

WAYNE W. WILLIAMS El Paso County, CO

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RESOLUTION NO. 11- 271

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADOAPPROVE REZONE FROM THE RR-5 (RESIDENTIAL) DISTRICT TO THE I-3
(INDUSTRIAL) DISTRICT

WHEREAS, Wicker Real Estate Holdings, LLC did file a petition with the Development Services Department of El Paso County to Rezone the herein described property in El Paso County from the RR-5 (Residential) Zone District to the I-3 (Industrial) Zone District; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on July 19, 2011, upon which date the Planning Commission did by formal resolution recommend approval of the subject Zone change petition with Wicker Real Estate Holdings, LLC; and

WHEREAS, a public hearing was held by this Board on August 11, 2011; and

WHEREAS, based on the evidence, testimony, exhibits, study of the master plan for the unincorporated area of the county, recommendations of the El Paso County Planning Commission, comments of the El Paso County Development Services Department, comments of public officials and agencies, and comments from all interested parties, this Board finds as follows:

1. 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 of El Paso County.
2. 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 parties were heard at those hearings.
3. The proposed zoning is in compliance with the recommendations set forth in the Master Plan for the unincorporated area of the county.
4. The proposed land use will be compatible with existing and permitted land uses in the area.
5. 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.

6. For the above-stated and other reasons, the proposed Zoning is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.
7. Changing conditions clearly require amendment to the Zoning Resolutions.

NOW, THEREFORE, BE IT RESOLVED the Board of County Commissioners of El Paso County, Colorado, hereby approves the petition of Wicker Real Estate Holdings, LLC for a Zone change from the RR-5 (Residential) Zone District to the I-3 (Industrial) Zone District for the unincorporated area of El Paso County as described in Exhibit A, which is attached hereto and incorporated by reference;

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

CONDITIONS OF APPROVAL

1. Use on the site is limited to a contractor's equipment yard only and as depicted on the site plan attached to this file.
2. Additional expansion or enlargement of the contractor's equipment yard will be subject to the applicable development standards of Chapter 5 in the Land Development Code and subject to approval of an administrative site development plan.
3. A time period and to read as follows: "If it is determined by the Development Services Department (DSD) Director that the use has been discontinued on the site for two (2) years, the DSD Director may commence a County Initiated rezoning of the property back to the RR-5 (Rural Residential) District, pursuant to section 5.3.5.e of the Land Development Code.

NOTATIONS

1. If a rezone petition is 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

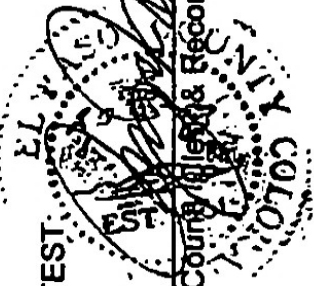
event of court litigation, from the date of the entry of final judgment of any court of record.

2. The El Paso County Board of County Commissioners may consider revocation and/or suspension if zoning regulations, conditions, and/or standards are being violated, preceded by notice and public hearing.*
3. The applicant recognizes an additional 30' of Right Of Way (ROW) reservation is required along North Curtis Road. This is required since the year 2030 Major Transportation Corridors Plan (MTCP 2004) classifies North Curtis Road as a 4-lane principal arterial requiring 180 feet of ROW.
- * The above notations are abbreviated; they have the same force and effect as the items found within their entirety in the El Paso County Land Development Code.

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

DONE THIS 11th day of August, 2011, at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST: 
By:  County Clerk & Recorder

By:  Chair

Resolution No. 11- 271
EXHIBIT A

LOT 1 SUNSHINE ACRES FIL NO 1

JOINT-USE WATER WELL AGREEMENT

This Agreement applies to the four lots (Lots 1, 2, 3 and 4) comprising 39.854 acres, more particularly described on Exhibit A attached hereto and incorporated herein by reference. Lot 4 has an existing well permit. This Agreement has been identified in the final plat of the Sunshine Acres Filing No. 1, and shall be identified in the deeds to the four lots in this subdivision, and in any other recorded instrument relating to these four lots individually or to the subdivision as a whole.

