

EL PASO COUNTY



COMMISSIONERS:
MARK WALLER (CHAIR)
LONGINOS GONZALEZ, JR. (VICE-CHAIR)

COLORADO

HOLLY WILLIAMS
STAN VANDERWERF
CAMIL BREMER

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

March 12, 2019



This letter is to inform you of the following petition which has been submitted to El Paso County BY: _____

PUDSP-18-001

PARSONS

PLANNED UNIT DEVELOPMENT/PRELIMINARY PLAN FOREST LAKES PHASE II

A request by FLRD, No. 2, LLC, for approval of a map amendment (rezoning) of 287 acres from PUD (Planned Unit Development) to PUD (Planned Unit Development) and approval of a preliminary plan for 180 single-family residential lots. The property is located north of Hay Creek Road, south of Doolittle Road, and west of Old Denver Highway. (Parcel No. 71000-00-433) (Commissioner District 1) (Kari Parsons)

Type of Hearing: **Quasi-Judicial**

For Against No Opinion

Comments: _____

(FOR ADDITIONAL COMMENTS, PLEASE ATTACH ANOTHER SHEET.)

- **This item is scheduled to be heard by the El Paso County Planning Commission on April 2, 2019.** The meeting begins at 9:00 a.m. and will be conducted in the Second Floor Hearing Room of the Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs.
- **The item will also be heard by the El Paso County Board of County Commissioners on April 23, 2019.** The meeting begins at 9:00 a.m. and will be conducted in the Centennial Hall Auditorium, 200 South Cascade Avenue, Colorado Springs.
- The date and order when this item will be considered can be obtained by calling the Planning and Community Development Department or through El Paso County's Web site (www.elpasoco.com). Actions taken by the El Paso County Board of County Commissioners are posted on the internet following the meeting.
- The online submittal portal can be found at: www.epcdevplanreview.com
- The Staff Report for this Agenda item can be found at: <https://planningdevelopment.elpasoco.com/el-paso-county-planning-commission/planning-commission-2019-hearings/>

Your response will be a matter of public record and available to the applicant prior to the hearing. You are welcome to appear in person at the hearing to further express your opinion on this petition. If we can be of any assistance, please call 719-520-6300.

Sincerely,

Kari Parsons, Planner II

Your Name: AARON JOHNSON (signature)

Address: 3915 SPATZ ROAD MONUMENT, CO 80132

Property Location: spatz + Remuda Phone 719-220-891

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



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

WWW.ELPASOCO.COM

EL PASO COUNTY COLORADO

COMMISSIONERS:
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COLORADO

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
 CRAIG DOSSEY, EXECUTIVE DIRECTOR

March 12, 2019

HOLLY WILLIAMS
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RECEIVED
 APR 01 2019
 BY: _____

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For _____ Against _____ No Opinion _____
 Comments: *This will change everything we would like for it to be a rural area with a small town feel. What about water? Traffic is a concern. Has already increased 10x what it used to be with the lot sizes of this development.*
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Sincerely,


Kari Parsons, Planner II

Your Name: Brian Johnson (signature)
 Address: 3915 Spatz Rd.
 Property Location: Spatz & Remick Phone: 303 472 6858

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



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

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EL PASO COUNTY



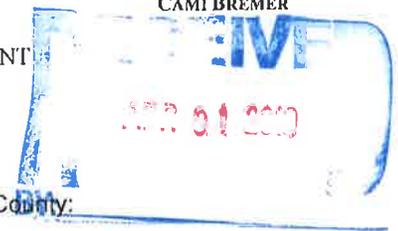
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Type of Hearing: Quasi-Judicial

_____	X	_____
For	Against	No Opinion
Comments: <u>See attached letter and attachments</u>		

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copy mailed 3/18/19

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Sincerely,


Kari Parsons, Planner II

Your Name: Alexa Carreno


 (signature)

Address: 501 S. Cherry St, Ste 1100 Denver CO 80246

Property Location: _____ Phone 312 758 7383

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



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Environmental and Animal Defense

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E | business@eadefense.org
W | www.eadefense.org

EL PASO COUNTY PLANNING COMMISSION RESPONSE AND COMMENT TO PROPOSED PUDSP-18-001

April 1, 2019

Submitted via Electronic Mail to kariparsons@elpasoco.com

Dear Planning Commissioners and Staff of El Paso County,

We are a Colorado-based nonprofit that focuses on environmental conservation and protecting animals. Residents of the El Paso County community who live near this proposed development reached out to us to investigate the Forest Lakes Phase 2 project proposal due to their many concerns.

We currently have several open Colorado Open Records Act and Freedom of Information Act Requests, including one with the El Paso County Planning Commission. Those requests for documents had not been fulfilled at the time the Planning Commission issued its notice of a hearing on PUDSP-18-001, and we continue to await pending documents from the above referenced requests.

Even with limited time and while waiting on multiple state and federal government agencies to produce public records, we have discovered multiple issues present with the proposed development site, both legal and logistic, that should preclude approval of the Forest Lakes Phase 2 project proposal by the Planning Commission.

For the reasons set forth below, rejection or a continuance to allow the applicant to make changes to the Phase 2 proposal as presented are the only reasonable solutions. The Commission should choose only to approve a new Phase 2 proposal when: the applicant limits the proposal to no more than the originally proposed 131 lots; when the project is consistent with the Endangered Species Act; and consistent with state and local codes and plans including concerns about fire safety, water scarcity, and flood issues.



