


**EL PASO COUNTY**  
**COLORADO**

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
 CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO: El Paso County Planning Commission  
 Brian Risley, Chair**

**FROM: John Green, Planner II  
 Lupe Packman, Review Engineer I  
 Craig Dossey, Executive Director**

**RE: Project File #: SF-21-011  
 Project Name: Mountain Shadow Vacate and Replat  
 Parcel No.: 51190-04-002**

<b>OWNER:</b>	<b>REPRESENTATIVE:</b>
Dale and Stephanie McGehee 10957 Mt. Evans Drive Peyton, CO80831	

**Commissioner District: 1**

Planning Commission Hearing Date:	11/18/2021
Board of County Commissioners Hearing Date	12/7/2021

**EXECUTIVE SUMMARY**

A request by Dale and Stephanie McGehee for approval of a vacation and replat of one platted lot, known as Lot 3 of the Mountain Shadow Ranch Second Phase subdivision, to create two (2) single-family residential lots. The 10.5-acre property is zoned RR-5 (Residential Rural) and is located approximately one-quarter (1/4) of a mile north of the Hodgen Road and Thompson Road intersection, approximately one (1) mile west of Black Forest Road and is within Section 19, Township 11, and Range 65 West of the 6th P.M. The property is located within the boundaries of the Black Forest Preservation Plan (1987).

2880 INTERNATIONAL CIRCLE, SUITE 110  
 PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127  
 FAX: (719) 520-6695

**A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION**

**Request:** A request by Dale and Stephanie McGehee for approval of a vacation and replat of one platted lot to create two (2) single-family residential lots.

**Authorization to Sign:** Final plat and any other documents necessary to carry out the intent of the Board of County Commissioners.

**Waiver(s)/Deviation(s):** The following waiver of the El Paso County Land Development Code (2021) (LDC) is requested with the proposed subdivision:

The applicants are requesting a waiver to Section 8.4.4.C. of the Code to allow for private roads.

Section 8.4.4.C, *Public Roads Required*, of the Code states: "Divisions of land, lots and tracts shall be served by public roads."

The applicant is proposing to create two (2) lots. Lot 1 not proposed to have direct access to a public road, but instead is proposed to only have access to a public road via an access easement across Lot 2, as depicted on the plat.

PCD Executive Director Recommendation:

The PCD Executive Director recommends approval of the requested waiver since adequate lot accessibility can be provided via a proposed private roadway located within an access easement serving Lot 1.

**B. PLANNING COMMISSION SUMMARY**

**Request Heard:**

**Recommendation:**

**Waiver Recommendation:**

**Vote:**

**Vote Rationale:**

**Summary of Hearing:**

**Legal Notice:**

**C. APPROVAL CRITERIA**

In approving a vacation of a plat without rights-of-way, the BoCC shall find that the request meets the criteria for approval outlined in Section 7.2.3.A.3, Actions Vacating or Altering a Recorded Plat, Vacation of a Plat with No Rights-of-Way of the El Paso County Land Development Code (2019):

- Vacation of the recorded plat will not leave any lots or parcels without adequate utility or drainage easements;
- Vacation of the recorded plat will not vacate road rights-of-way or access easements needed to access other property;
- Vacation of the recorded plat will not inhibit the provision of adequate public facilities or services to other property as required by this Code;
- Vacation of the recorded plat is consistent with the Master Plan;
- Vacation of the recorded plat will not adversely affect the public health, safety, and welfare; and
- Where the lots or parcels are subject to any CC&Rs or other restrictions, that any potential conflict with the CC&Rs or other restrictions resulting from the vacation of the plat has been resolved.

In approving a final plat, the BoCC shall find that the request meets the criteria for approval outlined in Section 7.2.1 (Subdivisions) of the El Paso County Land Development Code (2019):

- The subdivision is in conformance with the goals, objectives, and policies of the Master Plan;
- The subdivision is in substantial conformance with the approved preliminary plan;
- 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;
- 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;
- 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;
- 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)];
- 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;

- 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;
- Necessary services, including police and fire protection, recreation, utilities, and transportation systems, are or will be made available to serve the proposed subdivision;
- The final plans provide evidence to show that the proposed methods for fire protection comply with Chapter 6 of this Code;
- 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;
- 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 SIA so the impacts of the subdivision will be adequately mitigated;
- The subdivision meets other applicable sections of Chapter 6 and 8; and
- The extraction of any known commercial mining deposit shall not be impeded by this subdivision [C.R.S. §34-1-302(1), et seq.]

**D. LOCATION**

North: RR-5 (Residential Rural)	Single-family dwelling
South: RR-5 (Residential Rural)	Single-family dwelling
East: RR-5 (Residential Rural)	Single-family dwelling
West: RR-5 (Residential Rural)	Single-family dwelling

**E. BACKGROUND**

The property was initially zoned A-4 (Farming) on September 20, 1965 when zoning was first initiated for this portion of the County (Resolution No. 434870). Due to nomenclature changes to the Land Development Code, the A-4 district has been renamed as the RR-5 (Rural Residential) zoning district. The 10.49-acre lot was platted as Lot 3 of the Mountain Shadow Ranch Second Phase subdivision on June 22, 2000.

The applicant is requesting approval of a vacation and replat to create two (2) single-family residential lots from the existing platted lot. Lot 1 is proposed to include 5 acres while Lot 2 is proposed to include 5.49 acres.

**F. ANALYSIS**

**1. Land Development Code Compliance**

The vacation and re-plat application meets the final plat submittal requirements, the standards for Divisions of Land in Chapter 7, and the standards for Subdivision in Chapter 8 of the El Paso County Land Development Code (2019) with the exception of the waiver as listed above.

## **2. Zoning Compliance**

The 10.49-acre property is zoned RR-5 (Rural Residential). The RR-5 zoning district is intended to accommodate low-density, rural, single-family residential development. The density and dimensional standards for the RR-5 zoning district are as follows:

- Minimum lot size: 5 acres\*
- Minimum width at the front setback line: 200 feet
- Minimum setback requirement: front 25 feet, rear 25 feet, side 25 feet\*\*
- Maximum lot coverage: 25%
- Maximum height: 30 feet

\* Agricultural stands shall be setback a minimum of 35 feet from all property lines.

\*\* In the event that the land to be partitioned, platted, sold or zoned abuts a section line County road, the minimum lot area for lots abutting the road shall be 4.75 acres and minimum lot width shall be 165 ft.

The vacation and replat application proposes subdividing the existing vacant 10.49-acre platted lot into two (2) single-family residential lots. Lot 1 is proposed to be 5 acres in size and Lot 2 is proposed to be 5.49 acres. The proposed lots will be accessed by a shared access easement onto Thompson Road. Should the request for approval of a vacation and replat be approved, the applicant will need to complete a site plan prior to initiation of any residential use on the proposed lots to ensure all structures meet the dimensional standards of the RR-5 zoning district.

## **3. Policy Plan Analysis**

The El Paso County Policy Plan (1998) has a dual purpose; it serves as a guiding document concerning broader land use planning issues and provides a framework to tie together the more detailed sub-area elements of the County master plan. Relevant policies are as follows:

**Policy 6.1.11** - *Plan and implement land development so that it will be functionally and aesthetically integrated within the context of adjoining properties and uses.*

**Policy 6.1.3** - *Encourage new development which is contiguous and compatible with previously developed areas in terms of factors such as density, land use and access.*

The subject property is located one-quarter (1/4) of a mile north of the intersection of Hodgen Road and Thompson Road, approximately one mile west of Black Forest Road. The applicant is proposing to subdivide the existing platted lot into two (2) single-family residential lots. Lot 1 is proposed to be 5 acres in size and Lot 2 is proposed to be 5.49 acres. The subject property is surrounded by properties zoned RR-5 that are developed with single-family dwellings. Specifically, the parcel located to the north of the subject property is 8 acres in size, while the property to the south of the subject property is 10.5 acres in size. Both of those parcels are developed with single-family dwellings. The property west of the subject property is 35.22 acres while the property east of the subject property is 80 acres. Both of those parcels are developed with single-family dwellings.

