

Meggan Herington, AICP, Executive Director
El Paso County Planning & Community Development
O: 719-520-6300
MegganHerington@elpasoco.com
2880 International Circle, Suite 110
Colorado Springs, CO 80910

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

SUMMARY MEMORANDUM

TO: El Paso County Board of County Commissioners
FROM: Planning & Community Development
DATE: 11/9/2023
RE: P234 Map Amendment (Rezone) and MS236 Minor Subdivision for Fairytale Acres

Project Description

A request by Jacob and Sherry Kershman for approval of a Map Amendment (Rezone) for 7.59 acres of a 14.54-acre property from RR-5 (Residential Rural) to RR-2.5 (Residential Rural), and for a Minor Subdivision illustrating four (4) single-family residential lots. The proposed Map Amendment (Rezone) excludes 7.04 acres; at this time, the applicant is proposing that this land remain zoned RR-5. The property is located at 13055 Herring Road. Approval of the Map Amendment (Rezone) shall be considered prior to consideration of the Minor Subdivision. The Map Amendment (Rezone) and Minor Subdivision applications were both unanimously recommended for approval by the Planning Commission.

Notation

Please see the project manager's staff report for staff analysis and conditions.

Planning Commission Recommendation and Vote

Ms. Merriam moved / Mr. Moraes seconded to recommend approval for the Map Amendment Rezone) with two (2) conditions and two (2) notations, and that this item be forwarded to the Board of County Commissioners for their consideration. The motion was **approved (9-0)**. The item was heard as a regular agenda item. There was no public opposition.

Mr. Trowbridge moved / Mr. Whitney seconded to recommend approval for the Minor Subdivision with eight (8) conditions, two (2) notations, two (2) waivers, and a recommended finding of sufficiency regarding water quality, quantity, and dependability, that this item be forwarded to the Board of County Commissioners for their consideration. The motion was **approved (9-0)**. The item was heard as a regular agenda item. There was no public opposition.

Discussion

Both items were heard as regular items in a combined presentation. Discussion was primarily focused on the waiver requests associated with MS236 for clarity and understanding of the requests.

Attachments

1. Draft Planning Commission Minutes from 10/19/2023.
2. Signed Planning Commission Resolution – P234.
3. Signed Planning Commission Resolution – MS236
4. Planning Commission Staff Report.
5. Draft BOCC Resolution – P234.
6. Draft BOCC Resolution – MS236.

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EL PASO COUNTY PLANNING COMMISSION

MEETING RESULTS (UNOFFICIAL RESULTS)

Planning Commission (PC) Meeting

Thursday, October 19, 2023

El Paso County Planning and Community Development Department

2880 International Circle – Second Floor Hearing Room

Colorado Springs, Colorado

REGULAR HEARING, 9:00 A.M.

PC MEMBERS PRESENT AND VOTING: THOMAS BAILEY, SARAH BRITTAIN JACK, BECKY FULLER, JEFFREY MARKEWICH, BRANDY MERRIAM, ERIC MORAES, WAYNE SMITH, TIM TROWBRIDGE, AND CHRISTOPHER WHITNEY.

PC MEMBERS VIRTUAL AND VOTING: NONE.

PC MEMBERS PRESENT AND NOT VOTING: NONE.

PC MEMBERS ABSENT: JIM BYERS, JAY CARLSON, KARA OFFNER, BRYCE SCHUETTELZ.

STAFF PRESENT: MEGGAN HERINGTON, JUSTIN KILGORE, KYLIE BAGLEY, CARLOS HERNANDEZ MARTINEZ, JEFF RICE, JOE LETKE, MIRANDA BENSON, AND LORI SEAGO (VIRTUAL).

OTHERS PRESENT AND SPEAKING: CATHY LANE.

1. REPORT ITEMS

Planning Department. Ms. Herington advised the board that Ms. Seago joined the meeting remotely. Mr. Kilgore advised that the next PC Hearing is November 2, 2023, at 9:00 A.M. He stated there are two items on the agenda: the second hearing for MP231, and a rezone.

2. Call for public comment for items not on the hearing agenda.

Ms. Cathy Lane addressed the board regarding the proposed Briargate/Stapleton Corridor Plan. She stated she watched the October 5th meeting online but wasn't aware she needed to email PCDhearings@elpasoco.com to join remotely. She had a paper handout (that is now uploaded to the project file in EDARP). She believes the plans need further study. Her family is developing 70 acres directly north of the corridor and she believes that should make her a stakeholder, but her family has never been contacted. She further stated that none of her family's comments that had

BOCC Report Packet

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been submitted to the Wilson Company were responded to, uploaded to EDARP, or presented in the PC packet. She did not see the letter that the area HOAs wrote to the BOCC in September of 2022. She stated that her berm, pond, dam, fence, and access to her eastern pasture are all impacted by the proposed corridor and she doesn't see that cost in the Wilson report. She and 39 neighbors in 2.5-acre lots are directly adjacent to the corridor. They planned on a 120-foot-wide corridor. The Wilson report shows an ultimate width of 168 feet which she states begins the eminent domain process for those 40 properties. The Wilson report doesn't seem to mention this taking [of property] nor can she find the acquisition cost. She asks that the PC not approve the Plans as they were presented and asks that the width be limited to 120 feet along Black Forest Road, east to the Jaynes property. She also asked that the proposed access to her property be eliminated. She stated that they do not need access nor a traffic light. She stated her own development submittals seem to be stalled after a third or fourth review with hundreds of new comments that the County insists must be replied to before her proposed development moves forward, and yet the PC is being asked to swiftly approve 2 studies which directly impact her land.

Mr. Bailey stated that ensuring the public process works the way it's supposed to is a top priority. He stated her document will be added to the project file and he asked that County staff look into why they are missing previous comments.

3. CONSENT ITEM

A. Adoption of Minutes of meeting held October 5, 2023.

PC ACTION: THE MINUTES WERE APPROVED AS PRESENTED BY UNANIMOUS CONSENT (9-0).

4. CALLED-UP CONSENT ITEMS – NONE.

5. REGULAR ITEMS **Items 5A and 5B were presented and discussed as a combined package.**

A. P234

HOWSER

MAP AMENDMENT (REZONE) FAIRYTALE ACRES

A request by Jacob and Sherry Kershman for approval of a Map Amendment (Rezone) for 7.59 acres of a 14.54-acre property from RR-5 (Residential Rural) to RR-2.5 (Residential Rural). The proposed Map Amendment (Rezone) excludes 7.04 acres; at this time, the applicant is proposing that this land remain zoned RR-5. A concurrent Minor Subdivision is also being requested. This Map Amendment (Rezone) request must be considered prior to the consideration of the Minor Subdivision request. A combined staff report has been provided. The property is located at 13055 Herring Road. (Parcel No. 5209000030) (Commissioner District No. 1).

B. MS236

HOWSER

MINOR SUBDIVISION FAIRYTALE ACRES

A request by Jacob and Sherry Kershman for approval of a 14.54-acre Minor Subdivision illustrating four (4) single-family residential lots. The property is zoned RR-5 (Residential Rural). A concurrent Map

Amendment (Rezone) request is also being requested to rezone a portion of the property to RR-2.5 (Residential Rural). The Map Amendment (Rezone) request must be considered prior to the consideration of this Minor Subdivision request. A combined staff report has been provided. The property is located at 13055 Herring Road. (Parcel No. 5209000030) (Commissioner District No. 1).

STAFF & APPLICANT PRESENTATIONS

Mr. Howser asked if an abbreviated presentation to focus on the waivers and deviations could be permitted. (It was.) The presentation began.

Mr. Moraes reiterated that a landowner could propose a Minor Subdivision and be exempt from the International Fire Code (IFC) language. If an area large enough is leftover, could they then propose another Minor Subdivision and divide the land without having to meet IFC, and again, etc.?

Mr. Howser stated that PCD would apply the same logic they've used in other situations; if PCD notices multiple Minor Subdivisions being proposed after one another, they will treat the project as a Major Subdivision that needs to meet those applicable criteria. He stated he would recommend that the second subdivider no longer meet the IFC exemption.

Mr. Trowbridge added that the LDC states applicants are not allowed to do consecutive Minor Subdivisions to avoid having to follow certain aspects of the Code.

Mr. Moraes brought up that applications may not be within 6 months from one another or be proposed by the same individual (if the large portion is later sold).

Ms. Herington added that PCD does not enforce the IFC. While PCD would enforce aspects of the LDC [if consecutive Minor Subdivisions were proposed], she doesn't know when a Fire District would see that Minor Subdivision, see building permits within that subdivision, or how they would apply the IFC.

Ms. Fuller asked if the Fire District is making a recommendation for PCD to look at that.

Ms. Herington stated that each Fire District interprets the IFC differently for development within their own district. If there's a consecutive Minor Subdivision that comes through PCD, they will apply the LDC. The IFC goes past firewater onsite and specific road-design for access; it's all encompassing. When a question is asked related to the IFC, PCD can only apply what overlaps with the LDC and would not see other details that are only part of IFC. She stated she doesn't know how a Fire District would interpret the IFC.

Mr. Whitney clarified that the Black Forest Fire Protection District (BFFPD) is not saying they don't agree, they're just not saying "okay". (Mr. Howser agreed.) Asked if there was concern about precedence. If they don't have any objections, why don't they just say "okay"?

Ms. Herington stated that part of the LDC references the local fire authority working with PCD to make a recommendation. Currently, the BFFPD Fire Chief feels that it is not within his purview to make recommendations or to drive the development process. Instead of PCD sending BFFPD a request for specific comments, the BFFPD is choosing not to comment. They feel that they do not

have the standing or authority to provide comments. They do not have a Fire Marshall like other districts, so the Fire Chief is saying that they do not have anyone on staff with the ability to review all of these [proposals] and make comments related to the IFC and the LDC. They are choosing to stay neutral.

Mr. Bailey mentioned that this situation would be like other situations where an agency has made no comment at all or there has been no expert opinion submitted.

Mr. Trowbridge asked for clarification because the Staff Report seemed to include a recommendation within the emergency services section. It appears to recommend that the applicant submit a comprehensive fire protection report. Are they asking PCD/PC to have the applicant do that? He also asked if BFFPD said they *wouldn't* provide services.

Ms. Herington answered that they did not say they wouldn't provide services. She stated that she has met with all the area Fire Districts. She explained that [BFFPD] will be making standard, blanket comments for all development projects. She felt that PCD would be remiss if they didn't mention the wording that remains in the LDC even though Minor Subdivisions are exempt from the IFC. She feels that it does need a waiver from the LDC. In the future, BFFPD may not comment on each item. PCD will have to rely on the applicant and the information being presented when there is a proposal for an alternative design and PCD doesn't have comments from a Fire District.

Mr. Markewich asked for a comparison between the proposed alternative design and what would normally be required. (This was provided in the applicant's presentation.)

Mr. Howser stated he would defer to the applicant.

Ms. Brittain Jack asked if the IFC covers topics like roofing and building materials.

Ms. Herington explained that it talks about building materials as well as subdivision access, onsite firewater, cisterns, the amount of water required for different sized buildings, wildfire mitigation, etc. It is all-encompassing. Those are parts of the local version of the Fire Code adopted in 2013 from which Minor Subdivisions are exempt.

Mr. Bailey speculated that the intent of the BOCC when adopting [BOCC Resolution 13-503] was to acknowledge that there is a broad IFC which should be applied, but they recognize there are some small things and regardless of the blanket application of the IFC, there will be local fire authorities reviewing projects and making recommendations based on specific details.

Ms. Herington added that she was told that when these conversations were happening in 2013 between the Fire Protection Districts and the development industry, there was significant discussion related to how big a subdivision needed to be before needing its own onsite cistern. It does get expensive and can be labor-intensive to install. There was an in-depth conversation in 2013 and she was told that it was agreed that multiple details (i.e., access, onsite firewater, sprinkling systems for residences over 6,000 sq ft) were exempted purposefully for smaller subdivisions. It was decided that Minor Subdivisions should not be expected to install cisterns or have full fire-loaded, fire-rated access to the subdivisions. That discussion was what led to the adoption of the ICF with the local exemptions within BOCC Resolution 13-503.

Mr. Howser added that the LDC intentionally uses the word *should* as opposed to *shall*. PCD does not mandate that the Fire District provide a recommendation, but it was common practice. The applicant's presentation began.

Ms. Merriam asked if the subject property was impacted by the Black Forest Fire. (It was.)

Mr. Trowbridge asked if the driveway would be in a non-revocable easement. (It will be.)

Ms. Fuller asked if the southern part of the RR-5 lot (south of the driveway) was over 2.5 acres. (This was answered by Mr. Howser later in the meeting: The southern portion of the lot, from lot-line to improvements, would measure 2.3 acres. From lot-line to the center of the proposed easement, it would measure 2.57 acres.)

Ms. Ruiz, with Vertex Consulting, said she didn't know. She reiterated that to split that lot, the land would first need to be rezoned. That area is maintaining its RR-5 zoning with this proposal.

Mr. Moraes asked why the applicant objected to installing the fire cistern.

Ms. Ruiz answered that though finances aren't part of the approval criteria, it is a consideration. She also mentioned that the fire department is within a 5-minute drive so they could relay fire trucks back and forth easily, filling up the trucks at the station to fight any fires. She added that the adoption of BoCC Res. 13-503 means the IFC standards don't apply.

Mr. Moraes asked if that meant the applicant doesn't need a waiver.

Ms. Herington disagreed. She stated the section of the LDC from which the applicant is requesting a waiver was written in 2014, after adoption of BoCC Res. 13-503. She wonders why this section of the LDC was not written to specify that Minor Subdivisions were not required to follow the LDC. While Minor Subdivisions are exempt from the IFC, the language [requiring a fire cistern] still exists in the LDC. She believes the PC and BoCC could still say that even though the IFC does not require a cistern, the LDC *does*, and they want one installed. That is up to the PC and BoCC.

Mr. Moraes reiterated his understanding. It's a Minor Subdivision, so the BoCC said the IFC doesn't apply, but the LDC says that they do actually need a cistern irrespective of what the IFC calls for.

Ms. Herington gave a similar example: The IFC says the minimum subdivision access must be 20 feet wide but the ECM says the minimum is 24 feet wide. There's are differences between County regulations and the IFC. PCD is in a situation where there isn't a fire professional making comments from the BFFPD so they left are piecing it together. PCD is presenting the LDC waiver criteria and explaining that other codes (i.e., IFC) would not have this requirement. There's a need for conversation regarding whether this needs a waiver from the LDC at all. There's language that would allow for alternatives. PCD may use what is decided at his hearing as the example moving forward.

Mr. Bailey stated he was concerned that it was found that this requirement has not been applied on projects lately. He wonders why it's still in the LDC if it's not going to be enforced.

Mr. Whitney agreed. The LDC raises the issue of requiring a cistern even after adoption of Res. 13-503 but since 2020, it has not been enforced. If it was even reviewed at all.

Mr. Bailey stated he appreciated being made aware of the situation. As the LDC is revised, things like this need to be addressed.

Ms. Herington added that when PCD sends a request for outside agency reviews and no response is received, it is assumed that they had no comments. From her conversations with BFFPD, they weren't often responding to those requests. PCD would then move forward with the application. The Chief is now saying that he will provide a blanket statement that he is putting online and he's specifically saying that he will not be making comments. PCD now knows that for this specific Fire Protection District, they will only have this blanket comment. This is a change to the PCD process.

Ms. Brittain Jack asked if local codes like the LDC can supersede the IFC.

Ms. Herington stated that the BoCC adopts the IFC via resolution and they're working on an update currently. She stated that when the LDC is updated next year, PCD needs to pay attention to this section to decide what should be in it. There are currently parts of the LDC that reference the IFC but maybe not the most updated version.

Ms. Seago added that the IFC is a model code and does not have regulatory authority unless/until it's adopted by a state or local government with the authority to adopt a fire code. It's a model code that was developed by experts in the field and then made available to those who wish to adopt a fire code. Until adoption by the BoCC, it did not have any authority, superseding or otherwise, standing on its own. When adopted by an agency, it can be adopted with amendments, additions, or deletions.

Mr. Markewich asked if other Fire Protection Districts have had any issues with this waiver in the past? Do other districts agree with or disagree with allowing it?

Ms. Herington answered that all the other larger Fire Protection Districts that see major developments are reviewing the plans and commenting specifically. She has had conversations with multiple fire chiefs and they all have different opinions on what should be required regarding cisterns and access width. One chief could say the cistern should be required and another will tell you it's not going to do any good. She believes the IFC allows for the application of alternatives.

Mr. Bailey asked if Ms. Ruiz' EDARP search (that showed 100% of Minor Subdivisions were exempt from meeting these requirements of the LDC) was limited to the Black Forest area.

Ms. Ruiz stated her search results were for all Minor Subdivisions.

Mr. Bailey stated that it can be assumed that there is some variance in some fire districts where these things were not required in Minor Subdivisions.

Mr. Whitney reiterated that in the past, no comment received was deemed assent. Now, for BFFPD, silence is not deemed assent. PCD should refer to the statement on their website that states they don't believe they have the authority to say anything so they're not going to make comments.

Ms. Herington stated that is her understanding and her experience of how it was treated in the past. When PCD would send an email to the fire department but they didn't respond or would

respond that they have no comment, it became a discussion regarding how closely they were reviewing the plans. Now, specific to BFFPD, they are only going to provide the blanket statement.

Mr. Whitney wonders if this situation is a “one-off”. Procedurally, if PCD asks for comments but doesn’t receive any, the application presses on under the theory that they’re not objecting.

Ms. Herington agreed that that is her understanding.

Mr. Howser agreed with Ms. Herington and added that in the past, a lack of response was treated as “no issues”. That is what is different today. He answered Ms. Fuller’s question from earlier: The southern portion of the lot, from lot-line to improvements, would measure 2.3 acres. From lot-line to the center of the proposed easement, it would measure 2.57 acres.

Ms. Merriam noted that the applicant presented a letter indicating the fire risk as low, which she finds relevant. She is in support of the waivers. Mr. Ruiz then completed her presentation.

NO PUBLIC COMMENTS

NO FURTHER DISCUSSION

PC ACTION: MERRIAM MOVED / MORAES SECONDED TO RECOMMEND APPROVAL OF REGULAR ITEM NUMBER 5A, FILE NUMBER P234 FOR A MAP AMENDMENT (REZONE), FAIRYTALE ACRES, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH TWO (2) CONDITIONS AND TWO (2) NOTATIONS, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (9-0).

PC ACTION: TROWBRIDGE MOVED / WHITNEY SECONDED TO RECOMMEND APPROVAL OF REGULAR ITEM NUMBER 5B, FILE NUMBER MS236 FOR A MINOR SUBDIVISION, FAIRYTALE ACRES, UTILIZING THE RESOLUTION ATTACHED TO THE STAFF REPORT WITH EIGHT (8) CONDITIONS, TWO (2) NOTATIONS, TWO (2) WAIVERS, AND A RECOMMENDED FINDING OF SUFFICIENCY WITH REGARD TO WATER QUALITY, QUANTITY, AND DEPENDABILITY, THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS FOR THEIR CONSIDERATION. THE MOTION WAS APPROVED (9-0).