501 S. Cherry Street, Suite 1100
Denver, CO 80246

Project Background

The Forest Lakes subdivision was part of the 1,367-acre High Meadow Sketch Plan that was approved in 1984. The Board of County Commissioners approved the Forest Lakes PUD (PUD-01-009) and preliminary plan (SP-01-019) on February 26, 2002. The overall lots for the project were totaled at 467 including all phases. At that time, the Phase 2 aspect of the project included a proposed 131 homes.¹

In 2017, the Phase 2 proposal skyrocketed to 231 homes, a difference of 100 homes between proposals, which resulted in significant backlash from the local community and debris flow concerns from the Colorado Geologic Survey. The 2018 plan, while still facing significant challenges from neighbors, made changes to the proposed lot layout, street configuration, grading and culvert design, and took into account recommendations of “Debris Flow Analysis” requested by the Colorado Geologic Survey, which reduced the number of lots initially to 199 and ultimately to the 180 lots” as proposed.²

The current 2019 Phase 2 proposal appears largely the same in design as the 2018 proposal, with requests for PUD modifications in excess of the ordinances for flag lots, lots area and dimensions, mid-block crossings, roadway terminations for cul-de-sac length, and water quality capture volume requirements.

The applicant Classic Homes requests approval of the PUD Development Plan and approval of the PUD Development Plan as a Preliminary Plan, in addition to a finding of water sufficiency for water quality, dependability and quantity.

Summary of Issues

Phase 2 DOES NOT meet the PUD Zoning District Requirements

The Land Development Code of El Paso County requires that, among other factors:

- The proposed development is in compliance with the requirements of this Code and all applicable statutory provisions and will not otherwise be detrimental to the health, safety, or welfare of the present or future inhabitants of El Paso County;
- The subject property is suitable for the intended uses and the use is compatible with both the existing and allowed land uses on the neighboring properties, will be in harmony and responsive with the character of the surrounding area and natural environment, and will not have a negative impact upon the existing and future development of the surrounding area;

¹ See 2017 Letter of Intent.

² See 2018 Letter of Intent.

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- Areas with unique or significant historical, cultural, recreational, aesthetic or natural features are preserved and incorporated into the design of the project;
- The proposed development will not overburden the capacities of existing or planned roads, utilities and other public facilities (e.g. fire protection, police protection, emergency services, and water and sanitation), and the required public services and facilities will be provided to support the development when needed;
- The proposed development would be a benefit through the provision of interconnected open space, conservation of environmental features, aesthetic features and harmonious design, and energy efficient site design;

See Section 4.2.6 and Section 7.2.1 of the El Paso County Land Development Code (2019).

The proposed development will be detrimental to the health, safety, and welfare of the present and future inhabitants of El Paso County, due to, among other reasons, a significant fire risk as well as the risk of water scarcity.

The proposed development is not in harmony and responsive with the character of the surrounding area and natural environment. It will have a negative impact on the surrounding area. This development significantly alters the natural environment, affecting wildlife and existing homeowners.

The proposed development will not preserve aesthetic and natural features. In fact, the proposed trail system disturbs and cuts through protected critical habitat for an endangered species, the Preble's Meadow Jumping Mouse.

The proposed development will overburden utilities and public facilities. Among these overburdens is the risk of water scarcity and fire response.

The proposed development is not a benefit through the provision of interconnected open space, conservation of environmental features, or aesthetic features and harmonious design. Apart from affecting native endangered and non-endangered wildlife, fire risk, and water scarcity issues, this development will inevitably affect the air quality, bring about noise pollution, and create light pollution in an existing dark sky area.

Each of these concerns are addressed in detail below. For these reasons, the Planning Commission should reject the Phase 2 proposal.

Phase 2 DOES NOT meet the Preliminary Plan Submittal Requirements

For a PUD proposal to be considered for preliminary plan submission approval, the Land Development Code of El Paso County requires that, among other factors:

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- 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;
- Incorporating identified environmentally sensitive areas, including but not limited to, wetlands and wildlife corridors, into the design;
- The proposed subdivision is in general conformance with the goals, objectives, and policies of the Master Plan;

See Chapters 7 and 8 of the El Paso County Land Development Code (2019).

The proposed development's water supply security is questionable in the face of increased consumption, drought, and climate change.

The proposed development's consideration of environmentally sensitive areas is inadequate and harms the native ecosystem by eliminating wildlife corridors and infringing upon Preble's Meadow Jumping Mouse designated critical habitat.

The proposed development is not in general conformance with the goals, objectives, and policies of the Master Plan, namely the El Paso County Policy Plan, and the Tri-Lakes Comprehensive Plan (2002).

The El Paso County Plan

The El Paso County Plan prioritizes preserving the environment. The County itself admits that there is an influx of people moving to El Paso County and that "harmony with nature can only exist if adequate plans are made to ensure its sustainability." The County acknowledges that there is a visible haze over much of the county that was not present before 1980, which is caused in part by "increased fuel exhaust, geological dust and smoke from wood burning appliances." The County also acknowledges the impact of noise pollution.

Furthermore, the County Plan prioritizes the preservation and enhancement of "the region's unique flora and fauna." The County expounds upon the impacts of development on wildlife species, citing that "wildlife must compete for smaller and fewer territories as more land area is occupied by development," displacement of riparian and wetlands by development, as well as encounters with predators.