WHEREAS, to minimize the cost to present and future Lot Owners of developing and maintaining said water supply, the undersigned have deemed it desirable to construct and jointly utilize the well to be drilled pursuant to well permit #042989-F to serve the four Lots, subject to approval and conditions set forth in the findings and order of the Colorado Ground Water Commission for Permit No. 42989-F dated December 16, 1998, the Colorado Division of Water Resources, and subject to the conditions and requirements set forth in the Decrees, as amended, in Water Division 2, and pursuant to CRS-37-92-602 (3) (b) (11) (A), and subject to applicable rules of the Upper Black Squirrel Creek Ground Water Management District.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the undersigned do hereby agree as follows:

1. DEFINITIONS.

- A. **OWNER:** The record Owner is for simple of any Lot which has, by his, or any prior owner's, signature hereon, subscribed to this joint-use agreement. Regardless of whether Lot Ownership is joint or common tenancy, for purposes of voting, there shall be one vote per Lot.
- B. **WELL:** The well, by permit, serves an area of land of 39.854 acres described as the Southwest Quarter - Southwest Quarter of Section 34, Township 13 South, Range 64 West of the 6th P.M., El Paso County. This shall include any wiring, electrical and plumbing fixtures and fittings, pipe, meters, pressure or storage tank systems, equipment pit, and pump and any other appurtenances thereto which are located within the water well easements, except the water distribution lines from the well to each lot, which shall be the personal responsibility of the Owner of said Lot. Any appurtenance located outside of said easement shall be considered the personal property and responsibility of the individual Lot Owner served thereby.
- C. **EASEMENT:** An easement which shall be created on one or more lots, for the purpose of accessing, constructing and maintaining a joint-use well.
- D. **LOT:** The four lots which have been properly and legally platted and are known as Lots 1, 2, 3 and 4, Sunshine Acres Filing No. 1, El Paso County, Colorado.

2. EASEMENTS.

When a joint-use well is to be used, a legal easement shall be defined, and properly executed and recorded, together with this Agreement, in the records of El Paso County, Colorado, by the Owner of the Lot(s) upon which said easement and well is located. Said easement shall be for installation and maintenance of the well including, but not limited to, installation and maintenance of pipelines from the well to the four lots, and shall include the right of access thereto by all users and their agents.

3. USE.

The Owner of each Lot served by the well shall have an equitable ownership interest in said well, which interest shall be coupled to and transferred with the fee title to each said Lot and shall not be severable therefrom except as provided herein. Such interest shall entitle Owners of Lots served by the well to equal water distribution for uses provided in the well permit, subject to the following:

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a. A totalizing flow meter shall be attached to each water line from the well to each owner's dwellings, such that the total amount of water diverted by each Owner may be accurately measured. The well shall be limited to a maximum total annual diversion of 2.3 acre feet (749,455 gallons) for the four Lots combined using said well (0.5 acre feet for Lot 1 or 162,925 gallons), Lots 2, 3 and 4, (0.6 acre feet per Lot or, 195,510 gallons per Lot) as permitted by the Colorado Division of Water Resources. Each Lot is entitled to no more than 1/2 acre of irrigation for a lawn or garden. Irrigation of lawn or garden shall be subordinate to availability of ample water for household use.

b. Owners shall be responsible for any and all physical damage to the well resulting from their connection to the well; however, this shall not include problems or inconvenience caused to the other user by interruption of water flow to their Lot. Should any physical damage occur, the Owner responsible shall immediately cause said damage to be repaired.

c. Each Owner shall be obligated to share equally in the costs of permit, installation, meter, operation, maintenance, repair (except as provided in 3.b), and to protect and legally defend the well, pumping and distribution equipment located within the easement, water right, if any, and easement.

(1) At such time as the first Owner requires water for a house, the well will be installed and the cost borne by that Owner. If and when the Owners of the second, third, and fourth lots tap onto the well, said Owners shall pay an amount equal to 1/4 of the cost of the well, which sum shall be payable to the Owner who paid for the well. The well casing, pump and related items shall be of proper size to serve the four Lots.

Detailed written records, together with copies of all receipts pertinent thereto shall be kept by the Owner drilling the well and provided to the other Owners to establish the amount to be paid by said Owners as they subsequently tap onto the well. The costs of installation, repair and maintenance of the water distribution lines from the well to each Lot shall be borne solely by the Owner of each said Lot.

(2) At such time as all four Lot Owners commence using the well, the well pump shall be placed on a separate electrical meter from any dwelling. Said meter shall be provided by Mountain View Electric Association Inc., which will then bill specifically for the power used by the well. All Owners utilizing the well shall be responsible for full payment of all charges on said bill; however, any fee charged for initial installation of said meter shall be included in the costs in 3.c. (1).

