

PLANNING & COMMUNITY DEVELOPMENT

TO: El Paso County Planning Commission
 Thomas Bailey, Chair

FROM: Kylie Bagley, Principal Planner
 Daniel Torres, Principal Engineer
 Meggan Herington, AICP, Executive Director

RE: Project File Number: SF2315
 Project Name: Mariah Trail Filing No. 1
 Parcel Number: 5100000511

OWNER:	REPRESENTATIVE:
Thomas Kirk 19205 Mariah Trail Colorado Springs, CO 80908	Wayne-Anthony Custom Homes Attn: Richie Lyon, PE 1975 Research Parkway Colorado Springs, CO 80920

Commissioner District: 1

Planning Commission Hearing Date:	11/7/2024
Board of County Commissioners Hearing Date:	12/12/2024

EXECUTIVE SUMMARY

A request by Wayne-Anthony Custom Homes for approval of a 35-acre Final Plat creating six single-family lots. The property is zoned RR-5 (Residential Rural) and is located at 19205 Mariah Trail and is one-mile south of the intersection of East County Line Road and East Thunder Road. A finding of water sufficiency with regards to quality, quantity, and dependability is requested with the Final Plat. The applicants are also requesting a Waiver to Section 8.4.3.B.2.e of the El Paso County Land Development Code (as amended) to allow for two of the proposed lots to be created without having the required 30 feet of frontage and direct access from a public road.



Zoning Exhibit

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A. AUTHORIZATION TO SIGN

Final Plat, Subdivision Improvements Agreement, Detention Pond Maintenance Agreement and any other documents necessary to carry out the intent of the Board of County Commissioners.

B. APPROVAL CRITERIA

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 (as amended):

- *The proposed subdivision is in general conformance with the goals, objectives, and policies of the Master Plan;*
- *The subdivision is consistent with the purposes of this Code;*
- *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 (this finding may not be deferred to Final Plat if the applicant intends to seek administrative Final Plat approval);*
- *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 the proposed subdivision is compatible with such conditions. [C.R.S. § 30-28-133(6)(c)];*
- *Adequate drainage improvements complying with State law [C.R.S. § 30-28-133(3)(c)(VIII)] and the requirements of this Code and the ECM are provided by the design;*
- *The location and design of the public improvements proposed in connection with the subdivision are adequate to serve the needs and mitigate the effects of the development;*
- *Legal and physical access is or will be provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with this Code and the ECM;*
- *The proposed subdivision has established an adequate level of compatibility by (1) incorporating natural physical features into the design and providing sufficient open*

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spaces considering the type and intensity of the subdivision; (2) incorporating site planning techniques to foster the implementation of the County's plans, and encourage a land use pattern to support a balanced transportation system, including auto, bike and pedestrian traffic, public or mass transit if appropriate, and the cost effective delivery of other services consistent with adopted plans, policies and regulations of the County; (3) incorporating physical design features in the subdivision to provide a transition between the subdivision and adjacent land uses; (4) incorporating identified environmentally sensitive areas, including but not limited to, wetlands and wildlife corridors, into the design; and (5) incorporating public facilities or infrastructure, or provisions therefore, reasonably related to the proposed subdivision so the proposed subdivision will not negatively impact the levels of service of County services and facilities;

- *Necessary services, including police and fire protection, recreation, utilities, open space and transportation system, are or will be available to serve the proposed subdivision;*
- *The subdivision provides evidence to show that the proposed methods for fire protection comply with Chapter 6 of this Code; and*
- *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.]*

C. LOCATION

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

D. BACKGROUND

The subject property is over 35 acres in size and is therefore considered a legal division of land. The property was originally created as a larger 75-acre parcel, combined with the adjacent eastern property, and was deeded into two smaller parcels. The two parcels are



35-acres and 40-acres and are considered legal divisions of land due to their acreage. The subject property is zoned RR-5, the zoning has been in place since 1965 when this area of the County was initially zoned. There is an existing conservation easement that runs along the northeast corner and the southeast corner of the subject property that has been depicted on the Final Plat. There is an existing 16-foot access easement to the property to the east, the applicant will vacate the easement and extend Mariah Trail to the eastern property for access.

E. ANALYSIS

1. Land Development Code and Zoning Analysis

The Final 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 (as amended), with the exception of the proposed Waiver.

The applicants are requesting a Waiver to Section 8.4.3.B.2.e of the El Paso County Land Development Code (as amended) to allow for the proposed lots to be created without having access and 30 feet of frontage along a public road.

Section 8.4.3.B, Minimum Frontage, of the Code states: *Lots shall have a minimum of 30 feet of frontage on and have access from a public road, except where private roads are approved by the BoCC pursuant to waiver granted under Section 8.4.4 (E).*

Lots 3 and 4 will gain access through individual 25-foot joint access easements via Lots 2 and 5. Lots 1, 2, 5 and 6 will have a minimum of 30 feet of frontage to Mariah Trail.

In approving a Waiver from any of the subdivision design standards and requirements, the Board of County Commissioners shall find that the Waiver meets the criteria for approval outlined in Section 7.3.3 (Waivers) of the El Paso County Land Development Code (as amended):

- *The waiver does not have the effect of nullifying the intent and purpose of the Code;*
- *The waiver will not result in the need for additional subsequent waivers;*
- *The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property;*



- *The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable to other property;*
- *A particular non-economical hardship to the owner would result from a strict application of this Code;*
- *The waiver will not in any manner vary the zoning provisions of this Code; and*
- *The proposed waiver is not contrary to any provision of the Master Plan.*

F. MASTER PLAN COMPLIANCE

1. Your El Paso County Master Plan

a. Placetype Character: Large-Lot Residential

The Large-Lot Residential placetype consists almost entirely of residential development and acts as the transition between placetypes. Development in this placetype typically consists of single-family homes occupying lots of 2.5 acres or more, and are generally large and dispersed throughout the area so as to preserve a rural aesthetic. The Large-Lot Residential placetype generally supports accessory dwelling units as well. Even with the physical separation of homes, this placetype still fosters a sense of community and is more connected and less remote than Rural areas. Large-Lot Residential neighborhoods typically rely on well and septic, but some developments may be served by central water and waste-water utilities. If central water and wastewater can be provided, then lots sized less than 2.5 acres could be allowed if; 1.) the overall density is at least 2.5 acres/lot, 2.) the design for development incorporates conservation of open space, and 3.) it is compatible with the character of existing developed areas.

Conservation design (or clustered development) should routinely be considered for new development within the Large-Lot Residential placetype to provide for a similar level of development density as existing large-lot areas while maximizing the preservation of contiguous areas of open space and the protection of environmental features. While the Large-Lot Residential placetype is defined by a clear set of characteristics, the different large-lot areas that exist throughout the County can exhibit their own unique characters based on geography and landscape.

Recommended Land Uses:

Primary

- *Single-family Detached Residential (Typically 2.5-acre lots or larger)*

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Supporting

- *Parks/Open Space*
- *Commercial Retail (Limited)*
- *Commercial Service (Limited)*
- *Agriculture*

b. Area of Change Designation: Minimal Change: Developed

These areas have undergone development and have an established character. Developed areas of minimal change are largely built out but may include isolated pockets of vacant or underutilized land. These key sites are likely to see more intense infill development with a mix of uses and scale of redevelopment that will significantly impact the character of an area. For example, a large amount of vacant land in a suburban division adjacent to a more urban neighborhood may be developed and change to match the urban character and intensity so as to accommodate a greater population. The inverse is also possible where an undeveloped portion of a denser neighborhood could redevelop to a less intense suburban scale. Regardless of the development that may occur, if these areas evolve to a new development pattern of differing intensity, their overall character can be maintained.

c. Key Area Influences: The property is not located within a key area.

d. Analysis:

The proposed lot sizes are greater than the recommended minimum lot size in the Large-Lot Residential Placetype. The properties to the north are part of the Elk Creek Ranches Filings, which are zoned RR-5 and have minimum lot sizes of 5 acres. The applicant is proposing to create 6 lots, with each lot being a minimum of 5 acres in size. Relevant goals and objectives are as follows:

Goal LU1 – *Ensure compatibility with established character and infrastructure capacity.*

Objective LU3-1 – *Development should be consistent with the allowable land uses set forth in the placetypes first and second to their built form guidelines.*

Objective HC1-5 – *Focus detached housing development in Large-Lot Residential and Suburban Residential areas given the increasing infrastructure and environmental constraints associated with such development to help maintain the established character of rural communities.*

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Goal HC2 – *Preserve the character of rural and environmentally sensitive areas.*

Objective HC2-6 – *Continue to carefully analyze each development proposal for their location, compatibility with the natural environment, and cohesion with the existing character.*

2. 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 1.1 – *Ensure an adequate water supply in terms of quantity, dependability and quality for existing and future development.*

Policy 1.1.1 – *Adequate water is a critical factor in facilitating future growth and it is incumbent upon the County to coordinate land use planning with water demand, efficiency and conservation.*

Goal 1.2 – *Integrate water and land use planning.*

The Water Master Plan includes demand and supply projections for central water providers in multiple regions throughout the County. The property is located within Planning Region 2 of the Plan, which is an area anticipated to experience growth by 2040. The following information pertains to water demands and supplies in Region 2 for central water providers:

The Plan identifies the current demand for Region 2 to be 7,532 acre-feet per year (AFY) (Figure 5.1) with a current supply of 13,607 AFY (Figure 5.2). The projected demand in 2040 for Region 2 is at 11,713 AFY (Figure 5.1) with a projected supply of 20,516 AFY (Figure 5.2) in 2040. The projected demand at build-out in 2060 for Region 2 is at 13,254 AFY (Figure 5.1) with a projected supply of 20,756 AFY (Figure 5.2) in 2060. This means that by 2060 a surplus of 7,502 AFY is anticipated for Region 2.