Finally, the County Plan prioritizes the preservation and enhancement of "significant natural landscapes and features." The County acknowledges that "many large ranches, which once made up much of the County, have been transformed into 35 acre and smaller residential exurban subdivisions," such as the one proposed in Phase 2 of the Forest Lakes development.

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Phase 2 build-out of a 180-home proposal of the larger Forest Lakes subdivision is not in keeping with this advancing these policy points and will only contribute to these concerns.³

The Tri-Lakes Comprehensive Plan

One of the mission statements of the Tri-Lakes Comprehensive Plan is “to accommodate growth that preserves and enhances the natural environment, character, history, and visual beauty of the Tri-Lakes Area.” High density housing developments such as Phase 2 of Forest Lakes is not in keeping with that goal. This development will negatively impact wildlife and the surrounding ecosystems.

The County acknowledges that “Tri-Lakes is also considered a transitional zone for flora and fauna” and that habitats range from the sub-alpine to semi-arid systems, allowing for a variety of wildlife to thrive, including the Preble’s Meadow Jumping Mouse. This development will negatively impact all wildlife in the area, including the Preble’s Meadow Jumping Mouse.

The County acknowledges that “as growth and development occur along the Front Range, wild land fire potential can become a significant liability to residents, wildlife, and firefighters,” and that the risk in this area varies. One of the ways in which the County aimed to minimize fire risk was to establish “a minimum of 30’ wide ‘defensible space’ around building structures.” However, approving a high-density and close-quartered housing development needlessly puts hundreds of future homeowners, as well as existing homeowners in the area, at risk as there will be more fuel for a fire to spread rapidly, with potentially lethal effects.

While the County operates under a “market driven philosophy” in evaluating proposed developments, it must not do so at the expense of the natural environment, native ecosystems, or the peace and enjoyment of existing and future homeowners.⁴

Each of these concerns are addressed in detail below. For these reasons, the Planning Commission should reject the Phase 2 proposal.

Ultimately, if the Planning Commission does not reject the Phase 2 proposal in whole, it should issue a continuance of Classic Homes’ request for 180 homes and allow the applicant to correct the deficiencies of its application, including limiting

³ See generally <http://adm2.elpasoco.com/Planning/Policy-plan/page7.htm>

⁴ See generally <https://planningdevelopment.elpasoco.com/wp-content/uploads/ResourcesReference/MasterPlan/Tri-Lakes-Comprehensive-Plan-2000.pdf>

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its proposal to no more than the originally proposed 131 home limit, to be redesigned with the presently found concerns in mind.

Detriments of the Phase 2 Proposed Project**Contents**

1. Fire
2. Water Scarcity
3. Flood
4. Pollution
5. Native Wildlife
6. Endangered Species Act: Federally Threatened Species
7. Clean Water Act

Discussion**1. Fire**

The threat of wildfire is the harsh reality of the Phase 2 proposed development and surrounding homes. Per the Tri-Lakes Monument Fire Protection District's March 19, 2019 and October 30, 2018 comment letters, "the area and acreage within the Forest Lakes Subdivision is frequented by fire events as recently as the 2002 Spaatz Fire that started on the ranch and consumed over 67 acres while taxing the response of local resources even with a *rapid 4-minute response*" (emphasis added). If over 67 acres can be destroyed within the time it takes the fire department to reach the site, this can certainly cause fatalities and injury, as well as property damage, in a high-density subdivision such as the one in the Phase 2 proposal. While there is a low rating for wildfire in the meadow, the severe rating applies to wildfire in the brush, "which is where most of the homes are being constructed in Phase 2."

The Fire Marshal also states that this development will be constructed within "the severe hazard rated areas" of that district. In no uncertain terms, the Fire Marsal clearly states that "[t]he community will experience wildfire again as has been demonstrated numerous times over the last 20 plus years."

Further details projecting wildlife impacts are elaborated upon in the 2003 Wildfire Hazard Evaluation Report, which was revised in 2018. It predicts that a wildfire will "spread quickly, at a rate in excess of 1432 feet per hour, or 23 feet per minute. Flame lengths will range from 2 to 2 ½ feet. The probability of fuels igniting in advance of the fire front is 100%. In the fifteen minutes that it may take for the fire to be noticed, reported to the fire department's dispatch office and for the arrival of the initial attach force, the fire could have traveled over 350 feet and be approximately 1.6 acres in size. . ." The fire will accelerate as it travels, with the

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potential to grow to 3 acres in size and move at a rate of 35 feet per minute. These predictions are based on “normal” weather; however, the recent history of drought has made conditions increasingly dangerous. Conditions also will only continue to worsen as the effects of climate change increase in this region.

It is inevitable that this proposed development will experience wildfires, with risk of a severe fire cutting through a large swath of acreage destroying numerous homes with the potential for fatality. It is simply irresponsible for the Planning Commission to approve such a dangerous development.

2. Water Scarcity

The Forest Lakes development is served by the Forest Lakes Metropolitan District. The water source for this district is sourced from both non-renewable groundwater and surface water. While the 2017 Forest Lakes Metropolitan District Water Supply Plan and Wastewater Report, revised in 2018, characterizes the water source as “strong and reliable,” the report does not once mention effects of drought.