6. NON-ACTION ITEMS – NONE.

MEETING ADJOURNED at 10:05 a.m.

Minutes Prepared By: Miranda Benson

MAP AMENDMENT - REZONE (RECOMMEND APPROVAL)

Merriam

moved that the following Resolution be adopted:

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF EL PASO

STATE OF COLORADO

RESOLUTION NO. P234

FAIRYTALE ACRES

WHEREAS, Jacob and Sherry Kershman did file an application with the El Paso County Planning and Community Development Department for an amendment of the El Paso County Zoning Map to rezone property in the unincorporated area of El Paso County as described in Exhibit A, which is attached hereto and incorporated herein by reference, from the RR-5 (Residential Rural) zoning district to the RR-2.5 (Residential Rural) zoning district; and

WHEREAS, a public hearing was held by this Commission on October 19, 2023; 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; and
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 map amendment, the Planning Commission and the Board of County Commissioners shall find that the request meets the criteria for approval outlined in Section 5.3.5.B (Map Amendment, Rezoning) of the El Paso County Land Development Code (as amended):

1. The application is in general conformance with the El Paso County Master Plan including applicable Small Area Plans or there has been a substantial change in the character of the neighborhood since the land was last zoned;
2. The rezoning is in compliance with all applicable statutory provisions, including but not limited to C.R.S. § 30-28-111, § 30-28-113, and § 30-28-116;
3. The proposed land use or zone district is compatible with the existing and permitted land uses and zone districts in all directions; and
4. The site is suitable for the intended use, including the ability to meet the standards as described in Chapter 5 of the Land Development Code, for the intended zone district.

NOW, THEREFORE, BE IT RESOLVED, the El Paso County Planning Commission recommends that the petition of Jacob and Sherry Kershman for an amendment to the El Paso County Zoning Map to rezone property located in the unincorporated area of El Paso County from the RR-5 (Residential Rural) zoning district to the RR-2.5 (Residential Rural) zoning district be approved by the Board of County Commissioners with the following conditions and notations:

CONDITIONS

1. The developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements. Applicable agencies include but are not limited to: the Colorado Parks and 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 threatened species.
2. Any future or subsequent development and/or use of the property shall be in accordance with the use, density, and dimensional standards of the RR-2.5 (Residential Rural) zoning district and with the applicable sections of the Land Development Code and Engineering Criteria Manual.

NOTATIONS

1. If a zone or rezone petition has been disapproved by the Board of County Commissioners, resubmittal of the previously denied petition will not be accepted for a period of one (1) year if it pertains to the same parcel of land and is a petition for a change to the same zone that was previously denied. However, if evidence is presented showing that there has been a substantial change in physical conditions or circumstances, the Planning Commission may reconsider said petition. The time limitation of one (1) year shall be computed from the date of final determination by the Board of County Commissioners or, in the event of court litigation, from the date of the entry of final judgment of any court of record.
2. Rezoning requests not forwarded to the Board of County Commissioners for consideration within 180 days of Planning Commission action will be deemed withdrawn and will have to be resubmitted in their entirety.

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.

MORAES seconded the adoption of the foregoing Resolution.

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

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

The Resolution was adopted by a vote of 9 to 0 by the Planning Commission of the County of El Paso, State of Colorado.

DONE THIS 19th day of October 2023 at Colorado Springs, Colorado.

EL PASO COUNTY PLANNING COMMISSION

By: 
Thomas Bailey, Chair

EXHIBIT A

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, LYING EAST OF HERRING ROAD AND SOUTH OF THE NASH SUBDIVISION, COUNTY OF EL PASO, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 9; THENCE NORTH 89 DEGREES 19 MINUTES 15 SECONDS EAST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, WHICH BEARING IS THE BEARING OF RECORD OF SAID LINE AND THE BASIS OF ALL BEARINGS IN THIS DESCRIPTION, 30.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 32 MINUTES 15 SECONDS WEST ALONG THE EAST LINE OF HERRING ROAD, BEING 30 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER, 495.38 FEET TO THE SOUTHWEST CORNER OF NASH SUBDIVISION, ACCORDING TO THE PLAT THEREOF OF THE RECORDS OF SAID COUNTY; THENCE NORTH 89 DEGREES 28 MINUTES 29 SECONDS EAST ALONG THE SOUTH LINE OF SAID NASH SUBDIVISION, 1282.54 FEET; THENCE SOUTH 00 DEGREES 28 MINUTES 32 SECONDS EAST ALONG THE EAST LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER, 491.94 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89 DEGREES 19 MINUTES 15 SECONDS WEST ALONG THE SOUTH LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER, 1282.01 FEET TO THE POINT OF BEGINNING, COUNTY OF EL PASO, STATE OF COLORADO

FINAL PLAT (RECOMMEND APPROVAL)

TROWBRIDGE moved that the following Resolution be adopted:

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF EL PASO

STATE OF COLORADO

RESOLUTION NO. MS236

FAIRYTALE ACRES

WHEREAS, Jacob and Sherry Kershman did file an application with the El Paso County Planning and Community Development Department for approval of a Minor Subdivision Final Plat for the Fairytale Acres Subdivision for the 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 October 19, 2023; 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; and
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 minor subdivision, the Planning Commission and Board of County Commissioners 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 ("Code") (as amended):

1. The proposed subdivision is in general conformance with the goals, objectives, and policies of the Master Plan;
2. The subdivision is consistent with the purposes of the Code;
3. The subdivision is in conformance with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analysis, studies, reports, plans, designs, documents, and other supporting materials.
4. A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in the water supply standards [C.R.S. § 30-28-133(6)(a)] and the requirements of Chapter 8 of the Code.
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 the proposed subdivision is compatible with such conditions. [C.R.S. § 30-28-133(6)(c)].
7. Adequate drainage improvements complying with State law [C.R.S. § 30-28-133(3)(c)(VIII)] and the requirements of the Code and the Engineering Criteria Manual ("ECM") are provided by the design.
8. 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.
9. Legal and physical access is or will be provided to all parcels by public rights-of-way or recorded easement, acceptable to the County and in compliance with the Code and the ECM.
10. The proposed subdivision has established an adequate level of compatibility by (1) incorporating natural physical features into the design and providing sufficient open 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 therefor, reasonably related to the proposed subdivision so the proposed subdivision will not negatively impact the levels of service of County services and facilities.

11. Necessary services, including police and fire protection, recreation, utilities, open space and transportation system, are or will be available to serve the proposed subdivision.
12. The subdivision provides evidence to show that the proposed methods for fire protection comply with Chapter 6 of the Code.
13. The proposed subdivision meets other applicable sections of Chapters 6 and 8 of the Code.
14. 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.
15. 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.
16. 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 Jacob and Sherry Kershman for a Minor Subdivision Final Plat of the Fairytale Acres 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 El Paso County Planning and Community Development Department.
7. The Subdivider(s) agrees on behalf of him/herself and any developer or builder successors and assignees that Subdivider and/or said successors and assigns shall be required to pay traffic impact fees in accordance with the El Paso County Road Impact Fee Program Resolution (Resolution No. 19-471), or any amendments thereto, at or prior to the time of building permit submittals. The fee obligation, if not paid at final plat recording, shall be documented on all sales documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.
8. Applicant shall comply with all requirements contained in the Water Supply Review and Recommendations, dated 10/4/2023, as provided by the County Attorney's Office.

NOTATIONS

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

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.

Whitney seconded the adoption of the foregoing Resolution.

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

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

The Resolution was adopted by a vote of 9 to 0 by the Planning Commission of the County of El Paso, State of Colorado.

DONE THIS 19th day of October 2023 at Colorado Springs, Colorado.

EL PASO COUNTY PLANNING COMMISSION

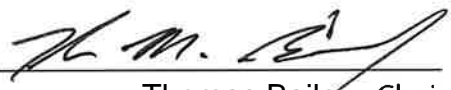
By: 
Thomas Bailey, Chair

EXHIBIT A

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, LYING EAST OF HERRING ROAD AND SOUTH OF THE NASH SUBDIVISION, COUNTY OF EL PASO, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 9; THENCE NORTH 89 DEGREES 19 MINUTES 15 SECONDS EAST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, WHICH BEARING IS THE BEARING OF RECORD OF SAID LINE AND THE BASIS OF ALL BEARINGS IN THIS DESCRIPTION, 30.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 32 MINUTES 15 SECONDS WEST ALONG THE EAST LINE OF HERRING ROAD, BEING 30 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER, 495.38 FEET TO THE SOUTHWEST CORNER OF NASH SUBDIVISION, ACCORDING TO THE PLAT THEREOF OF THE RECORDS OF SAID COUNTY; THENCE NORTH 89 DEGREES 28 MINUTES 29 SECONDS EAST ALONG THE SOUTH LINE OF SAID NASH SUBDIVISION, 1282.54 FEET; THENCE SOUTH 00 DEGREES 28 MINUTES 32 SECONDS EAST ALONG THE EAST LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER, 491.94 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89 DEGREES 19 MINUTES 15 SECONDS WEST ALONG THE SOUTH LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER, 1282.01 FEET TO THE POINT OF BEGINNING, COUNTY OF EL PASO, STATE OF COLORADO

PLANNING & COMMUNITY DEVELOPMENT

TO: El Paso County Planning Commission
Thomas Bailey, Chair

FROM: Ryan Howser, AICP, Planner III
Edward Schoenheit, Engineer I
Meggan Herington, AICP, Executive Director

RE: Project File Numbers P234; MS236
Project Name: Fairytale Acres Map Amendment (Rezone) and Minor Subdivision
Parcel Number: 52090-00-030

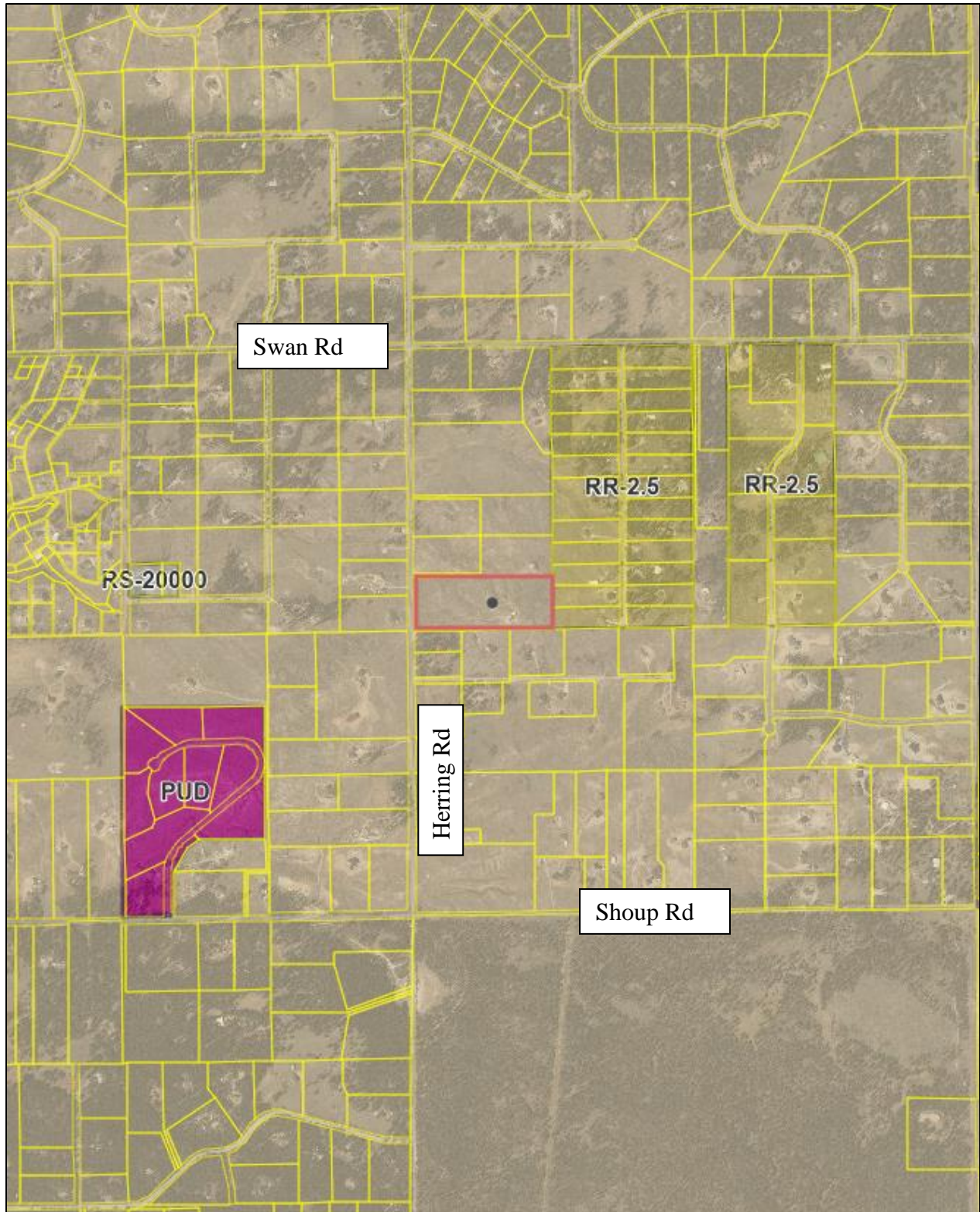
OWNER:	REPRESENTATIVE:
Jacob and Sherry Kershman 13055 Herring Road Colorado Springs, CO, 80908	Vertex Consulting Services PO Box 1385 Colorado Springs, CO, 80901

Commissioner District: 1

Planning Commission Hearing Date:	10/19/2023
Board of County Commissioners Hearing Date:	11/9/2023

EXECUTIVE SUMMARY

A request by Jacob and Sherry Kershman for approval of a Map Amendment (Rezoning) 7.59 acres of a 14.54-acre property from RR-5 (Residential Rural) to RR-2.5 (Residential Rural), and for a Minor Subdivision illustrating four (4) single-family residential lots. The proposed Map Amendment (Rezone) excludes 7.04 acres; at this time, the applicant is proposing that this land remain zoned RR-5. The property is located at 13055 Herring Road. Approval of the Map Amendment (Rezone) shall be considered prior to consideration of the Minor Subdivision.



Vicinity Map

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A. WAIVERS AND AUTHORIZATION

Waiver(s):

There are two proposed waivers in relation to the Minor Subdivision request, MS236, but are not applicable to the requested Map Amendment (Rezone), P234. 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 ("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.

Section 2.2.1.1 of the Code states: *The BoCC, at a public hearing on a specific application, may hear the request for a waiver from the subdivision design standards of Chapters 6, 7 and 8 and decide to accept or reject the request, or make modifications to the waiver request.*

The applicant requests a waiver from Section 8.4.4.E of the Code to allow a private road to be constructed in lieu of a public road. Pursuant to Section 8.4.3.B.2.e, 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 a waiver granted under Section 8.4.4.E. Generally, private roads shall be constructed and maintained to ECM standards except as may be otherwise determined in the waiver. Private road waivers may only include design standards for the following:

- Right-of-way width where suitable alternative provisions are made for pedestrian walkways and utilities;
- Design speed where it is unlikely the road will be needed for use by the general public;
- Standard section thickness minimums and pavement type where suitable and perpetual maintenance provisions are made;
- Maximum and minimum block lengths; and
- Maximum grade.



In approving a waiver for private roads, the Board of County Commissioners shall find that the waiver meets the criteria outlined in Section 8.4.4.E of the Code.

The applicant requests a waiver of the requirements of Section 6.3.3.C.1.d of the Land Development Code. Pursuant to this section of the Code, *fire cisterns shall be provided in planned building areas which are not served by fire hydrants, unless the Fire Authority has recommended and the approval authority has approved an alternative fire protection system.*

The applicant is proposing an alternative fire protection system. Please see the Emergency Services section of this report below for more information regarding this request.

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

B. APPROVAL CRITERIA

In approving a Map Amendment (Rezoning), the Board of County Commissioners shall find that the request meets the criteria for approval outlined in Section 5.3.5 (Map Amendment, Rezoning) of the Code (as amended):

- *The application is in general conformance with the El Paso County Master Plan including applicable Small Area Plans or there has been a substantial change in the character of the neighborhood since the land was last zoned;*
- *The rezoning is in compliance with all applicable statutory provisions including, but not limited to C.R.S § 30-28-11, § 30-28-113, and § 30-28-116;*
- *The proposed land use or zone district is compatible with the existing and permitted land uses and zone districts in all directions; and*
- *The site is suitable for the intended use, including the ability to meet the standards as described in Chapter 5 of the Code, for the intended zone district.*

In approving a Minor Subdivision, the BoCC shall find that the request meets the criteria for approval outlined in Section 7.2.1 (Subdivisions) of the 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 the Code.*
- *The subdivision is in conformance with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analysis, 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 the Code.*
- *A public sewage disposal system has been established and, if other methods of sewage disposal are proposed, the system complies with state and local laws and regulations, [C.R.S. § 30-28-133(6) (b)] and the requirements of Chapter 8 of the 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 the Code and the Engineering Criteria Manual ("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 and in compliance with the Code and ECM.*
- *The proposed subdivision has established an adequate level of compatibility by (1) incorporating natural physical features into the design and providing sufficient open 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 therefor, 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 the Code.*
- *The proposed subdivision meets other applicable sections of Chapters 6 and 8 of the Code.*



- *Off-site impacts were evaluated, and related off-site improvements are roughly proportional and will mitigate the impacts of the subdivision in accordance with applicable requirements of Chapter 8 of the Code.*
- *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 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)	Residential
South:	RR-5 (Residential Rural)	Residential
East:	RR-2.5 (Residential Rural)	Residential
West:	RR-5 (Residential Rural)	Residential

D. BACKGROUND

The subject property was created on May 13, 1955, by warranty deed. Due to the date of creation preceding July 17, 1972, the property is considered a legal division of land. The property was zoned A-4 (Agricultural) on September 20, 1965, when zoning was first initiated for this part of the County. Due to changes in the nomenclature of the Code, the A-4 zoning district was renamed as the RR-5 (Residential Rural) zoning district in 2007.

The existing home on the property was constructed in 2018 and the existing agricultural structure on the property was constructed in 2022. If the request for Map Amendment is approved, the applicant will be required to receive approval of the concurrent Minor Subdivision application in order to convey any potential lots within the subject property area (PCD file no. MS236).

