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July 15, 2025

To: El Paso County Board of County Commissioners
200 South Cascade Ave., Suite 100
Colorado Springs, CO 80903
Sent via e-mail: KylieBagley@elpasoco.com

Re: Request for Variance on behalf of Mariah Trail Filing No. 1

Good day El Paso County Board of County Commissioners,

We are writing on behalf of the applicant Wayne Anthony Custom Homes ("WACH"), the Applicant for Mariah Trail Filing No. 1. The application for Mariah Trail Filing No. 1 was approved by you in December, 2024. However, this project is still pending final approval because El Paso County Land Development Code Section 8.5.1(C)(1)(b) states that land dedicated to the County must be free of all liens and encumbrances. This includes right of way dedications, according to Section 8.5.4(A)(1). There is an easement in place on this property that slightly overlaps where the County intends to extend the existing county road, Mariah Trail. We are writing to request you, the El Paso County Board of Commissioners, grant our request of a variance of this requirement for Mariah Trail Filing No. 1 for the reasons stated herein:

History of Property and Owner

WACH submitted the application in this matter on April 26, 2023 on behalf of the property owner, Mr. Thomas Kirk. Mr. Kirk first acquired this property with his now ex-wife, Ms. Donahue, in 2013 as a 75.23 acre property zoned RR-5 by El Paso County. In 2020 Mr. Kirk and Ms. Donahue divorced and legally divided the marital property, with Mr. Kirk receiving 35 acres and Ms. Donahue the remaining 40.23 acres and the residence upon it.

As part of the property separation Mr. Kirk granted to Ms. Donahue an easement to ensure she has continued access from Mariah Trail to her portion of the divided land. Said easement was recorded at El Paso County reception no. 221099747. It is this easement

13511 NORTHGATE ESTATES DRIVE
SUITE 250
COLORADO SPRINGS, COLORADO 80921



211 EAST MAIN STREET
SUITE 1
OAK CREEK, COLORADO 80467

that is now hindering El Paso County approving the final plat map for the approved 6-lot subdivision.

Mr. Kirk is a retired farrier of forty (40) years. Mr. Kirk is not a wealthy man; he is a man who had to split up the 35 acres of land he was left with following his divorce so that he can afford to build a comfortable permanent residence on the single lot he is keeping for himself. This property, as well as Ms. Donahue's, have always been zoned RR-5, so it seems it has long been contemplated by the County that such a development would occur on this property.

Outstanding Issue

El Paso County requires that the existing Mariah Trail, a County Road, be extended on to Mr. Kirk's land for public use as part of this subdivision. Mr. Kirk has agreed to grant this property to the County as part of the subdivision. El Paso County personnel have informed WACH that they cannot extend Mariah Trail on to Mr. Kirk's land because of an existing easement, pursuant to El Paso County Land Development Code Section 8.5.1(C)(1)(b). The scope of how much land the existing easement overlaps the Mariah Trail extension is approximately 400 square feet, which is depicted on sheet 2 of the attached Land Survey Plat. Applicant and Mr. Kirk have tried to reach a solution with Ms. Donahue, the adjacent property owner with an easement for access. Ms. Donahue has refused to consent to partially abandoning or amending her existing easement to make way for this public extension. All attempts at resolution have been unsuccessful.

The public right-of-way extension of Mariah Trail will not interfere with Ms. Donahue's existing easement; the only effect will be a reduction in the length of the existing driveway, the north end of which will be replaced with a public right-of-way where Mariah Trail will be constructed. As a member of the general public Ms. Donahue will have unrestricted access to Mariah Trail and continued unrestricted access to her driveway. This means there will be no harm or detriment to Ms. Donahue's ability to access her property. Arguably, once Mariah Trail is extended, the overlapping easement becomes moot as any member of the public will now have access to what was Mr. Kirk's property.

Request

You, the El Paso County Board of County Commissioners, approved WACH's application on December 12, 2024. Now, more than seven (7) months later, the land owner's project is at a standstill due to an existing easement and El Paso County's Code at Section 8.5.1(C)(1)(b). We ask that you grant a variance to this requirement, allowing the County to approve the planned subdivision layout and extension of Mariah Trail. The Mariah Trail extension will not hinder, obstruct, or harm the neighboring property owner, Ms. Donahue, and it will allow this previously approved development to move forward.

Sincerely,

MONSON, CUMMINS, SHOHET
& FARR, LLC

/s/ W. James Tilton