As it stands, the available water rights provide a net 724.14 annual acre-feet of water after relinquishments for augmentation, non-300 year demands, and evaporative losses. The study projects the annual water demand to total 166.30 annual acre-feet.

Simply stated, the doctrine of prior appropriation comes with a “use it or lose it” policy. Regardless of the fact that the estimates by this survey places water usage at nearly 600 acre-feet below the appropriated rights, there is a significant incentive for the Forest Lakes Metropolitan District to use all of its allotted water rights, seriously harming the health of the aquifer and surface waters. This is even after the fact of providing stream augmentations of approximately 50 acre-feet.

Additionally, the massive use of water for this development will detrimentally impact neighboring homes. There is growing concern that personal residential wells will run dry as prior appropriation runs its course, drought worsens, and the longstanding existing community members will be left with no water.

Finally, the effects of climate change must also be considered. Acre-feet and water availability may look “strong” on paper, but the reality must also be considered. 2018 presented drought conditions in the state, with snowpack at a deficit.⁵ While 2019 is a “good year” thus far, given the past 3 years of data it must be considered an anomaly. Since 2000, Colorado has been progressing through cyclical drought cycles, cycles which last years.⁶ Cycles of drought will only become more frequent as the effects of climate change become more apparent within the state. Therefore, the

⁵ See <https://www.wcc.nrcs.usda.gov/ftpref/states/co/charts/basinplotstate19.gif>

⁶ See <https://www.drought.gov/drought/states/colorado>

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Planning Commission must take these concerns into account and reject the Phase 2 proposal.

3. Flood

The Debris Flow Analysis completed in August 2018 evaluates the 231-lot plan and demonstrates that certain plots of land will be flooded. The lots that remain in the current 181-lot plan along the North Beaver Creek were found to encroach into the 100-year storm event debris and mudflow. These lots need to be replatted or mitigation measures must be taken. As currently planned, these lots will be damaged by a 100-year storm event. As such, it is irresponsible for the Planning Commission to approve the development as planned.

4. Pollution

With development comes increased pollution. The Traffic Impact Study does not evaluate impacts on air quality, noise pollution, or light pollution; however, it is important to consider these effects. The County recognizes in its own Policy Plan that there is a haze above the County. Increased development and traffic will only contribute to the existing air pollution, leading to greater visibility issues and potential health issues related to poor air quality, such as asthma.⁷

Furthermore, there will undoubtedly be increased noise pollution and light pollution. The area as it currently stands is a relatively rural area, occupied by a limited number of homeowners. Additional traffic will create noise pollution, affecting wildlife and human use and enjoyment in the area. Furthermore, lighting from homes, cars, street lights, and street lamps, will create light pollution which will affect wildlife, particularly nocturnal species, and human use and enjoyment of the area. Therefore, the Planning Commission should reject the Phase 2 proposal.

5. Native Wildlife

There are hundreds of species of wildlife that will be affected by this development project. This section will not include federally-protected endangered or threatened species, which are discussed below.

The November 16, 2018 Impact Identification Report identifies seasonal concentrations of elk, mule deer, and white-tailed deer. These species are at risk for negative interactions with humans, including but not limited to automobile accidents, urban hunting, and damaging private property. These species are not traditional urban wildlife species, such as squirrels and raccoons, which are accustomed to life among humans. These species will face significant stressors from high-density development and inevitable human encounters. Furthermore, as

⁷ See <https://www.aafa.org/air-pollution-smog-asthma/>

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grazing herbivores, these species' food sources will be eliminated by the development. The presence of high-density development may even affect certain species' migration patterns through the total elimination of current habitat.

There is also an increased potential to attract black bear to the development due to trash foraging. Negative encounters between humans and black bears are well documented along the Front Range as far east as Parker.⁸ These encounters will only increase and be exacerbated by a 180-home development in Phase 2. The existing homeowners and community are accustomed to life among the native wildlife in the existing rural area. With the potential for over 720 new residents (calculated at 4 per household) in the area in Phase 2 alone, the chances for wildlife encounters greatly increase.

Additionally, there are many species of birds that inhabit and migrate to or from the area. The Impact Identification Report identifies 19 migratory bird species, including 15 potential breeding species. These species are protected under the Migratory Bird Treaty Act which prohibits pursuing, hunting, taking, capturing, killing, these species or any attempt to do so. Increased human population inevitably increases the risk for disturbing these federally protected species, which is punishable criminally through jail time and fines.⁹

Therefore, it is in the best interest of both the native wildlife and the public for the Planning Commission to reject this proposed Phase 2 high-density housing proposal.

6. Endangered Species Act

There as many as four species impacted by this development protected by the Endangered Species Act: the Preble's Meadow Jumping Mouse, the Greenback Cutthroat Trout, the Mexican Spotted Owl, and the Ute Ladies'-Tresses.

The Endangered Species Act was enacted "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved."¹⁰ An "endangered species" is "any species which is in danger of extinction throughout all or a significant portion of its range."¹¹ A "threatened

⁸ See <https://www.denverpost.com/2018/09/03/bear-westminster-colorado-backyard/>; <https://www.kktv.com/content/news/Black-bears-push-into-Colorado-Springs-before-hibernation-494022131.html>; <https://www.wkbw.com/news/national/video-black-bear-wanders-around-hotel-lobby-in-colorado>; <https://www.denverpost.com/2018/07/26/black-bear-in-parker/>;

⁹ See 16 U.S.C. § 707.