Although those parcels immediately adjacent to the subject parcel exceed 5 acres in size, there are other platted lots of similar size to those proposed in this request in the immediate vicinity. The Longview Estates subdivision, located approximately one-quarter (1/4) of a mile west of the subject property, consists of 5-acre lots and the Equine Estates subdivision, located approximately one-half (1/2) mile north of the subject property, also consists of 5-acre lots. As such, the proposed subdivision is consistent with the character of the surrounding neighborhood and is compatible with the density of developed properties in the area (Policy 6.1.3 and Policy 6.1.11).

#### **4. Small Area Plan Analysis**

The proposed vacation and replat is located within the boundaries of the Black Forest Preservation Plan (1987) and is specifically identified as being within the Northern Grasslands Area. The Plan recommends that new subdivision within the area should be permitted only when densities are at one dwelling unit per five acres or less. The relevant goals and policies are as follows:

**Goal 3.A** – *Promote a residential environment which perpetuates a rural-residential character of the Black Forest Planning Area.*

**Goal 1.A** – *Preserve and enhance the sensitive natural environment and unique community character of the Black Forest Planning Area.*

**Policy 3.5** – *Generally support residential development which complements and enhances the area’s terrain, vegetation, and natural resources.*

**Policy 3.1** – *Continue the promotion of residential subdivisions with an overall average minimum lot area of five acres in the Timbered Area and other designated portions of the planning area. The minimum lot size for five-acre overall density areas should be at least 2 ½ acres in most instances.*

The subject property is located within an area of low density, large-lot rural residential development and is located within the Northern Grasslands sub-area of the Plan. While the Plan recommends that future subdivision within the area be discouraged, states that development that does occur within the area should not exceed a density of one dwelling unit per five acres. The applicant is proposing to subdivide the existing 10.5-acre property into two single-family residential lots. The proposed lots will be 5.49 acres and 5 acres and will be accessed via a shared access easement onto Thompson Road, consistent with the stated policies of the sub-area. The subject property is also surrounded by rural properties of similar or larger size, developed with single-family dwellings. As such, the proposed subdivision is consistent with the rural residential character of the surrounding neighborhood, which is consistent with Goal 3.A and Policy 3.1 of the Plan. Additionally, as noted below, large areas of the proposed subdivision have been dedicated as no-build areas due to geologic constraints and the identification of seasonally wet areas, consistent with Policy 3.5 and Goal 1.A.

## **5. Water Master Plan Analysis**

The El Paso County Water Master Plan (2018) has three main purposes; better understand present conditions of water supply and demand; identify efficiencies that can be achieved; and encourage best practices for water demand management through the comprehensive planning and development review processes. Relevant policies are as follows:

**Goal 5.5** – *Identify any water supply issues early on in the land development process.*

The subject parcel is within Region 2 of the El Paso County Water Master Plan. The Plan includes demand and supply projections for central water providers in multiple regions throughout the County. The proposed development will not be served by a central water system. The following has been included for informational purposes only as it pertains to water demands and supplies in Region 2 for central water providers:

Region 2 has a current water supply for central water providers of 13,607 acre-feet per year and a current demand of 7532 acre-feet per year. The 2040 water supply is projected to be 20,516 acre-feet per year and the projected demand is 11,713 acre-feet. The 2060 water supply is projected to be 20,756 acre-feet per year, whereas the demand is anticipated to be 13,254 acre-feet per year; therefore, there is projected to be a surplus of water for central water providers in this region of the County. The projected water demand in the Region does not consider groundwater sources, which may be adequate to serve projected demands in the Region.

The recommendation of a finding of water sufficiency with this application indicates compliance with Goal 5.5 and along with a finding of water sufficiency for the proposed replat.

The State Engineer and the County Attorney's Office have recommended that the proposed vacation and replat has an adequate water supply in terms of quantity and dependability. El Paso County Public Health has recommended that the proposed subdivision has an adequate water supply in terms of water quality. Please see the Water section below for a summary of the water findings and recommendations for the proposed subdivision.

#### **6. Other Master Plan Elements**

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a low wildlife impact potential. Colorado Parks and Wildlife was sent a referral for the application and did not provide review comments.

The Master Plan for Mineral Extraction (1996) identifies potential stream terrace deposits in the area of the subject parcels. A mineral rights certification was prepared by the applicant indicating that, upon researching the records of El Paso County, no severed mineral rights exist.

Please see the Parks section below for information regarding conformance with The El Paso County Parks Master Plan (2013).

Please see the Transportation section below for information regarding conformance with the El Paso County 2016 Major Transportation Corridors Plan Update (MTCP).

## **G. PHYSICAL SITE CHARACTERISTICS**

### **1. Hazards**

The soils and geology report submitted with the application was prepared by Entech Engineering on October 30, 2020. The report identified areas of seasonally shallow groundwater in the development area. Those areas have been depicted on the plat as no-build areas. Additionally, a corresponding note has been added to the plat indicating areas of seasonally shallow groundwater to be identified as a no-build area.

### **2. Wildlife**

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a low wildlife impact potential.

### **3. Floodplain**

The property is not located within a defined floodplain as determined from review of the FEMA Flood insurance Rate Map panel number 08041C0305G, dated December 7, 2018.

### **4. Drainage and Erosion**

The property is located within the East Cherry Creek (CYCY0200) drainage basin, which is not included in the El Paso County Drainage Basin Fee program. Drainage fees will not be due at the time of plat recordation.

Per the submitted final drainage report, the site generally drains to the east. Stormwater runoff is conveyed to existing roadside ditches that are within Thompson Road right-of-way. Runoff flows under Thompson Road at a low point on the road adjacent to the site and continues to flow northeasterly. Water quality and detention are not required for the site due to the size of the lots and employed runoff reduction practices.

### **5. Transportation**

The property obtains access off Thompson Road, which is owned and maintained by El Paso County. Thompson Road is classified as a rural local road.

The El Paso County 2016 Major Transportation Corridors Plan Update (MTCP) depicts roadway improvement projects in the immediate vicinity of the site for Hodgen Road. Hodgen Road is planned to be improved to a minor arterial standard by 2040.

The development is subject to the El Paso County Road Impact Fee Program (Resolution No. 19-471), as amended. Road impact fees will be due for any new construction at time of building permit approval.

## **H. SERVICES**

### **1. Water**

Sufficiency:

Quality: Sufficient

Quantity: Sufficient

Dependability: Sufficient

Attorney's summary: Water service to the subject property is provided by an on-site well. The State Water Engineer's Office has made a recommendation regarding a finding of adequacy and has stated water can be provided without causing injury to decreed water rights. The County Attorney's Office recommends a finding of sufficiency with regard to water quantity and dependability. El Paso County Public Health has made a recommendation regarding a finding of sufficiency for water quality and has no outstanding comments.

### **2. Sanitation**

The proposed subdivision is intended to be served by individual on-site wastewater treatment systems (OWTS). The applicant must receive approval from El Paso County Public Health for approval of any OWTS for the proposed lots.

### **3. Emergency Services**

The property is within the Black Forest Fire Protection District. The District was sent a referral for the vacation and replat and has no objection. The District did provide a commitment letter to serve the proposed lots.

### **4. Utilities**

Mountain View Electric Association will provide electrical service and Black Hills Energy will provide natural gas service to the area included within the vacation and replat. Both agencies were sent referral letters and had no comment on the application.

**5. Metropolitan Districts**

The subject parcel is not located within the boundaries of a metropolitan district.

**6. Parks/Trails**

The El Paso County Parks Master Plan (2013) shows no open space, park facilities, or trails intersected by or within the project area. The proposed Hodgen Road Bicycle Route and the proposed Fox Run Regional Trail are located 0.3 miles south of the property running east and west along Hodgen Road. The site is not located within any Candidate Open Space area. fees in lieu of park land dedication will be due at the time of plat recording.

**7. Schools**

Fees in lieu of school dedication to benefit of Lewis-Palmer School District No. 38 in the amount of \$616.00 will be due at the time of plat recording.

**I. APPLICABLE RESOLUTIONS**

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**J. STATUS OF MAJOR ISSUES**

There are no outstanding major issues.

**K. RECOMMENDED CONDITIONS AND NOTATIONS**

Should the Planning Commission that the request meets the criteria for approval outlined in Section 7.2.1 (Subdivisions) and Section 7.2.3 (Vacations and Actions Altering a Recorded Plat) of the El Paso County Land Development Code (2019) staff recommends the following conditions and notations:

**CONDITIONS**

1. All Deed of Trust holders shall ratify the plat. The applicant shall provide a current title commitment at the time of submittal of the Mylar for recording.
  
