TO: **El Paso County Planning Commission**
Brian Risley, Chair

FROM: **Gabe Sevigny, Planner II**
Gilbert LaForce, PE Engineer II
Craig Dossey, Executive Director

RE: **Project File #: MS-19-003**
Project Name: Poenitsch Minor Subdivision
Parcel No.: 52080-00-041

OWNER:	**REPRESENTATIVE:**
Tom Poenitsch & Christy Mullins PO Box 8202 Colorado Springs, CO 80933	Oliver E Watts Consulting Engineer, INC 614 Elkton Drive Colorado Springs, CO 80907

Commissioner District: 1

Planning Commission Hearing Date:	2/18/2020
Board of County Commissioners Hearing Date	3/10/2020

EXECUTIVE SUMMARY

A request by Tom Poenitsch and Christy Mullings, for approval of a minor subdivision for the Poenitsch subdivision to create and authorize the development of three (3) single-family lots. The 18.86 acre parcel is zoned RR-5 (Residential Rural) and is located at the northwest corner of the Herring Road and Shoup Road intersection and is within Section 8, Township 12 South, Range 65 West of the 6th P.M. The subject property is located within the boundaries of the Black Forest Preservation Plan (1987) area.

The final plat application meets the submittal and review criteria for a final plat as well as the general development standards of Chapter 6, the final plat review criteria of Chapter 7, and the subdivision design requirements of Chapter 8 of the El Paso County Land Development Code (2019).

Individual wells and onsite wastewater treatment systems (OWTS) are proposed to serve the three (3) lots. A finding of water sufficiency is requested and recommended with this application.

A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION

Request: A request by Tom Poenitsch and Christy Mullins for approval of a minor subdivision to create three (3) single-family residential lots.

Waiver(s)/Deviation(s): No waivers are requested with this application.

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

B. PLANNING COMMISSION SUMMARY

Request Heard:
Recommendation:
Waiver Recommendation:
Vote:
Vote Rationale:
Summary of Hearing:
Legal Notice:

C. APPROVAL CRITERIA

In approving a final plat, the BoCC 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 (2019):

- The subdivision is in conformance with the goals, objectives, and policies of the Master Plan;
- The subdivision is in substantial conformance with the approved preliminary plan;
- The subdivision is consistent with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analyses, 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 this 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 this Code;
- All areas of the proposed subdivision which may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified and that the proposed subdivision is compatible with such conditions [C.R.S. §30-28-133(6)(c)];
- Adequate drainage improvements are proposed that comply with State Statute [C.R.S. §30-28-133(3)(c)(VIII)] and the requirements of this Code and the ECM;
- Legal and physical access is provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with this Code and the ECM;
- Necessary services, including police and fire protection, recreation, utilities, and transportation systems, are or will be made available to serve the proposed subdivision;
- The final plans provide evidence to show that the proposed methods for fire protection comply with Chapter 6 of this 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;
- 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 subdivision meets other applicable sections of Chapter 6 and 8; and
- The extraction of any known commercial mining deposit shall not be impeded by this subdivision [C.R.S. §34-1-302(1), et seq.]

D. LOCATION

North:	RR-5 (Residential Rural)	Vacant
South:	RR-5 (Residential Rural)	Single Family Residential
East:	RR-5 (Residential Rural)	Vacant
West:	RR-5 (Residential Rural)	Single Family Residential

E. BACKGROUND

The subject property was zoned A-4 (Agricultural) on September 21, 1965, however, subsequent nomenclature changes have renamed the zoning district to the RR-5

(Residential Rural) zoning district. The current lot configuration was created by metes and bounds on April 20, 1966, which pre-dates the subdivision regulations adopted by El Paso County on July 17, 1972, thus making the current configuruation of the
18.86 acre parcel a legal conforming lot.
The subject plat is proposing three (3) single-family lots, each consisting of a minimum of 5 acres. An additional twenty (20) feet of right-of-way along Shoup Road, and an additional fifteen (15) feet of right-of-way along Herring Road are proposed to be dedicated with this proposal. All three lots will access a shared driveway from Herring Road. A maintenance agreement covering the shared driveway has been prepared and will be recorded with the approved final plat. A note has been added to the final plat prohibiting direct from Shoup Road.

If the minor subdivision is approved, the newly created lots will be subject to the residential site plan application process and any future structures and uses will be subject to the zoning restrictions of the RR-5 (Residential Rural) zoning district and the requirements of the Land Development Code.