¹⁰ 16 U.S.C. § 1531.

¹¹ 16 U.S.C. § 1532.

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species” is “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”¹² Concurrent with a designation threatened of endangered, the Secretary of the Interior then has the authority the designate critical habitat for a species.¹³ Endangered and threatened species are not allowed for “take,” which is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”¹⁴ Furthermore, each federal agency has the duty to consult with either the United States Fish and Wildlife Service (“FWS”) or the National Marine Fisheries Service to ensure that “any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the” critical destruction or adverse modification of habitat without an exemption, otherwise known as a Section 7 consultation.¹⁵ Finally, there is a provision for citizen suits to uphold the integrity of the Act.¹⁶

Each of the species, hereinafter discussed, have not undergone a formal Section 7 consultation as, based on the provided documents, it has not been triggered. The documents include only letters from the FWS opining on the possibility of adverse effects within the critical habitat and possibility for “take” based upon the documents provided by Classic Homes. However, the application for a dredge-and-fill permit under the Clean Water Act (“Section 404 permit”) for at least two roadways that are planned to cross waterways in the planned Phase 2, and other parts of the development including grading and construction, will trigger the Section 7 consultation requirement under the Endangered Species Act. Nevertheless, it is clear from the development plans that this project will harm the viability of these federally protected species; therefore, the Planning Commission should reject the Phase 2 proposal as submitted.

Preble’s Meadow Jumping Mouse

As of July 10, 2018, FWS, relying upon documentation provided by Classic Homes’ consultants, stated that, “[b]ased on the information you provided and FWS’ understanding of the project, local conditions, and current information, we agree with your determination that ‘take’ of the Preble’s meadow jumping mouse, which is protected under the Endangered Species Act (Act) as amended (16 USC 1531 et seq.), from the project is not reasonably certain to occur because all proposed

¹² 16 U.S.C. § 1532.

¹³ 16 U.S.C. § 1533.

¹⁴ 16 U.S.C. § 1532.

¹⁵ 16 U.S.C. § 1536.

¹⁶ 16 U.S.C. § 1540.

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development will be located more than 300 feet from the 100-year floodplain.” As of December 17, 2018, FWS has refused to comment on any updated plan proposal.



Figure 1 - Preble's Meadow Jumping Mouse (U.S. Fish and Wildlife Service)

There is significant cause for concern given the circumstances surrounding the Preble's Meadow Jumping Mouse, including the concern that any communication between Classic Homes and FWS was inadequate in the Service's review of the information at stake.

First, there has been a significant redrawing of the critical habitat line between 2001 and present day without any sort of explanation or citation.

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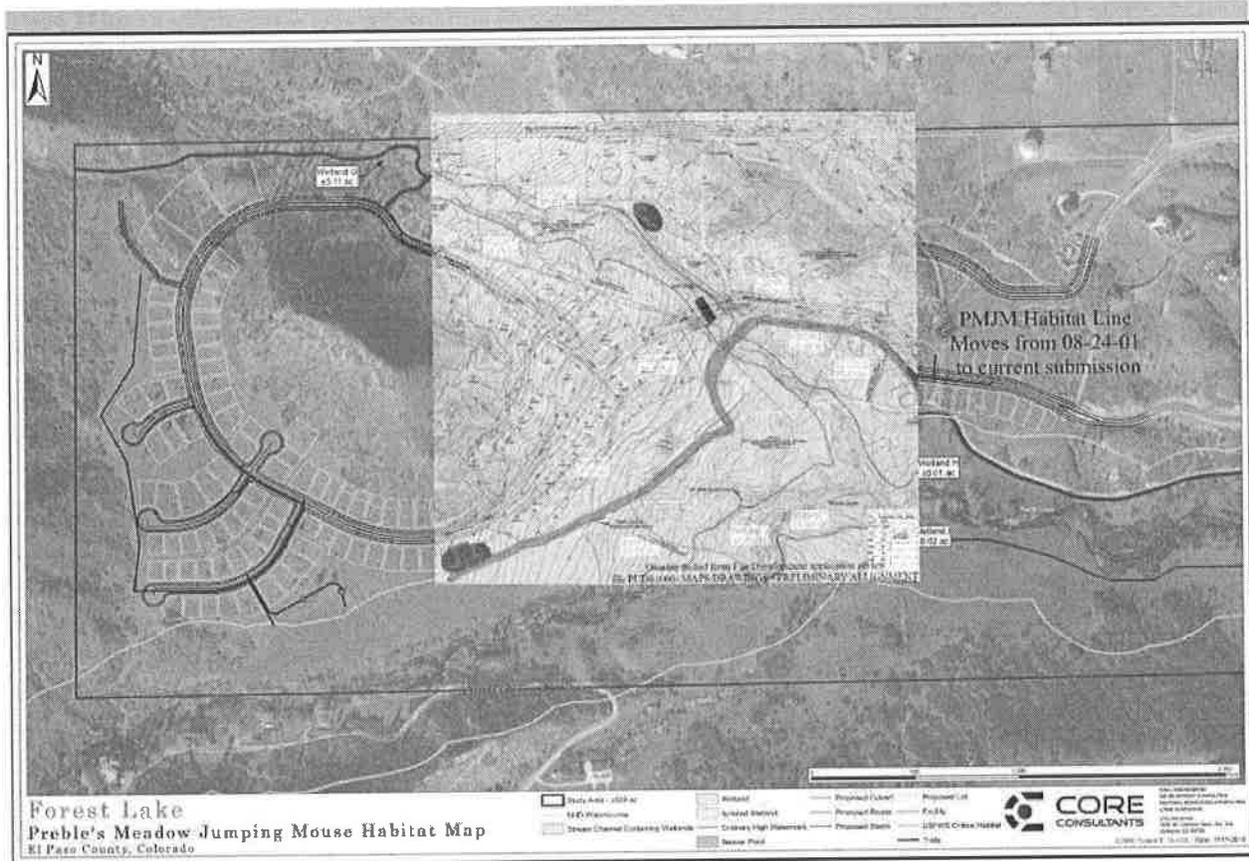