(3) No subsequent Owner shall be allowed to tap onto the well until said Owner has reimbursed first Owner for his pro-rata share of the cost of the well. Such taps shall be made solely at the expense of that subsequent Owner. All lines from the well to Lots shall contain valves allowing for shutoff of the water supply at the wellhead or pit.

(4) Except as provided in 3.b. and 3.c.(1), (2) and (3), relating to the initial costs of installation, electric bills and required maintenance, no capital improvements shall be made to the system which results in assessments to any Lot Owner of more than \$150.00 in any one year, unless approved in writing by all Owners.

(5) No Owner shall be entitled to compensation from any other Owner for administrative time or personal time expended in the management of the well; however, Owners may be reimbursed for parts purchased for repair.

4.

ENFORCEMENT.

If any Owner shall violate any of the covenants herein, it shall be lawful for any other Owner or users to prosecute any proceedings at law or in equity against the person or persons violating such covenants, and either prevent him from doing so, or to recover costs or damages for such violation, or both.

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Any controversy, dispute, or question arising out of, in connection with, or in relation to this Agreement or its interpretation, performance or non-performance, or any breach thereof shall be determined by arbitration conducted in accordance with the existing rules of the Colorado Uniform Arbitration Act (C.R.S. 13-22-201).

In the event that any sums due from any Owner are not paid when owed, then such sums shall be considered delinquent and together with interest, attorney fees and costs of collection, shall become a continuing lien on the delinquent Owner's Lot. The Lienor shall be the Owner(s) who advances the sums unpaid by the delinquent party. Such liens shall cloud the title of the Lot of the defaulting Owner, his heirs, successors, devisees, personal representatives and assigns.

If the delinquent sums are not paid in thirty (30) days after the due date, they shall bear interest at the rate of eighteen percent (18%) per annum and the Lienor may record a Statement of Lien and foreclose his lien against the property as provided in Colorado law.

In addition to the foregoing, the non-delinquent Owner(s) shall have the right to disconnect or shut off the water supply to the Lot(s) of the delinquent Owner(s) whose payments are thirty (30) days past due until said owner(s) has paid all sums due hereunder.

5. TERMINATION.

Upon the recording of Sunshine Acres Filing No. 1 Plat, this Agreement shall be recorded and shall be binding upon the parties hereto, their heirs, successors, devisees, personal representatives or assigns, upon execution and shall run with the land unless terminated as provided herein.

Where multiple lots are served by a well, all Owners must agree in writing to terminate this Agreement. If a well permit has already been received or a well has already been drilled under this Agreement, the Owners must apply to the Colorado Division of Water Resources for a modification of the Well Permit or a Change of Use of the well, stating which lots the well is now to serve, the proposed amount of appropriation and irrigable area. Upon receipt of written approval from the State, the Owners shall execute and record a Quitclaim Deed in favor of the Owner upon whose lot the well is located. Said Deed shall identify the easement, this Agreement, the Well Permit number, and state the intention of the Owners to terminate same. Further, if a distribution line has been installed to the lot on which the well is not located, it will be necessary for that lot Owner to remove or sever same and plug the line at the well head.

6. AMENDMENT.

This Agreement may be modified or amended at any time by a recorded statement signed by all parties hereto.

7. NOTICE.

Any notice required to be sent to any Owner under the provisions hereof shall be deemed to have been properly given when mailed, by first class mail, to the address of record or the last known address of the Owner or recorded at the time of mailing.

8. SEVERABILITY.

Invalidation of any of the covenants, limitation or provisions of this Agreement by judgment or court order shall in no way affect any of the remaining provisions hereof, and same shall continue in full force and effect.

9. APPLICABLE LAW AND VENUE.

This Agreement shall be construed in accordance with the laws of the State of Colorado. The parties agree that the exclusive place of venue and jurisdiction shall be any court of competent jurisdiction located within El Paso County, Colorado.

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10. ATTORNEY FEES AND COSTS

In the event that it becomes necessary to enforce the terms hereof, the prevailing party shall be entitled to its attorney fees and costs in connection with such dispute.