E. ZONING ANALYSIS

The applicant is requesting to rezone 7.59 acres to the RR-2.5 (Residential Rural) zoning district. The RR-2.5 (Residential Rural) zoning district is intended to accommodate low-density, rural, single family residential development. The density and dimensional standards for the existing and proposed zoning districts are as follows:



	Existing Zoning District: RR-5 (Residential Rural)	Proposed Zoning District: RR-2.5 (Residential Rural)
Maximum Density	1 unit per 5 acres	1 unit per 2.5 acres
Minimum Lot Size	5 acres	2.5 acres
Minimum Width at Front Setback	200 feet	200 feet
Front Setback	25 feet	25 feet
Rear Setback	25 feet	25 feet
Side Setback	25 feet	15 feet
Maximum Lot Coverage	25%	None
Maximum Height	30 feet	30 feet

The property adjacent to the east of the property subject to the proposed Map Amendment (Rezoning) is zoned RR-2.5 and is comprised of lots between 2 and 3 acres in size. The two unplatted parcels to the south of the subject property to the south of the subject property are zoned RR-5; however, the properties have been developed since prior to 1972 and are 2 acres in size each. The Map Amendment to RR-2.5 for the portions of the subject property is generally consistent with existing properties in the surrounding area.

The proposed Minor Subdivision contemplates the three smaller lots (2.50 acres in size each) on the east and west sides of the property, where they are adjacent to existing lots which are similar in size. The fourth lot is proposed to be 7.04 acres and is located in the center of the property, proximate to the larger parcels in the area. This fourth lot is proposed to be excluded from the Map Amendment (Rezone) request and is proposed to remain zoned RR-5 (Residential Rural).

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)*

Supporting

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

Analysis:

The property is located within the Large-Lot Residential placetype. The Large-Lot Residential placetype supports the rural character of the County while providing for unique and desirable neighborhoods. 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.*

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

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Goal HC-2 Specific Strategy – Maintain existing and expand the Large-Lot Residential placetype in Black Forest/North Central area in a development pattern that matches the existing character of the developed Black Forest community.

The proposed Map Amendment and Minor Subdivision are consistent with the recommended density of the Large-Lot Residential Placetype.

b. Area of Change Designation: Minimal Change: Undeveloped

The character of these areas is defined by a lack of development and presence of significant natural areas. These areas will experience some redevelopment of select underutilized or vacant sites adjacent to other built-out sites, but such redevelopment will be limited in scale so as to not alter the essential character. New development may also occur in these areas on previously undeveloped land, but overall there will be no change to the prioritized rural and natural environments.

Analysis:

The character of the surrounding area is consistent with the Area of Change designation, which identifies that existing vacant land may be developed in the future. Since the subject property is surrounded primarily by developed land, it is unlikely that the character of the area may change substantially in the future. The current Map Amendment and Minor Subdivision proposals are consistent with the Area of Change designation and with the current development pattern of the surrounding properties.

c. Key Area Influences: Forested Area

This Key Area includes parts of the County where natural forests are the predominant feature such as Black Forest, areas north of Peyton, and areas along Highway 115 as well as lands within Pike National Forest. Pike National Forest is one of the County's largest natural amenities and tourist destinations. Continued coordination with the U.S. Forest Service is critical to ensuring future development in areas adjacent to the Forest do not negatively impact the natural environment. There are also many established communities within Pike National Forest particularly in Ute Pass and along Highway 115. New development and any redevelopment in these locations should be of a lower intensity to mitigate any impacts on the Forest, properly manage stormwater, provide safe access to major roads and state highways for the traveling public and emergency response vehicles and adhere to the strictest building codes to prevent any hazards such as fires and soil erosion related to poor planning, design, and construction.



Managed residential growth, along with supportive commercial uses, have helped the other forested areas preserve their natural amenities while supporting the daily needs of a thriving local community. The seamless connection between the natural environment and small-scale, low intensity development is critical to their identity. All new development and redevelopment in this Key Area should strictly adhere to the transportation and infrastructure, stormwater requirements, built form, and transition guidelines outlined in their appropriate placetypes. Each development proposal should also be reviewed on a case-by-case basis to determine its specific impact on the forested area and the established character of the individual community.

Analysis:

The property is located within the Forested Area. A relevant specific strategy is as follows:

Goal LU1 Specific Strategy – *New development and any redevelopment in Forested Areas should be of a lower intensity to mitigate any impacts on the Forest, properly manage stormwater, provide safe access to major roads and state highways for the traveling public and emergency response vehicles and adhere to the strictest building codes to prevent any hazards such as fires and soil erosion related to poor planning, design, and construction.*

The lot sizes that would be allowed pursuant to the proposed Map Amendment and Minor Subdivision are consistent with the existing development pattern in the area, which consists of lots and unplatted parcels varying in size. The property is directly adjacent to lots between 2 and 3 acres in size. Additionally, the proposed Map Amendment excludes the proposed 7.04-acre lot to remain zoned RR-5.

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.

Goal 4.3 – Collaborate with the State and other stakeholders to extend the economic life of the Denver Basin aquifers.

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; however, it is not located in an area anticipated to experience growth by 2040 and is not proposed to be served by a central water provider. See the Water section below for a summary of the water findings and recommendations for the proposed subdivision.

3. Other Master Plan Elements

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

The Master Plan for Mineral Extraction (1996) does not identify deposits in the area of the subject property. 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:** No hazards were identified that would preclude development if mitigation were to occur. The applicant has provided a map of the constraints and hazards impacting the four (4) lots and have included the following note on the preliminary plan:

Geologic Hazard Note: the following lots have been found to be impacted by geologic hazards. Mitigation measures and a map of the hazard area can be found in the Soils & Geology Report by Entech Engineering, Inc. dated April 20, 2023, in file MS236 available at the El Paso County Planning and Community Development Department.

- Potentially seasonally high groundwater: Lots 1, 2, 3, and 4.

In areas of high groundwater: due to high groundwater in the area, all foundations shall incorporate an underground drainage system. Per the OWTS and Soils Report, all septic systems shall be engineered.

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2. **Floodplain:** The property is not located within a floodplain as determined by a review of the Federal Insurance Rate Map panel number 08041C0320G, effective December 7th, 2018. The property is located in Zone "X" an area of minimal flood hazard determined to be outside the 500-year flood zone.
3. **Drainage and Erosion:** The property is located in the Kettle Creek Drainage Basin. Drainage basin fees in the amount of \$7,711.48 will be due at time of plat recordation. Kettle Creek has no current bridge fees. A drainage report is not required for the rezone application but has been submitted as part of the minor subdivision application. General drainage flow is to the north and west. No public drainage improvements or detention ponds are proposed or required with the rezone or plat. The development will be responsible for improving the entrance from Herring Road to the subdivision, which involves installing a culvert and regrading the entrance and roadside ditch.
4. **Transportation:** The property is located along Herring Road which is a County maintained paved road classified as unimproved collector. A traffic study was not required in accordance with the Engineering Criteria Manual Section B.1.2.D. The property is expected to generate less than 40 daily trips to the surrounding road network. The property will be required to obtain a driveway access permit. County Road Impact Fees will be applicable as approved by Resolution 19-471 (as amended) and will be assessed at the time of building permit. The applicant has proposed a private road to serve the subdivision with a dead-end cul-de-sac. The private road is required to be constructed to County non-road access standards with a minimum width of 24 feet to support two-way traffic. Currently the private road cross section width has been submitted with a width of 20 feet with no designated shoulders. This does not meet the requirements of the Land Development Code Sections 6.3.3.C.2 and 6.3.3.C.3.

H. SERVICES

1. Water

Water is provided by individual 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 Water Engineer's Office has made a finding of adequacy and has stated water can be provided without causing injury to decreed water rights. The County Attorney's Office is recommending a finding of



sufficiency with regard to water quantity and dependability. El Paso County Public Health is recommending a finding of sufficiency with regard to water quality.

2. Sanitation

Wastewater is provided by on-site wastewater treatment systems (OWTS). The applicant submitted an OWTS report which indicated that the lots are suitable for the construction of these systems.

3. Emergency Services

The property is within the Black Forest Fire Protection District. The District was sent a referral for the Map Amendment and Minor Subdivision. The District will not provide an endorsement of the requested waivers, and has recommended as follows:

Applicants shall demonstrate full compliance and conformance with El Paso County's adopted Land Development Code (LDC), Engineering Criteria Manual (ECM), adopted International Fire Code (IFC), and all other adopted codes, provisions, or statutes that impact fire safety to include access/egress, water supply, hardening of structures, addressing, fire protection systems, etc. The applicant shall submit a comprehensive fire protection report from a qualified fire protection engineer that is licensed as a Professional Engineer (PE) by the Colorado State Board of Registration for Professional Engineers to demonstrate conformance to all requirements. Furthermore, the District does not support any waivers or variances that negatively impact any fire safety provisions including access/egress, water supply, hardening of structures, addressing, fire protections systems, etc.

Section 6.3.3.A.3 of the Code states: *Where a conflict exists between adopted fire district or fire department standards and this Code, the Board of County Commissioners may choose to approve an alternative design which accomplishes the purpose of this section and provides an equivalent benefit to the development. The Fire Authority should provide a recommendation regarding whether the alternative design accomplishes the intent of this section and whether it provides an equivalent benefit to the development.*

The applicant wishes to waive the requirement to install a fire cistern. The Black Forest Fire Protection District has not provided a recommendation for the applicant's alternative proposal and is recommending full compliance and conformance with the Land Development Code.



The applicant has included the following note on the plat to address their proposed alternative fire protection system:

At the time of approval of this project, this property is located within the Black Forest Fire Protection District, which has adopted a Fire Code requiring residential fire sprinkler requirements for covered structures over 6000 square feet in size, and other fire mitigation requirements depending upon the level of fire risk associated with the property and structures. The owner of any lot should contact the Fire District to determine exact development requirements relative to the adopted Fire Code.

Pursuant to Board of County Commissioners Resolution No. 13-503, lots platted as part of a subdivision containing four or fewer such platted lots shall be exempt from International Fire Code (IFC) coverage.

4. Utilities

Mountain View Electric Association (MVEA) will provide electrical service and Black Hills Energy (BHE) will provide natural gas service to the subject property. Both utility providers were sent referrals for the Map Amendment; MVEA has no outstanding comments and BHE did not provide a response.

5. Metropolitan Districts

The property is not located within the boundary of a metropolitan district.

6. Parks/Trails

Land dedication and fees in lieu of park land dedication are not required for a Map Amendment (Rezoning) application.

7. Schools

Land dedication and fees in lieu of school land dedication are not required for a Map Amendment (Rezoning) application.

I. APPLICABLE RESOLUTIONS

The Map Amendment (Rezoning) request must be approved prior to the Minor Subdivision approval. See attached resolutions.

J. STATUS OF MAJOR ISSUES

There are no major issues at this time.

2880 INTERNATIONAL CIRCLE
OFFICE: (719) 520 – 6300



COLORADO SPRINGS, CO 80910
PLNWEB@ELPASOCO.COM

K. RECOMMENDED CONDITIONS AND NOTATIONS

Should the Planning Commission and the Board of County Commissioners find that the request meets the criteria for approval outlined in Section 5.3.5 (Map Amendment, Rezoning) of the El Paso County Land Development Code (as amended), staff recommends the following conditions and notations:

CONDITIONS

1. The developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements. Applicable agencies include but are not limited to: the Colorado Parks and 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 threatened species.
2. Any future or subsequent development and/or use of the property shall be in accordance with the use, density, and dimensional standards of the RR-2.5 (Residential Rural) zoning district and with the applicable sections of the Land Development Code and Engineering Criteria Manual.

NOTATIONS

1. If a zone or rezone petition has been disapproved by the Board of County Commissioners, resubmittal of the previously denied petition will not be accepted for a period of one (1) year if it pertains to the same parcel of land and is a petition for a change to the same zone that was previously denied. However, if evidence is presented showing that there has been a substantial change in physical conditions or circumstances, the Planning Commission may reconsider said petition. The time limitation of one (1) year shall be computed from the date of final determination by the Board of County Commissioners or, in the event of court litigation, from the date of the entry of final judgment of any court of record.
2. Rezoning requests not forwarded to the Board of County Commissioners for consideration within 180 days of Planning Commission action will be deemed withdrawn and will have to be resubmitted in their entirety.

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



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 Subdivider(s) agrees on behalf of him/herself and any developer or builder successors and assignees that Subdivider and/or said successors and assigns shall be required to pay traffic impact fees in accordance with the El Paso County Road Impact Fee Program Resolution (Resolution No. 19-471), or any amendments thereto, at or prior to the time of building permit submittals. The fee obligation, if



not paid at final plat recording, shall be documented on all sales documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.

8. Applicant shall comply with all requirements contained in the Water Supply Review and Recommendations, dated 10/4/2023, as provided by the County Attorney's Office.

NOTATIONS

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

L. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified twenty (20) adjoining property owners on October 2, 2023, for the Planning Commission and Board of County Commissioners meetings. Responses will be provided at the hearing.

M. ATTACHMENTS

Map Series
Map Amendment (Rezone) Letter of Intent
Rezone Map

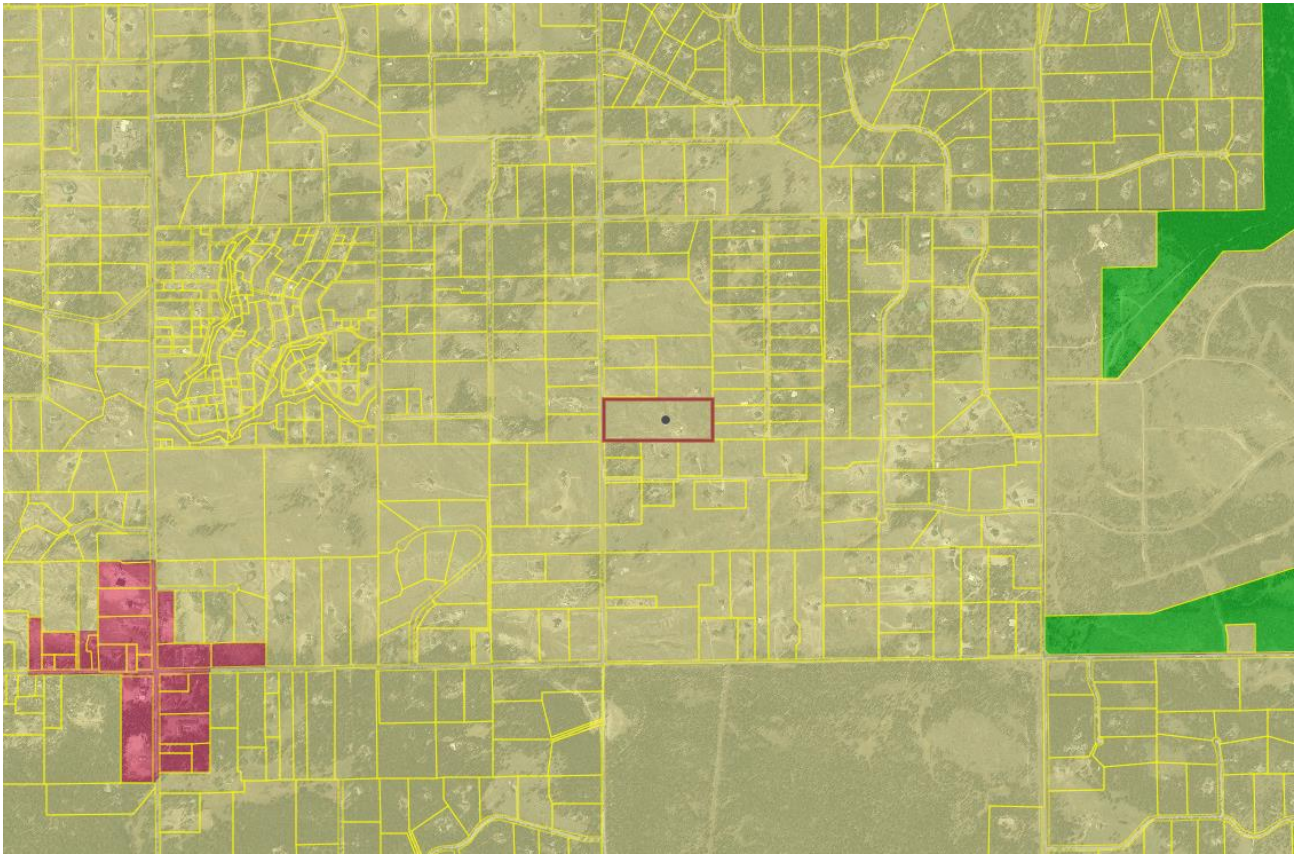
Minor Subdivision Letter of Intent
Plat Drawing
SEO Letter
CAO Letter
EPCPH Letter






Map Exhibit #1: Context



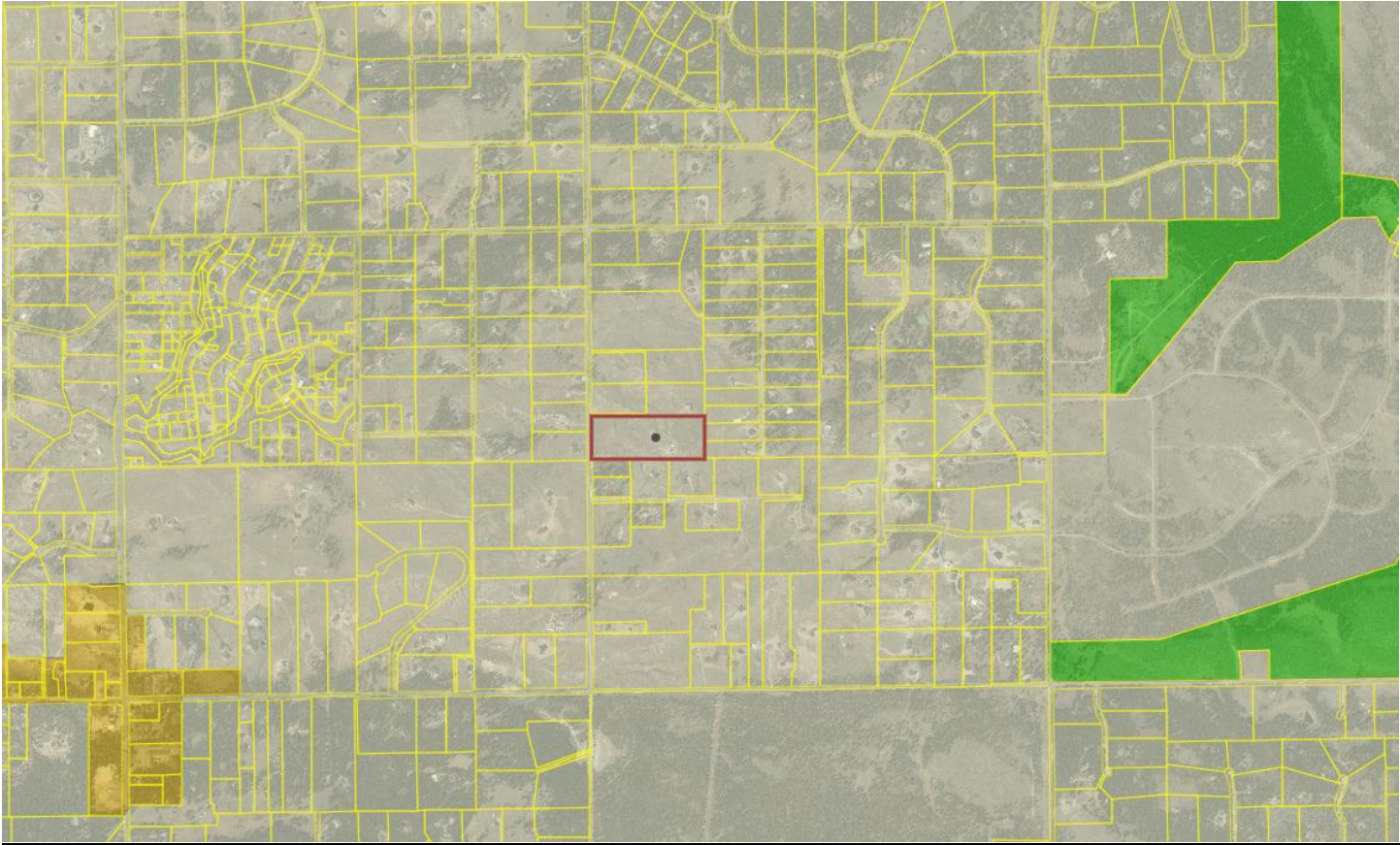
Map Exhibit #2: Placetype



Legend

- | | |
|---|---|
|  Rural |  Employment Center |
|  Large-Lot Residential |  Regional Open Space |
|  Suburban Residential |  Mountain Interface |
|  Urban Residential |  Military |
|  Rural Center |  Utility |
|  Regional Center |  Incorporated Area |