2. Colorado statute requires that at the time of the approval of platting, the subdivider provides the certification of the County Treasurer’s Office that all ad valorem taxes applicable to such subdivided land, or years prior to that year in which approval is granted, have been paid. Therefore, this plat is approved by the Board of County Commissioners on the condition that the subdivider or developer must provide to the Planning and Community Development

Department, at the time of recording the plat, a certification from the County Treasurer's Office that all prior years' taxes have been paid in full.

3. The subdivider or developer must pay, for each parcel of property, the fee for tax certification in effect at the time of recording the plat.
4. The applicant shall submit the Mylar to Enumerations for addressing.
5. A joint access easement granting access between Lots 1 and 2 shall be provided and recorded with the vacation and replat map.
6. Developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed species.
7. Driveway permits will be required for each access to an El Paso County owned and maintained roadway. Driveway permits are obtained from the El Paso County Planning and Community Development Department.
8. The Subdivider(s) agrees on behalf of him/herself and any developer or builder successors and assignees that Subdivider and/or said successors and assigns shall be required to pay traffic impact fees in accordance with the El Paso County Road Impact Fee Program Resolution (Resolution No.19-471), or any amendments thereto, at or prior to the time of building permit submittals. The fee obligation, if not paid at final plat recording, shall be documented on all sales documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.
9. The County Attorney's Conditions of Compliance shall be adhered to at the appropriate time.
10. School fees in the amount of \$616.00 to the benefit of Lewis-Palmer School District No. 38 are due at the time of plat recording.
11. Park fees are due at the time of plat recording.

## **NOTATIONS**

1. Final plats not recorded within 24 months of Board of County Commissioner approval shall be deemed expired unless an extension is approved.
2. Site grading or construction, other than installation or initial temporary control measures, may not commence until a Preconstruction Conference is held with Planning and Community Development Inspection staff and a Construction Permit is issued by the Planning and Community Development Department.

## **L. PUBLIC COMMENT AND NOTICE**

The Planning and Community Development Department notified eight (8) adjoining property owners on November 3, 2021, for the Planning Commission meeting. Responses will be provided at the hearing.

## **M. ATTACHMENTS**

Vicinity Map  
Letter of Intent  
Plat Drawing  
State Engineer's Letter  
County Attorney's Letter  
El Paso County Health Department Letter

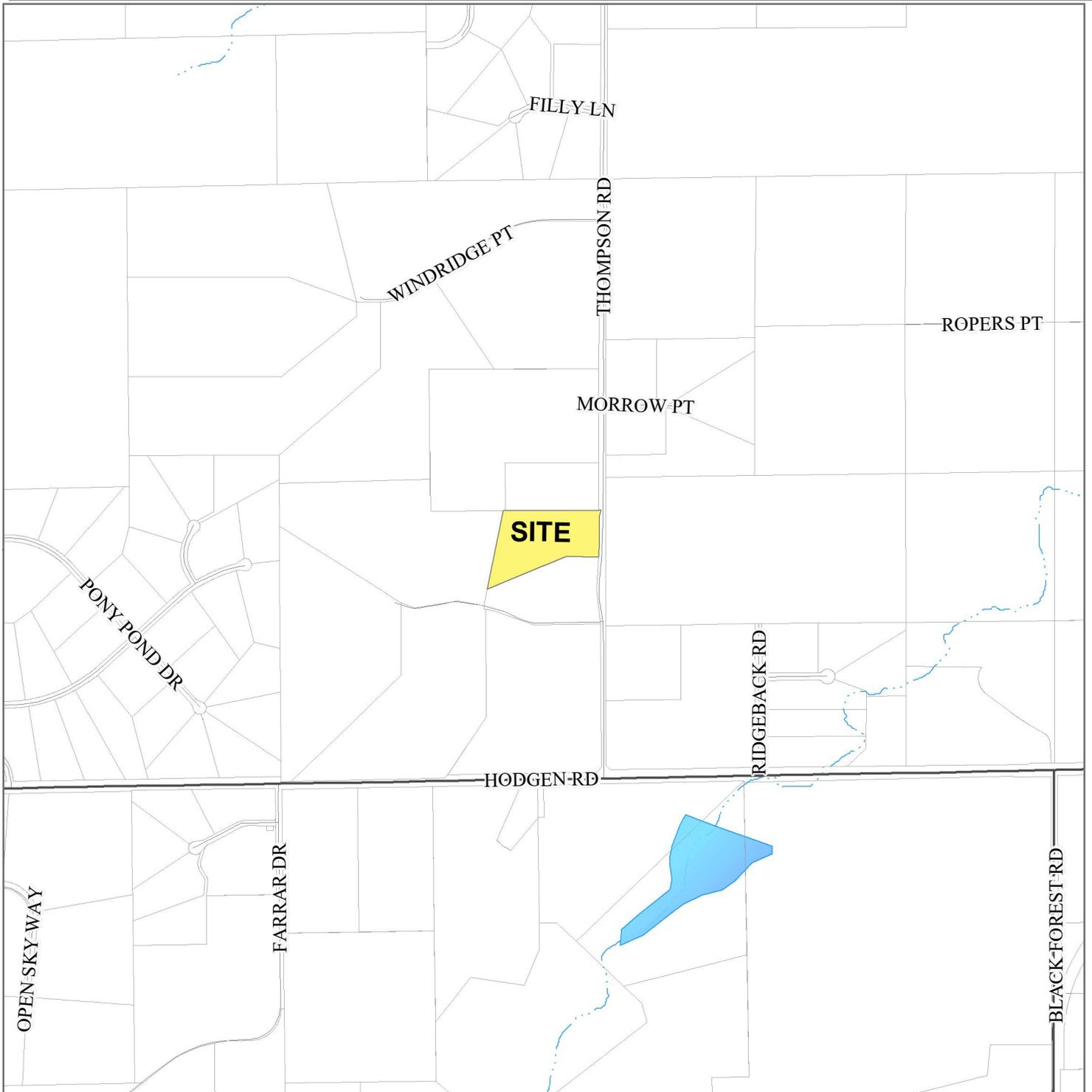
# El Paso County Parcel Information

PA	NAME
511	MCGEHEE D

File Name: SF-21-011

Zone Map No. --

Date: October 27, 2021



Please report any parcel discrepancies to:  
El Paso County Assessor  
1675 W. Garden of the Gods Rd.  
Colorado Springs, CO 80907  
14 (719) 520-6600



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Revised July 20, 2021

**LETTER OF INTENT - MCGEHEE SUBDIVISION . . . LDC Project No. 20018**

Re: 51190-04-002, 16860 Thompson Road, Lot 3, MOUNTAIN SHADOW RANCH SECOND PHASE, El Paso County, Colorado

LDC, Inc. is representing: Dale D., Stephanie B. and Collier McGehee  
10958 Mt. Evans Drive  
Peyton, CO 80831-4406

This is an application for approval of a Vacation Replat. The property is 10.495 acres and is currently platted as one lot. The property is zoned RR-5, and two total lots are proposed. Upon approval of the plat, MCGEHEE SUBDIVISION will contain two lots, five+ acres in size. The lots are planned as single-family residences with applicable accessory structures permitted by code.

We are asking for approval of a 2-lot Vacation Replat with a proposed single common access shared private drive off of Thompson Road, a County-maintained public right-of-way. We are asking for a waiver of the Land Use Code requiring frontage on a public road. There will be a Private Common Access Drive Users group formed which will own and maintain the private access. Water will be by an individual well for both lots, and septic systems will be constructed on each of the lots.