OWNERS OF LOT 1

Clara M. Kuhn 8-6-99
Date

OWNERS OF LOT 2

Clara M. Kuhn 8-6-99
Date

OWNERS OF LOT 3

Clara M. Kuhn 8-6-99
Date

OWNERS OF LOT 4

Clara M. Kuhn 8-6-99
Date

STATE OF COLORADO)
)SS
COUNTY OF EL PASO)

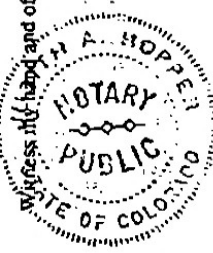
Connie Kuhn 08/06/99
Date

Connie Kuhn 08/06/99
Date

The foregoing instrument was acknowledged before me this 6 day of August 1999, by Clara M. Kuhn, as owner(s) of Lot #1 Sunshine Acres Filing No. 1.

My commission expires: 1-19-2000

Witness the hand and official seal.



H. A. Hopper
Notary Public

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STATE OF COLORADO)
COUNTY OF EL PASO)

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The foregoing instrument was acknowledged before me this 6 day of August
1999, by Condie L. Kuhn, as owners(s) of Lot #2 Sunshine Acres Filing No. 1.

My commission expires: 1-19-2000

Witness my hand and official seal.



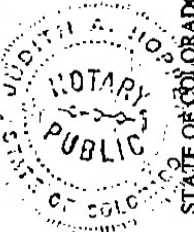
STATE OF COLORADO)
COUNTY OF EL PASO)

Judith A. Hoffer
Notary Public

The foregoing instrument was acknowledged before me this 6 day of August
1999, by Condie L. Kuhn, as owners(s) of Lot #3 Sunshine Acres Filing No. 1.

My commission expires: 1-19-2000

Witness my hand and official seal.



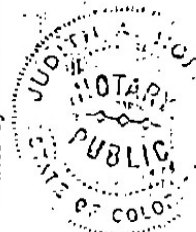
STATE OF COLORADO)
COUNTY OF EL PASO)

Judith A. Hoffer
Notary Public

The foregoing instrument was acknowledged before me this 6 day of August
1999, by Condie L. Kuhn, as owners(s) of Lot #4 Sunshine Acres Filing No. 1.

My commission expires: 1-19-2000

Witness my hand and official seal.

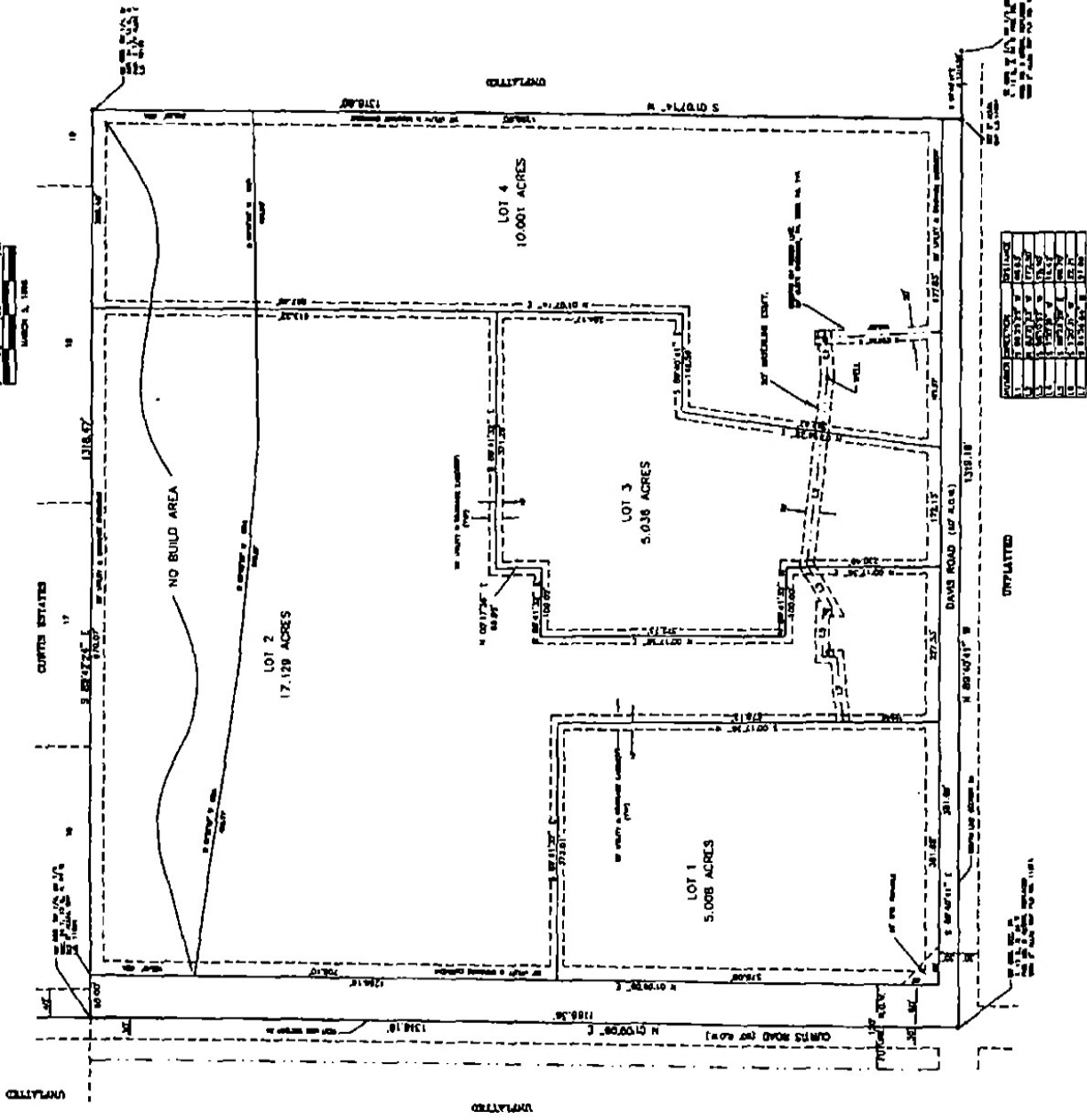
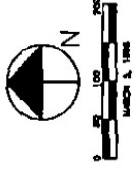