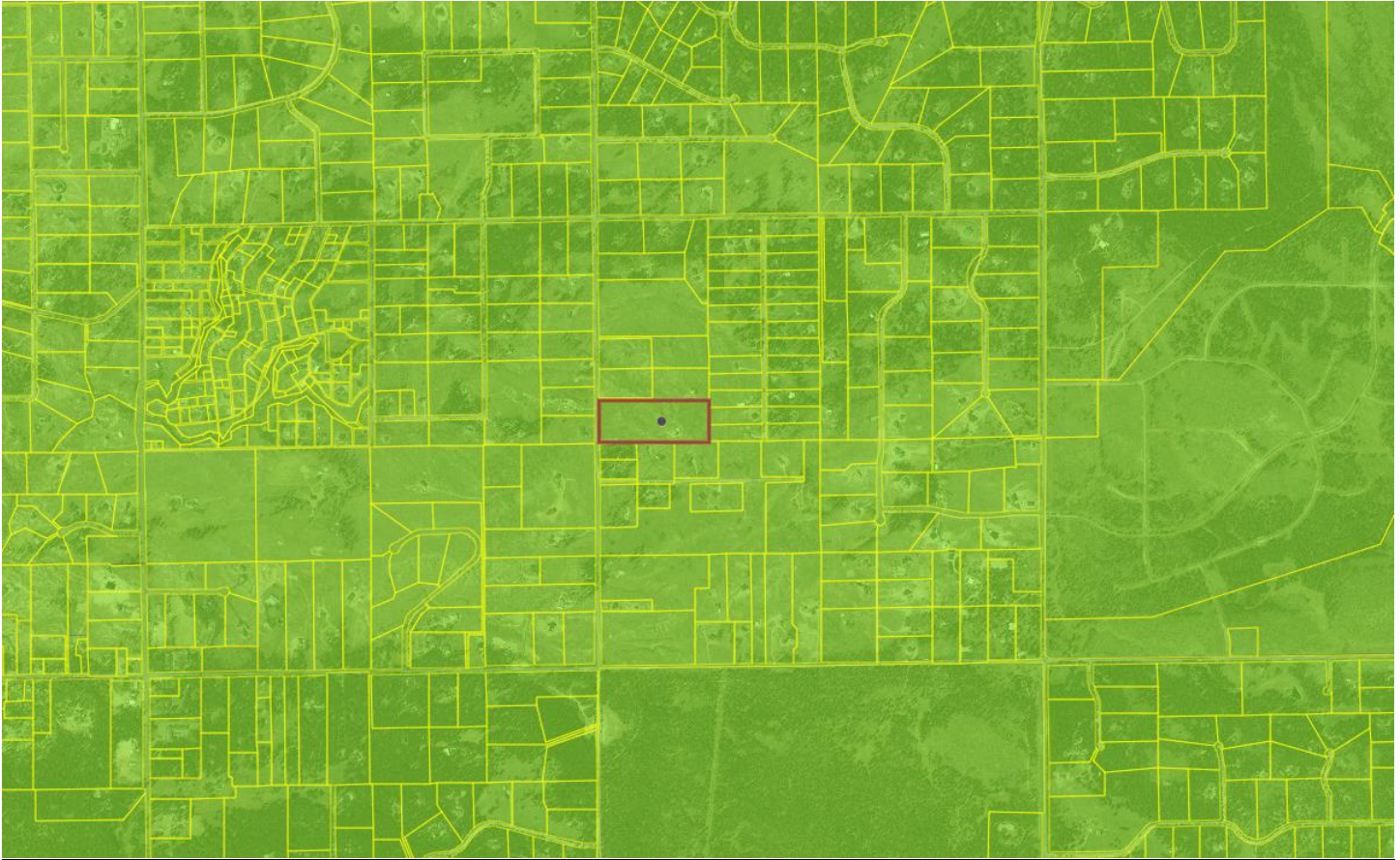
Map Exhibit #3: Area of Change



Legend

- Protected/Conservation Area
- Minimal Change: Undeveloped
- Minimal Change: Developed
- New Development
- Transition

Map Exhibit #4: Key Area



Legend

-  Military Installations
-  Potential Areas for Annexation
-  Enclaves or Near Enclaves
-  Small Towns & Rural Communities
-  Fountain Creek Watershed Flood Control & Greenway District
-  Forested Area
-  Pikes Peak Influence Area
-  Tri-Lakes Area
-  Colorado Springs Airport/Peterson Field
-  Uncommon Natural Resources





Vertex Consulting Services, LLC
455 Pikes Peak Avenue, Suite 101
Colorado Springs, CO 80903-3672
719-733-8605

**Fairytale Acres
Letter of Intent**

September 12, 2023

Jacob & Sherry Kershman
13055 Herring Road
Colorado Springs, CO 80908

Planner: Vertex Consulting Services, LLC, Nina Ruiz
455 E Pikes Peak Avenue, Suite 101
Colorado Springs, CO 80903
719-733-8605
Nina.ruiz@vertexcsc.com

Tax Schedule No: 5209000030
Acreage: 14.63 Acres (7.59 acres to be rezoned)
Current Zoning: RR-5 (Residential Rural)

Site Location, Size, Zoning:

Vertex Consulting Services, LLC, on behalf of Jacob and Sherry Kershman, is respectfully submitting an application for a map amendment (rezone) from the RR-5 zoning district to the RR-2.5 zoning district. The proposed rezone is compatible with the surrounding planned and existing developments and is consistent with the Your El Paso Master Plan.

Utilities

Mountain View Electric Association (MVEA) provides electric service and Black Hills Energy provides natural gas service to the area and have provided commitment to serve any new homes within the subdivision. All new dwellings will be served by individual onsite wastewater treatment systems and individual wells.

Request:

Request for approval of a map amendment (rezone) of 7.59 acres from the RR-5 zoning district to the RR-2.5 zoning district. The remaining 7.04 acres will remain RR-5 and will not be rezoned.

Justification:

The pages that follow address each one of the criteria included within Section 5.3.5 (map amendment), of the El Paso County Land Development Code.

The application is in general conformance with the El Paso County Master Plan including applicable Small Area Plans or there has been a substantial change in the character of the neighborhood since the land was last zoned.

The proposed map amendment (rezone) is in general conformance with the Master Plan. Please see the Master Plan analysis beginning on page five.

The rezoning is in compliance with all applicable statutory provisions, including but not limited to C.R.S. § 30-28-111 § 30-28-113, and § 30-28-116.

Pursuant to the El Paso County procedures, the County has posted the public hearing date in the newspaper ensuring all statutory requirements have been satisfied.

The proposed land use or zone district is compatible with the existing and permitted land uses and zone districts in all directions.

The property owners are requesting to rezone the property from the RR-5 zoning district to the RR-2.5 zoning district. The parcels located immediately adjacent to the east are zoned RR-2.5 and are approximately 2.5 acres in size. Immediately adjacent to the south are three parcels less than 2.5 acres in size. There are also numerous developed non-conforming parcels within the RR-5 zoning district that are 2.5 acres or less in size (see map below).

Section 3.2 of the Code states the following as the intent of the RR-5 (Residential Rural) zoning district:

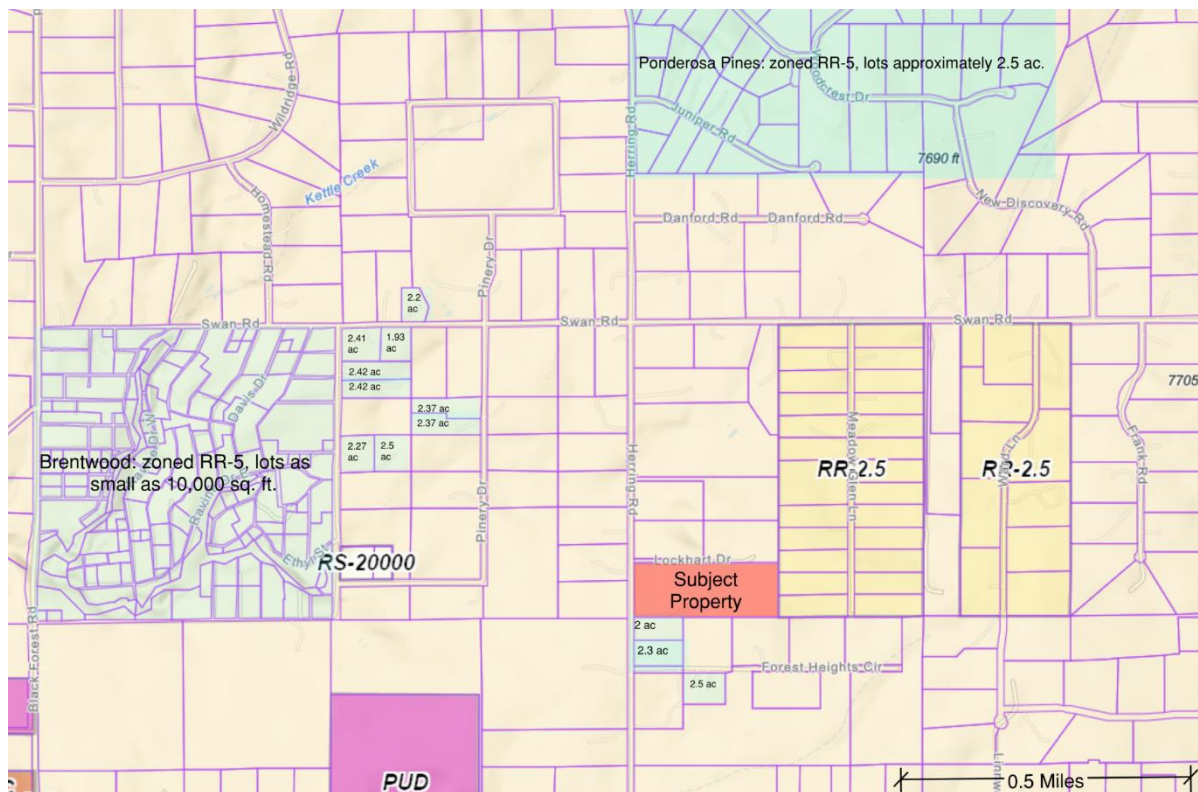
“The RR-5 zoning district is a 5 acre district intended to accommodate low density, rural, single-family residential development.”

Section 3.2 of the Code states the following as the intent of the RR-2.5 (Residential Rural) as the intent of the RR-2.5 zoning district:

“The RR-2.5 zoning district is a 2.5 acre district intended to accommodate low density, rural, single family residential development.”

The primary difference in the intent of the two zoning districts is the dimensional standards, more specifically the minimum lot size requirement. The intent of the two zoning districts is exactly the same if the lot size reference is eliminated. Additionally, the permitted uses mirror one another with very few exceptions. The proposed map amendment (rezoning) is compatible in terms of compatible uses with the surrounding RR-5 zoned parcels.

Below is a map depicting those parcels that are 2.5 acres or smaller:



The site is suitable for the intended use, including the ability to meet the standards as described in Chapter 5 of the Land Development Code, for the intended zone district.

Table 5-4 of the Land Development Code identifies the density and dimensional standards of the RR-2.5 zoning district:

- Minimum lot size: 2.5 acres
- Front Setback: 25 feet
- Side Setback: 15 feet
- Rear Setback: 25 feet
- Maximum Height: 30 feet

The existing dwelling and accessory structures meet all setback and height requirements of the RR-2.5 zoning district, as depicted on the site plan. The concurrently reviewed subdivision depicts lot sizes meeting the 2.5 acres size limitation. A residential site plan will be required for all lots prior to building permit authorization to ensure all proposed structures will meet the setback and height requirements of the RR-2.5 zoning district.

Master Plan Elements

Below is an analysis of the various El Paso County Master Plan elements.

Your El Paso County Master Plan Analysis

Chapter 1 of Your El Paso Master Plan (2021) states that the Plan is “general in nature-it cannot tackle every issue in sufficient detail to determine every type of necessary action.” In addition, Chapter 1 goes on to state that the Plan “is intended to provide clearer and more coordinated policy, resulting in a document that effectively communicates County goals and identifies specific actions to achieve both County-wide and local area objectives.” When taken together, these two statements suggest to the reader that the Plan may only address certain issues at a cursory level and that specific steps or actions for addressing such issues may not be offered within the Plan. That conclusion is certainly the case in numerous instances and with regard to a variety of topical areas. However, where that is not the case is with respect to the requested map amendment (rezoning) to the RR-2.5 zoning district, as identified below.

Key Area Analysis

The subject property is identified in the Plan as being within the Forested Area Key Area. The Plan further describes the Key Areas as:

“This Key Area includes parts of the County where natural forests are the predominant feature such as Black Forest, areas north of Peyton, and areas along Highway 115 as well as lands within Pike National Forest. Pike National Forest is one of the County’s largest natural amenities and tourist destinations. Continued coordination with the U.S. Forest Service is critical to ensuring future development in areas adjacent to the Forest do not negatively impact the natural environment. There are also many established communities within Pike National Forest particularly in Ute Pass and along Highway 115. New development and any redevelopment in these locations should be of a lower intensity to mitigate any impacts on the Forest, properly manage stormwater, provide safe access to major roads and state highways for the traveling public and emergency response vehicles and adhere to the strictest building codes to prevent any hazards such as fires and soil erosion related to poor planning, design, and construction.

Managed residential growth, along with supportive commercial uses, have helped the other forested areas preserve their natural amenities while supporting the daily needs of a thriving local community. The seamless connection between the natural environment and small-scale, low intensity development is critical to their identity. All new development and redevelopment in this Key Area should strictly adhere to the transportation and infrastructure, stormwater requirements, built form, and transition guidelines outlined in their appropriate placetypes. Each development proposal should also be reviewed on a case-by-case basis to determine its specific impact on the forested area and the established character of the individual community.” (emphasis added)

As discussed above, the proposed RR-2.5 zoning district is compatible with the adjacent RR-2.5

zoning district, surrounding RR-5 zoning district, and numerous parcels with lot sizes of 2.5 acres or less.

Area of Change Analysis

The subject property is identified in the Areas of Change map within the Plan as being within the “Minimal Change: Undeveloped” area of change.

Page 21 of the Plan characterizes areas of “Minimal Change: Undeveloped” by stating:

“The character of these areas is defined by a lack of development and presence of significant natural areas. These areas will experience some redevelopment of select underutilized or vacant sites adjacent to other built-out sites, but such redevelopment will be limited in scale so as to not alter the essential character. New development may also occur in these areas on previously undeveloped land, but overall there will be no change to the prioritized rural and natural environments.”
(Emphasis added)

The subject property is currently developed with a single-family residence and is surrounded by other residential properties and with lot sizes of 2.5 acres or less to the east and south. The Master Plan anticipates some redevelopment as long as the character can be maintained. As discussed above, the proposed rezone is in conformance with the existing uses and densities of the surrounding properties as well as the other numerous parcels 2.5 acres or less that are located within one half of a mile.

Placetype Analysis

The subject property is shown on the Placetypes map of Your El Paso Master Plan as being within the Large-Lot Residential Placetype.

Page 26 of the Plan identifies the following land uses as being Primary Land Uses within the Large-Lot Residential Placetype:

- Single-Family Detached Residential (typically 2.5 acre lots or larger)

In addition, the Placetype includes the following Supporting Land Uses:

- Parks/Open Space
- Commercial Retail
- Commercial Service
- Agriculture

The Large-Lot Residential Placetype is described further on page 26 as follows:

“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 wastewater 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.” (emphasis added)

The placetype specifically identifies lot sizes of 2.5 acres or greater as being supported within the placetype. Additionally, concurrently reviewed subdivision depicts the 7-acre lot located in the center of the development is to remain RR-5, and cannot be further subdivided in the future. This greatly reduces the overall density, allowing for the subject site to serve as a transition from the 5-acre parcels located to the north and the 2-acre parcels located to the south.

El Paso County Water Master Plan

The Executive Summary from the Water Master Plan (2018) states that “The Plan Water Master Plan (WMP) was developed for the Board of County Commissioners, El Paso County officials and staff, developers, citizens, and water providers within the County for the purpose of identifying and addressing water supply issues earlier in the land use entitlement process.” For that reason, water supply should be discussed even with a rezone. This does not mean a full water sufficiency finding should be made since sufficiency findings in El Paso County are made at the subdivision stage of development, which is under concurrent review. It should be further noted that the Water Master Plan only contemplates centralized providers and did not provide an analysis for individual well, as is proposed here.

The subject property is located within Planning Region 2 of the Water Master Plan, pursuant to Figure 3-1 on page 25. The Plan identifies the current supply and demand forecasts at full build out (year 2060) for each of the Planning Regions. The Table indicates that the current water supplies for Region 2 amounts to 13,607 AF of water per year with 2060 being 20,756 AF of water per year; therefore, there is projected to be a surplus supply of water for central water providers in this region of the County.

A Water Resources Report has been submitted with the concurrently reviewed subdivision application. The report identifies there is sufficient water in terms of water quantity, quality, and dependability for the lots included in the subdivision.