Figure 2. Critical Habitat Boundary – Larger version attached

As noted in the abovementioned map overlay created by Environmental and Animal Defense, the critical habitat line has moved significantly southwards concerning the lower portion of North Beaver Creek. The curvature of the planned road has changed as well. Where there once was critical habitat, there are now homes planned. Planning and FWS documents do not reference this change in habitat designation boundary at all, suggesting Classic Homes has redrawn this boundary with the intention of fitting homes to the east of the proposed culvert. This change also seems unnoticed by FWS, which makes reliance upon any clearance provided by FWS regarding Preble's Meadow Jumping Mouse critical habitat unreasonable.

Additionally, the applicant's current planning documents show planned grading into the critical habitat zone, which is also unreferenced by the applicant and FWS clearance letters.

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residents at risk for prosecution and subject to suit under the Endangered Species Act for unlawful take.

Greenback Cutthroat Trout

The Greenback Cutthroat Trout is a federally listed threatened species and the Colorado state fish. The Impact Identification Report states that it is “unlikely” that there is an occurrence of Greenback Cutthroat Trout based on a 2012 study by Metcalf et al. and that the species was limited to Bear Creek. However, Bear Creek is hydrologically connected to Monument Creek, which feeds into Beaver Creek and the lakes at Forest Lakes. Community members of the existing homes believe they have anecdotally seen Greenback Cutthroat Trout in the creeks in that region. It is scientifically believed that the Bear Creek population of this trout is the only viable wild population.¹⁸



Figure 4 - Greenback Cutthroat Trout (U.S. Fish and Wildlife Service)

There is admittedly no critical habitat designated for the Greenback Cutthroat Trout, which is currently listed as threatened. However, development should proceed with extreme caution, particularly due to the singular population and potential for uplisting of this rare fish.

Mexican Spotted Owl

The Mexican Spotted Owl is a federally listed threatened species. The Impact Identification Report states that designated critical habitat is over 10 miles away and there is no habitat connectivity between the sites. However, development plans and future residents should take extreme caution when considering the close

¹⁸ See <https://www.rmfi.org/projects/bear-creek-watershed>

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proximity to critical habitat and the potential for take should individual birds travel outside of the critical habitat zone.



Figure 5 - Mexican Spotted Owl (U.S. Fish and Wildlife Service)

Ute Ladies-Tresses

The Ute Ladies-Tresses orchid is a federally listed threatened species. The Impact Identification Report states that it is possible that this species will occur within the Phase 2 proposal area. This orchid is likely to occur perennially near Beaver Creek adjacent to the floodplain.



Figure 6 - Ute Ladies-Tresses Orchid (U.S. Fish and Wildlife Service)

Environmental and Animal Defense

While there is no designated critical habitat for this species, the likelihood of its perennial occurrence should give developers and future residents extreme caution when proceeding in order to avoid violations of the Endangered Species Act.

7. Clean Water Act

The Clean Water Act was implemented in order to “restore and *maintain* the chemical, physical, and biological integrity of the Nation's waters.” 33 U.S.C. 1251 (emphasis added). The Clean Water Act regulates certain activities affecting the nation’s navigable waters. Dredging and filling activities require a permit from the Army Corps of Engineers before any material may be discharged into navigable waters. There is also a citizen suit provision of the Act to further the purposes of the Act.¹⁹

Section 404 Permitting

As the above Figure 2 demonstrates, the navigable waters at issue in Phase 2 are Hell Creek, North Beaver Creek and South Beaver Creek and their resulting wetlands. There are multiple issues affecting these waters of the United States, including:

- A proposed culvert/road over a stream containing wetlands in the center of the proposed Phase 2 project.
- A proposed trail to go through wetlands, a stream containing wetlands, and an NHD watercourse at the north end of the proposed Phase 2 project.
- A proposed trail to go through wetlands, a stream containing wetlands, and an NHD water course in the center of the proposed Phase 2 project.
- Grading into wetlands at the center of the proposed Phase 2 project. This includes at least 8 affected homes.
- A large section of homes in the southwest corner of the proposed Phase 2 that will interfere with an NHD watercourse. At least 6 proposed homes directly interfere with that watercourse.
- At least 2 proposed homes directly interfering with another NHD watercourse in northeast corner of the proposed Phase 2 project.

There are no provided documents indicating that Classic Homes is in the process of seeking Section 404 permits for any of these aspects, although the Impact Identification Report advises Classic Homes to do so. Most, if not all, of these abovementioned aspects will require dredging and filling, thus triggering the need for a Section 404 Permit.