Review criteria for a Vacation Replat is as follows:

This application meets the Vacation Replat 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 (2016). Vacation Replats 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. The Master Plan is comprised of several elements. One of the elements is the El Paso County Policy Plan (1998), which does not include site-specific land use policies, but establishes broad policies and goals which are intended to serve as a framework for decision-making regarding development in the County. The project satisfies the following policies from the Policy Plan as they specifically relate to this request:*  
*Goal 6.4 – “Develop and maintain rural residential areas in a manner which protects their integrity, addresses the carrying capacity of the natural environment and provides for an adequate level of non-urban facilities and services.” and “Policy 6.1.3 - Encourage new development which is contiguous and compatible with previously developed areas in terms of factors such as density, land use and access.”* The proposed Vacation Replat will not create the need for additional roadways or public facilities. The site will remain rural residential and is surrounded by existing rural residential development on the north, south, east, and west sides; *Policy 6.1.14 – “Support development which compliments the unique*

*environmental conditions and established land use character of each sub-area of the County.”*

This area of the County is conducive to rural residential development. The five acres lots in the area have little impact on environmental conditions. The proposed Vacation Replat is consistent with the Black Forest Preservation Plan as it applies to the Southern Transitional sub-area which is discussed below; *Policy 6.4.4 - “Encourage new rural residential subdivisions to be located within or contiguous with existing rural residential area or to be incorporated as a buffer between higher density and undevelopable areas.”* The proposed Vacation Replat is in an area adjacent to rural residential development with RR-5 to the north, west, south and east; *Goal 6.1 A – “Encourage patterns of growth and development which compliment the regions’ unique natural environments and which reinforce community character.”* The existing community character is preserved with this Vacation Replat. 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 1 more residential lot on this site.

Another element of the Master Plan is the Small Area Plan. The MCGEHEE SUBDIVISION site is located within the area of the Black Forest Preservation Plan (1987), specifically within the “Northern Grasslands Sub-Area” of the plan. Although this small area plan is out of date, the goals for land use within this sub-area are still valid. The area desires that the rural residential development pattern be encouraged, while providing a gradual buffer from higher density to lower density development. The preferred density of one dwelling unit per five acres is encouraged in this sub-area. This coincides with the proposed Vacation Replat density. The proposed Vacation Replat is consistent with the Black Forest Preservation Plan.

The proposed Vacation Replat is in compliance with the Parks Master Plan, which does not appear to call for trails or parks within this site’s vicinity. Any required Park Fees will be paid at the time of platting. The proposed Vacation Replat is also in compliance with the 2040 Major Transportation Corridors Plan (MTCP) and Master Plan for Mineral Extraction as no separate mineral estate owners were found for the property and the existing development on surrounding properties is not compatible with any potential mineral extraction operations.

The proposed Vacation Replat is in compliance with the El Paso County Water Master Plan (2018). Each of the 2 lots is to be provided water and sewer/septic services through an on-site individual well and non-evaporative wastewater treatment systems. It is expected that each of the lots will require an average of 0.41 annual acre-feet of water supply, for a total of 0.82 annual acre-feet, provided from an existing well. Each residence on the two lots is anticipated to utilize 0.26 acre-feet annually, for a maximum total of 0.52 annual acre feet of water, for in-house residential purposes, consistent with the decree and associated Augmentation Plan in Case No. 17CW3054. Return flows from pumping of the well for the lots will accrue to the stream system to replace depletions from pumping in accordance with the decreed plan for augmentation. The owner seeks a finding of sufficiency from the Colorado Division of Water Resources based on the decreed water rights. 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 well 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 single-family residences on each of the proposed 5 acre lots will utilize on-site wastewater treatment systems which will provide "Return Flows" to the stream system in order to replace pumping depletions 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 Vacation Replat and requires no Preliminary Plan for Plat approval. The Vacation Replat 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 Vacation Replat is prepared in accordance with applicable subdivision design standards. No public improvements are required for this Vacation Replat.
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 an individual on-site well operated under a State approved Water Augmentation Plan as decreed in Case No. 17CW3054, Water Division 1.
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. Fluctuation in groundwater conditions may occur due to variations in rainfall and other factors not readily apparent at this time. Designed systems are anticipated for both of the lots due to the highly clayey soils and shallow bedrock, however, areas may be encountered on the lots where conventional systems would be suitable. Further design criteria can be found in the OWTS-Wastewater Study prepared for the site and the owner will comply with the recommendations of the Study.
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.
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 Vacation Replat is consistent with the submitted Final Drainage Report. There are no public Drainage facilities needed or proposed with this development. The owner will comply with the requirements of the Final Drainage Report.
8. *Legal and physical access is provided to all parcels by public rights-of-way or private road,*

acceptable to the County in compliance with this Code and the ECM. Thompson Road is a County-maintained public right-of-way and the shared common access drive will be privately owned and maintained.

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. MCGEHEE SUBDIVISION will be annexed into the Black Forest Fire Protection District which is providing fire protection for the site and has agreed to serve this Vacation Replat. Water and sanitary sewer provisions are discussed in items 4 and 5 above. The property is located within the service areas of Mountain View Electric Association, Century Link Telephone, and Academy School District 20, which will serve the Vacation Replat. Transportation is being facilitated by the existing adjacent roadway system.
10. *The Minor Subdivision plans provide evidence to show that the proposed methods for fire protection comply with Chapter 6 of this Code.* MCGEHEE SUBDIVISION is located within the annexed Black Forest Fire Protection District which will be providing fire protection for the site and the surrounding area. The District has agreed to serve this Vacation Replat. 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 addition of one residence to the site already containing one residence. The owner will be responsible to pay park, school, drainage and Traffic Impact fees.
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 SIA so the impacts of the subdivision will be adequately mitigated.* There are no public facilities or infrastructure required or proposed for this Vacation Replat. 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.* The Vacation Replat meets the requirements of the Land Development Code.
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 the County Clerk and Recorder's records did not identify a separate mineral estates owner for this property.

Thank you for your consideration of our request.

Respectfully submitted,



David V. Hostetler, PLS, Director of Surveying, LAND DEVELOPMENT CONSULTANTS, INC.

# MCGEHEE SUBDIVISION

A VACATION AND REPLAT OF LOT 3, "MOUNTAIN SHADOW RANCH SECOND PHASE", BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO

## NOTES:

- - Indicates survey monument set with a #4 rebar with Surveyor's Cap, PLS No. 20681.  
● - Indicates survey monument found as noted. \* - Indicates not a part of this Vacation Replat.
- This survey does not constitute a title search by LDC, Inc. to determine ownership or easements of record. For all information regarding easements, rights-of-way and title of record, LDC, Inc. relied upon a Commitment for Title Insurance, prepared by EMPIRE TITLE OF COLORADO SPRINGS, LLC on behalf of STEWART TITLE GUARANTY COMPANY, File No. 80972ECS dated January 11, 2021 at 7:30 a.m.
- The approval of this Vacation Replat vacates all prior plats for the area described by this Vacation Replat.
- The El Paso County Planning and Community Development Department must be contacted prior to the establishment of any new driveway. Access to Lots 1 and 2 shall be through the shown access easement. The responsibility and maintenance of said access is subject to the maintenance agreement and all covenants and restrictions contained therein, as recorded under Reception No. \_\_\_\_\_ of the records of El Paso County Clerk and Recorder.

Individual lot purchasers are responsible for constructing driveways, including necessary drainage culverts from Thompson Road per Land Development Code Section 6.3.C.2 and 6.3.C.3. Due to their length, some of the driveways will need to be specifically approved by the Black Forest Fire/Rescue Protection District.

- Utility services for this Resubdivision are to be provided by, but not limited to, the following entities: Electric service by MOUNTAIN VIEW ELECTRIC ASSOCIATION, INC.; natural gas service by individual lot propane tank; water and wastewater service to be provided by an individual well for both lots and an individual on-site wastewater treatment system for each lot.

- Basis of Bearings: All bearings are based on the Northerly line of this Resubdivision, monumented as shown and assumed to bear N89°57'00"E, a distance of 863.94 feet.

- Unless otherwise indicated, all side, front and rear lot lines are hereby platted on either side with a ten (10) foot public utility and drainage easement. All exterior subdivision boundaries are hereby platted with a twenty (20) foot public utility and drainage easement. The sole responsibility for maintenance of these easements is hereby vested with the individual property owners.

- All structural foundations shall be located and designed by a Professional Engineer, currently registered in the State of Colorado.

- FEDERAL EMERGENCY MANAGEMENT AGENCY, Flood Insurance Rate Map Numbers 08041C0305 G, effective date December 7, 2018, indicates the area in the vicinity of this parcel of land to be a Zone X (area determined to be out of the 500 year flood plain).

- (16860) - Indicates property address. The addresses exhibited on this plat are for informational purposes only. They are not the legal description and are subject to change.

- All property owners are responsible for maintaining proper storm water drainage in and through their property. Structures, fences, materials or landscaping that could impede the flow of runoff shall not be placed in drainage easements.