El Paso County Parks Master Plan

The El Paso County Parks Master Plan (2022) does not depict any planned or existing trails or open space on the subject property. Land dedication, or fees in lieu of land dedication are not required with a rezone application, however, fees in lieu of dedication will be provided with the concurrently reviewed subdivision.

2016 Major Transportation Corridors Plan (MTCP)

The 2016 MTCP depicts Herring Road as a Collector roadway. Herring Road is of adequate width and no right-of-way dedication is required with the concurrently reviewed subdivision application. A traffic impact study is not required pursuant to ECM Appendix B, ECM Chapters 1.6 and 1.16 as the proposed rezone will not result in traffic in excess of 100 ADT or 10 trips at the peak hour. The rezone is anticipated to result in an average of 30 additional trips per day.

Other Topical Elements of the County Master Plan

The proposed rezone is in compliance with the other topical elements of the County Master Plan, including the Master Plan for Mineral Extraction, and the El Paso County Wildlife Habitat Maps and Descriptors.

Fairytale Acres RR-2.5 Map Amendment (Rezone)





Vertex Consulting Services, LLC
455 Pikes Peak Avenue, Suite 101
Colorado Springs, CO 80903-3672
719-733-8605

**Kershman Subdivision
Letter of Intent**

March 22, 2023

PCD File # MS236

Jacob & Sherry Kershman
13055 Herring Road
Colorado Springs, CO 80908

Planner: Vertex Consulting Services, LLC, Nina Ruiz
455 E Pikes Peak Avenue, Suite 101
Colorado Springs, CO 80903
719-733-8605
Nina.ruiz@vertexcscos.com

Tax Schedule No: 5209000030

Acreage: 14.63 Acres

Zoning: RR-5 (Residential Rural), RR-2.5 (Residential Rural) (Concurrent Map Amendment and Subdivision)

Site Location, Size, Zoning:

Vertex Consulting Services, LLC, on behalf of Jacob and Sherry Kershman, is respectfully submitting an application for a 4-lot subdivision within the RR-5 and RR-2.5 zoning district. The proposed subdivision is compatible with the surrounding planned and existing developments and is consistent with the Your El Paso Master Plan.

Utilities

Mountain View Electric Association (MVEA) provides electric service and Black Hills Energy provides natural gas service to the area and have provided commitment to serve the lots within the subdivision. All new dwellings will be served by individual onsite wastewater treatment systems and individual wells. The Onsite Wastewater Treatment System (OWTS) Report prepared by Entech Engineering Inc. demonstrates the soils are suitable for OWTS design and construction. The Water Resources Report prepared by Monson, Cummins, Shohet & Farr, LLC identifies there is adequate water in terms of quantity, quality, and dependability to support the BOCC making a finding of sufficiency.

Request:

1. Request for approval of a 4-lot minor subdivision.
2. Request for waiver of Section 8.4.4.E for private roadways to meet County standards (per definition, a driveway cannot serve more than 3 lots).
3. Request for waiver of Section 6.3.3.C.1.d requiring a fire cistern.

Justification:

The pages that follow address each one of the criteria included within Sections 7.2.1 (minor subdivision) and 7.3 (waiver) of the El Paso County Land Development Code.

Land Disturbance:

Per the Drainage Report, the improvement of the existing driveway to improve the existing turnaround to meet a Fire Apparatus turnaround and to add an additional turnaround will not exceed 1-acre of total disturbance.

Minor Subdivision (Preliminary Plan & Final Plat Criteria)

The proposed subdivision is in general conformance with the goals, objectives, and policies of the Master Plan.

Please review the Master Plan analysis beginning on page 8 below.

The subdivision is consistent with the purposes of the Land Development Code (“Code”).

Section 1.4 of the Land Development Code identifies the purpose of the Code. Below is the Code citation with the italic wording indicating how the proposed subdivision furthers the intended purpose.

“This Code is adopted for the purpose of preserving and improving the public health, safety and general welfare of the citizens and businesses of El Paso County. More specifically, it is the purpose of this Code to:

- Implement the Master Plan and related elements.
See the Master Plan section below for an analysis of how the proposed subdivision conforms to the Master Plan.
- Promote predictability, consistency and efficiency in the land development process for residents, neighborhoods, businesses, agricultural and development interests.
The application has been submitted and reviewed in compliance with the Land Development Requirements and applicable procedures.
- Ensure appropriate opportunities for participation and involvement in the development process by all affected parties.
Adjacent property owners were notified via certified mail of the request. A couple concerned adjacent property owners reached out to Vertex to inquire as to what the request was. After discussions with Vertex and the property owners regarding the specific proposal and intent the adjacent property owners determined they are not opposed to the request.
- Be fair to all by ensuring due consideration is given to protecting private property rights, the rights of individuals and the rights of the community as a whole.
The requested subdivision will not infringe upon the rights of the surrounding properties.
- Guide the future growth and development of the County in accordance with the Master Plan.
See the Master Plan section below for an analysis of how the proposed subdivision conforms to the Master Plan
- Guide public and private policy and action in order to provide adequate and efficient transportation, water, sewerage, schools, parks, playgrounds, recreation, and other public requirements and facilities.
The proposed subdivision will result in an additional 30 ADT, which the surrounding roadway network can handle. The water and wastewater reports submitted with the subdivision application demonstrate sufficient water and that wastewater can be treated with an onsite wastewater treatment system. Park and school fees will be paid at the time of plat recordation.

- Establish reasonable standards of design and procedures for subdivision and resubdivision in order to further the orderly layout and use of land and to ensure proper legal descriptions and monumenting of subdivided land.
All standards are being met.
- Ensure that public facilities and services are available concurrent with development and will have a sufficient capacity to serve the proposed subdivision, and, in so doing, ensure that current residents will be required to bear no more than their fair share of the cost of providing the facilities and services by requiring the developer to pay fees, furnish land, or establish mitigation measures to cover the development's fair share of the capital facilities needs generated by the development.
Commitment letters have been submitted for fire protection, electric service, and natural gas service. The road impact fee will be paid at the time of building permit for any new dwellings proposed.
- Prevent the pollution of air, streams, and ponds; assure the adequacy of drainage facilities; and encourage the wise use and management of natural and biological resources throughout the County in order to preserve the integrity, stability, and beauty of the community and the value of the land."
There are no significant natural features within the subdivision that should be preserved. The drainage report identifies that the existing natural drainage onsite will not be significantly impacted by the proposed subdivision and that no additional improvements are required.

The subdivision is in conformance with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analysis, studies, reports, plans, designs, documents, and other supporting materials.

All design considerations listed in Section 8.4.1 of the Land Development Code have been met with the exception of the above listed waiver to allow the private driveway to be considered a shared access. Seasonally wet areas have been found on all four lots, which have been depicted as a no-build area on the plat.

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.

The water resources report prepared by Emilie Polley recommends sufficient water in terms of water quantity, quality, and dependability. A water augmentation plan and associated water covenants were required by the State and have been submitted.

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.

An onsite wastewater treatment system report prepared by Entech Engineering Inc. has been submitted and identifies the proposed lots may be served by engineered individual septic systems.

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)].

Seasonally wet areas have been found on all four lots, which have been depicted as a no-build area on the plat.

Adequate drainage improvements complying with State law [C.R.S. § 30-28- 133(3)(c)(VIII)] and the requirements of the Code and the Engineering Criteria Manual ("ECM") are provided by the design.

The drainage report prepared by SMH Consultants identifies no drainage improvements are requested for the proposed subdivisions.

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.

Due to the size and scale of the subdivision impacts related to the proposed subdivision will be negligible, therefore, no public improvements are required.

Legal and physical access is or will be provided to all parcels by public rights of-way or recorded easement, acceptable to the County and in compliance with the 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 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 therefor, reasonably related to the proposed subdivision so the proposed subdivision will not negatively impact the levels of service of County services and facilities.

Legal physical access is being provided to each lot through a private access easement. The dedication of open space is not required for this 4-lot subdivision. Seasonally wet areas have been found on all four lots, which have been depicted as a no-build area on the plat.

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 Black Forest Fire Protection District has provided no comment regarding the subdivision, however, they did provide an inspection identifying the property to be the lowest category of risk. Commitment letters have also been submitted from Mountain View Electric Association as well as Black Hills Energy. The existing County roadway network is capable of handling the anticipated additional 30 Average Daily Trips.

The subdivision provides evidence to show that the proposed methods for fire protection comply with Chapter 6 of the Code.

The Fire Protection Report meets all requirements of Section 6.3.3, Fire Protection and Wildfire Mitigation, with the exception of the waiver of Section 6.3.3.C.d requiring a fire cistern, regardless of if the proposed subdivision is for 1 lot, or 20 lots. Please see the justification below.

The proposed subdivision meets other applicable sections of Chapters 6 and 8 of the Code.

A waiver of Section 8.4.4.E.3 of the Land Development Code, which require lots gain access from a public roadway, are being requested. Requiring the construction of a public roadway is not proportional to the anticipated impact 30 additional Average Daily Trips (ADT) would generate. Access is being proposed via a shared access easement. A shared maintenance agreement has been submitted with the subdivision application.

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.

The only anticipated off-site impact is additional traffic, however, the three additional dwelling units will not generate a significant amount of traffic and the existing roadway network can easily handle the additional traffic.

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 proposed subdivision will be served by a private access easement and will not require an public infrastructure improvements. The existing driveway will be improved to increase the size of the existing turnaround to meet a Fire Apparatus turnaround and to add an additional turnaround. Per the covenants, the easement will be improved prior to the CO of any new single-family dwelling within the subdivision. The cost of this improvement, along with ongoing maintenance, will be shared amongst the lot owners.

The extraction of any known commercial mining deposit shall not be impeded by this subdivision

[C.R.S. §§ 34-1-302(1), et seq.].

The mineral rights have not been severed from the land.

Waiver

The waiver does not have the effect of nullifying the intent and purpose of this Code.

Roadway- The purpose and intent of the portions of the Code to be waived are to ensure safe, legal access. Legal access is being provided via easement. Safe access is being maintained by the existing driveway being improved to meet fire apparatus turning radius. The proposed waivers request a slight adjustment to the private access and lot configurations allowed for this specific project. All other aspects of the Code remain in force. The covenants include language regarding how shared access will be maintained.

Fire- the Code provide the following as the stated purpose of Section 6.3.3:

“To ensure that proposed development is reviewed in consideration of the wildfire risks and need to provide adequate fire protection in order to:

- Regulate development, buildings, and structures so as to minimize the hazard to public health, safety, and welfare;
- Ensure that adequate fire protection is available for new development;
- Implement wildfire hazard reduction in new development;
- Encourage voluntary efforts to reduce wildfire hazards; and
- Reduce the demands from the public for relief and protection of structures and facilities.”

All building Code requirements, including hardening of the exterior, will be followed at the time of building permit. The site is not located within a wildfire hazard area and is instead within a prairie grassland area, therefore no additional wildfire thinning is to occur. The lots are 2.5-7 acres in size which will result in the homes being spread apart, reducing the risk of fire jumping from one residence to another. Additionally, the Black Forest Fire Station is located 2.5 miles, or 5 minutes away, which would allow for fire apparatus to be refilled quickly in the event of a fire.

The waiver will not result in the need for additional subsequent waivers.

The waivers will not result in the need for additional waivers.

The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property.

Road- The plat depicts a turnaround that meets the turning radius for a fire truck as well as a pullout that can be utilized for emergency response.

Additionally, El Paso County has historically struggled to maintain the roads within the County. Small cul-de-sacs are typically last on the list of maintenance and improvement. El Paso County does not allow the public to maintain the roads they access, even if they become in disrepair. The private roadway may be better maintained than if it were a County roadway, therefore making it a safer road.

Lastly, El Paso County has voiced concern regarding residents not reviewing the covenants, plat, and title work identifying the road as being private and believing it to be a County roadway. The roadway being constructed to be more similar to a driveway in place of appearing equivalent to a County road may result in fewer assumptions by future residents.

Fire- All building Code requirements, including hardening of the exterior, will be followed at the time of building permit. The site is not located within a wildfire hazard area and is instead within a prairie grassland area, therefore no additional wildfire thinning is to occur. The lots are 2.5-7 acres in size which will result in the homes being spread apart, reducing the risk of fire jumping from one residence to another. Additionally, the Black Forest Fire Station is located 2.5 miles, or 5 minutes away, which would allow for fire apparatus to be refilled quickly in the event of a fire.

The following note is also being added to the face of the plat:

“At the time of approval of this project, this property is located within the Black Forest Fire Protection District, which has adopted a Fire Code requiring residential fire sprinkler requirements for covered structures over 6000 square feet in size, and other fire mitigation requirements depending upon the level of fire risk associated with the property and structures. The owner of any lot should contact the Fire District to determine exact development requirements relative to the adopted Fire Code.”

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.

Road- The surrounding properties are all provided access either directly from Herring Road or from pre-existing private drives, which do not adjoin the subject parcel.

The lot is rectangular in shape which would cause any new public cul-de-sac to be over 1,000 feet in length. The burden of constructing of a public cul-de-sac, as well as the dedication of the public roadway, is not roughly proportional to the anticipated traffic impacts of the 3 additional lots.

Fire- Based upon reviewing the EDARP records, none of the adjacent properties along Herring Road have a fire cistern. In reviewing the El Paso County files (EDARP) specifically for Minor Subdivisions between the years 2020-2023 there were a total of 38 minor subdivisions. The fire cistern requirement was waived for all minor subdivisions, and not a single minor subdivision included a cistern.

A particular non-economical hardship to the owner would result from a strict application of this Code.

Road- Without the requested waivers, the requirements of the public road access to four lots would be detrimental to the site's natural characteristics and be detrimental to the rural character of the surrounding parcels. Significantly more land disturbance would be required, creating a visual obstruction for the neighbors located to the south.

Fire- with the Fire Department being located within 5 minutes of the subdivision, having a fire cistern onsite would be an unnecessary duplicative effort.

The waiver will not in any manner vary the zoning provisions of this Code.

All standards of the RR-2.5 and RR-5 zoning district will be met.

The proposed waiver is not contrary to any provision of the Master Plan.

See Master Plan section below for further information regarding how the proposed subdivision is in compliance with the Master Plan.

Below is an analysis of how the requested waiver meets the criteria specifically for Private Road Allowances:

(1)Use of Private Roads Generally Limited. Private roads shall normally be confined to closed loops and dead-end roads not likely to be needed for the convenience and safety of the general public.

The private road to serve the minor subdivision will be a cul-de-sac. The private road will only be utilized by the residents within the subdivision, therefore, the road is not needed for the convenience or safety of the general public.

(2)Private Roads Require Waiver. The use of private roads is limited and allowed only by waiver. In granting a waiver to allow private roads, the BoCC shall make written findings supporting the use of private roads and may require the owner to enter into a Private Road Maintenance Agreement or create covenants whereby the lot owners are required to maintain the private roads.

The covenants and private road agreement have been submitted with the subdivision application.

(3)Private Roads to Meet County Standards. Generally, private roads shall be constructed and maintained to ECM standards except as may be otherwise determined in the waiver. Private road waivers may only include design standards for the following:

- *Right-of-way width where suitable alternative provisions are made for pedestrian walkways and utilities;*

Pedestrian walkways are not required for local rural roads, which is the standard being waived. Utility easements have been provided on the plat drawing.

- *Design speed where it is unlikely the road will be needed for use by the general public;*

The road will not be utilized by the general public as it is a cul-de-sac to serve this subdivision alone.

- *Standard section thickness minimums and pavement type where suitable and perpetual maintenance provisions are made;*

Maintenance is being provided by the property owners within the subdivision and per the covenants and maintenance agreement.

- *Maximum and minimum block lengths; and*
Not applicable.
- *Maximum grade.*
Not applicable.

Master Plan Elements

Below is an analysis of the various El Paso County Master Plan elements.

Your El Paso County Master Plan Analysis

Chapter 1 of Your El Paso Master Plan (2021) states that the Plan is “general in nature-it cannot tackle every issue in sufficient detail to determine every type of necessary action.” In addition, Chapter 1 goes on to state that the Plan “is intended to provide clearer and more coordinated policy, resulting in a document that effectively communicates County goals and identifies specific actions to achieve both County-wide and local area objectives.” When taken together, these two statements suggest to the reader that the Plan may only address certain issues at a cursory level and that specific steps or actions for addressing such issues may not be offered within the Plan. That conclusion is certainly the case in numerous instances and with regard to a variety of topical areas. However, where that is not the case is with respect to the requested subdivision, as identified below.

Key Area Analysis

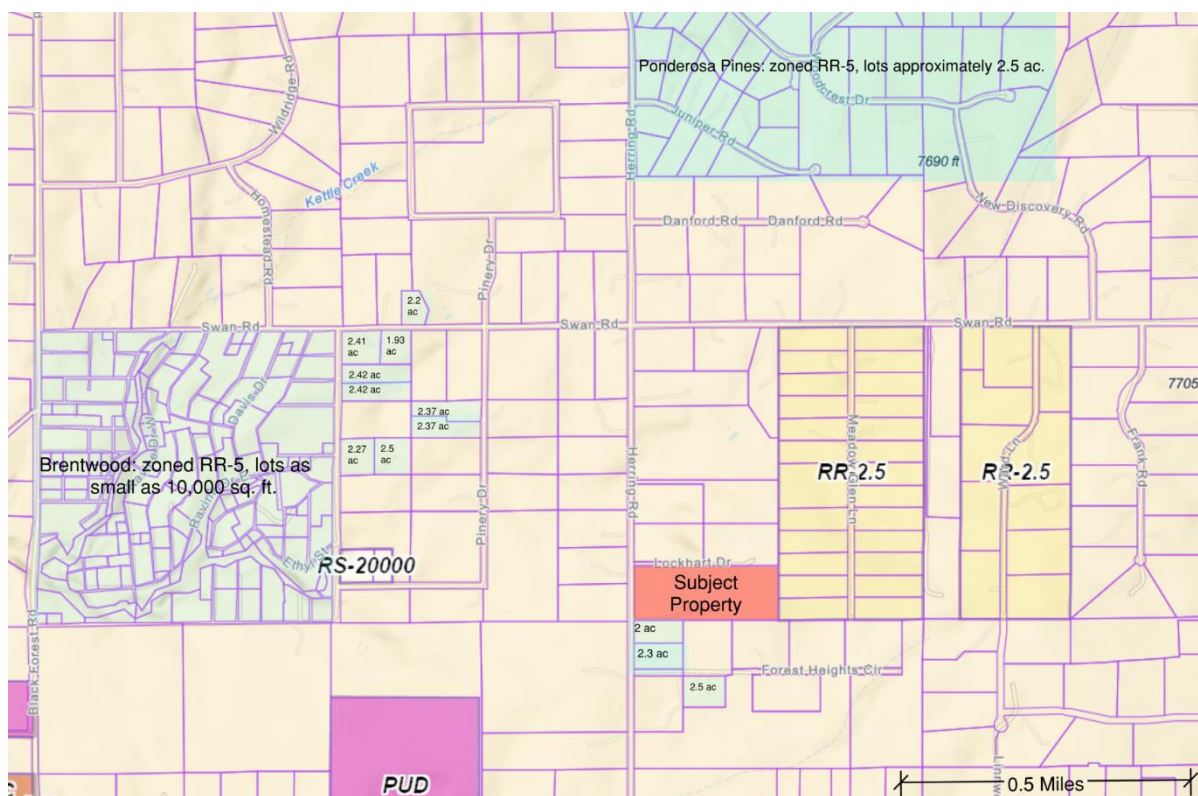
The subject property is identified in the Plan as being within the Forested Area Key Area. The Plan further describes the Key Areas as:

“This Key Area includes parts of the County where natural forests are the predominant feature such as Black Forest, areas north of Peyton, and areas along Highway 115 as well as lands within Pike National Forest. Pike National Forest is one of the County’s largest natural amenities and tourist destinations. Continued coordination with the U.S. Forest Service is critical to ensuring future development in areas adjacent to the Forest do not negatively impact the natural environment. There are also many established communities within Pike National Forest particularly in Ute Pass and along Highway 115. New development and any redevelopment in these locations should be of a lower intensity to mitigate any impacts on the Forest, properly manage stormwater, provide safe access to major roads and state highways for the traveling public and emergency response vehicles and adhere to the strictest building codes to prevent any hazards such as fires and soil erosion related to poor planning, design, and construction.