NPDES Permitting

¹⁹ 33 U.S.C. 1365

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National Pollutant Discharge Elimination System permits (“NPDES permits”) are required for discharge into waters of the United States. There are no documents provided discussing any NPDES permits for discharge from point sources into the affected waters of the United States, although there is mention of three point source drainage ways in the November 2018 Drainage Report. These permits are necessary to remain in compliance with the Clean Water Act.

Therefore, due to the lack of Section 404 permits and NPDES permits for this Phase 2 proposal, the Planning Commission should reject the plan.

Conclusion

There are several issues that should necessitate the denial of the Phase 2 proposal:

1. Fire
2. Water Scarcity
3. Flood
4. Pollution
5. Native Wildlife
6. Endangered Species Act: Federally Threatened Species
7. Clean Water Act

Should this Planning Commission not outright reject the Phase 2 proposal, it should require the modification of the proposal, and issue a continuance of the hearing. The continuance should urge the applicant to modify the plan to mitigate the issues described above and reduce the number of homes to no more than the originally submitted 131 homes.

Thank you for the opportunity to comment on this project proposal.

Sincerely,



Alexa Carreno, Esq.
Environmental and Animal Defense
501 S. Cherry St, Ste 1100
Denver, CO 80246



Jeremy McKay, Esq.
Environmental and Animal Defense
501 S. Cherry St, Ste 1100
Denver, CO 80246

Environmental and Animal Defense

Attached Documents:

1. Letter from local resident Daniel Irey in opposition to the development.
 2. Endangered Species Act and Clean Water Act Concerns Map (Figure 1)
 3. Full resolution Critical Habitat Boundary Map (Figure 2)
 4. A screen capture of a Change.Org Petition documenting public opposition to the development, *original available at* <https://www.change.org/p/stop-the-over-development-threatening-the-pike-national-forest-monument-co>
-

leading development. They are ignorantly making owners think this development, even violating the Tri Lakes Comprehensive Plan of 2000.

This property is a vast stretch of land that is home to Elk, the endangered Preble Jumping Mouse, Bear, Mountain Lion, Deer, Coyote, and Migrating Birds. If developed, the dramatic effects will be felt by all residents and visitors to the Pike National Forest. This type of development, only designed to maximize the all-mighty dollar, will alter the beauty and the reason that people choose to live/visit Colorado.

Equally as important as the wildlife are the water supply and eminent fire danger:

Water Supply

Water is a Colorado relic, which is leading El Paso County down a road to families without water. Many developers are touting that they have enough water, for these mass developments, because it says so on paper. We live in the marginal zone and thus we will lose water prior to the other areas who live over the deeper parts of the aquifers. Of course in the Forest Lake plan, there is alternate source of water, but it will come at a steep cost.

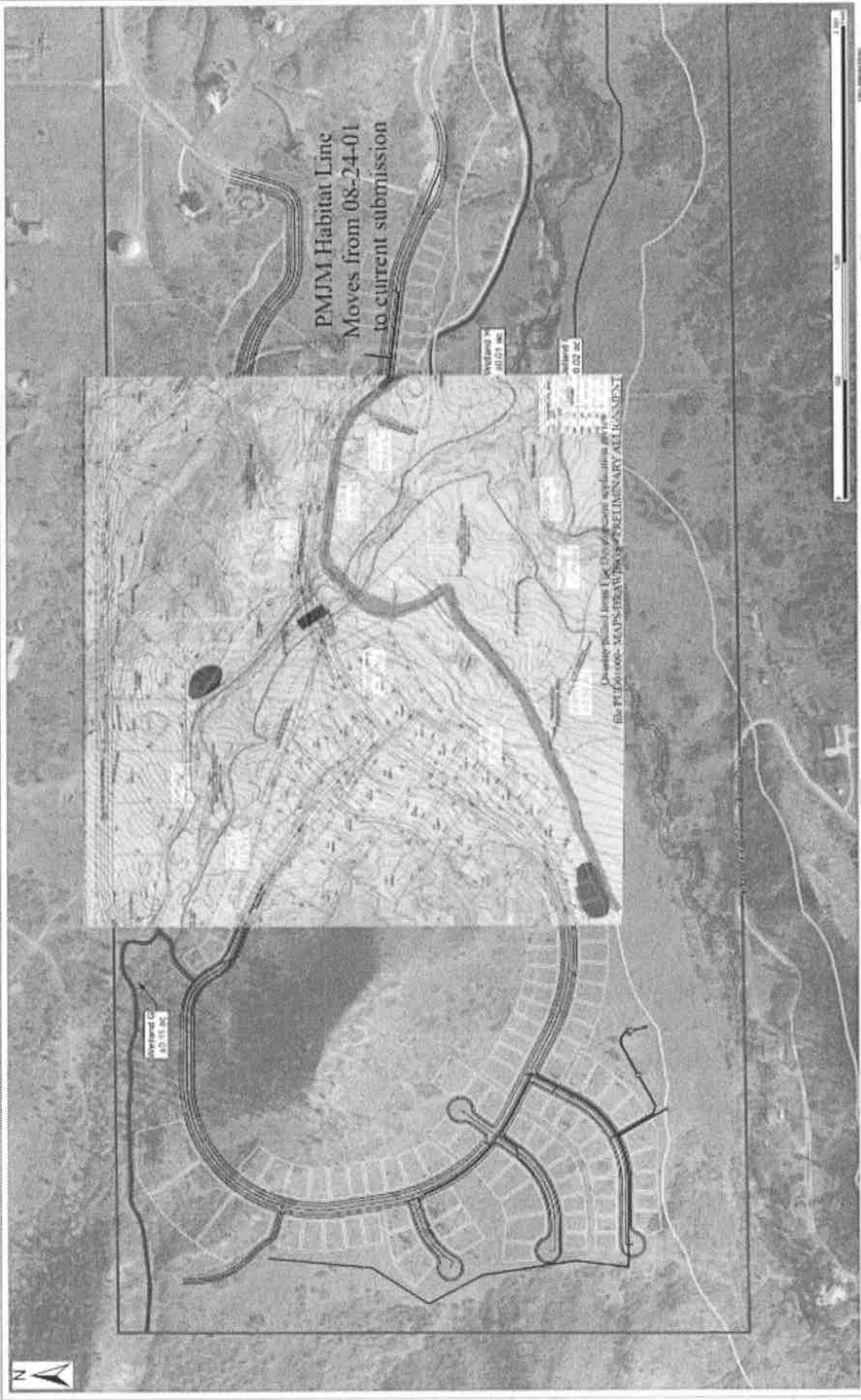
FACT: Forest Lakes is built on a premise that it would be a "renewal water resource development". The reservoirs would supply water for 467 homes in the final build out. The wells in place would only be used to supplement any potable water required by homes if the reservoirs could not maintain enough water. How can this be guaranteed when it has not been tested?