- The following reports have been submitted and are on file at the El Paso County Planning and Community Development Department: Drainage Report, Water Resources Report, Water Quality Report, Soils Geology Geologic Hazard Study and OWTS Wastewater Study.

- Mailboxes shall be installed in accordance with all El Paso County and United States Postal Service regulations.

- Property within this subdivision is subject to the terms and provisions of the El Paso County Road Impact Fee Program (Resolution 19-471) and any subsequent amendments. Fees for each lot within this subdivision shall be paid in full at the time of building permit issuance.

- Each individual property owner is responsible for the construction and operation of a non-evaporative wastewater disposal system approved by the El Paso County Health Department. The Health Department may require a specifically-designed or "engineered" system prior to permit approval. Engineered systems may cost more to design, install and maintain than systems which are not engineered.

- Fluctuation in groundwater conditions may occur due to variations in rainfall and other factors not readily apparent at this time. Designed systems are anticipated for both of the lots due to the highly clayey soils and shallow bedrock, however, areas may be encountered on the lots where conventional systems would be suitable. Further design criteria can be found in the OWTS-Wastewater Study by ENTECH ENGINEERING, INC., October 30, 2020 in file PCD File No. SF-21-11, available at the El Paso County Planning and Community Development Department.

- This Vacation Replat has been found to be impacted by geological constraints. Mitigation measures and explanation of constraints in the area can be found in the report Soil, Geology, and Geologic Hazard Study by ENTECH ENGINEERING, INC., October 30, 2020 in file PCD File No. SF-21-11, available at the El Paso County Planning and Community Development Department.

- Potentially Seasonally High Groundwater; Erosion; Potential Expansive Soils; Collapsible Soils . . . Soil investigations will be required prior to the construction of building sites and septic systems.

- The individual well in the Dawson aquifer will be the shared responsibility of the lot owners. At such time that additional wells may be drilled, the individual wells in the Dawson aquifer will then be the responsibility of each individual lot owner. Permits for such wells must be obtained from the Colorado Division of Water Resources. Ground water rights and an associated augmentation plan associated with the subdivision were decreed in Case No. 17CW3054, Water Division 1 (as consolidated with Case No. 17CW3015, Water Division 2).

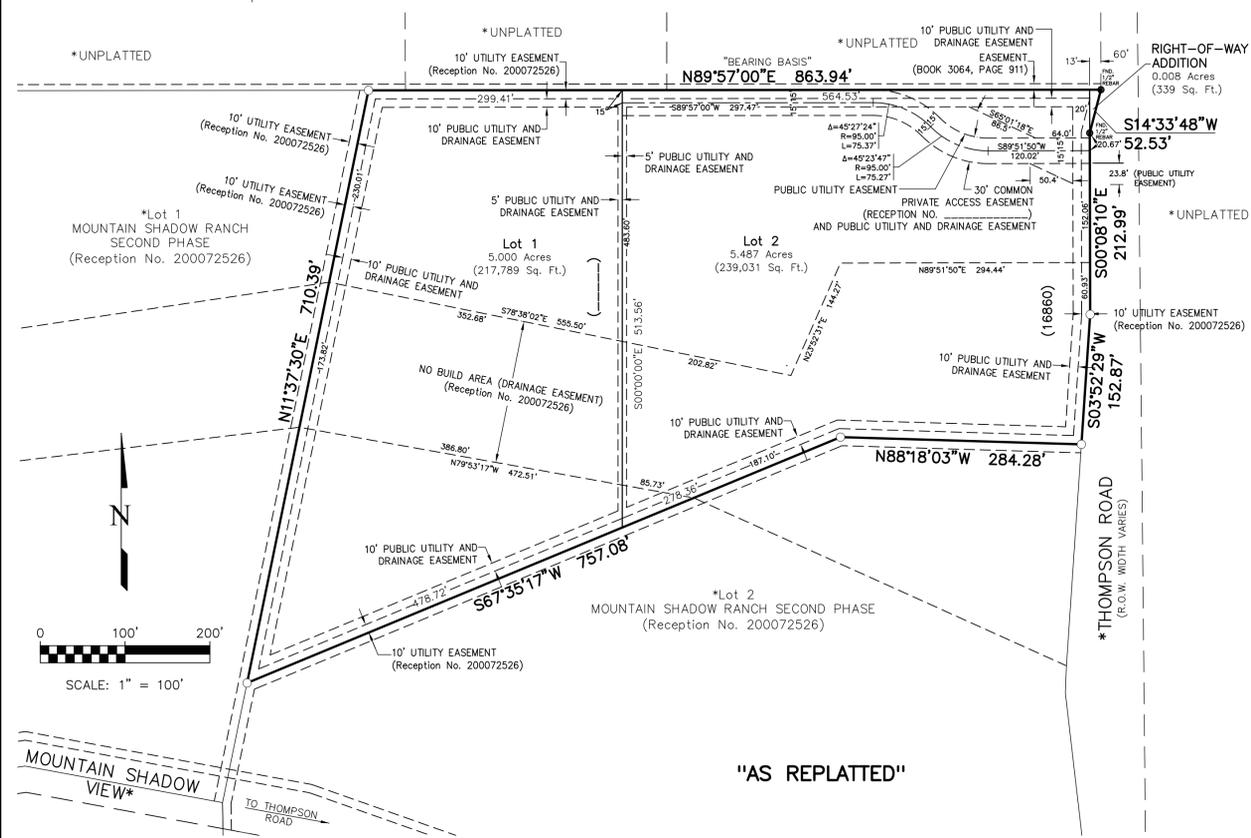
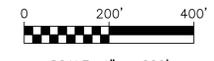
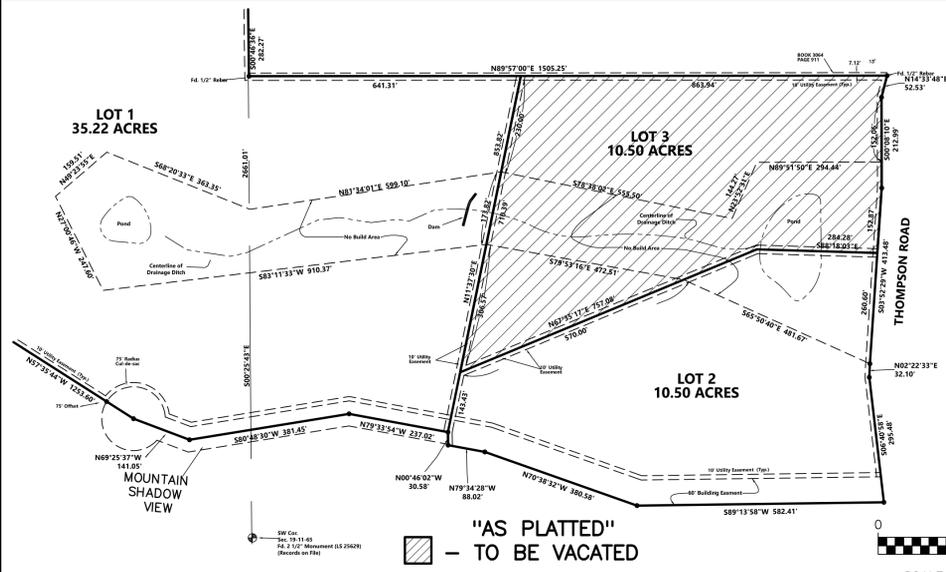
The plan for augmentation was designed to allow pumping of 0.82 acre foot annually from one Dawson aquifer well in the subdivision. Applicant, its successors and assigns at the time of lot sales, shall transfer rights to underlying ground water and well rights to the initial purchaser of each lot in an amount at least sufficient to satisfy the 300 year water supply requirement of El Paso County for two lots, or 125 acre feet from the Dawson aquifer and 125 acre feet from the Laramie-Fox Hills aquifer, as well as an undivided interest in the plan for augmentation and right to use the Dawson aquifer well for water supply. This provision is included only to be consistent with the provisions of the augmentation plan, and does not imply the future approval by El Paso County of further subdivision of either of the two lots. Such conveyance may be accompanied either by separate quit claim deed, by other appropriate deed of the water rights associated with the lot, or by specifically identifying and transferring the water rights in the warranty deed which transfers the real property to the individual lot purchaser.

Water in the Denver Basin aquifers is allocated based on a 100 year aquifer life. However, for El Paso County planning purposes, water in the Denver Basin aquifers is evaluated based on a 300 year aquifer life. Applicant, and all future owners of lots in the subdivision, should be aware that the economic life of a water supply in the Dawson aquifer may be less than either 100 years or 300 years indicated due to anticipated water level declines.