See the Water section below for a summary of the water findings and recommendations for the proposed subdivision.

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3. Other Master Plan Elements

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a moderately wildlife impact potential. El Paso County Environmental Services and Colorado Parks and Wildlife (CPW) were each sent a referral and have no outstanding comments. CPW anticipates that the impacts to the wildlife resource from this project will be negligible.

The Master Plan for Mineral Extraction (1996) identifies stream terrace deposit 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.

G. PHYSICAL SITE CHARACTERISTICS

1. Hazards

A soils & geology report was submitted for review with the Preliminary Plan. Identified geologic conditions on the site include shallow groundwater. Pursuant to Colorado Geological Survey recommendations, the applicant has included the following note on the Final Plat:

Mitigation measures are to be taken to remove geologic hazards to allow development of lots in which they occur, on a per lot basis. Mitigation measures include overlot grading such as lot earthwork fill to raise proposed building elevations and regrading to remove ponding locations, installation of foundation perimeter drains, and installation of underslab drains or interceptor drains. The drainage easements shown on the plat are the established no-build areas that cannot be mitigated and coincide with the geologic hazards of the site. The extents of the geologic hazards are not no-build areas as mitigation measures are to be taken to allow development within these areas. There is a 10' no-build setback from the drainage easements.

2. Floodplain

The property is not located within a defined floodplain as determined by FEMA Flood Insurance Rate Map panel number 08041C0305G, dated December 7, 2018.

3. Drainage and Erosion

The site is located within the East Cherry Creek Drainage Basin (CYCY0200), which is unstudied with no associated drainage or bridge fees.

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The site generally drains to the southeast to an existing natural drainageway that traverses the southern portion of the development. Stormwater runoff from the development will be conveyed to this drainageway via sheet flow to maintain existing drainage patterns. Per the submitted final drainage report, the site yields minor insignificant stormwater increases due to the minimal disturbance proposed within the development. Additionally, there are no improvements proposed to the existing drainageway within and downstream of the site as this development will not negatively impact the existing stable drainageway.

Stormwater quality is not required as the total proposed disturbance is less than one acre and the development would meet the stormwater quality exclusion criteria identified in Engineering Criteria Manual Appendix I.7.1.B.5 for large lot single-family sites.

Per the submitted drainage report, there will be no negative impacts to the surrounding and downstream developments and infrastructure due to this development.

4. Transportation

The subdivision will obtain access from the extension of Mariah Trail, which is a County owned and maintained Rural Local gravel roadway. Mariah Trail will be extended by the development approximately 150 feet to the south of its current terminus and a new cul-de-sac will be constructed. Mariah Trail will be owned and maintained by El Paso County upon acceptance. Additionally, public right-of-way will be provided to the land locked parcel to the east such that Mariah Trail may be extended to the east with future development of the adjacent parcel. The total right-of-way dedication to El Paso County will be approximately 1.18 acres.

The request is subject to the El Paso County Road impact Fee Program (Resolution No. 19-471), as amended. Road impact fees shall be paid at time of building permit.

H. SERVICES

1. Water

Water will be provided by individual onsite wells. Water sufficiency has been analyzed with the review of the proposed subdivision. The applicant has shown a sufficient water supply for the required 300-year period. The State Engineer and the County

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Attorney's Office have recommended that the proposed Final Plat has an adequate water supply in terms of quantity and dependability. El Paso County Public Health has recommended that there is an adequate water supply in terms of quality.

2. Sanitation

Wastewater is provided by on-site wastewater treatment systems.

3. Emergency Services

The property is within the Tri-Lakes Monument Fire Protection District, which is committed to providing fire protection services to the proposed development. The District was sent a referral and has no outstanding comments.

4. Utilities

Electricity will be provided by Mountain View Electric.

5. Metropolitan Districts

The subject property is not located within a Metropolitan District.

5. Parks/Trails

Fees in lieu of park land dedication in the amount of \$3,030 for regional fees and \$0 for urban park fees will be due at the time of recording the Final Plat.

6. Schools

Fees in lieu of school land dedication in the amount of \$1,848 shall be paid to El Paso County for the benefit of Lewis Palmer School District 38 at the time of plat recording.

I. APPLICABLE RESOLUTIONS

See attached resolution.

J. STATUS OF MAJOR ISSUES

There are no outstanding major issues.

K. RECOMMENDED CONDITIONS AND NOTATIONS

Should the Planning Commission and Board of County Commissioners find that the request meets the criteria for approval outlined in Section 7.2.1 (Subdivisions) of the El

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Paso County Land Development Code (as amended) 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. 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.
6. Driveway permits will be required for each access to an El Paso County owned and maintained roadway. Driveway permits are obtained from the appropriate El Paso County staff.
7. The Subdivision Improvements Agreement, including the Financial Assurance Estimate, as approved by the El Paso County Planning and Community Development Department, shall be filed at the time of recording the Final Plat.

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8. Collateral sufficient to ensure that the public improvements as listed in the approved Financial Assurance Estimate shall be provided when the Final Plat is recorded.
9. Applicant shall comply with all requirements contained in the Water Supply Review and Recommendations, dated August 8, 2023, as provided by the County Attorney's Office.

NOTATIONS

1. The following fees are required to be paid to El Paso County at the time of plat recordation:
 - a. The project is located within the East Cherry Creek drainage basin which has no associated fees.
 - b. Fees in lieu of park land dedication in the amount of \$3,030 for regional fees and \$0 for urban park fees will be due at the time of recording the Final Plat.
 - c. Fees in lieu of school land dedication in the amount of \$1,848 shall be paid to El Paso County for the benefit of Lewis-Palmer School District 38 at the time of plat recording.
2. Final Plats not recorded within 24 months of Board of County Commissioner approval shall be deemed expired unless an extension is approved.
3. 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 Inspections and a Construction Permit is issued by the Planning and Community Development Department.
4. The El Paso County Road Impact Fee Program Resolution (Resolution 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 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.

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L. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified eleven adjoining property owners on October 14, 2024, for the Planning Commission and Board of County Commissioner meetings. Responses will be provided at the hearing.