Managed residential growth, along with supportive commercial uses, have helped the other forested areas preserve their natural amenities while supporting the daily needs of a thriving local community. The seamless connection between the natural environment and small-scale, low intensity development is critical to their identity. All new development and redevelopment in this Key Area should strictly adhere to the transportation and

infrastructure, stormwater requirements, built form, and transition guidelines outlined in their appropriate placetypes. Each development proposal should also be reviewed on a case-by-case basis to determine its specific impact on the forested area and the established character of the individual community." (emphasis added)

The property owners are requesting a concurrent rezone of a portion of the property from the RR-5 zoning district to the RR-2.5 zoning district. The larger 7-acre parcel will remain RR-5. The parcels located immediately adjacent to the east are zoned RR-2.5 and are approximately 2.5 acres in size. Immediately adjacent to the south are three parcels less than 2.5 acres in size. There are also numerous developed non-conforming parcels within the RR-5 zoning district that are 2.5 acres or less in size (see map below).



The plat depicts three 2.5-acre lots and one 7.04-acre lot. The proposed subdivision and lot sizes are in keeping with the character of the surrounding development.

Area of Change Analysis

The subject property is identified in the Areas of Change map within the Plan as being within the "Minimal Change: Undeveloped" area of change.

Page 21 of the Plan characterizes areas of "Minimal Change: Undeveloped" by stating:

"The character of these areas is defined by a lack of development and presence of significant natural areas. These areas will experience some redevelopment of select underutilized or vacant sites adjacent to other built-out sites, but such

redevelopment will be limited in scale so as to not alter the essential character. New development may also occur in these areas on previously undeveloped land, but overall there will be no change to the prioritized rural and natural environments.”
(Emphasis added)

The subject property is currently developed with a single-family residence and is surrounded by other residential properties and with lot sizes of 2.5 acres or less to the east and south. The Master Plan anticipates some redevelopment as long as the character can be maintained. As discussed above, the proposed subdivision is in conformance with the existing uses and densities of the surrounding properties as well as the other numerous parcels 2.5 acres or less that are located within one half of a mile.

Placetype Analysis

The subject property is shown on the Placetypes map of Your El Paso Master Plan as being within the Large-Lot Residential Placetype.

Page 26 of the Plan identifies the following land uses as being Primary Land Uses within the Large-Lot Residential Placetype:

- Single-Family Detached Residential (typically 2.5 acre lots or larger)

In addition, the Placetype includes the following Supporting Land Uses:

- Parks/Open Space
- Commercial Retail
- Commercial Service
- Agriculture

The Large-Lot Residential Placetype is described further on page 26 as follows:

“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 wastewater 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.” (emphasis added)

The placetype specifically identifies lot sizes of 2.5 acres or greater as being supported within the placetype. Additionally, the 7-acre lot to remain RR-5 greatly reduces the overall density, allowing for the subject site to serve as a transition from the 5-acre parcels located to the north and the 2-acre parcels located to the south.

El Paso County Water Master Plan

The Executive Summary from the Water Master Plan (2018) states that “The Plan Water Master Plan (WMP) was developed for the Board of County Commissioners, El Paso County officials and staff, developers, citizens, and water providers within the County for the purpose of identifying and addressing water supply issues earlier in the land use entitlement process.” A water sufficiency finding is being requested with subdivision. It should be noted that the Water Master Plan only contemplates centralized providers and did not provide an analysis for individual well, as is proposed here.

The subject property is located within Planning Region 2 of the Water Master Plan, pursuant to Figure 3-1 on page 25. The Plan identifies the current supply and demand forecasts at full build out (year 2060) for each of the Planning Regions. The Table indicates that the current water supplies for Region 2 amounts to 13,607 AF of water per year with 2060 being 20,756 AF of water per year; therefore, there is projected to be a surplus supply of water for central water providers in this region of the County.

A Water Resources Report has been submitted with the subdivision application. The report identifies there is sufficient water in terms of water quantity, quality, and dependability for the lots included in the subdivision.

El Paso County Parks Master Plan

The El Paso County Parks Master Plan (2022) does not depict any planned or existing trails or open space on the subject property. Fees in lieu of dedication will be provided with the concurrently reviewed subdivision.

2016 Major Transportation Corridors Plan (MTCP)

The 2016 MTCP depicts Herring Road as a Collector roadway. Herring Road is of adequate width and no right-of-way dedication is required with the concurrently reviewed subdivision application. A traffic impact study is not required pursuant to ECM Appendix B, ECM Chapters 1.6 and 1.16 as the proposed subdivision will not result in traffic in excess of 100 ADT or 10 trips at the peak hour, there are no additional minor or major roadways being proposed, there will be no change in the type of traffic to be generated, the subdivision will not result in a change to the LOS for Herring Road, and there is no proposed access onto a State Highway. The subdivision is anticipated to result

in an average of 30 additional trips per day.

Other Topical Elements of the County Master Plan

The proposed subdivision is in compliance with the other topical elements of the County Master Plan, including the Master Plan for Mineral Extraction, and the El Paso County Wildlife Habitat Maps and Descriptors.

Final Plat

FAIRYTALE ACRES SUBDIVISION

A PART OF THE NW 1/4 OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65
WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE
OF COLORADO

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Jacob and Sherry Kershman, being the owner of the following described tract of land:

TO WIT (DEED DESCRIPTION):

That portion of the West half of the Northwest Quarter of Section 9, Township 12 South, Range 65 West of the 6th Principal Meridian, lying east of Herring Road and South of the Nash Subdivision, County of El Paso, State of Colorado, more particularly described as follows:

Commencing at the Southwest corner of said Northwest quarter of Section 9; thence N 89°19'15" E along the south line of said Northwest quarter, which bearing is the bearing of record of said line and the basis of all bearings in this description, 30.00 feet to the point of beginning; thence N 00°32'15" W along the east line of Herring Road, being 30 feet east of and parallel with the west line of said Northwest Quarter, 495.38 feet to the Southwest corner of Nash Subdivision, according to the plat thereof of the records of said county; thence N 89°28'29" E along the south line of said Nash Subdivision, 1282.54 feet; thence S 00°28'32" E along the east line of said West half of the Northwest quarter, 491.94 feet to the Southeast corner thereof; thence S 89°19'15" W along the South line of said West half of the Northwest quarter, 1282.01 feet to the point of beginning, County of El Paso, State of Colorado.

DEDICATION:

The undersigned, being all Owners, Mortgages, Beneficiaries of Deeds of Trust and holders of other interests in the land described herein, have laid out, subdivided, and platted said lands into lots and easements as shown hereon under the name and subdivision of "FAIRYTALE ACRES". All public improvements so platted are hereby dedicated to public use and said Owner does hereby covenant and agree that the public improvements will be constructed to El Paso County standards and that proper drainage and erosion control for same will be provided at said Owner's expense, all to the satisfaction of the Board of County Commissioners of El Paso County, Colorado. Upon acceptance by resolution, all public improvements so dedicated will become matters of maintenance by El Paso County, Colorado. The utility easements shown hereon are hereby dedicated for public utilities and communication systems and other purposes as shown hereon. The entities responsible for providing the services for which the easements are established are hereby granted the perpetual right of ingress and egress from and to adjacent properties for installation, maintenance, and replacement of utility lines and related facilities.

IN WITNESS WHEREOF:

The aforementioned Jacob and Sherry Kershman, have executed this instrument this _____ day of _____, 2023 A.D.

Jacob Kershman Sherry Kershman

NOTARIAL:

STATE OF COLORADO)
COUNTY OF EL PASO) SS

The foregoing instrument was acknowledged before me this _____ day of _____, 2023 A.D. by Jacob and Sherry Kershman

Witness my hand and seal _____

Address _____

My Commission expires _____

SURVEYOR'S CERTIFICATE:

I Tim Sloan, a duly registered Professional Land Surveyor in the State of Colorado, do hereby certify that this plat truly and correctly represents the results of a survey made on March 13, 2023, by me or under my direct supervision and that all monuments exist as shown hereon; that mathematical closure errors are less than 1:10,000; and that said plat has been prepared in full compliance with all applicable laws of the State of Colorado dealing with monuments, subdivision, or surveying of land and all applicable provisions of the El Paso County Land Development Code.

I attest on this _____ day of _____, 20____.

Tim Sloan, Professional Land Surveyor Date

Colorado Registered PLS # _____



BOARD OF COUNTY COMMISSIONERS CERTIFICATE:

This Plat FAIRYTALE ACRES was approved for filing by the El Paso County, Colorado Board of County Commissioners on the _____ day of _____, 2023, subject to any notes specified hereon and any conditions included in the resolution of approval.

Chair, Board of County Commissioners Date

Director, Planning and Community Development Department Date

DEDICATION:

The undersigned, being all Owners, Mortgages, Beneficiaries of Deeds of Trust and holders of other interests in the land described herein, have laid out, subdivided, and platted said lands into lots and easements as shown hereon under the name and subdivision of "FAIRYTALE ACRES". The utility easements shown hereon are hereby dedicated for public utilities and communication systems and other purposes as shown hereon. The entities responsible for providing the services for which the easements are established are hereby granted the perpetual right of ingress and egress from and to adjacent properties for installation, maintenance, and replacement of utility lines and related facilities.

IN WITNESS WHEREOF:

The aforementioned _____, as _____ of Air Academy Federal Credit Union, has executed this instrument this _____ day of _____, 2023 A.D.

NOTARIAL:

STATE OF COLORADO)
COUNTY OF EL PASO) SS

The foregoing instrument was acknowledged before me this _____ day of _____, 2023 A.D. by _____ as, _____ of Air Academy Federal Credit Union.

Witness my hand and seal _____

Address _____

My Commission expires _____

RECORDINGS:

STATE OF COLORADO)
COUNTY OF EL PASO) SS

I hereby certify that this instrument was filed for record in my office at _____ O'clock ____M. this _____ day of _____, 2023 A.D., and is duly recorded under Reception Number _____ of the records of El Paso County, State of Colorado.

By: _____ El Paso County Clerk and Recorder _____ Date

NOTES:

- NO GAPS OR OVERLAPS EXIST.
- THERE ARE NO LINES OF POSSESSION THAT AFFECT THIS SURVEY.
- PARENT TRACT IS RECORDED AS INSTRUMENT #221110288, CLERK & RECORDER'S OFFICE, EL PASO COUNTY, COLORADO.
- ALL BUILDING SETBACK REQUIREMENTS SHALL BE DETERMINED BY THE ZONING DISTRICT, UNLESS OTHERWISE NOTED.
- THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY SMH CONSULTANTS, TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR INFORMATION REGARDING EASEMENTS, AND RIGHT OF WAY, SMH CONSULTANTS RELIED UPON THE TITLE POLICY PREPARED BY COMMONWEALTH LAND TITLE INSURANCE COMPANY, DATED JANUARY 3, 2023.
- BASIS OF BEARINGS IS THE SOUTH LINE OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65 WEST, MONUMENTED AS SHOWN AND ASSUMED TO BEAR SOUTH 89 DEGREES 56 MINUTES 05 SECONDS WEST, 1282.32 FEET.
- SEWAGE TREATMENT IS THE RESPONSIBILITY OF EACH INDIVIDUAL PROPERTY OWNER. THE EL PASO COUNTY PUBLIC HEALTH DEPARTMENT MUST APPROVE EACH SYSTEM AND, IN SOME CASES, THE DEPARTMENT MAY REQUIRE AN ENGINEER-DESIGNED SYSTEM PRIOR TO PERMITTING APPROVAL.
- INDIVIDUAL WELLS ARE THE RESPONSIBILITY OF EACH PROPERTY OWNER. PERMITS FOR INDIVIDUAL WELLS MUST BE OBTAINED FROM THE STATE ENGINEER WHO BY LAW HAS THE AUTHORITY TO SET CONDITIONS FOR THE ISSUANCE OF THESE PERMITS.
- WATER IN THE DENVER WATER 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 ELEVATED BASED ON A 300-YEAR AQUIFER LIFE. APPLICANTS, THE HOME OWNERS ASSOCIATION, 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 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.
- THE OWNER, ITS SUCCESSORS AND ASSIGNS SHALL ADVISE THE FUTURE OWNERS OF THESE LOTS OF ANY APPLICABLE REQUIREMENTS OF THE DETERMINATION OF WATER RIGHT 22CW3036 RECORDED AT RECEPTION NO. 223004277.
- ALL PROPERTY OWNERS ARE RESPONSIBLE FOR MAINTAINING PROPER STORMWATER DRAINAGE IN AND THROUGH THEIR PROPERTY. PUBLIC DRAINAGE EASEMENTS AS SPECIFICALLY NOTED ON THE PLAT SHALL BE MAINTAINED BY THE INDIVIDUAL LOT OWNERS UNLESS OTHERWISE INDICATED. STRUCTURES, FENCES, MATERIALS OR LANDSCAPING THAT COULD IMPEDE THE FLOW OF RUNOFF SHALL NOT BE PLACED IN DRAINAGE EASEMENTS.
- ACCESS TO LOTS 1-4 SHALL BE VIA A PRIVATE ROAD LOCATED WITHIN THE INGRESS/EGRESS EASEMENT SHOWN ON THE PLAT. THE RESPONSIBILITY AND MAINTENANCE OF SAID PRIVATE ROAD IS SUBJECT TO THE MAINTENANCE AGREEMENT AND ALL COVENANTS AND RESTRICTIONS CONTAINED THEREIN, AS RECORDED AT RECEPTION NO. _____ OF THE RECORDS OF EL PASO COUNTY CLERK AND RECORDER.
- NO DRIVEWAY SHALL BE ESTABLISHED UNLESS AN ACCESS PERMIT HAS BEEN GRANTED BY EL PASO COUNTY PLANNING AND COMMUNITY DEVELOPMENT. INDIVIDUAL LOT PURCHASERS ARE RESPONSIBLE FOR CONSTRUCTING DRIVEWAYS, INCLUDING NECESSARY DRAINAGE CULVERTS FROM FAIRYTALE HEIGHTS PER LAND DEVELOPMENT CODE SECTION 6.3.3.C.2 AND 6.3.3.C.3.
- DUE TO THEIR LENGTH, SOME OF THE DRIVEWAYS WILL NEED TO BE SPECIFICALLY APPROVED BY THE BLACK FOREST FIRE PROTECTION DISTRICT.
- NO STRUCTURES OR MAJOR MATERIAL STORAGE ACTIVITIES ARE PERMITTED WITHIN THE DESIGNATED DRAINAGE EASEMENTS, EXCEPT FENCES. FENCES SHALL NOT IMPEDE RUNOFF FROM REACHING DRAINAGE SWALES.
- THE SUBDIVIDER(S) AGREES ON BEHALF OF HIM/HERSELF AND ANY DEVELOPER OR BUILDER SUCCESSORS AND ASSIGNEES THAT SUBDIVIDER AND/OR SAI SUCCESSORS AND ASSIGNS SHALL BE REQUIRED TO PAY TRAFFIC IMPACT FEES IN ACCORDANCE WITH EL PASO COUNTY ROAD IMPACT FEE PROGRAM RESOLUTION (RESOLUTION NO. 19-471), OR ANY AMENDMENTS THERETO, AT OR PRIOR TO THE TIME OF BUILDING PERMIT SUBMITTALS. THE FEE OBLIGATION, IF NOT PAID AT FINAL PLAT RECORDING, SHALL BE DOCUMENTED ON ALL SALES DOCUMENTS AND PLAT NOTES TO ENSURE THAT A TITLE SEARCH WOULD FIND THE FEE OBLIGATION BEFORE SALE OF THE PROPERTY.
- MAILBOXES SHALL BE INSTALLED IN ACCORDANCE WITH ALL EL PASO COUNTY DEPARTMENT OF TRANSPORTATION AND THE UNITED STATES POSTAL SERVICE REGULATIONS.
- THE FOLLOWING REPORTS HAVE BEEN SUBMITTED IN ASSOCIATION WITH THE FINAL PLAT FOR THIS SUBDIVISION AND ARE ON FILE AT THE EL PASO COUNTY PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT: DRAINAGE REPORT, WATER RESOURCES REPORT, ONSITE WASTEWATER TREATMENT REPORT, GEOLOGY AND SOILS REPORT, FIRE PROTECTION REPORT, AND ONSITE WASTEWATER TREATMENT SYSTEM REPORT.
- THE ADDRESSES EXHIBITED ON THIS PLAT ARE FOR INFORMATIONAL PURPOSES ONLY. THEY ARE NOT THE LEGAL DESCRIPTION AND ARE SUBJECT TO CHANGE.
- ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT OR LAND BOUNDARY MONUMENT OR ACCESSORY COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO C.R.S. § 18-6-508*
- ALL LOTS ARE SUBJECT TO DECLARATION OF COVENANTS AND WATER COVENANTS AS RECORDED AT RECEPTION NO. _____ OF THE RECORDS OF EL PASO COUNTY CLERK AND RECORDER.
- OWNERS OF ALL LOTS SHALL SUBMIT AN ENGINEERED SITE PLAN AT TIME OF BUILDING PERMIT. ENGINEERED SITE PLAN SHALL DEPICT LOCATION OF PROPOSED HOUSE, INDIVIDUAL DRIVEWAY FROM PRIVATE ROAD TO HOUSE, AND ANY CULVERTS NECESSARY BASED ON HOUSE AND DRIVEWAY LOCATION.
- THE PRIVATE ROADS AS SHOWN ON THIS PLAT WILL NOT BE MAINTAINED BY EL PASO COUNTY UNTIL AND UNLESS THE STREETS ARE CONSTRUCTED IN CONFORMANCE WITH EL PASO COUNTY STANDARDS IN EFFECT AT THE DATE OF THE REQUEST FOR DEDICATION AND MAINTENANCE.
- THERE SHALL BE NO DIRECT SEPARATE DRIVEWAY ACCESS FROM LOT 1 TO HERRING ROAD. ALL ACCESS SHALL BE FROM PRIVATE ROAD.
- PRIOR TO ANY NEW HOME CONSTRUCTION, THE PRIVATE ROAD SERVING THE DEVELOPMENT MUST BE CONSTRUCTED. THIS INCLUDES RECONSTRUCTING THE EXISTING ACCESS FROM HERRING ROAD TO MEET COUNTY STANDARDS, INCLUDING INSTALLATION OF A CULVERT.
- AT THE TIME OF APPROVAL OF THIS PROJECT, THIS PROPERTY IS LOCATED WITHIN THE BLACK FOREST FIRE PROTECTION DISTRICT, WHICH HAS ADOPTED A FIRE CODE REQUIRING RESIDENTIAL FIRE SPRINKLER REQUIREMENTS FOR COVERED STRUCTURES OVER 6000 SQUARE FEET IN SIZE, AND OTHER FIRE MITIGATION REQUIREMENTS DEPENDING UPON THE LEVEL OF FIRE RISK ASSOCIATED WITH THE PROPERTY AND STRUCTURES. THE OWNER OF ANY LOT SHOULD CONTACT THE FIRE DISTRICT TO DETERMINE THE EXACT DEVELOPMENT REQUIREMENTS RELATIVE TO THE ADOPTED FIRE CODE.