NOTICE: The buyer/owner of Lot 2 is advised that El Paso County's approval of this Replat does not include certification of water rights or the structural stability of the existing stock pond located on the subject property. The State of Colorado has jurisdiction regarding modification or elimination of the pond.

- Fire protection to be provided by Black Forest Fire/Rescue Protection District.

- Developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers and/or the U.S. Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the listed species, if applicable.



## BE IT KNOWN BY THESE PRESENTS:

That Dale D. and Stephanie B. McGehee, being the owners of the following described tract of land to wit:

A portion of the Southwest Quarter of Section 19, Township 11 South, Range 65 West of the 6th P.M., situate in El Paso County, Colorado, described as follows:

Lot 3, MOUNTAIN SHADOW RANCH SECOND PHASE (Reception No. 200072526, El Paso County, Colorado records);

Containing 10.495 acres, more or less.

## DEDICATION:

The above owners have caused said tract of land to be surveyed, vacated and resubdivided into lots, right-of-way addition and easements as shown on the accompanying plat, which plat is drawn to a fixed scale as indicated thereon and accurately sets forth the boundaries and dimensions of said tract of land and the locations of said lots, right-of-way addition and easements. The right-of-way addition is hereby dedicated to El Paso County for public use. Said lot, as resubdivided, shall be known as MCGEHEE SUBDIVISION, El Paso County, Colorado.

## IN WITNESS WHEREOF:

The aforementioned, Dale D. and Stephanie B. McGehee, have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D.

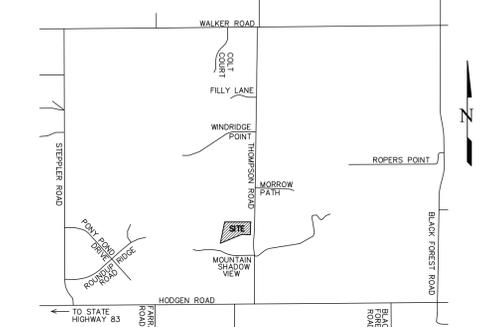
\_\_\_\_\_  
Dale D. McGehee  
\_\_\_\_\_  
Stephanie B. McGehee

## NOTARIAL:

STATE OF COLORADO }  
COUNTY OF EL PASO } SS  
The above and aforementioned was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D., by Dale D. and Stephanie B. McGehee.  
Witness my hand and seal

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_



VICINITY MAP  
NO SCALE

## SURVEYOR'S CERTIFICATION:

I, David Hostetler, a duly registered Professional Land Surveyor in the State of Colorado, do hereby certify that this plat truly and correctly represents the results of a survey made on date of survey, by me or under my direct supervision and that all monuments exist as shown hereon; that mathematical closure errors are less than 1:10,000; and that said plat has been prepared in full compliance with all applicable laws of the State of Colorado dealing with monuments, subdivision, or surveying of land and all applicable provisions of the El Paso County Land Development Code.

I attest the above on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

David V. Hostetler  
Colorado Professional Land Surveyor No. 20681

PRELIMINARY COPY  
SUBJECT TO FINAL  
COUNTY APPROVAL

## BOARD OF COUNTY COMMISSIONERS CERTIFICATE:

This plat for MCGEHEE SUBDIVISION was approved for filing by the El Paso County, Colorado Board of County Commissioners on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, subject to any notes specified hereon and any conditions included in the resolution of approval. The dedications of land to the public streets and easements are accepted, but the public improvements thereon will not become the maintenance responsibility of El Paso County until preliminary acceptance of the public improvements in accordance with the requirements of the Land Development Code and Engineering Criteria Manual, and the Subdivision Improvements Agreement.

\_\_\_\_\_  
President, Board of County Commissioners  
\_\_\_\_\_  
Date

## COUNTY APPROVAL:

Approval is granted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D.

\_\_\_\_\_  
Planning and Community Development Director

## RECORDING:

STATE OF COLORADO }  
COUNTY OF EL PASO } SS  
I hereby certify that this instrument was filed for record in my office at \_\_\_\_\_ o'clock \_\_\_\_\_ M., this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ A.D., and is duly recorded under Reception No. \_\_\_\_\_ of the records of El Paso County, Colorado.

\_\_\_\_\_  
Chuck Broerman, Recorder

SURCHARGE: \_\_\_\_\_ BY: \_\_\_\_\_ Deputy  
FEE: \_\_\_\_\_

## FEES:

Park Fee: \_\_\_\_\_ Drainage Fee: \_\_\_\_\_  
School Fee: \_\_\_\_\_ Bridge Fee: \_\_\_\_\_

According to Colorado law, any legal action based upon any defect in this survey first discovered after you first discover any defect in no event, may any action based upon any defect in more than ten years from the date of the certification shown hereon.

CALL BEFORE YOU DIG . . .  
**811**  
DIAL 811  
48 HOURS BEFORE YOU DIG. CALL UTILITY LOCATORS FOR LOCATIONS AND MARKING GAS, ELECTRIC, WATER AND WASTEWATER.

Date	By	Description
05/04/21	DVH	
		COUNTY COMMENTS
No.		

H Scale:	VARIES	N/A	N/A	
V Scale:	N/A	N/A	BRH	DVH
Designed By:				
Drawn By:				
Checked By:				
Date:				10/21/20

Land Development Consultants, Inc.  
PLANNING · SURVEYING  
www ldc inc com · TEL: (719) 528-6133 · FAX: (719) 528-8548  
3888 MAZELAND ROAD · COLORADO SPRINGS, CO 80909

FINAL PLAT  
**MCGEHEE SUBDIVISION**

Project No.: 20018  
Sheet: 1 of 1



August 27, 2021

John Green  
El Paso County Development Services Department  
[DSDcomments@elpasoco.com](mailto:DSDcomments@elpasoco.com)

**RE:** McGehee Subdivision AKA Mountain Shadow Vacate and Replat  
Part of the E ½ of the SW ¼, Section 29, T11S, R65W, 6<sup>th</sup> P.M.  
Water Division 1, Water District 8

Dear John Green,

We have reviewed the additional information received by this office on August 5, 2021 regarding the above referenced referral. The Applicant is proposing to vacate Lot 3, Mountain Shadow Ranch Second Phase and subdivide the 10.495 acres into two lots. This office previously commented on the referral in a letter dated March 2, 2021, this letter supersedes the previous letter.

### **Water Supply Demand**

According to the Water Supply Information Summary and the McGehee Minor Subdivision Water Resources Report by Monson, Cummins & Shoet, LLC dated June 28, 2021 (“Water Resources Report”), the estimated annual demand for the two lots is 0.82 acre-feet per year for 300 years, which will be used for domestic type uses, including in-house, landscape/irrigation of lawn and gardens, watering of domestic animals and stock, commercial uses, home office use and hot tub/swimming pool purposes.

### **Source of Water Supply**

The proposed water source for the two lots is an existing well, permit no. 81469-F, to be used as a shared well. Well permit no. 81469-F is constructed in the Dawson aquifer and operates pursuant to the decreed augmentation plan in Division 1 Water Court Case no. 17CW3054 and may withdraw 0.82 acre-foot per year for ordinary household purposes inside two single family dwellings, irrigation of home lawn and garden and the watering of domestic animals. Prior to withdrawal of groundwater from the well for commercial uses, home office use and hot tub/swimming pool purposes, the well would need to be re-permitted to allow for such uses.

The decreed augmentation plan in Division 1 Water Court Case no. 17CW3054 allows for the annual withdrawal of 0.82 acre-feet per year from the not nontributary Dawson aquifer, based on a 300 year allocation approach. The augmentation plan states the ground water will be used for indoor residential uses, and a guest cottage, commercial uses, livestock water, home office use, irrigation, hot tub and/or swimming pool purposes and augmentation.



The proposed source of water for this subdivision is a bedrock aquifer in the Denver Basin. The State Engineer's Office does not have evidence regarding the length of time for which this source will be a physically and economically viable source of water. According to 37-90-137(4)(b)(I), C.R.S., "Permits issued pursuant to this subsection (4) shall allow withdrawals on the basis of an aquifer life of one hundred years." Based on this allocation approach, the annual amounts of water decreed in case no. 17CW3054 are equal to one percent of the total amount, as determined by rules 8.A and 8.B of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7. Therefore, the water may be withdrawn in those annual amounts for a maximum of 100 years.