M. ATTACHMENTS

Map Series

Letter of Intent

Plat Drawing

State Engineer's Letter

County Attorney's Letter

Draft Resolution

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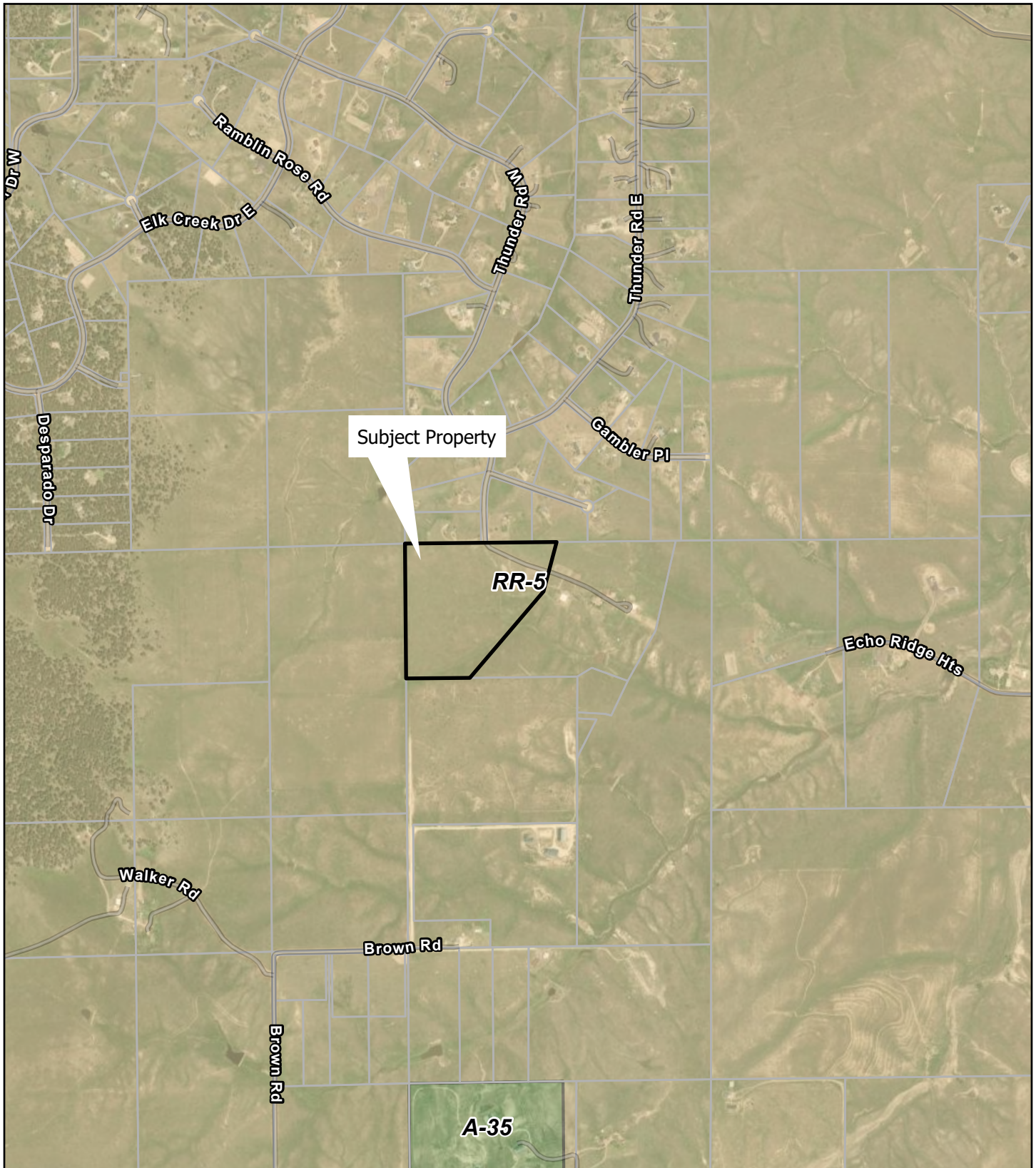
Aerial Map

File No.SF2315

Map Series No. 1



0 0.10.1 0.2 Miles



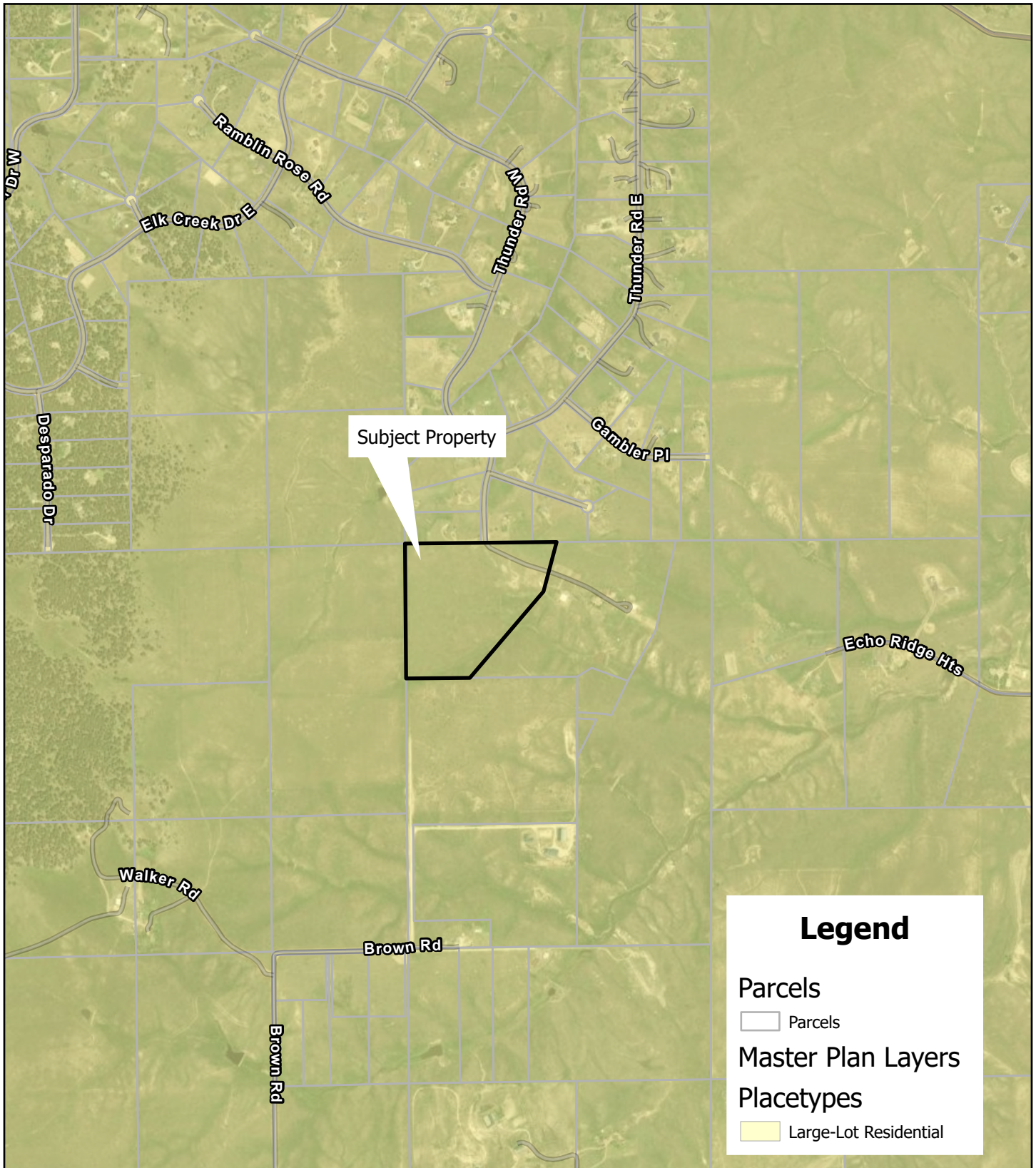
Zoning Map



File No.SF2315

Map Series No. 2

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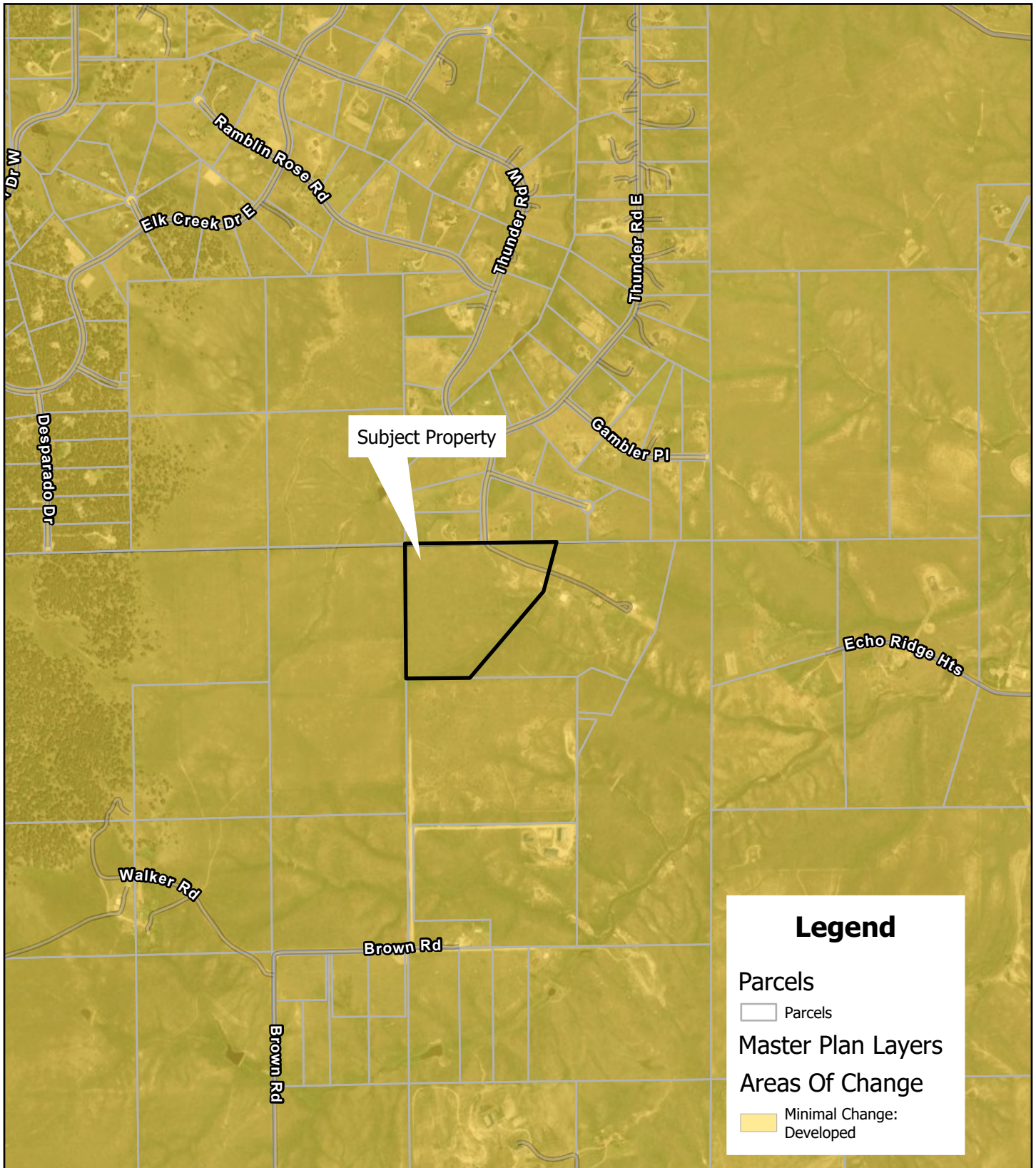
Placetype Map

