the Property are responsible for the Roadway as it exists and if desired by Parties to construct the Roadway to El Paso County standards.
2. **Maintenance of Roadway.** It shall be the duty and obligation of each Owner to maintain the shared access driveway. The shared access driveway shall be equally maintained by the parcel owners benefiting from, and sharing, the respective driveway and shall each pay an equal portion of maintenance and repair costs, unless the expense to repair is attributable to a specific lot owner. “Maintenance” or “repair” includes, but is not limited to, graveling, paving, draining, removing snow, clearing, or providing any other maintenance or repair-type service however defined, on the shared access driveway. If a Parcel Owner does not utilize or benefit from the shared access driveway, then the Lot Owner is not responsible for maintenance and repair and associated costs. The driveway shall, at a minimum, meet typical standards for gravel or paved roads, as applicable. The driveway will, at all times, be kept in passable condition without potholes, sinkholes, obstructions, or other unstable or unpassable conditions. The shared access driveway may be paved if the sharing parties agree to share the cost of paving, or if one party agrees to bear the total cost for the pavement. In no case shall the paved access driveway fall below the county standard for access drives.
3. **Run with the Land.** The rights and obligations granted herein and the provisions hereof shall run with the land, shall be appurtenant to the Property, shall be binding upon the Owners and Property and all present and future owners of the Property, and shall inure to the benefit of the Owners and Property and all present and future owners of the Property.

4. **Enforcement.**

A. This Agreement may be enforced as provided hereinafter by each Owner of a parcel in the Property. Each Owner of a parcel, by acquiring an interest in the parcel, shall automatically become vested with the rights and obligations provided under this Agreement. Violation of any condition, covenant, restriction, or reservation contained herein by any party shall, after providing thirty (30) days' written notice to the party responsible in violation of this Agreement, give to said owner of a Lot the right to bring suit in law or equity against the party or parties violating any such condition, covenant, restriction, and/or reservation to enjoin them from so violating, to cause such violation to be remedied, and to recover damages resulting from such violation.

B. In any legal or equitable proceeding for the enforcement of this Agreement, or any provision hereof, whether it be an action for damage, declaratory relief, injunctive relief, or any other action, the prevailing party in such action shall be entitled to recover from the non-prevailing party all of its costs incurred in such action, including court costs and reasonable attorneys' fees. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

C. The failure of any owner or owners of a Lot to enforce any of the conditions, covenants, restrictions, or reservations contained herein shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other conditions, covenants, restrictions, or reservations contained herein.

5. **Miscellaneous.**

a. Severability. In the event any Court of competent jurisdiction declares any portion of this document to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this document.

b. Third Parties. This document does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceeding against any of the parties hereto or their respective successors and assigns, including any individual Lot Owners, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

c. Applicable Law and Venue. The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this document. Venue shall be in the El Paso County District Court

f. Modification. No breach of this Agreement shall entitle any Party to cancel, rescind or terminate the Agreement or any rights granted herein. This Agreement may be modified or terminated only by recording a written modification or termination agreement executed by the then present owner or owners of all of the Properties.

g. Notices. All notices required or permitted to be given or delivered hereunder shall be in writing and be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the Party intended at its address as set forth above or to such other address as indicated on title transfer documents filed with the El Paso County, Colorado real property records. All such notices shall be deemed to have been given and delivered when hand delivered or seventy-two (72) hours after deposit in the United States Mail in the manner provided unless the return receipt shall show earlier delivery.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first set forth above.

Lots 1, 2 and 3, Treasured Acres Filing No. 1:

By:

By:

STATE OF COLORADO)

) ss.

COUNTY OF El Paso)

The foregoing was acknowledged before me this ___ day of _____, 2022, by

WITNESS my hand and official seal.

My Commission expires: _____

Notary Public