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El Paso County Planning and Community Development Department
2880 International Circle, Suite 110
Colorado Springs, CO 80910

Re: Nor'Wood Bible Church Saddlehorn Subdivision

El Paso County Planning and Community Development Department:

This firm represents the Upper Black Squirrel Creek Ground Water Management District (the "UBSC District"), a formed and operating ground water management district with the powers enumerated in the Colorado Ground Water Management Act, C.R.S. § 37-90-101 *et seq.* The UBSC District has reviewed the Nor'Wood Bible Church Saddlehorn Subdivision (the "Project") submitted by Vertex Consulting Services (Nina Ruiz) ("Applicant") requesting approval of a site development plan to allow for development of a religious institution on 5 acres with water to be provided by the Saddlehorn Metropolitan District and provides the following comments for your review and consideration:

1. Management and Use of Designated Groundwater.

The Colorado Ground Water Management Act of 1965, C.R.S. § 37-90-101 *et seq.*, created the Colorado Ground Water Commission ("Commission") and provided for the formation of groundwater management districts within designated basins. Together, the Commission and the local groundwater management district administer designated groundwater in a coordinated manner.

Under the 1965 Act, the Commission, not the water court, has jurisdiction to determine the right to withdraw designated groundwater. The Commission has promulgated rules and regulations, the "Designated Basin Rules," 2 CCR 410-1, for the management and control of designated groundwater and are binding on all users of designated groundwater. Groundwater management districts may also establish rules for the management and control of designated groundwater that are applicable to the withdrawal and use of designated groundwater. For example, within the boundaries of a groundwater management district, the district has the authority to administer designated groundwater priorities, issue curtailment orders, and further limit withdrawals.

The UBSC District is a groundwater management district formed and operating under the Colorado Ground Water Management Act. Pursuant to its statutory authority, the UBSC

District has established rules, regulations, and policies, available to view on the UBSC District's website.¹ Applicant should review all UBSC District rules, regulations, and policies.

2. Compliance with UBSC District Rules.

The Project is located within the UBSC District's boundaries and therefore Applicant must comply with all UBSC District rules and regulations. Specifically, Applicant must comply with:

UBSC District Rule 17. Rule 17(B) imposes the following limits on withdrawals from large capacity wells in subdivisions:

Withdrawals shall not exceed 0.5 acre-feet per year per single family residence, single condominium unit, apartment unit, single unit with a multiple-dwelling unit, or equivalent within the Subdivision or cluster development supplied by the well. In the event a Subdivision or cluster development is supplied by multiple wells, production from all wells supplying the subdivision or cluster development shall not exceed the product of (the number of single family residences, single condominium units, apartment units, single units within a multiple-dwelling unit or equivalent within the Subdivision)X(.5) acre feet per year. In no event shall production from the well exceed the rate or amount set forth in any determination of water rights issued for the well by the Colorado Ground Water Commission.

UBSC District Rule 18. Rule 18 imposes the following limits on withdrawals from large capacity wells located outside a subdivision or cluster development:

For residential use:

- (A) Production shall not exceed fifteen gallons per minute and withdrawals shall not exceed one acre foot per year.
- (B) A well shall not serve more than two residences on a single parcel.
- (C) Totalizing flow meters shall be installed on all wells and well owners shall keep accurate records of withdrawals and provide copies of such records to the UBSC District upon request.

Requests for irrigation use on the same parcel must be supported with a description of the place of use and the number of acres to be irrigated.

UBSC District Rule 19. Rule 19 imposes the following limits on withdrawals from large capacity wells for commercial use:²

- (A) Withdrawals shall be limited to the amount reasonably necessary to supply the present and future needs of the proposed Commercial Business, as

¹UBSC District, *Rules, Regulations and Statement of Policy*, https://upperblacksquirrelcreekwater.com/reg_rules.php.

² Rule 19 defines a commercial business as "a business that will a) be operated by the well owner and that will have its own books, bank accounts, checking accounts and separate tax returns; b) use water solely on the land indicated on the proposed permit for the purposes stated in the proposed permit; and c) will maintain its individual assets and will own or lease the property upon which the well is to be located."

established by the Board of Directors of the UBSC District in consultation with the Ground Water Commission.

- Applicant must therefore provide a detailed water demand estimates for the commercial use and all other intended uses so the UBSC District Board of Directors may make its determination of the amount reasonably necessary to supply the present and future needs of the business.

(B) Totalizing flow meters shall be installed on all wells and well owners shall keep accurate records of withdrawals and provide copies of such records to the UBSC District upon request.

Applicant is responsible for complying with all UBSC District rules and regulations, not just Rules 17, 18, and 19.