FACT: Residents of Forest Lakes were sold properties with the implied promise that the lake was for beautification and recreation only. Current residents were told recently that it could go dry, but they had enough well water to keep the lake at an acceptable level and if not they could drill more wells.

FACT: To date the reservoir at Forest lake has not been used supply potable water to any of the existing homes. Per the 1986 contract with Colorado Springs, the renewable water source is being supplied by 660 af of return flow water which was purchased from Las Vegas Wastewater Treatment Facility (located down stream in Colorado Springs). But in this contract there is a stipulation that if the flow from the creek drops below 5 cfps that Forest Lakes would have to pay for the water or supplement it from the existing wells. It has not been proven to date that this plan will work.

FACT: Drilling more wells into the deeper aquifers is expensive and the need to treat the water is expensive. Water to fill the lakes is lost to evaporation and to seepage that is not addressed. In addition, more wells in close proximity will decrease the amount of water from surrounding wells.

FACT: In 2002 a plan was put forth and passed for the development called Forest Lakes.. Many people fought this large development. The aquifers are being depleted and less development is far better for those who have no other means of water, except from existing private wells. It is wrong to penalize the current residents for wanting to protect a very precious resource.



PMJM Habitat Line
 Moves from 08-24-01
 to current submission

Developed from USGS 1:25000 scale topographic map
 File: F:\100-Map-Drawings\PRELIMINARY\ALPHABET

Scale: 1" = 100'
 0 100 200 300 400 500 600 700 800 900 1000
 Feet

Legend

- Proposed Culvert
- Proposed Road
- Proposed Stream
- Proposed Facility
- Proposed Wetland
- Proposed High Watermark
- Proposed Pond

Study Area - 62.4 ac
 NE Wetland
 Stream Channel Containing Wetland

Wetland C
 Wetland D

Forest Lake
 Preble's Meadow Jumping Mouse Habitat Map
 El Paso County, Colorado

CORE CONSULTANTS

CORE Project #: 10-018 Date: 10/18/02

Kari Parsons

From: Craig Dossey
Sent: Monday, April 1, 2019 10:04 AM
To: Holly Williams
Subject: RE: Letter AGAINST Forest Lakes Phase 2

Thank you Commissioner, we will add this one to the file.

Craig Dossey

Executive Director
El Paso County Planning and Community Development Department
2880 International Circle, Suite 110
Colorado Springs, CO 80910
719-520-7941
craigdossey@elpasoco.com

From: Holly Williams
Sent: Monday, April 1, 2019 9:55 AM
To: 'Dan Irej'
Cc: Craig Dossey
Subject: RE: Letter AGAINST Forest Lakes Phase 2

Dan,

I have forwarded your comments to the Planning Department for their official file. Thank you,

Commissioner Holly Williams

El Paso County Colorado
200 South Cascade, Suite 100
Colorado Springs, CO 80903-2202
(719) 374-0856 (mobile)
(719) 520-6411 (office)

From: Dan Irej [<mailto:danielrirey@gmail.com>]
Sent: Sunday, March 31, 2019 8:04 PM
To: Kari Parsons; Holly Williams; Mark Waller; Stan VanderWerf; Longinos Gonzalez Jr; Cami Bremer
Subject: Letter AGAINST Forest Lakes Phase 2

CAUTION: This email originated from outside the El Paso County technology network. Do not click links or open attachments unless you recognize the sender and know the content is safe. Please call IT Customer Support at 520-6355 if you are unsure of the integrity of this message.

Dear Ms. Parsons and County Commissioners,

We appreciate your time, dedication and service to the citizens of El Paso County and your effort to be a servant of the people.

Please see attached letter AGAINST Forest Lakes Phase II as proposed.

Sincerely,

Dan & Susan Irey
Diamondback Ranch
4585 Diamondback Drive