GEOLOGIC HAZARD NOTE:

THE FOLLOWING LOTS HAVE BEEN FOUND TO BE IMPACTED BY GEOLOGIC HAZARDS. MITIGATION MEASURES AND A MAP OF THE HAZARD AREA CAN BE FOUND IN THE SOILS & GEOLOGY REPORT BY ENTECH ENGINEERING, INC. DATED APRIL 20, 2023 IN FILE MS-236 AVAILABLE AT THE EL PASO COUNTY PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT.

- POTENTIALLY SEASONALLY HIGH GROUNDWATER: LOTS 1, 2, 3, AND 4.

IN AREAS OF HIGH GROUNDWATER: DUE TO HIGH GROUNDWATER IN THE AREA, ALL FOUNDATIONS SHALL INCORPORATE AN UNDERGROUND DRAINAGE SYSTEM. PER THE OWTS AND SOILS REPORT, ALL SEPTIC SYSTEMS SHALL BE ENGINEERED.

ENVIRONMENTAL:

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 DEPARTMENT OF WILDLIFE, COLORADO DEPARTMENT OF TRANSPORTATION, U.S. ARMY CORPS OF ENGINEERS, THE U.S. FISH & WILDLIFE SERVICE REGARDING THE ENDANGERED SPECIES ACT, PARTICULARLY AS IT RELATES TO THE PREBLE'S MEADOW JUMPING MOUSE AS A LISTED THREATENED SPECIES.

FLOODPLAIN NOTE:

FLOOD INSURANCE RATE MAP, MAP NUMBER 08041C0320G EFFECTIVE DATE DECEMBER 7, 2018, INDICATES THAT THE AREA WITHIN THE SURVEYED PROPERTY TO BE LOCATED IN ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 500-YEAR FLOOD PLAIN).

EASEMENTS:

UNLESS OTHERWISE INDICATED, ALL SIDE, FRONT, AND REAR LOT LINES ARE HEREBY PLATTED ON EITHER SIDE WITH A 10-FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT. ALL EXTERIOR SUBDIVISION BOUNDARIES ARE HEREBY PLATTED WITH A 20-FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT. THE SOLE RESPONSIBILITY FOR THE MAINTENANCE OF THESE EASEMENTS IS HEREBY VESTED WITH THE INDIVIDUAL PROPERTY OWNERS.

UTILITY NOTES:

ANY UTILITY COMPANY THAT LOCATES FACILITIES IN ANY EASEMENT SHALL HAVE THE RIGHT TO PRUNE, REMOVE, ERADICATE, CUT AND CLEAR AWAY ANY TREES, LIMBS, VINES, AND BRUSH ON THE UTILITY EASEMENT NOW OR AT ANY FUTURE TIME AND PRUNE AND CLEAR AWAY ANY TREE LIMBS, VINES, AND BRUSH ON LANDS ADJACENT TO THE UTILITY EASEMENT WHENEVER, IN THE UTILITY COMPANIES JUDGMENT, SUCH MAY INTERFERE WITH OR ENDANGER THE CONSTRUCTION, OPERATION, OR MAINTENANCE OF ITS FACILITIES, TOGETHER WITH THE RIGHT OF INGRESS TO AND EGRESS FROM THE UTILITY EASEMENT AND CONTIGUOUS LAND SUBJECT TO THIS PLAT FOR THE PURPOSE OF SURVEYING, ERECTING, CONSTRUCTING, MAINTAINING, INSPECTING, REBUILDING, REPLACING, AND WITH OR ENDANGERING THE CONSTRUCTION, OPERATION OR MAINTENANCE OF SAID FACILITIES.

NOTICE:

ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL 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 COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.



VICINITY MAP
(NOT TO SCALE)



OWNER:
JACOB & SHERRY KERSHMAN
13055 HERRING ROAD
COLORADO SPRINGS, CO 80908
719-482-4964

SURVEYOR:
TIM SLOAN, VICE-PRESIDENT
SMH CONSULTANTS, P.A.
411 SOUTH TEJON STREET, STE 1
COLORADO SPRINGS, CO 80903
719-465-2145

ENGINEER:
BRETT LOUK
SMH CONSULTANTS, P.A.
411 SOUTH TEJON STREET, STE 1
COLORADO SPRINGS, CO 80903
719-465-2145

TOTAL ACREAGE:
LOT 1 = 2.50 ACRES
LOT 2 = 2.50 ACRES
LOT 3 = 7.04 ACRES
LOT 4 = 2.50 ACRES
TOTAL = 14.54 ACRES

SERVICE PROVIDERS:
BLACK FOREST FIRE PROTECTION DISTRICT
MOUNTAIN VIEW ELECTRIC ASSOC.
BLACK HILLS ENERGY
DOMESTIC WELLS
INDIVIDUAL SEWAGE DISPOSAL SYSTEMS

FEES:
PARK FEE: \$2,020.00 (PARKS REGIONAL AREA 2)
SCHOOL FEE: \$1224.00 (DISTRICT 20)
BRIDGE FEE: N/A
DRAINAGE FEE: \$7,711.48

DATE SUBMITTED: 08/10/2023
REVISIONS:
△

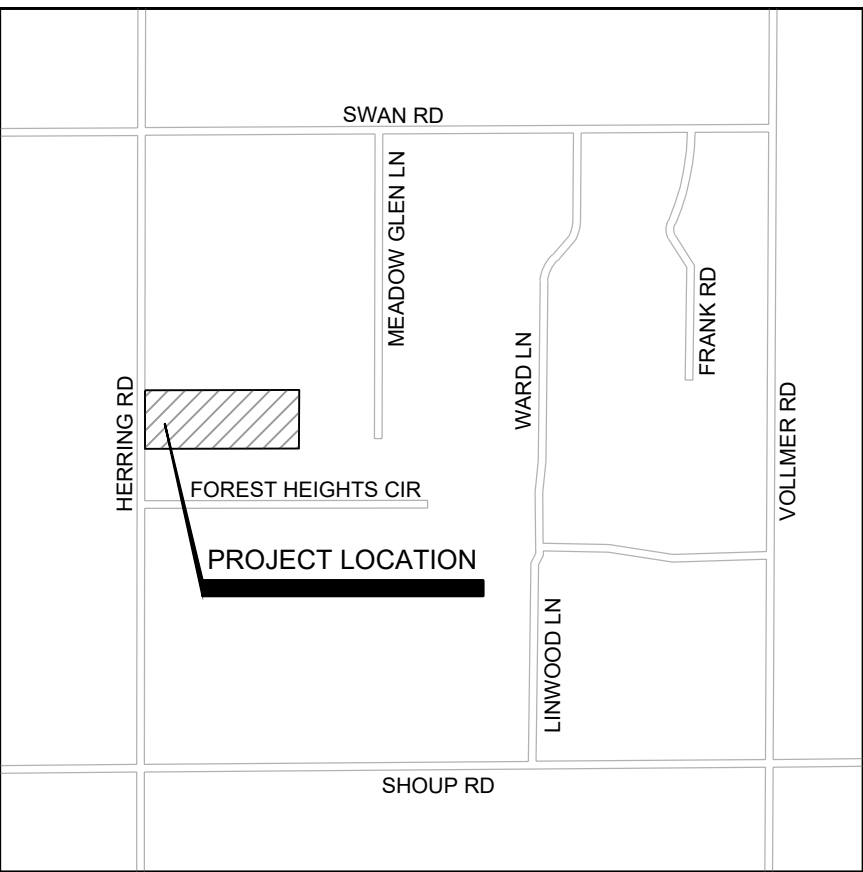
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Overland Park, KS P: (913) 444-9615 • Colorado Springs, CO P: (719) 465-2145
Survey Prepared March 13, 2023
Drawn By: JAM Project #2211-0461 PCD File #MS236

MAY 2023

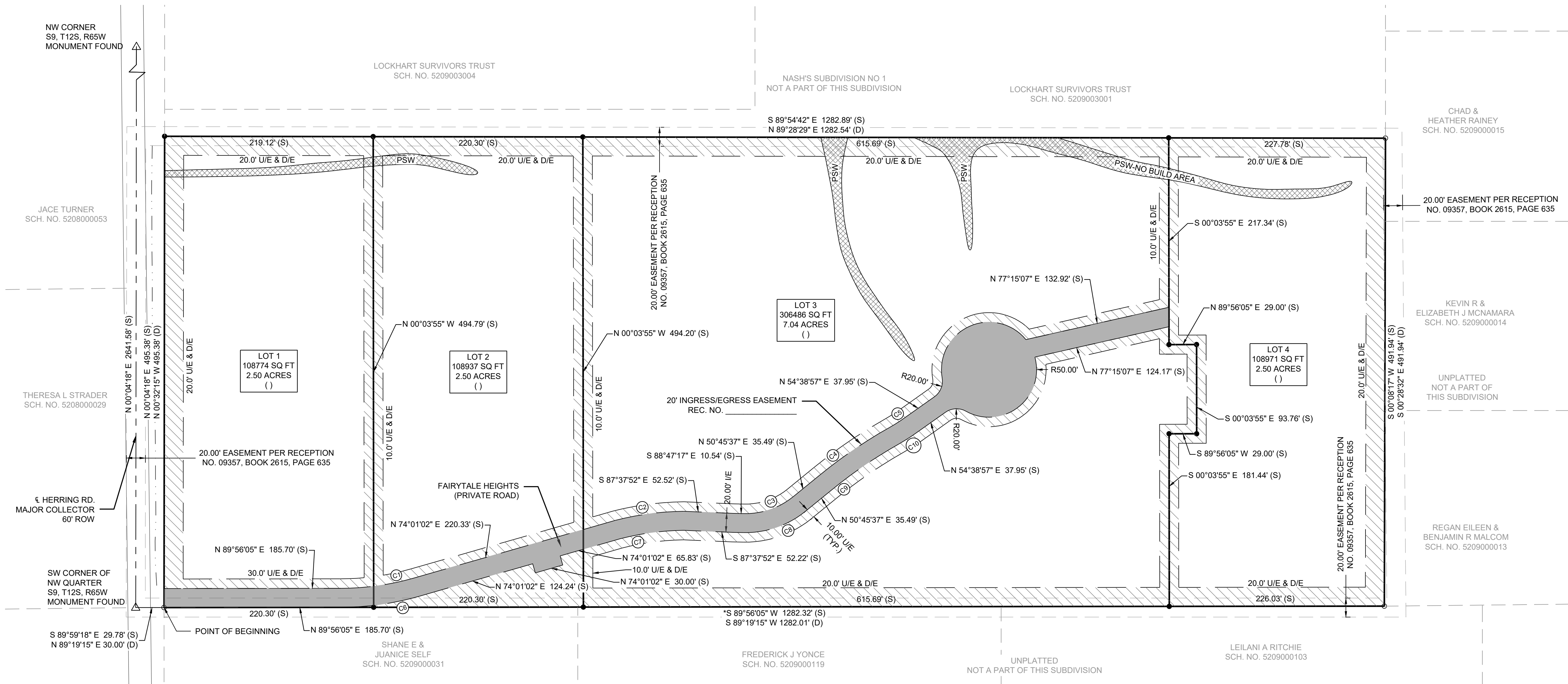
Final Plat

FAIRYTALE ACRES SUBDIVISION

A PART OF THE NW 1/4 OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65
WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE
OF COLORADO



VICINITY MAP
(NOT TO SCALE)



INGRESS EGRESS EASEMENT CURVE DATA						
CURVE #	LENGTH	RADIUS	DELTA	BEARING	CHORD	TANGENT
C1	77.79	280.00	015.9176	N89°56'04.92"E	77.54	39.15
C2	72.68	296.47	014.0458	N75°29'21.66"E	72.50	36.52
C3	56.49	80.00	040.4518	S88°47'16.50"E	55.32	29.48
C4	88.71	520.00	009.7736	N50°45'37.04"E	88.60	44.46
C5	19.52	190.00	005.8847	S54°38'57.04"W	19.51	9.77
C6	83.35	300.00	015.9176	S74°01'01.60"W	83.08	41.94
C7	67.04	276.47	013.8927	S89°26'03.86"W	66.87	33.68
C8	70.61	100.00	040.4518	S50°45'37.04"W	69.14	36.84
C9	85.30	500.00	009.7736	S60°32'02.08"W	85.19	42.75
C10	21.57	210.00	005.8847	N60°32'02.08"E	21.56	10.79

- LEGEND**
- MONUMENT FOUND (1/2" REBAR) W/PLS 9853 CAP
 - 1/2"x24" REBAR W/PLS38374 CAP SET
 - △ SECTION CORNER, NOTE: ALL SECTION CORNER MONUMENT ORIGINS ARE UNKNOWN UNLESS OTHERWISE NOTED.
 - ASSUMED BEARING
 - (D) DEED DIMENSION
 - (S) SURVEYED DIMENSION
 - PSW POTENTIALLY SHALLOW GROUNDWATER AREA
 - NO-BUILD AREA
 - U/E UTILITY EASEMENT
 - D/E DRAINAGE EASEMENT
 - UTILITY/DRAINAGE EASEMENT HATCH
 - I/E INGRESS/EGRESS EASEMENT
 - INGRESS/EGRESS EASEMENT HATCH

- LINETYPE LEGEND**
- ADJACENT PROPERTY LINE
 - PROPERTY LINE
 - SECTION LINE
 - INGRESS/EGRESS EASEMENT LINE
 - DRAINAGE AND UTILITY EASEMENT LINE
 - UTILITY & DRAINAGE EASEMENT LINE



SCALE: 1" = 60'

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Survey Prepared March 13, 2023

Drawn By: JAM Project #2211-0461 DD # PCD File #MS236

MAY 2023



June 22, 2023

Kari Parsons
El Paso County Development Services Department
2880 International Circle, Suite 110
Colorado Springs, CO 80910

RE: Fairytale Acres Subdivision
S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 9, Twp. 12S, Rng. 65W, 6th P.M.
Water Division 2, Water District 10
CDWR Assigned Subdivision No. 30802

To Whom It May Concern,

We have received the submittal to subdivide a 14.63-acre lot into 4 single-family residential lots. Lots 1, 2, and 4 will be approximately 2.5 acres in size, and Lot 3 will be approximately 7.04 acres in size. There is an existing residence on the proposed Lot 3, which is serviced by an existing well with permit no. 69077. The water supply to these lots will be provided by one existing well and three proposed wells with wastewater being disposed of through individual on-lot septic disposal systems.

Water Supply Demand

The Water Supply Information Summary, included with the submittal, estimated a total annual use for the subdivision of 3.43 acre-feet per year pursuant to Division 2 Water Court Case No. 2022CW3036. Under the associated augmentation plan, Kershman Well no. 1 may pump up to 1.63 acre-feet per year, and Kershman Well nos. 2 through 4 may each pump up to 0.60 acre-feet per year.

Source of Water Supply

The anticipated source of water is to be provided by four on-lot wells. This wells will produce from the Dawson aquifer. The wells will operate pursuant to the augmentation plan decreed in case no. 2022CW3036 (Division 2). The water underlying this property was adjudicated and the applicant is the owner of the Dawson, Denver, Arapahoe, and Laramie Fox-Hills aquifers.

According to the decree referenced above, the following amounts of water shown in Table 1, below, were determined to be available underlying the 14.63-± acre tract of land owned by the applicant.



Table 1 - Denver Basin Ground Water Rights

Aquifer	Tributary Status	Volume (AF)	Annual Allocation 100 Year (AF/Year)	Annual Allocation 300 Year (AF/Year)
Dawson	NNT	1,157	11.57	3.85
Denver	NNT	959	9.59	3.19
Arapahoe	NT	643	6.43	2.14
Laramie-Fox Hills	NT	418	4.18	1.39

The plan for augmentation decreed in case no. 2022CW3068 allows for annual diversion of 3.43 acre-feet from the Dawson aquifer for the uses proposed in the subdivision referral.

This office has record of one existing well located on the property. Well permit no. 69077 is an exempt well issued pursuant to 37-92-602(3)(b)(II)(A) for use in a single family residence. **The applicant must re-permit this well pursuant to case no. 2022CW3036 and 37-90-137(4) as a non-exempt well for use in this subdivision.**

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 is equal to one percent of the total amount available 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 amounts for a maximum of 100 years.

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

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

The State Engineer's Office does not have evidence regarding the length of time for which this source will "meet the average annual demand of the proposed subdivision." However, treating El Paso County's requirement as an allocation approach based on three hundred years, the annual estimated demand, for the entire subdivision, is a maximum of 3.43 acre-feet as allowed by the augmentation plan. As a result, the water may be withdrawn in that annual amount for a maximum of 300 years.

State Engineer's Office Opinion

Based on the above, it is our opinion, pursuant to CRS 30-28-136(1)(h)(I), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(4) and the plan for augmentation noted herein, for all wells in the subdivision and operates the wells in accordance with the terms and conditions of any future well permits.

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 the demands of the proposed subdivision.

Our opinion is qualified by the following:

The Division 2 Water Court has retained jurisdiction over the final amount of water available pursuant to the above-referenced decrees, pending actual geophysical data from the aquifer.