File No.SF2315

Map Series No. 3



0 0.10.1 0.2 Miles



Areas of Change Map

File No.SF2315

Map Series No. 4



0 0.10.1 0.2 Miles

August 8, 2024

Letter of Intent

Mariah Trail Filing No. 1

Major Subdivision – Final Plat

Owner: Thomas Kirk, Jr.
19510 Mariah Trail
Colorado Springs, CO 80908

Applicant/Consultant: Engineering Local Xperts, LLC.
PO BOX 6708
Colorado Springs, CO 80934
Carlos Serrano, PE
carlos@elxsoco.com

Tax Schedule No. 5100000511

Request:

Major Subdivision/Final Plat containing six rural residential (RR-5) lots on an existing 35 acre parcel. All lots will be a minimum of 5.0 acres per zoning code. All lots will access a single gravel cul-de-sac located at the north of the property that will be a 60' right-of-way extension of Mariah Trail, an existing local rural roadway that currently terminates at the property. The right-of-way extension is a termination point of the public local rural roadway via a cul-de-sac to allow emergency vehicle access and turnaround. The cul-de-sac is designed such that a future extension of Mariah Trail due east may be constructed and utilize the cul-de-sac as a knuckle configuration. Future 60' width right-of-way dedication due east to the eastern property boundary is platted and the existing access easement and no-build conservations easements on the site are to remain in place. There are no Colorado Department of Transportation roadways involved in the project. This request meets the intent of the Land Development Code for a Minor Subdivision and the current RR-5 zoning as follows:

Land Development Code Section 7.2.1.C.2:

The Final Plat will create five or more lots, in this case six, in accordance with C.R.S Section 30-28-101(10)(d). A major subdivision shall be required to conform to all preliminary plan and final plat requirements including the criteria for approval. A Sketch Plan may be required where the PCD Director determines a sketch plan is necessary to support the efficient and comprehensive

review of a major subdivision. An Early Assistance Meeting was conducted in December of 2021 determining that the Sketch Plan was not needed due to the simplicity of the development.

El Paso County Policy Plan – This Major Subdivision and Final Plat remains consistent with the zoning of the existing property and surrounding properties as RR-5 zoned lots allowing rural residential parcels of a minimum of 5 acres. The proposed major subdivision is a subdividing of an existing 35 acres property into six parcels of at least 5 acres each.

El Paso County Waster Master Plan – This Major Subdivision and Final Plat meets the requirements of the County Water Master Plan as there is an existing water attenuation plan with water rights associated with the property that satisfies the proposed development.

There are no geologic hazards prohibiting the development of the subdivision.

There are existing conservation easements on the site that are to remain in place and will remain as no-build areas on the Final Plat.

The subdivision will not interfere with the extraction of any known commercial mining deposit.

The design of the subdivision protects the natural resources or unique landforms. There is not significant deviation from the existing stormwater drainage pattern nor are any significant natural resources required to be removed for development of the access road or future residences. Drainage was assessed to implement any necessary drainage easements as no-build areas, as needed.

The proposed methods for fire protection are adequate to serve the subdivision; and

The subdivision is appropriate and the design is based on mitigating the constraints of topography, soil types, geologic hazards, aggregate resources, environmental resources, floodplain, airplane flight overlays, or other constraints.

Site Description:

The property of interest, henceforth referred to as the Site, addressed as 19205 Mariah Trail, is an unplatted 35-acre RR-5 zoned parcel within El Paso County with Schedule No. 5100000511. The Site within the northwest quarter of Section 7, Township 11 South, Range 65 West of the sixth P.M.. The Site is south of the County's 60-foot right-of-way of Mariah Trail, a rural local gravel roadway. The property is accessed via a private access drive within a 16-foot width common access easement (Reception No. 213070061). The adjacent properties or subdivisions are as follows:

North: El Creek Ranches Filing No. 1 (Lots 24-26)

East: 19275 Mariah Trail, Schedule No. 5100000512, Zoned RR-5, Unplatted 40.23 acre property

South: 18885 Brown Road, Schedule No. 5100000447, Zoned RR-5, Unplatted 61.55 acre property

West: Part of Section 12-11-66, Schedule No. 6100000224, Zoned RR-5, Unplatted 80 acre property

The Site is currently zoned RR-5 (Rural Residential), allowing 5-acre minimum lots with 25-foot front, rear, and side setbacks for principal structures, and a 200-foot minimum lot frontage width.

The soils indicative to the site are classified as Brussett loam and Peyton-Print complex by the USDA Soil Conservation Service and are listed as NRCS (National Resources Conservation Service) Hydrologic Soil Group B. A USDA Soil Map is provided in Appendix C.

The existing topography of the Site consists of slopes between 2.0 percent and 15 percent generally draining from the west to the east. There are several local topographic high points and grasslined swales across the property. The natural landscape comes to a swale located on the eastern property boundary, central to the Site. The majority of the Site drains to this point where it continues to flow due east. The stormwater runoff to this area is via overland sheet flow and remains generally as sheet flow until the swale reduces in width downstream to channelized flow. The ultimate outfall location is East Cherry Creek approximately 1.5 miles east of the Site.

There are no major drainageways or existing facilities on the Site. The neighboring property to the east consists of a tertiary channel that the Site drains to and there is an existing stock pond downstream of the swale.

The Site lies within the East Cherry Creek Drainage Basin according to the El Paso County Drainage Basins map. There are no known non-stormwater discharges that contribute to the storm water systems on site and downstream, both private and public.

The project site does not lie within a designated floodplain according to information published in the Federal Emergency Management Agency Floodplain Map No. 08041C0305G, dated December 7, 2018. The FEMA FIRM panel is provided in Appendix B.

The existing percent imperviousness of the Site is less than 0.1% as evidence by aerial photography and site visits. The only non-vegetation land is a dirt path within a common access easement at the north of the Site. The existing vegetative cover of the Site is approximately 99.9% with sparse native grasses and weeds, also as evidence by aerial photography and site visits.

Proposed Development Description:

The proposed project scope is for a small subdivision for a total of six lots with a proposed public roadway that follows the County's 60' width right-of-way section as an extension of Mariah Trail as a cul-de-sac. A Final Plat and Minor Development Plan show Lots 1 through 6 with minimum areas of 5 acres to meet RR-5

rural residential zoning standards. A private driveway within a 20' common access easement is to extend from Mariah Trail to connect to future private residences.

The small subdivision is to remain zoned as RR-5, allowing for single-family residences and accessory structures within the El Paso County zoning code's allowed land uses. Covenants for the Mariah Trail Filing No. 1 subdivision shall meet El Paso County land use and development standards at a minimum with the following minimum criteria per the County:

- Minimum 200' width lot frontage
- Minimum 30' lot frontage at public roadways
- No minimum lot frontage at private roadways
- 25' front, side, and rear principal building setbacks
- 5% Imperviousness (per HOA covenants)

Proposed construction activity for the subdivision is for the Mariah Trail right-of-way extension of the gravel roadway cul-de-sac only.

Proposed construction activity for the major subdivision is for the Mariah Trail right-of-way extension of the gravel roadway cul-de-sac. The limits of disturbance and construction is to establish the public cul-de-sac and private gravel roadway is approximately 12,000 square feet (0.27 acres) or 0.7% of the total 35-acre site area.

The construction timeline is anticipated to commence following the Subdivision Plat, Entitlements, and Construction Drawings processes with the County anticipated to be September of 2024. Construction of the roadway is anticipated to take two months with final stabilization occurring in November of 2024. Erosion and sediment control measures for the Site are to be established prior to any disturbance or construction activity as required by the County and per the GEC Plan Set and Stormwater Management Report.