In the *El Paso County Land Development Code*, effective November, 1986, Chapter 5, Section 49.5, (D), (2) states:

"- Finding of Sufficient Quantity - The water supply shall be of sufficient quantity to meet the average annual demand of the proposed subdivision for a period of three hundred (300) years."

The State Engineer's Office does not have evidence regarding the length of time for which this source will "meet the average annual demand of the proposed subdivision." However, treating El Paso County's requirement as an allocation approach based on three hundred years, the annual demand for the two lots discussed above is the same as the allowed average annual amount of withdrawal allowed by the augmentation plan. As a result, the water may be withdrawn in that annual amount for a maximum of 300 years.

This office does not encourage the use of shared wells and will in no way enforce or administer well sharing agreements. However, should the county approve a division of land that relies on a shared well we recommend the use of a well sharing agreement that outlines well maintenance, use, and access. At no point should the agreement, or shared nature of the well, expand the uses of the well beyond those uses allowed on the well permit.

### State Engineer's Office Opinion

Based on the above, it is our opinion, pursuant to C.R.S. § 30-28-136(1)(h)(I), it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights, **so long as prior to the withdrawal of groundwater from the well constructed under permit no. 81469-F for commercial uses, home office use and hot tub/swimming pool purposes, the well is re-permitted to allow such uses.**

Our opinion that the water supply is **adequate** is based on our determination that the amount of water required annually to serve the subdivision is currently physically available, based on current estimated aquifer conditions.

Our opinion that the water supply can be **provided without causing injury** is based on our determination that the amount of water that is legally available on an annual basis, according to the statutory allocation approach, for the proposed uses is greater than the annual amount of water required to supply existing water commitments and the demands of the proposed subdivision.

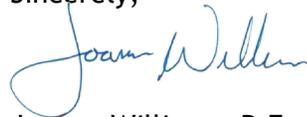
Our opinion is qualified by the following:

The Division 1 Water Court has retained jurisdiction over the final amount of water available pursuant to the above-referenced decrees, pending actual geophysical data from the aquifer.

The amounts of water in the Denver Basin aquifers, and identified in this letter, are calculated based on estimated current aquifer conditions. The source of water is from a non-renewable aquifer, the allocations of which are based on a 100 year aquifer life. The county should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than the 300 years used for allocation due to anticipated water level declines. We recommend that the county determine whether it is appropriate to require development of renewable water resources for this subdivision to provide for a long-term water supply.

Should you or the Applicant have any questions, please contact Ailis Thyne of this office at 303-866-3581 x8216.

Sincerely,

A handwritten signature in blue ink that reads "Joanna Williams". The signature is written in a cursive style with a large initial "J".

Joanna Williams, P.E.  
Water Resource Engineer

Ec: Subdivision file: 27537  
File permit no. 81469-F

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

**Diana K. May, County Attorney**

### Assistant County Attorneys

Lori L. Seago  
Lisa A. Kirkman  
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Bryan E. Schmid  
Nathan J. Whitney  
Michael J. Desmond  
Christopher M. Strider  
Terry A. Sample

July 15, 2021

SF-21-11 Mountain Shadows Vacate and Replat a/k/a  
McGehee Minor Subdivision

Reviewed by: Lori L. Seago, Senior Assistant County Attorney  
Edi Anderson, Paralegal, ACP

### FINDINGS AND CONCLUSIONS:

1. This is a proposal by Dale and Stephanie McGehee ("Applicant") for a 2-lot minor subdivision on a parcel of approximately 10.5 +/- acres (the "Property"). This proposal will vacate Lot 3 of the Mountain Shadows Ranch 2<sup>nd</sup> Phase into 2 residential lots. The property is zoned RR-5 (Rural Residential).

2. The Applicant has provided for the source of water to derive from an individual on-lot well, as provided in the decree and plan for augmentation in Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2) ("Decree" or "Augmentation Plan") granted to Dale and Stephanie McGehee on August 31, 2017. An existing well (Permit No. 81469-F) is located on the Property and will be used by both lots. Pursuant to the Water Supply Information Summary ("WSIS"), the water demand is 0.26 acre-feet for each lot for household use, plus an additional 0.256 acre-feet total for irrigation and 0.044 acre-feet for stock watering for a total water demand of 0.82 acre-feet/year for the subdivision (0.41 acre-feet/lot). Based on this total demand, Applicant must be able to provide a supply of 246 acre-feet of water (0.82 acre-feet per year x 300 years) to meet the County's 300 year water supply requirement.

3. In a letter dated March 2, 2021, the State Engineer reviewed the submittal to vacate and replat the 10.495 +/- acre parcel into a 2-lot minor subdivision. The State Engineer stated that the "proposed water source for the two lots is an existing well permit no. 81469-F, to be used as a shared well. Well permit no. 81469-F is constructed in the Dawson aquifer and operates pursuant to the decreed augmentation plan in Division 1 Water Court Case no. 17CW3054 and may withdraw 0.82 acre-foot per year for ordinary household purposes inside two single family dwellings, irrigation of home lawn and garden and the watering of domestic animals." The State Engineer refers to the *Water Resources Report For McGehee Minor Subdivision – Mountain Shadows Vacate and Replat* ("Report") by Chris Cummins dated December 23, 2020. The Report was subsequently updated on June 28, 2021; however, the

annual water demand of 0.82 acre-feet/year for the subdivision remains consistent in both reports.

The State Engineer identified that a shared well is to be used in the subdivision and stated: “This office does not encourage the use of shared wells and will in no way enforce or administer well sharing agreements. However, should the county approve a division of land that relies on a shared well we recommend the use of a well sharing agreement that outlines well maintenance, use, and access. At no point should the agreement, or shared nature of the well, expand the uses of the well beyond those uses allowed on the well permit.”

Finally, the State Engineer provided the opinion that “pursuant to C.R.S. § 30-28-136(1)(h)(I), it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights.”

4. Findings of Fact, Conclusions of Law, Judgment and Decree, Colorado Water Division Consolidated Court Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2) (“Decree”/“Augmentation Plan”).

Pursuant to the Decree, the following amounts of water have been adjudicated and were determined to be available underlying the property (Source of table is *Water Resources Report* dated June 28, 2021):

Aquifer	Saturated Thickness (ft)	Total Water Adjudicated (Acre Feet)	Annual Average Withdrawal – 100 Years (Acre Feet)	Annual Average Withdrawal – 300 Years (Acre Feet)
Dawson (NNT)	490	1,029	10.3	3.4
Denver (NT)	510	910	9.1	3.0
Arapahoe (NT)	240	428	4.3	1.4
Laramie-Fox Hills (NT)	200	315	3.2	1.05

The Decree granted to Applicants a vested right to 1,029 acre-feet of water in the not-nontributary Dawson aquifer. The Augmentation Plan permits withdrawal of 246 acre-feet from the Dawson aquifer (0.82 acre-feet/year) for this subdivision. The beneficial uses permitted by the Decree are “residential uses and a guest cottage, commercial uses, livestock water, home office use, irrigation, hot tub and/or swimming pool purposes, and augmentation of depletions in this plan for augmentation through return flows from a non-evaporative septic system.”

Replacement of Depletions During Pumping. The Augmentation Plan provides for a pumping period of a minimum of 300 years. For any wells constructed into the not-nontributary Dawson aquifer, the Applicant is required to replace actual stream depletions on an annual basis during the 300 years of pumping by residential return flows from a non-evaporative septic system to the Arkansas and South Platte River systems. As stated in the Decree/Augmentation Plan, “...septic

system return flows are assumed to equal at least 0.18 acre feet annually, so they will equal or exceed the greatest amount of annual depletions that are projected to occur during the projected 300 year pumping period.” Such return flows may not be otherwise used, sold, traded, or assigned.

Replacement of Post-Pumping Depletions. The Decree/Augmentation Plan requires that Applicant reserve and dedicate to the plan “225 acre feet of the Denver aquifer water decreed herein for the purpose of replacing all post-pumping depletions to the South Platte River system.” The Decree/Augmentation Plan further requires that successors in interest shall be required to construct Denver aquifer wells for the purpose of meeting the post-pumping obligations and that a total of up to 225 acre-feet of Denver groundwater will be used to replace any injurious post-pumping depletions. The Decree/Augmentation Plan requires that these waters may not be severed from ownership of the overlying Property.