3. Water and Wastewater Service.

The UBSC District has enacted a policy that “encourages the uses of central (municipal) water and wastewater systems, as opposed to the use of individual wells and septic systems in any proposed subdivision consisting of three or more lots.” Similarly, the El Paso County Land Development Code states that “[e]very reasonable effort shall be made to provide a central wastewater system.” El Paso Land Dev. Code § 8.4.8(B)(1)(a).

The proliferation of individual septic systems, called Individual Sewage Disposal Systems (ISDS) or Onsite Wastewater Treatment Systems (OWTS), within the UBSC Basin degrades the Basin’s alluvial water quality and threatens the already over-appropriated groundwater resources of the Basin. Septic systems are generally ineffective at removing organic nitrogen compounds, volatile organic compounds (solvents, paints, antifreeze, etc.), pharmaceuticals, and personal care products from effluent. The cumulative use of septic systems in a specific region of the aquifer can result in the discharge of hundreds of acre-feet per year of effluent to a localized part of the alluvial aquifer, which may cause attenuation of certain contaminants from the effluent that can then become a source of residual contamination.

For projects intending to utilize individual septic systems, consideration must be given to the cumulative use of septic systems in that area and the location of the septic systems within the alluvial groundwater flow system. This should include an analysis of the depth to groundwater and depth to bedrock, and the degree of subsurface saturation, which influences groundwater flow direction and velocity. In areas with shallow depth to water, the use of septic systems can create near-surface saturated conditions. Similarly, shallow bedrock can prevent septic systems from properly discharging, which can result in near-surface impacts, particularly during rain events. ***Accordingly, individual septic systems should not be used in areas with shallow depth to water or shallow bedrock.***

The application states that Applicant intends to utilize onsite wastewater treatment systems. The location of this proposed development is within a few miles of the Woodmen Hills Wastewater Treatment Plant and Applicant ***should investigate connecting to Woodmen Hills Metropolitan District’s central wastewater service.*** Failing to do so is a violation the UBSC District’s policy, and no evidence is provided that the Applicant took every reasonable effort to provide connection to the central wastewater as required by El Paso County regulations.

4. Detention of Surface Flows.

The Project's Letter of Intent states that the "existing Saddlehorn regional pond was designed and sized to accept flows related to the proposed religious institution (see drainage letter)." Letter of Intent at 2. To date, no drainage letter or additional information have been provided. The Project may not capture and detain surface flows within the UBSC Basin unless done so by a proper stormwater detention facility in accordance with Designated Basin Rule 5.11. Surface flows in a designated basin are "designated ground water" under the Groundwater Management Act and are subject to administration by the Ground Water Commission. *In Matter of Water Rights*, 361 P.3d 392, 396-97 (Colo. 2015); *see also* C.R.S. § 37-90-102(1) (stating that designated ground water may only be appropriated in the manner prescribed by the Groundwater Management Act). Accordingly, it is illegal to capture and detain such flows unless done so by a proper storm water detention facility in accordance with Rule 5.11, which includes (among several other requirements) as follows:

5.11.1 A "storm water detention and infiltration facility" means a facility that is operated solely for storm water management and:

- A. Is owned or operated by a government entity or is subject to oversight by a governmental entity;
- B. Continuously releases or infiltrates at least ninety-seven percent of all of the water from a rainfall event that is **equal to or less than a five-year storm** within seventy-two hours after the end of the rainfall event;
- C. Continuously releases or infiltrates all of the water from a rainfall event **greater than a five-year storm** as quickly as practicable, but in all cases releases or infiltrates at least ninety-nine percent of all of the water from the rainfall event within one hundred twenty hours after the end of the rainfall event, and;
- D. Operates passively and does not subject the storm water runoff to any active treatment process.

5. Shallow Groundwater and Underdrains.

Shallow groundwater exists throughout much of the UBSC Basin, including the area underlying this proposed development. Applicant should investigate the existence of shallow groundwater under each proposed lot. Structures developed in areas with high groundwater require underdrains to capture and drain water that would otherwise flood those structures. Under the Ground Water Commission's Designated Basin Rules, underdrains are considered large capacity wells and require a large capacity well permit. Any such large capacity well permit will require a replacement plan that meets the requirements of Designated Basin Rule 5.6, including by replacing evaporation and evapotranspiration associated with the exposure of groundwater caused by the underdrain.

6. Denver Basin Groundwater.

Denver Basin groundwater is a non-renewable source, and it is well known that the Denver Basin water supplies are diminishing and may not be available in the future. Accordingly,

Applicant should seek renewable sources of water and minimize reliance on Denver Basin groundwater to supply the Project.

The UBSC District reserves the right to provide additional comments at a later date founded upon information not readily ascertainable from the above-referenced application.

Respectfully,

A handwritten signature in blue ink, appearing to read "LOBi". The signature is fluid and cursive, with the letters "L", "O", and "B" being prominent and connected.

Lucas O'Brien
for
TROUT RALEY