Requested Waivers:

8.4.3.A Minimum Frontage for a Division of Land. A division of land shall have a minimum of 60 feet frontage on a public road.

A waiver is requested for this criteria to accommodate the proposed plat with flag lots for Lots 2 and 5 and reduce the number of lots accessing the 20' access drive (lots 3 and 4), as a maximum of three lots are allowed to have a shared driveway.

County Master Plan:

The development is consistent with the County's Master Plan for large lot residential placetypes as this is a single-family detached residential subdivision with minimum acreages of 5 acres. The development is considered a "minimal change" development by having no more than six single-family residences and a County roadway built within the 35 acre vacant property. The large lot placetypes will have minimal impact to the natural features and surroundings of the Site as the rural landscape and topography will remain in place. Custom homes are anticipated to be built upon the six subdivided lots that are encouraged to match the rural settings of the Site.

Traffic Impacts:

The property is approximately a mile south of County Highway 404 / East Palmer Divide Avenue at the County limits and is approximately a mile west of Black Forest Road. The proposed major subdivision is accessed from an extension of the existing dirt roadway of Mariah Trail that extends south through the Elk Creek Ranches Filing No. 1 subdivision near local rural roadways of Wildfire Court and Thunder Road West. The accesses to County Highway 404 are via Elk Creek Drive East or Thunder Road East. There is no direct access to Black Forest Road.

The six lot subdivision is not anticipated to have a trip generation over 100. There are no additional roadways or intersections proposed other than a public roadway extension of the Mariah Trail right-of-way. There is not anticipated to be an increase in trips by more than 100 daily trips. The traffic type is to remain residential use. There is no anticipated change to level of service for the local connecting roadways or nearest County Highways. There are no recorded accident or safety issues for roadways in the immediate vicinity. There is no existing or new pedestrian or bicycle traffic for the development as none is required.

Utilities:

Lots 1 through 6 are to be served by onsite wastewater treatment systems and a water well for each respective lot. Each lot is responsible for providing their own well and septic system at the time of development.

Per the Water Resources Report prepared by RESPEC, these lots meet the requirements for water supply in terms of quantity, quality, and dependability, and methods of sewerage disposal per the Land Development Code Chapter 8.

All lots will be serviced by Mountain View Electric as an extension of the underground primary electric line that exists at the end of Mariah Trail.

All lots will be serviced by Black Hills Energy for natural gas as an extension of the underground distribution pressure gas line at the end of Mariah Trail.

Fire suppression will be provided by Tri-Lakes Monument Fire Protection.

Will-serve letters are provided as a part of the Major Subdivision entitlement process.

Soils and Geologic Hazards:

A soils report was conducted by Vivid Engineering Group, Inc. dated March 2023 for soil borings conducted in March of 2023. Construction of the subdivision for the roadway as well as future residential construction shall follow the recommendations made in the report including roadway gravel pavement sections, earthwork and grading methods and permanent stabilization, as well as residential construction recommendations such as use of in-situ soils, overexcavation, foundation recommendations, fine grading near foundations, etc. There were no geologic hazards identified within the report to designate any no-build areas on the Final Plat. All lots will be able to provide their own well and septic system within each individual lot as the report identifies appropriate soils for systems.

The development is compliant with the El Paso County Master Plan for Mineral Extraction. A Mineral Rights Affidavit has been provided with the application. The Site is located on the Mineral Map within panel 6 of the R66W, T11S section. The map indicates Stream Terrace Deposit which is old stream deposits containing sand, gravel, silt and clay preserved on benches or broad flat to sloping areas adjacent to streams. This is consistent with the soils investigation. There are no known mineral deposits that require mitigation nor any hazards per the soils investigation and master plan report and maps.

Drainage:

A natural drainage swale exists on the eastern boundary that conveys stormwater due east toward the East Cherry Creek. This natural swale is not a formal drainageway and is a part of the existing topography of the Site.

There are no stream crossings located within the construction site boundary. The lots are not within a streamside boundary and there are no preservation easements or existing no-build areas on or within the vicinity of construction/disturbance. All natural drainageways within the site conveying 15 cfs or more are placed in drainage easements or Tracts as shown on the Final Plat.

There are no anticipated negative impacts to surrounding or downstream developments or infrastructure as a result of development of this major subdivision.

Water Master Plan:

The development is compliant with the County's water master plan by having the water rights, a water decree with augmentation plan for a 300-year water supply as required. The development is to have individual wells for each of the six residents.

A Water Resources report was conducted and follows the County's criteria with groundwater source testing. A Wastewater Report has also been conducted. These reports are included in the subdivision application.

All requirements for the development are met for water resources – quantity, quality, and dependability are provided to each lot within the subdivision.

Justification:

The development of the Mariah Trail Filing No. 1 major subdivision conforms to the following El Paso County policies:

2.1.11: Encourage approaches to natural system preservation and protection which also accommodate reasonable development opportunities. The development conforms to the existing RR-5 zoning of the parcel and surrounding properties.

2.2.3: Evaluate the impact from proposed developments on watersheds and wildlife habitat with appropriate government agencies early in the development process. The Entitlements Process includes a Final Drainage Report, a Wildlife Hazard Report, and a Water Resources Report that speak to this policy and demonstrate compliance.

2.3.1: Preserve significant natural landscapes and features. There are no significant natural resources or features on the site. The most notable are natural topography in the form of grass swales and drainageways that are not formal waterways within the County. These areas are within drainage easements or Tracts and are not to be disturbed to maintain the historical drainage pattern of the site and cause no negative impacts to downstream and surrounding properties or development. RR-5 zoning standards are to be adhered to for the development of the individual lots.

2.3.7: Encourage the mitigation of visual impacts caused by construction including road cuts, utility lines, outside storage, water tanks, and building scale. The major subdivision is a gravel roadway extension of Mariah Trail for access to six lots. There is no proposed significant roadway cutting or filling that would cause visual impacts as the roadway is generally at existing grade. All residential development is to follow zoning code for building height.

Policy 3.1.8: Promote water supply systems and augmentation arrangements which maximize the effective use of near-surface ground water supplies without jeopardizing existing water rights or established wells. This development has water rights and augmentation plan in place that meets the

300-year water supply requirement and anticipates 0.625 acre-feet (AF) of water per year for each of the new residential lots.

Policy 3.3.6 Evaluate the consequences of surface water from new development including run off of natural soils, as chemical compounds that may result from the proposed uses including pesticides, herbicides and hydrocarbons. The development consists of minimum 5-acre area lots that are typically 7 percent impervious and there is a gravel roadway extension with roadside ditches to convey stormwater to the existing natural drainage outfall location to the east. Water Quality is provided for the gravel roadway via grass buffers as there are large areas of natural landscape for infiltration. The outfall location is an existing grasslined swale that is stabilized.

Policy 6.1.6 Direct development toward areas where the necessary urban-level supporting facilities and services are available or will be developed concurrently. The subdivision will be served with urban fire protection services by the Tri-Lakes Monument Fire Protection District.

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. Land use for the development is consistent with those of surrounding subdivisions.

Policy 9.2.3 Strictly limit direct access onto major transportation corridors in order to preserve their functional capacity. The access to this development is from a local rural roadway and has no direct access onto major transportation corridors such as highways, arterials, or collectors.

Policy 11.1.14 Require development plans to effectively address both quantitative and qualitative impacts of drainage within the project site. The Final Drainage Report addresses this policy and meets all requirements per the DCM and ECM. Water Quality is provided and detention is proven to be unnecessary.

Policy 11.3.1 Where feasible, support the use of natural or naturalistic drainage approaches rather than hard line solutions. The Final Drainage Report and Grading Plan demonstrates use of natural drainage approaches by utilizing existing areas of native grasses and the natural drainage ways not to be disturbed. Infiltration is provided for impervious areas that sheet flow over pervious meadow/pasture allowing runoff reduction.

Policy 11.3.4 Promote the effective use of innovative short and long term strategies including sediment ponds, buffer strips, and constructed wetlands as a means of reducing peak flows and improving storm water quality. The Final Drainage Report demonstrates use of grass buffers and stabilized natural drainage ways for runoff reduction and conveyance downstream.

Policy 11.3.5 Protect the integrity of wetlands, riparian areas and associated wildlife habitat through a combination of careful land development and drainage system design. The Final Drainage Report demonstrates compliance with this policy.

Policy 11.3.6 Encourage the effective use of control measures to mitigate the short and long term erosion impacts of development. The Stormwater Management Plan and corresponding Grading and Erosion Control Plan show erosion and sediment control and mitigation by use of construction control

measures. Silt fence, vehicle tracking control, erosion control blankets, sediment control logs, and check dams are sited for construction phases.