The amounts of water in the Denver Basin aquifers, and identified in case no. 2022CW3036 (Division 2), was 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. Furthermore, that applicant will need to apply for, and obtain a new well permits issued pursuant to Section 37-90-137(4) C.R.S.

Should you or the applicant have questions regarding any of the above, please contact me at this office.

Sincerely,



Kate Fuller, P.E.
Water Resource Engineer

cc: Rachel Zancanella, Division 2 Engineer
Jacob Olson, District 10 Water Commissioner

County Attorney

Kenneth R. Hodges, County Attorney
719-520-6485
Centennial Hall
200 S. Cascade, Suite 150
Colorado Springs, CO 80903
www.ElPasoCo.com

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

October 4, 2023

MS-23-6 Fairytale Acres Subdivision

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 the Fairytale Acres Subdivision, a minor subdivision application by Jacob and Sherry Kershman ("Applicant") for a 4-lot subdivision on a parcel of 14.63 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 3.43 acre-feet/year, comprised of 1.04 acre-feet/year for household use for 4 single-family dwellings and 2.39 acre-feet/year for additional purposes. Based on this total demand, Applicant must be able to provide a supply of 1,029 acre-feet of water (3.43 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 Referee and Decree in Division 2 Case No. 22CW3036 ("Decree and Augmentation Plan"). In the Decree and Augmentation Plan, the Court granted a vested right to 1,157 acre-feet of water in the Dawson aquifer underlying Applicant's property and approved the pumping of 1,029 total acre-feet pursuant to the approved augmentation plan for beneficial uses consisting of domestic, irrigation of lawn, garden, and greenhouse, stock water, fire protection, commercial, and also for storage and augmentation purposes associated with such uses. The Court also granted vested rights to 959 acre-feet of water in the Denver aquifer, 643 acre-feet of water in the Arapahoe aquifer, and 418 acre-feet of water in

ASSISTANT COUNTY ATTORNEYS

NATHAN J. WHITNEY
CHRISTOPHER M. STRIDER

STEVEN A. KLAFFKY
TERRY A. SAMPLE

LORI L. SEAGO
DOREY L. SPOTTS

BRYAN E. SCHMID
STEVEN W. MARTYN

the Laramie-Fox Hills aquifer. The Court further awarded a vested right to use 4 wells on the property, one of which is currently permitted and constructed as an exempt well under Well Permit No. 69077.

The approved augmentation plan has a term of 300 years and requires that septic system return flows be used for augmentation during the pumping period for the 4 approved wells. Applicant must reserve 520 acre-feet of its water rights in the Arapahoe aquifer and 418 acre-feet of its water rights in the Laramie-Fox Hills aquifer which shall be used for replacement of post-pumping depletions. Well Permit No. 69077 may pump up to a maximum of 1.63 acre-feet per year (however, may only pump up to 1.0 acre-feet until an additional residence is constructed on the property), and the remaining 3 wells may each pump up to 0.60 acre-feet per year for a maximum total withdrawal of 3.43 acre-feet per year from the Dawson aquifer. The existing well must be re-permitted under the Decree and Augmentation Plan.

State Engineer's Office Opinion

4. In a letter dated June 22, 2023, the State Engineer stated that “[t]he Water Supply Information Summary, included with submittal, estimated a total annual use for the subdivision of 3.43 acre-feet per year pursuant to Division 2 Water Court Case No. 22CW3036.” The State Engineer noted that the wells will produce from the Dawson aquifer pursuant to the augmentation plan decreed in case no. 22CW3036. The State Engineer further noted that one existing well is located on the property and must be re-permitted as a non-exempt well.

Finally, the State Engineer provided their opinion, “pursuant to CRS 30-28-136(1)(h)(I), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(4) and the plan for augmentation noted herein. . .”

Recommended Findings

5. Quantity and Dependability. Applicant's water demand for the Fairytale Acres Subdivision is 3.43 acre-feet per year for a total demand of 1,029 acre-feet for the subdivision for 300 years. The Decree and Augmentation Plan allows for 4 wells limited to an annual withdrawal of 1.63 acre-feet for the permitted well and 0.60 acre-feet per year for each of the remaining 3 wells.

Based on the water demand of 3.43 acre-feet/year for the Fairytale Acres Subdivision and the Decree and Augmentation Plan withdrawals in that amount, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for the Fairytale Acres Subdivision.

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 21, 2023, the Water Supply Information Summary, the State Engineer's Office Opinion dated June 22, 2023, and Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 2 Case No. 22CW3036 entered on January 17, 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 Referee and Decree in Division 2 Case No. 22CW3036, specifically, that water withdrawn from the Dawson aquifer by each of the proposed four wells permitted shall not exceed 1.0 annual acre-foot for Well No. 1 (located on Lot 3) until such time as a second home is built within the subdivision, at which time Well No. 1 may withdraw up to 1.63 annual acre-feet, and 0.60 annual acre-feet for each of Wells 2-4, based on a total combined annual withdrawal of 3.43 acre-feet. Depletions during pumping shall be replaced by residential return flows from non-evaporative septic systems.

B. The County prefers that when there is an augmentation plan, Applicant 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. For minor subdivisions such as this, however, Applicant may elect to solely rely on the covenant provisions required below and forego creation of an HOA.

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 Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 22CW3036.

Covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 1,029 acre-feet of Dawson aquifer water, 520 acre-feet of Arapahoe aquifer water and 418 acre-feet of Laramie-Fox Hills aquifer water pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 22CW3036 to satisfy El Paso County's 300-year water supply requirement for the 4 lots of the Fairytale Acres Subdivision. The Covenants shall further identify that 489 acre-feet (1.63 AF/year) of Dawson aquifer water, 247 acre-feet of Arapahoe aquifer water, and 198.55 acre-feet of Laramie-Fox Hills aquifer water is allocated to Lot 3 and that 180 acre-feet (0.60 AF/year) of Dawson aquifer water, 91 acre-feet of Arapahoe aquifer water, and 73.15 acre-feet of

Laramie-Fox Hills aquifer water is allocated to each of the additional 3 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 the Arapahoe and Laramie-Fox Hills 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. 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 Referee and Decree in Division 2 Case No. 22CW3036 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, Arapahoe and/or Laramie-Fox Hills 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 Referee and Decree in Division 2 Case No. 22CW3036 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 the Fairytale Acres Subdivision pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 22CW3036. 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, from 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 Referee and Decree in Division 2 Case No. 22CW3036 are also terminated by the Division 2 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 489 acre-feet (1.63 acre-feet per year), 247 acre-feet of Arapahoe aquifer water, and 198.55 acre-feet of Laramie-Fox Hills aquifer water for Lot 3, and Dawson aquifer water in the decreed amount of 180 acre-feet (0.60 acre-feet per year), 91 acre-feet of Arapahoe aquifer water and 73.15 acre-feet of Laramie-Fox Hills aquifer water for Lots 1, 2, and 4. 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, Arapahoe aquifer and Laramie-Fox Hills aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson, Arapahoe and Laramie-Fox Hills aquifers 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 the Fairytale Acres Subdivision. 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 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 Referee and Decree in Division 2 Case No. 22CW3036 and shall identify the obligations of the individual lot owners thereunder.

G. Applicant and its successors and assigns shall record all applicable documents, including but not limited to agreements, assignments, and warranty deeds regarding the water rights, and Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

H. 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."

I. Prior to recording the final plat, Applicant must provide proof that the well operating under Well Permit No. 69077 has been re-permitted under the Decree and Augmentation Plan.

cc: Ryan Howser, Project Manager, Planner



Prevent • Promote • Protect

Environmental Health Division
1675 W. Garden of the Gods Road
Suite 2044
Colorado Springs, CO 80907
(719) 578-3199 *phone*
(719) 578-3188 *fax*
www.elpasocountyhealth.org

Fairytale Acres, MS-23-6

Please accept the following comments from El Paso County Public Health regarding the 14.5-acre, 4-lot minor subdivision project referenced above:

- **Proposed Lot #3 has an existing house. The house is served wastewater treatment by a permitted and approved onsite wastewater treatment system (OWTS) installed in 1973. A new building sewer line connecting the house to the existing septic tank was installed in 2018. The existing soil treatment area (STA) for this OWTS must be 10' minimum from any new proposed lot line. There is also a requirement for sufficient areas to be dedicated for the replacement of this STA should the original area fail requiring an addition or total replacement. The primary and secondary STA's (existing and proposed) must be protected from compaction.**
- **The Entech Engineering, Inc., Soils and Geology Study dated 22August2023 support the installation of OWTS's; however, the systems will likely require professional engineer designs due to shallow bedrock. All new lots require full compliance with the El Paso County Board of Health Regulations, Chapter 8, Onsite Wastewater Treatment Systems.**
- **A finding for sufficiency in terms of water quality has been made based on the acceptable water quality test results completed by Colorado Analytical Laboratories, Inc. on 25January2023, and Hazen Research, Inc. on 16March2023.**

Mike McCarthy
El Paso County Public Health
719.332.5771
mikemccarthy@elpasoco.com
13October2023

RESOLUTION NO. 23-

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

APPROVAL OF A MAP AMENDMENT (REZONE)
FAIRYTALE ACRES (P234)

WHEREAS, Jacob and Sherry Kershman did file an application with the El Paso County Planning and Community Development Department for an amendment to the El Paso County Zoning Map to rezone property located within the unincorporated area of the County, more particularly described in Exhibit A, which is attached hereto and incorporated by reference, from the RR-5 (Residential Rural) zoning district to the RR-2.5 (Residential Rural) zoning district; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on October 19, 2023, upon which date the Planning Commission did by formal resolution recommend approval of the subject map amendment application; and

WHEREAS, a public hearing was held by the El Paso County Board of County Commissioners on November 9, 2023; 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, comments by the El Paso County Planning Commission Members, and comments by the Board of County Commissioners during the hearing, this Board finds as follows:

1. That the application was properly submitted for consideration by the Board of County Commissioners.
2. That the proper posting, publication, and public notice were provided as required by law for the hearings before the Planning Commission and the Board of County Commissioners.
3. That the hearings before the Planning Commission and the Board of County Commissioners were extensive and complete, that all pertinent facts, matters and issues were submitted and reviewed, and that all interested persons were heard at those hearings.
4. That all exhibits were received into evidence.
5. That the proposed zoning is in compliance with the recommendations set forth in the Master Plan for the unincorporated area of the county.
6. That the proposed land use will be compatible with existing and permitted land uses in the area.

7. That the proposed land use does not permit the use of any area containing a commercial mineral deposit in a manner, which would interfere with the present or future extraction of such deposit by an extractor.
8. That changing conditions clearly require amendment to the Zoning Resolutions.
9. That for the above-stated and other reasons, the proposed Amendment to 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, pursuant to Section 5.3.5 of the El Paso County Land Development Code, as amended, in approving this amendment to the El Paso County Zoning Map, the Board of County Commissioners considered one or more of the following criteria:

1. The application is in general conformance with the El Paso County Master Plan including applicable Small Area Plans or there has been a substantial change in the character of the neighborhood since the land was last zoned;
2. The rezoning is in compliance with all applicable statutory provisions, including but not limited to C.R.S. § 30-28-111, § 30-28-113, and § 30-28-116;
3. The proposed land use or zone district is compatible with the existing and permitted land uses and zone districts in all directions; and
4. The site is suitable for the intended use, including the ability to meet the standards as described in Chapter 5 of the Land Development Code, for the intended zone district.

NOW, THEREFORE, BE IT RESOLVED the El Paso County Board of County Commissioners hereby approves the petition of Jacob and Sherry Kershman to amend the El Paso County Zoning Map to rezone property located in the unincorporated area of El Paso County as described in Exhibit A, which is attached hereto and incorporated by reference, from the RR-5 (Residential Rural) zoning district to the RR-2.5 (Residential Rural) zoning district;

BE IT FURTHER RESOLVED the following conditions and notations shall be placed upon this approval:

CONDITIONS

1. The developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements. Applicable agencies include but are not limited to: the Colorado Parks and 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 threatened species.

2. Any future or subsequent development and/or use of the property shall be in accordance with the use, density, and dimensional standards of the RR-2.5 (Residential Rural) zoning district and with the applicable sections of the Land Development Code and Engineering Criteria Manual.

NOTATIONS

1. If a zone or rezone petition has been disapproved by the Board of County Commissioners, resubmittal of the previously denied petition will not be accepted for a period of one (1) year if it pertains to the same parcel of land and is a petition for a change to the same zone that was previously denied. However, if evidence is presented showing that there has been a substantial change in physical conditions or circumstances, the Planning Commission may reconsider said petition. The time limitation of one (1) year shall be computed from the date of final determination by the Board of County Commissioners or, in the event of court litigation, from the date of the entry of final judgment of any court of record.
2. Rezoning requests not forwarded to the Board of County Commissioners for consideration within 180 days of Planning Commission action will be deemed withdrawn and will have to be resubmitted in their entirety.

AND BE IT FURTHER RESOLVED the record and recommendations of the El Paso County Planning Commission be adopted, except as modified herein.

DONE THIS 9th day of November 2023 at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:

By: _____
Chair

By: _____
County Clerk & Recorder

EXHIBIT A

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, LYING EAST OF HERRING ROAD AND SOUTH OF THE NASH SUBDIVISION, COUNTY OF EL PASO, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 9; THENCE NORTH 89 DEGREES 19 MINUTES 15 SECONDS EAST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, WHICH BEARING IS THE BEARING OF RECORD OF SAID LINE AND THE BASIS OF ALL BEARINGS IN THIS DESCRIPTION, 30.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 32 MINUTES 15 SECONDS WEST ALONG THE EAST LINE OF HERRING ROAD, BEING 30 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER, 495.38 FEET TO THE SOUTHWEST CORNER OF NASH SUBDIVISION, ACCORDING TO THE PLAT THEREOF OF THE RECORDS OF SAID COUNTY; THENCE NORTH 89 DEGREES 28 MINUTES 29 SECONDS EAST ALONG THE SOUTH LINE OF SAID NASH SUBDIVISION, 1282.54 FEET; THENCE SOUTH 00 DEGREES 28 MINUTES 32 SECONDS EAST ALONG THE EAST LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER, 491.94 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89 DEGREES 19 MINUTES 15 SECONDS WEST ALONG THE SOUTH LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER, 1282.01 FEET TO THE POINT OF BEGINNING, COUNTY OF EL PASO, STATE OF COLORADO

RESOLUTION NO. 23-

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

APPROVAL OF A MINOR SUBDIVISION
FAIRYTALE ACRES (MS236)

WHEREAS, Jacob and Sherry Kershman did file an application with the El Paso County Planning and Community Development Department for the approval of a Final Plat for the Fairytale Acres 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 the El Paso County Planning Commission on October 19, 2023, upon which date the Planning Commission did by formal resolution recommend approval of the Final Plat application; and

WHEREAS, a public hearing was held by the El Paso County Board of County Commissioners on November 9, 2023; 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, comments by the El Paso County Planning Commission Members, and comments by the Board of County Commissioners during the hearing, this Board 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 hearings before the Planning Commission and the Board of County Commissioners.
3. The hearings before the Planning Commission and the Board of County Commissioners were extensive and complete, all pertinent facts, matters and issues were submitted and reviewed, and all interested persons were heard at those hearings.
4. All exhibits were received into evidence.
5. The proposed subdivision is in general conformance with the goals, objectives, and policies of the Master Plan.
6. The subdivision is consistent with the purposes of the Land Development Code ("Code").

7. The subdivision is in conformance with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analysis, studies, reports, plans, designs, documents, and other supporting materials.
8. 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.
9. 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.
10. 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)].
11. Adequate drainage improvements complying with State law [C.R.S. § 30-28-133(3)(c)(VIII)] and the requirements of the Code and the Engineering Criteria Manual ("ECM") are provided by the design.
12. 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.
13. Legal and physical access is or will be provided to all parcels by public rights-of-way or recorded easement, acceptable to the County and in compliance with the Code and the ECM.
14. The proposed subdivision has established an adequate level of compatibility by (1) incorporating natural physical features into the design and providing sufficient open 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 therefor, reasonably related to the proposed subdivision so the proposed subdivision will not negatively impact the levels of service of County services and facilities.
15. Necessary services, including police and fire protection, recreation, utilities, open space and transportation system, are or will be available to serve the proposed subdivision.

16. The subdivision provides evidence to show that the proposed methods for fire protection comply with Chapter 6 of the Code.
17. The proposed subdivision meets other applicable sections of Chapters 6 and 8 of the Code.
18. 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.
19. 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.
20. The extraction of any known commercial mining deposit shall not be impeded by this subdivision [C.R.S. §§ 34-1-302(1), et seq.].

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of El Paso County, Colorado, hereby approves the Minor Subdivision Final Plat application for the Fairytale Acres Subdivision;

BE IT FURTHER RESOLVED that the following conditions and notations shall be placed upon this approval:

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 El Paso County Planning and Community Development Department.
7. The Subdivider(s) agrees on behalf of him/herself and any developer or builder successors and assignees that Subdivider and/or said successors and assigns shall be required to pay traffic impact fees in accordance with the El Paso County Road Impact Fee Program Resolution (Resolution No. 19-471), or any amendments thereto, at or prior to the time of building permit submittals. The fee obligation, if not paid at final plat recording, shall be documented on all sales documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.
8. Applicant shall comply with all requirements contained in the Water Supply Review and Recommendations, dated 10/4/2023, as provided by the County Attorney's Office.

NOTATIONS

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

BE IT FURTHER RESOLVED that the record and recommendations of the El Paso County Planning Commission be adopted.

DONE THIS 9th day of November 2023 at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:

By: _____
Chair

By: _____
County Clerk & Recorder

EXHIBIT A

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, LYING EAST OF HERRING ROAD AND SOUTH OF THE NASH SUBDIVISION, COUNTY OF EL PASO, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER OF SECTION 9; THENCE NORTH 89 DEGREES 19 MINUTES 15 SECONDS EAST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, WHICH BEARING IS THE BEARING OF RECORD OF SAID LINE AND THE BASIS OF ALL BEARINGS IN THIS DESCRIPTION, 30.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 32 MINUTES 15 SECONDS WEST ALONG THE EAST LINE OF HERRING ROAD, BEING 30 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER, 495.38 FEET TO THE SOUTHWEST CORNER OF NASH SUBDIVISION, ACCORDING TO THE PLAT THEREOF OF THE RECORDS OF SAID COUNTY; THENCE NORTH 89 DEGREES 28 MINUTES 29 SECONDS EAST ALONG THE SOUTH LINE OF SAID NASH SUBDIVISION, 1282.54 FEET; THENCE SOUTH 00 DEGREES 28 MINUTES 32 SECONDS EAST ALONG THE EAST LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER, 491.94 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89 DEGREES 19 MINUTES 15 SECONDS WEST ALONG THE SOUTH LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER, 1282.01 FEET TO THE POINT OF BEGINNING, COUNTY OF EL PASO, STATE OF COLORADO