5. Analysis. Applicant’s water demand for the Mountain Shadows Vacate and Replat is 0.82 acre-feet per year from the Dawson aquifer for total demand of 246 acre-feet for the subdivision for 300 years. Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2) authorizes withdrawal of 246 acre-feet of water (0.82 acre-feet/year) of Dawson aquifer water for a period of 300 years. Based on the demand of 0.82 acre-feet/year for the 2-lot subdivision and the Decree/Augmentation Plan permitting withdrawals in the amount of 0.82 acre-feet/year for the shared well serving the 2 lots on the Property, there appears to be a sufficient water supply to meet the water demands of the Mountain Shadows Vacate and Replat a/k/a McGehee Minor Subdivision.

6. The water quality requirements of Section 8.4.7.B.10.g., of the Land Development Code must be satisfied.

7. Therefore, based upon the Water Supply Information Summary, a finding of sufficiency and no injury by the State Engineer, Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2) and based on the requirements below, the County Attorney’s Office recommends a finding that the proposed water supply is **conditionally sufficient** in terms of quantity and dependability, subject to the County’s approval of a well-sharing agreement. El Paso County Public Health shall provide a recommendation as to water quality.

#### **REQUIREMENTS:**

A. Applicant, its successors and assigns, shall comply with all requirements of Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2), specifically, that water use shall not exceed 0.82 acre-feet/year for the shared well serving the 2-lot subdivision and that all stream depletions will be replaced with non-evaporative septic system return flows for a period of 300 years, pursuant to the Court’s augmentation plan.

B. The County prefers that when there is a plan for augmentation that Applicant create a homeowners' association ("HOA"); however, alternatively to establishing an HOA, especially for minor subdivisions such as this, Applicant may create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2) as well as their obligations to comply with the plan for augmentation, including, but not limited to, ensuring that return flows by the use of non-evaporative septic systems are made to the stream systems, and that such return flows shall only be used to replace depletions and shall not be separately sold, traded, or assigned in whole or in part for any other purpose. The Covenants more specifically shall require that each lot served by a Dawson aquifer well have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. In addition, the Covenants shall advise future lot owners of this subdivision and their successors and assigns of their obligations regarding costs of operating the plan for augmentation, which will include pumping of the Dawson well in a manner to replace depletions during pumping and the cost of drilling Denver aquifer wells in the future to replace post-pumping depletions. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from the well pursuant to the plan for augmentation, and shall protect the viability of the water supply by placing limitations in the Covenants as to amendments and termination as applied to said water supply.

The covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 246 acre-feet of not-nontributary Dawson aquifer water pursuant to Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2) to satisfy El Paso County's 300-year water supply requirement for the 2 lots of the Mountain Shadows Vacate and Replat a/k/a McGehee Minor Subdivision.

2) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping, shall reserve said return flows to replace depletions during pumping, and shall state that said return flows shall not be separately sold, traded, assigned, or used for any other purpose. The Covenants more specifically shall require that each lot served by the Dawson aquifer well have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. The Covenants shall also include the following or similar language to ensure that such return flows shall only be used for replacement purposes: "Return flows shall only be used for replacement purposes, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose."

3) The following or similar language shall be included in the Covenants to address future conveyances of the lots subsequent to the initial conveyance made by Applicant/Declarant: "The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not the plan for augmentation in Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2) and the water rights therein are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."

4) The Covenants shall advise future lot owners of this subdivision, their successors and assigns, of their responsibility for any metering and data collecting that may be required regarding water withdrawals from the existing or future wells in the Dawson aquifer and future wells which may be constructed in the Denver aquifer.

5) The Covenants shall address amendments using the following or similar language:

"Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which would alter, impair, or in any manner compromise the water supply for the Mountain Shadows Vacate and Replat pursuant to the plan for augmentation in Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2). Further, written approval of any such proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioners, after review by the County Attorney's Office. Any amendments must be pursuant to a Decree from the Water Court approving such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such adjudication."

6) The Covenants shall address termination using the following or similar language:

"These Covenants shall not terminate unless the requirements of the plan for augmentation in Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2) are also terminated by order of the Water Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County."

C. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the Property the decreed amount of at least 0.82 acre-feet annually for the subdivision (0.41 acre-feet annually per lot) for a period of 300 years for a total of 246 acre-feet for the 2-lot subdivision for 300 years. Said reservation shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for primary and replacement supply. Applicant shall convey by recorded warranty deed these reserved Dawson aquifer water rights to the individual lot owners. Applicant shall provide copies of said Covenants or other such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson aquifer):  
"These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, and replacement during pumping, for each of the 2 lots of the Mountain Shadows Vacate and Replat. The water rights so conveyed, and the return flows therefrom shall be appurtenant to each of the respective lots with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."

D. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the Property a total of 225 acre-feet of water in the Denver aquifer for use in the augmentation plan to replace post-pumping depletions. Pursuant to the Decree/Augmentation Plan, Applicant shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for augmentation supply. Applicant shall convey by recorded warranty deed these reserved Denver aquifer water rights to the HOA or to the individual lot owners (with appropriate deed restrictions) for use in the augmentation plan. Applicant shall provide copies of such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.

E. Applicant and its successors and assigns at the time of lot sales, shall convey by warranty deed to individual lot owners sufficient water rights in the Dawson aquifer pursuant to Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2) underlying the respective lots to satisfy El Paso County's 300 year water supply requirement. Dawson aquifer requirements are 123 acre-feet/lot (0.41 acre-feet/year x 300 years). Said conveyance instruments shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for the primary supply and replacement during pumping for the respective lots. Applicant shall provide form deeds for such conveyances that shall be reviewed and approved by both the Planning and Community

Development Department and the County Attorney's Office prior to recording the minor subdivision plat.

F. Applicant and its successors and assigns shall submit a Declaration of Covenants, Conditions and Restrictions and any plat notes required herein to the Planning and Community Development Department and the County Attorney's Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. Said Declaration shall cross-reference Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2) and shall identify the obligations of the individual lot owners thereunder.

G. Applicant and its successors and assigns shall record all applicable documents, including, but not limited to, the decree in Colorado District Court Water Division Consolidated Case Nos. 17CW3054 (Div. 1) and 17CW3015 (Div. 2), agreements, assignments, and warranty deeds regarding the water rights and Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

H. Applicant shall submit a proposed well-sharing agreement to the Planning and Community Development Department and the County Attorney's Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat in order to obtain full water sufficiency for the subdivision.

I. Applicant shall ensure that the *Water Resources Report* dated June 28, 2021, the updated WSIS indicating household water demand of 0.52 acre-feet/year, and the *Water Quality Report* dated June 28, 2021 are uploaded on eDARP prior to the Planning Commission hearing on this matter.

J. The following plat note shall be added that addresses the State Engineer's admonition to advise landowners of potential limited water supplies in the Denver Basin:

"Water in the Denver Basin aquifers is allocated based on a 100-year aquifer life; however, for El Paso County planning purposes, water in the Denver Basin aquifers is evaluated based on a 300-year aquifer life. Applicants and all future owners in the subdivision should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than either the 100 years or 300 years used for allocation indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers. Alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply."

cc: John Green, Planner II



Prevent • Promote • Protect

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### **Mountain Shadow Vacate and Replat, SF-21-11 (updated)**

**Please accept the following comments from El Paso County Public Health regarding the project referenced above:**

- **The existing 10.5-acre undeveloped lot is proposed to have two 5+ acre lots created. The new lots will be served water from individual private wells, and two new individual onsite wastewater treatment systems (OWTS).**
- **El Paso County Public Health agrees with the findings made in the Monson, Cummins and Shoheit, LLC Water Quality Report dated 23Dec2020; therefore, sampling for volatile organic chemical contaminants and synthetic organic chemical contaminants from the confined Denver Aquifer is not required for this 2-lot subdivision. The results of the inorganic chemical samples reported by SGS North America Inc. on 02October2021 were all within the required drinking water standards.**
- **The 30Oct2020, Entech Engineering, OWTS-Wastewater Study was reviewed and supports the use of individual onsite wastewater treatment systems for wastewater service. El Paso County Public Health has approved numerous OWTS installation's in this area and agrees with the findings.**

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20June2021**