Policy 12.1.3 Approve new urban and rural residential development only if structural fire protection is available. Fire protection is provided as evidence by the will-serve letter.

Policy 12.1.9 Develop and implement area-wide and parcel-specific Wildfire Mitigation Plans in zones identified as having high wildfire potential. A Wildfire Hazard Report and mitigation plan was submitted with this Major Subdivision application.

Policy 15.3.3 Encourage innovative approaches to the problem of financing solutions to the off-site fiscal impacts of development. This project will be required to participate in the El Paso County Road Impact Fee Program. The proposed lots will participate in the fee program by paying the full applicable fees at building permit.

References:

Subsurface Soils Investigation and Geologic Hazard Study by Vivid Engineering Group, Inc. dated March 2023.

Onsite Wastewater Study by Vivid Engineering Group, Inc. dated March 2023.

Water Resources Report for Mariah Trail Filing No. 1 by RESPEC dated March 2023.

Wastewater Report for Mariah Trail Filing No. 1 by RESPEC dated April 2023.

Final Drainage Report for Mariah Trail Filing No. 1 by Engineering Local Xperts dated March 2023.

Fire Protection Report by Atwell, LLC. dated April 2023.

Respectfully,

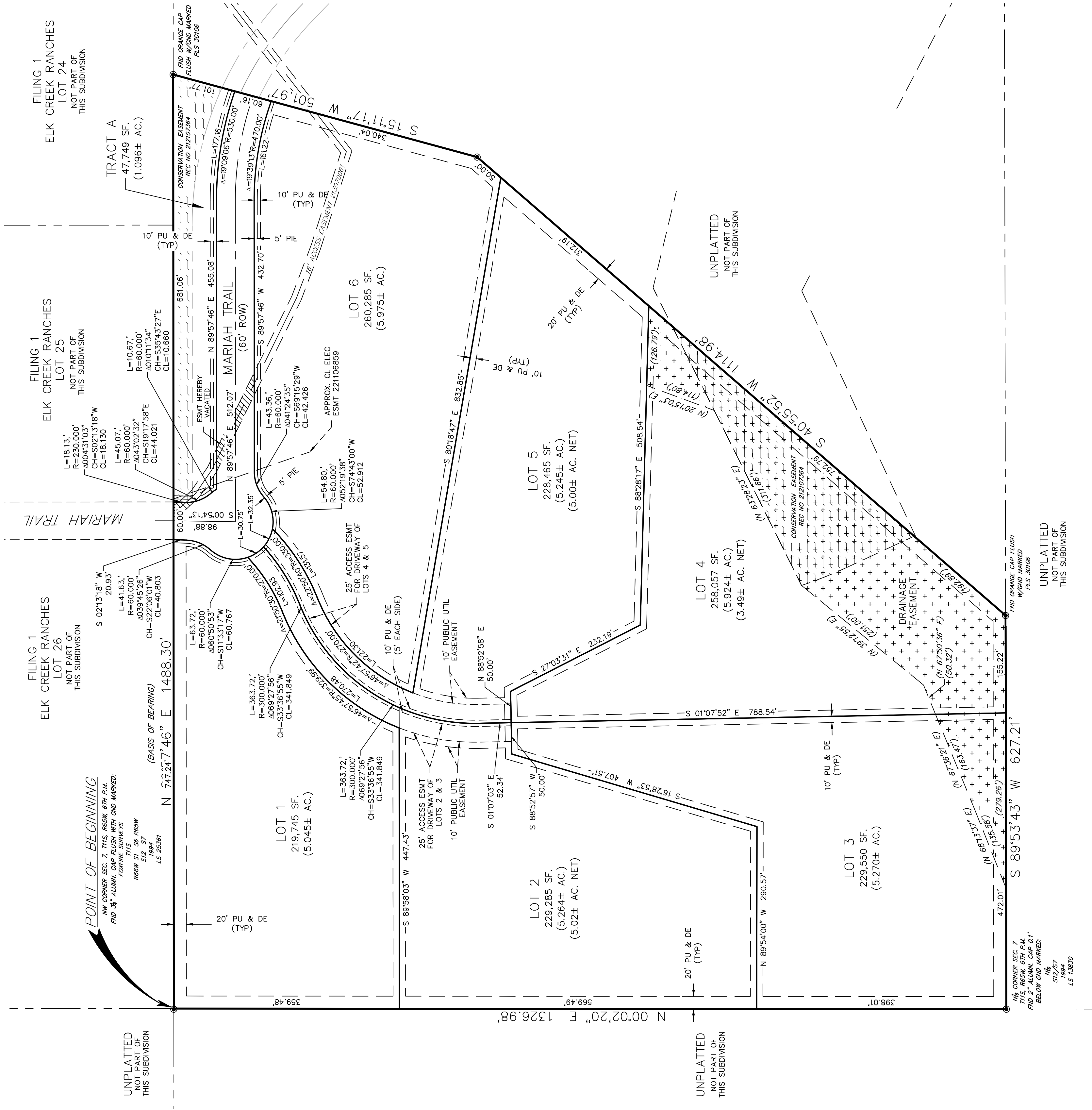
Engineering Local Xperts, LLC.



Carlos Serrano, PE
Principal

MARIAH TRAIL FILING NO. 1

A PORTION OF THE NORTHWEST QUARTER OF SECTION 7,
TOWNSHIP 11 SOUTH, RANGE 65 WEST, OF THE 6TH PRINCIPAL MERIDIAN,
EL PASO COUNTY, COLORADO.



REGISTERED LAND SURVEYOR IN THE STATE OF COLORADO, NO. 27605 FOR AND ON BEHALF OF POLARIS SURVEYING, INC. NOTICE: THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE COLORADO SURVEYING ACT AND THE SURVEYING BOARD OF THE STATE OF COLORADO. ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE CERTIFICATION SHOWN HEREON.

MARIAH TRAIL FILING NO. 1

A PORTION OF THE NORTHWEST QUARTER OF SECTION 7,
TOWNSHIP 11 SOUTH, RANGE 65 WEST, OF THE 6TH PRINCIPAL MERIDIAN,
EL PASO COUNTY, COLORADO.

REVISIONS			DATE	APPROVED
ZONE	REV	DESCRIPTION	DATE	
	1	COUNTY REVIEW COMMENTS	08/10/23	
	2	COUNTY REVIEW COMMENTS	09/22/23	
	3	MARIAH TRAIL CHANGES	09/06/24	

DATE: 02/21/2023

DRAWING NO: N/A

SHEET: 2 of 2

FINAL PLAT

OWNER: THOMAS D KIRK JR

19205 MARIAH TRAIL, CO SPR, 80508



June 29, 2023

Kylie Bagley, Project Manager
El Paso County Development Services Department
Transmitted via the EPC EDARP Portal: <https://epcdevplanreview.com>

RE: Mariah Trail Filing 1 - 19205 Mariah Trail
Case No. SF2315
Part of the NW ¼ of the NW ¼, Section 7, T11S, R65W, 6th P.M.
Water Division 1, Water District 8

Dear Kylie Bagley,

We have reviewed the submittal documents related to Mariah Trail Filing 1 Subdivision, concerning the above referenced proposal to subdivide a 35-acre parcel, into six single-family residential lots of minimum 5 acres each.

Water Supply Demand

Based on the water supply information summary and the April 2023 Water Resource Report from RESPEC ("Report") the estimated annual water requirements totals 1.8 acre-feet for in-house use (0.3 acre-feet/year/lot), 1.8 acre-feet for irrigation of up to 0.82 acres (6,000 square-feet of lawn irrigation/lot and based on 0.05 acre-feet/year/1,000 square-feet of lawn irrigation) and 0.15 acre-feet for the watering of 12 heads (based on 0.0125 acre-feet/year/head). The total annual demand for the subdivision would be 3.75 acre-feet/year.

Source of Water Supply

The proposed water source is individual on lot wells constructed in the Dawson aquifer operating pursuant to the decreed augmentation plan in case no. 2022CW3094. The groundwater that is subject to 2022CW3094 was quantified in case no. 2006CW189 for a 170-acre parcel, located in the W ½ of Section 7, Township 11 South, Range 65 West of the 6th P.M. The following amounts of water were deeded to the applicant for the 35 acre parcel:

Aquifer	Annual amount available for 35 acre parcel		Type
	Based on 100 year allocation approach	Based on 300 year allocation approach	
Dawson	21.03	7.01	Not-Nontributary
Denver	28.02	9.34	Nontributary
Arapahoe	15.63	5.21	Nontributary
Laramie-Fox Hills	10.68	3.56	Nontributary

The decreed augmentation plan in the case nos. 2022CW3094 allows for the total annual withdrawal of 3.75 acre-feet through up to six lots from the not nontributary Dawson aquifer, based on a 300-year allocation approach. The augmentation plan states that indoor use will utilize an estimated 0.3 acre-feet/year/well or 1.8 acre-feet/year total, 0.3 acre-feet/year/well or 1.8 acre-feet/year total for irrigation of lawn, garden, and trees of up to 6,000 square-feet/lot, 0.025 acre-



feet/year/well or 0.15 acre-feet/year total for stockwatering for up to 2 large domestic animals/lot and fire protection.