Judith A. Hoffer
Notary Public

SUNSHINE ACRES FILING NO. 1

S.W. 1/4 OF THE S.W. 1/4 OF SECTION 34, T. 13 S., R. 64 W. OF THE 6TH P.M.
EL PASO COUNTY, COLORADO

EXHIBIT "A"



Colorado Division of
Water Resources

Colorado's Well Permit Search

Permit Issued; Completion Status Unknown

Help Last Refresh: 6/8/2011 12:02:16 AM

Receipt: 0432347 Division: 2
Permit #: 42989-F - Water District: 10
Well Name / #: UPPER BLACK SQUIRREL CREEK County: EL PASO
Designated Basin: UPPER BLACK SQUIRREL CREEK Management District: UPPER BLACK SQUIRREL
Case Number:
WDID:

[-] Applicant/Owners History			
Date Range	Applicant/Owner Name	Address	City/State/Zip
Unknown - Present	KUHIN KLAUS & CONNIE	1-990 DAVIS RD	PEYTON, CO 80831

[-] Location Information			
Approved Well Location:			
Q40	Q160	Section	Township
SW	SW	34	13.0S
Range	PM	Footage from Section Lines	
64.0W	Sixth	150 S	800 W
Northing (UTM y): 4302213.8 Easting (UTM x): 538934.3			
Location Accuracy: Spotted from section lines			

Physical Address

City/State/Zip

Subdivision Name

Filing Block Lot

Parcel ID:
Acres In Tract: 0

[-] Permit Details	
Date Issued: 12/16/1998	Date Expires:
Use(s): IRRIGATION COMMERCIAL	Aquifer ARAPAHOE (s):
Special Use:	

Area which may be irrigated: 0 acres
Maximum annual volume of appropriation: 0

Statute:

Permit Requirements: Totalizing Flow Meter No Geophysical Log No Abandonment Report No

Cross Reference
Permit(s): Permit Number Receipt Description
42989-F- 0432347

Comments:EXPANSION OF USE

[-] Construction/Usage Details			
Well Construction Date:	Pump Installation Date:		
Well Plugged:	1st Beneficial Use:		
Elevation 0	Perforated Casing (Top) 0	Perforated Casing (Bottom) 0	Static Water Level 0
Depth 0			Pump Rate 0

[-] Application/Permit History	
Permit Issued	12/16/1998
Application Received	06/29/1998

[-] Imaged Documents	
Document Name	Date Imaged Annotated