There is an existing well on the property operating under permit no. 85835-F. This well is constructed in the not nontributary Dawson aquifer and operates pursuant to the decreed augmentation plan in Division 1 Water Court case no. 2006CW189 and is permitted to withdraw 0.7 acre-feet per year for in-house use and irrigation of 7,000 square-feet of lawn and garden irrigation. This well is proposed to supply one of the lots in this subdivision. Since well permit no. 85835-F will operate pursuant to the decree in case no. 2022CW3094, the applicant must obtain a new well permit pursuant to the new augmentation plan in case no. 2022CW3094.

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. 2006CW189 and deeded to the applicant in case no. 2022CW3094 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.

The *El Paso County Land Development Code*, Section 8.4.7.(B)(7)(b) states:

"(7) Finding of Sufficient Quantity

(b) Required Water Supply. The water supply shall be of sufficient quantity to meet the average annual demand of the proposed subdivision for a period of 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 proposed annual water demand equals the allowed average annual amount of withdrawal of 3.75 acre-feet per year, allowed by the augmentation plan in the case no. 2022CW3094. As a result, the water may be withdrawn in that annual amount for a maximum of 300 years.

Applications for on lot well permits, submitted by entities other than the water court Applicant in case no. 2022CW3094 (Thomas D. Kirk, Jr.) must include evidence that the Applicant has acquired the right to the portion of the water being requested on the application.

State Engineer's Office Opinion

Based upon the above and pursuant to Section 30-28-136(1)(h)(I), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights.

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 decree, 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. For planning purposes 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 me at this office at 303-866-3581 x8246 or ioana.comaniciu@state.co.us

Sincerely,



Ioana Comaniciu, P.E.
Water Resource Engineer

Ec: Subdivision file: 30833
File permit no. 85835-F

County Attorney

Kenneth R. Hodges, County Attorney
719-520-6485
Centennial Hall
200 S. Cascade, Suite 150
Colorado Springs, CO 80903
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Board of County Commissioners
Holly Williams, District 1
Carrie Geitner, District 2
Stan VanderWerf, District 3
Longinos Gonzalez, Jr., District 4
Cami Bremer, District 5

August 8, 2023

SF-23-15 Mariah Trail Filing No. 1

Reviewed by: Lori L. Seago, Senior Assistant County Attorney
April Willie, Paralegal

WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal for approval of Mariah Trail Filing No. 1, a subdivision application by Thomas Kirk ("Applicant") for a 6-lot subdivision on a parcel of 35 acres of land (the "property"). The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary ("WSIS"), the water demand for the subdivision is 3.75 acre-feet/year, comprised of .30 acre-feet/year for household use for each of the 6 residential lots totaling 1.8 acre-feet/year, 0.05 acre-feet per 1,000 square foot/year for irrigation per lot for a total of 1.8 acre-feet per year, and 0.125 acre-feet/year per horse for stock watering of up to twelve horses for a total of .150 acre-feet per year. Based on this total demand, Applicant must be able to provide a supply of 1,125 acre-feet of water (3.75 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement.

Proposed Water Supply

3. The Applicant has provided for the source of water to derive from the not-nontributary Dawson aquifer as provided in the Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 1 Case No. 2022CW3094 ("2022 Decree"). The groundwater underlying the property was decreed in Case No. 2006CW189, Water Division 1 ("2006 Decree"). In the 2022 Decree, the Court recognized that the Applicant had been granted via quitclaim deed certain water rights from the 2006 decree, including 2,103 acre-feet of water in the Dawson aquifer and 1,563 acre-feet of water in the Arapahoe aquifer, both underlying Applicant's property. The 2022 Decree

ASSISTANT COUNTY ATTORNEYS

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LORI L. SEAGO
DOREY L. SPOTTS

BRYAN E. SCHMID
STEVEN W. MARTYN

approved the pumping of up to 3.75 acre-feet per year for 300 years and 1,125 acre-feet total of Dawson aquifer water. The 2006 Decree allows water to be utilized for domestic, industrial, commercial, irrigation, livestock watering, fire protection, recreational, fish and wildlife and exchange and augmentation purposes, including storage, both on and off the property. The Court further awarded a vested right to use up to 6 wells on the property, one of which is currently permitted and constructed under Well Permit No. 85835-F and operates pursuant to the 2006 Decree.¹

The approved augmentation plan has a term of 300 years and requires that non-evaporative septic system return flows be used for augmentation during the pumping period for the 6 approved wells. Applicant must reserve 1,125 acre-feet of its water rights in the Arapahoe aquifer which shall be used for replacement of post-pumping depletions. Each of the 6 wells may pump up to 0.625 acre-feet per year.

State Engineer's Office Opinion

4. In a letter dated June 29, 2023, the State Engineer stated that “[t]he estimated annual water requirements totals 1.8 acre-feet for in-house use (0.3 acre-feet/year/lot), 1.8 acre-feet for irrigation of up to 0.82 acres (6,000 square-feet of lawn irrigation/lot and based on 0.05 acre-feet/year/1,000 square-feet of lawn irrigation) and 0.15 acre-feet for the watering of 12 heads (based on 0.0125 acre-feet/year/head). The total annual demand for the subdivision would be 3.75 acre-feet/year.” The State Engineer noted that the wells will produce from the Dawson aquifer pursuant to the augmentation plan decreed in case no. 2022CW3094. The State Engineer further noted that one existing well is located on the property operating under the 2006 Decree and must be re-permitted pursuant to the 2022 Decree.

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

Recommended Findings

5. Quantity and Dependability. Applicant's water demand for the Mariah Trail Filing No. 1 is 3.75 acre-feet per year for a total demand of 1,125 acre-feet for the subdivision for 300 years. The 2022 Decree allows for 6 wells to withdraw water from the Dawson aquifer in those total amounts.

Based on the water demand of 3.75 acre-feet/year for Mariah Trail Filing No. 1 and the 2022 Decree withdrawals in that amount, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for Mariah Trail Filing No. 1.

¹ Applicant must obtain a new well permit pursuant to the new augmentation plan in 22CW3094 Decree and Augmentation Plan.

6. The water quality requirements of Section 8.4.7.B.10.g. of the El Paso County Land Development Code must be satisfied. **El Paso County Public Health shall provide a recommendation as to the sufficiency of water quality.**

7. Basis. The County Attorney's Office reviewed the following documents in preparing this review: a *Water Resources Report* dated April 2023, the Water Supply Information Summary, the State Engineer's Office Opinion dated June 29, 2023, and Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 1 Case No. 2022CW3094 entered on February 3, 2023. The recommendations herein are based on the information contained in such documents and on compliance with the requirements set forth below. ***Should the information relied upon be found to be incorrect, or should the below requirements not be met, the County Attorney's Office reserves the right to amend or withdraw its recommendations.***

REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with all requirements of the Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 1 Case No. 2022CW3094, specifically, that water withdrawn from the Dawson aquifer by each of the proposed six wells permitted shall not exceed 0.625 annual acre-feet, based on a total combined annual withdrawal of 3.75 acre-feet. Depletions during pumping shall be replaced by individual on-lot non-evaporative septic systems.

B. Applicant must create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water decrees and augmentation plans for the property.

C. Applicant shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision, their successors and assigns, and the HOA regarding all applicable requirements of the 2022 Decree.

Covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 1,125 acre-feet of Dawson aquifer water and 1,125 acre-feet of Arapahoe aquifer water pursuant to Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 1 Case No. 2022CW3094 to satisfy El Paso County's 300-year water supply requirement for the 6 lots of the Mariah Trails Filing No. 1 subdivision. The Covenants shall further identify that 187.5 acre-feet (0.625 acre-feet/year) of Dawson aquifer water is allocated to each of the 6 lots. Said reservations shall not be separated from transfer of title to the property and shall be used exclusively for primary water supply.

2) Advise of responsibility for costs. The Covenants shall advise the HOA, lot owners, and their successors and assigns of their obligations regarding the costs of operating the

plans for augmentation, which include pumping of the Dawson wells in a manner to replace depletions during pumping and the cost of drilling Arapahoe aquifer wells in the future to replace post-pumping depletions.

3) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use a non-evaporative septic system to ensure that return flows from such systems are made to the stream system to replace actual 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 in the subdivision 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."

4) Address future lot conveyances. 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 Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 1 Case No. 22CW3094 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."

5) Advise of monitoring requirements. The Covenants shall advise the HOA, future lot owners of this subdivision, and their successors and assigns of their responsibility for any metering and data collecting that may be required regarding water withdrawals from existing and future wells in the Dawson and/or Arapahoe aquifers.

6) Require well permits. The Covenants shall require that well permits be obtained pursuant to the requirements of Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 1 Case No. 22CW3094 and C.R.S. § 37-90-137(4) and (10).

7) Address amendments to the covenants. 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 Mariah Trail Filing No. 1 pursuant to Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 1 Case No. 22CW3094. 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 the Colorado Ground Water Commission 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 determination.”

8) Address termination of the covenants. The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 1 Case No. 22CW3094 are also terminated by the Division 1 Water Court and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

D. Applicant and its successors and assigns shall reserve in any deeds of the Property Dawson aquifer water in the decreed amount of 187.5 (0.625 acre-feet per year) per lot. 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.

E. Applicant and its successors and assigns shall convey by recorded warranty deed these reserved Dawson aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson aquifer underlying the respective lots to satisfy El Paso County’s 300-year water supply requirement.

Any and all conveyance instruments shall also 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 water supply, and replacement during pumping, for each of the lots of Mariah Trails Filing No. 1. 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.”

F. Applicant shall convey by recorded warranty deed the reserved 1,125 acre-feet of Arapahoe aquifer water rights for use in the augmentation plan to replace post-pumping depletions. Applicant shall recite in the deed that this water shall be used exclusively for augmentation supply and shall not be sold, conveyed, traded, bartered, assigned, or encumbered in whole or in part for any other purpose.

G. Applicant and its successors and assigns shall submit a Declaration of Covenants, Conditions, and Restrictions, form deeds, 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 Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 1 Case No. 2022CW3094 and shall identify the obligations of the individual lot owners thereunder.

H. Applicant and its successors and assigns shall record all applicable documents, including but not limited to agreements, assignments, 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.

I. 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. Applicant 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.”

K. Prior to recording the final plat, Applicant shall:

- 1) Record the 2022 Decree in the records of the El Paso County Clerk and Recorder’s Office and upload the recorded decree into eDARP;
- 2) Upload into eDARP proof that the existing well operating under Permit No. 85835-F has been repermited.

cc: Kylie Bagley, Project Manager, Planner

FINAL PLAT (RECOMMEND APPROVAL)

_____ moved that the following Resolution be adopted:

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF EL PASO

STATE OF COLORADO

RESOLUTION NO. SF2315
MARIAH TRAIL FILING NO. 1

WHEREAS, Wayne-Anthony Custom Homes did file an application with the El Paso County Planning and Community Development Department for approval of a Final Plat for the Mariah Trail Filing No. 1 Subdivision for property in the unincorporated area of El Paso County as described in Exhibit A, which is attached hereto and incorporated herein by reference; and

WHEREAS, a public hearing was held by this Commission on November 7, 2024; and

WHEREAS, based on the evidence, testimony, exhibits, consideration of the Master Plan for the unincorporated area of the County, presentation and comments of the El Paso County Planning and Community Development Department and other County representatives, comments of public officials and agencies, comments from all interested persons, comments by the general public, and comments by the El Paso County Planning Commission members during the hearing, this Commission finds as follows:

1. The application was properly submitted for consideration by the Planning Commission;
2. Proper posting, publication, and public notice were provided as required by law for the hearing before the Planning Commission;
3. The hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters, and issues were submitted and that all interested persons and the general public were heard at that hearing;
4. All exhibits were received into evidence;
5. The proposed land use does not permit the use of an area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor;

6. All data, surveys, analyses, studies, plans, and designs as are required by the State of Colorado and El Paso County have been submitted, reviewed, and found to meet all sound planning and engineering requirements of the El Paso County Subdivision Regulations.
7. For the above-stated and other reasons, the proposed amendment of the El Paso County Zoning Map is in the best interest of the health, safety, morals, convenience, order, prosperity, and welfare of the citizens of El Paso County.

WHEREAS, when approving a Final Plat, the Planning Commission and Board of County Commissioners shall find that the request meets the criteria for approval outlined in Section 7.2.1.D.3.f of the Land Development Code ("Code") (as amended):

1. The Subdivision is in conformance with the goals, objectives, and policies of the Master Plan;
2. The Subdivision is in substantial conformance with the approved Preliminary Plan;
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;
4. Either 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 the Code, or, with respect to applications for Administrative Final Plat approval, such finding was previously made by the BoCC at the time of Preliminary Plan approval;
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 the Code;
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)];
7. Adequate drainage improvements are proposed that comply with State Statute [C.R.S. § 30-28-133(3)(c)(VIII)] and the requirements of the Code and the Engineering Criteria Manual ("ECM");
8. Legal and physical access is provided to all parcels by public rights-of-way or recorded easement acceptable to the County in compliance with the Code and the ECM;
9. Necessary services, including police and fire protection, recreation, utilities, and transportation systems, are or will be made available to serve the proposed Subdivision;

10. The final plans provide evidence to show that the proposed methods for fire protection comply with Chapter 6 of the Code;
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 of the Code;
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;
13. The Subdivision meets other applicable sections of Chapter 6 and 8 of the Code; and
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.].

WHEREAS, 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 the Code.

NOW, THEREFORE, BE IT RESOLVED, the El Paso County Planning Commission recommends that the petition of Wayne-Anthony Custom Homes for approval of a Final Plat for the Mariah Trail Filing No. 1 Subdivision be approved by the Board of County Commissioners with 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. 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.
6. Driveway permits will be required for each access to an El Paso County owned and maintained roadway. Driveway permits are obtained from the appropriate El Paso County staff.
7. The Subdivision Improvements Agreement, including the Financial Assurance Estimate, as approved by the El Paso County Planning and Community Development Department, shall be filed at the time of recording the Final Plat.
8. Collateral sufficient to ensure that the public improvements as listed in the approved Financial Assurance Estimate shall be provided when the Final Plat is recorded.
9. Applicant shall comply with all requirements contained in the Water Supply Review and Recommendations, dated August 8, 2023, as provided by the County Attorney's Office.

NOTATIONS

1. The following fees are required to be paid to El Paso County at the time of plat recordation:
 - a. The project is located within the East Cherry Creek drainage basin which has no associated fees.
 - b. Fees in lieu of park land dedication in the amount of \$3,030 for regional fees and \$0 for urban park fees will be due at the time of recording the Final Plat.
 - c. Fees in lieu of school land dedication in the amount of \$1,848 shall be paid to El Paso County for the benefit of Lewis-Palmer School District 38 at the time of plat recording
2. Final Plats not recorded within 24 months of Board of County Commissioner approval shall be deemed expired unless an extension is approved.
3. 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 Inspections and a Construction Permit is issued by the Planning and Community Development Department.
4. The El Paso County Road Impact Fee Program Resolution (Resolution 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 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.

AND BE IT FURTHER RESOLVED that this Resolution and the recommendations contained herein be forwarded to the El Paso County Board of County Commissioners for its consideration.

_____ seconded the adoption of the foregoing Resolution.

The roll having been called, the vote was as follows: (circle one)

Thomas Bailey	aye / no / non-voting / recused / absent
Sarah Brittain Jack	aye / no / non-voting / recused / absent
Jim Byers	aye / no / non-voting / recused / absent
Jay Carlson	aye / no / non-voting / recused / absent
Becky Fuller	aye / no / non-voting / recused / absent
Jeffrey Markewich	aye / no / non-voting / recused / absent
Eric Moraes	aye / no / non-voting / recused / absent
Bryce Schuettpelz	aye / no / non-voting / recused / absent
Wayne Smith	aye / no / non-voting / recused / absent
Tim Trowbridge	aye / no / non-voting / recused / absent
Christopher Whitney	aye / no / non-voting / recused / absent

The Resolution was adopted by a vote of ____ to ____ by the El Paso County Planning Commission, State of Colorado.

DONE THIS 7th day of November 2024 at Colorado Springs, Colorado.

EL PASO COUNTY PLANNING COMMISSION

By: _____
Chair

EXHIBIT A

A TRACT OF LAND BEING IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPLE MERIDIAN, EL PASO COUNTY, COLORADO, DESCRIBE AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 7,
THENCE N89°57'46"E, 1488.30 FEET ALONG THE NORTH LINE OF SAID NORTHWEST 1/4;
THENCE S15°11'17"W, 501.97 FEET;
THENCE S40°55'52"W, 1114.98 FEET;
THENCE S89°53'43"W, 627.21 FEET TO A POINT ON THE WEST LINE OF SAID NORTHWEST 1/4;
THENCE N00°02'20"E, 1326.98 FEET ALONG THE WEST LINE OF SAID NORTHWEST 1/4 TO THE
NORTHWEST CORNER THEREOF, AND THE POINT OF BEGINNING.

AREA = 35 ACRES, MORE OR LESS.