F. ANALYSIS

1. Land Development Code Compliance

A minor subdivision is defined as a division of land that creates four (4) or fewer lots. Section 7.2.1(C) of the Code requires a minor subdivision to conform to all preliminary plan and final plat requirements. This application meets the final plat and preliminary plan submittal requirements, the standards for Divisions of Land in Chapter 7, and the standards for Subdivision in Chapter 8 of the Code.

2. Zoning Compliance

The subject parcel is zoned RR-5 (Rural Residential). The RR-5 zoning district is intended to accommodate low-density, rural, single family residential development. The density and dimensional standards for the RR-5 zoning district are as follows:

- Minimum lot size – 5 acres
- Minimum lot width- 200 feet
- Setbacks – front 25 feet, sides 25 feet, and rear 25 feet
- Maximum lot coverage- 25 percent
- Maximum building height – 30 feet

The applicants are requesting approval of a minor subdivision to create and authorize development of three (3) single-family dwelling lots. The proposed lots will meet the dimensional standards of the RR-5 zoning district. Any future

applications for structures will be required to meet the setback requirements identified above or otherwise in place at the time of application submittal. Staff will have the opportunity to verify compliance with the setback requirements at the time that each future structure is permitted via the residential site plan process.

3. **Policy Plan Analysis**

The El Paso County Policy Plan (1998) has a dual purpose; it serves as a guiding document concerning broader land use planning issues and provides a framework to tie together the more detailed sub-area elements of the County Master Plan. Relevant policies are as follows:

> ***Policy 6.1.3-*** *Encourage new development which is contiguous and compatible with previously developed areas in terms of factors such as density, land use, and access.*
>
> ***Policy 6.1.11-*** *Plan and implement land development so that it will be functionally and aesthetically integrated within the context of adjoining properties and uses.*
>
> ***Policy 6.1.14-*** *Support development which complements the unique environmental conditions and established land use character of each sub-area of the County.*

The subject property is zoned RR-5 (Residential Rural) and is surrounded by RR-5 zoned properties in every direction. The adjacent parcels located north and east of the subject parcel were at one time developed as single-family dwelling structures with a minimum of 5 acres; however, as a result of the Black Forest Fire, the structures have been removed and the parcels continue remain vacant. The parcel located to the south of the subject parcel is developed with a single-family dwelling. The lot directly adjacent to the west is a legally created 1.85 acre lot that is developed with a single-family dwelling. The proposed subdivision is compatible with the previously developed areas.

4. **Small Area Plan Analysis**

The subject parcel is within the Black Forest Preservation Plan (1987), specifically Sub Area 1, the Timbered Area. The Plan encourages residential density of one dwelling unit per five acres, large lot cluster options, and protection and preservation of meadows and ponds. The applicants are proposing a three (3) lot minor subdivision with an average density of one dwelling unit per 5.99 acres.

The Black Forest Land Use Committee was sent a referral for this application and have no outstanding comments. Staff recommends that a finding of general consistency with the Plan can be made.

5. 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.*
>
> ***Goal 1.2*** *– Integrate water and land use planning*.

Water sufficiency has been analyzed with the review of the proposed minor subdivision. Please see the Water section below for a summary of the water findings and recommendations for the proposed minor subdivision. The State Engineer and the County Attorney's Office have recommended that the proposed minor subdivision has an adequate water supply in terms of quantity and dependability.

Section 1.10.5 of the Land Development Code (2019) states the following:

> "Any project or action for which a complete application was submitted to the County before the effective date of this Code or any subsequent amendment to this Code may, at the applicant's option, will be reviewed under the regulations or ordinances in effect at the time of application. If approved, the projects or actions may be carried out in accordance with said regulations or ordinances. Nothing in this subsection is intended to restrict otherwise applicable vested applicant rights."

The Code in effect at the time of submittal of the minor subdivision application allowed an assumption of water quality for minor subdivisions.

6. Other Master Plan Elements

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a low wildlife impact potential. Colorado Parks and Wildlife, Colorado State Forest Service, El Paso County Conservation District, and El Paso County

Community Services Department, Environmental Services Division, were each sent a referral and have no outstanding comments.

The Master Plan for Mineral Extraction (1996) identifies no aggregate resource of value in the area of the subject parcels. A mineral rights certification was prepared by the applicants indicating that, upon researching the records of El Paso County, no severed mineral rights exist.

G. PHYSICAL SITE CHARACTERISTICS

1. Hazards

The soils and geology report prepared by Ground Water Investigations, LLC, indicates that there are no hazards present on the property that would preclude development within the proposed minor subdivision. The Colorado Geologic Survey (CGS) was sent a referral for the minor subdivision and had no objection.

2. Wildlife

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

3. Floodplain

The property is located within FEMA flood zone X, area of minimal flood hazard and determined to be outside the 500-year floodplain per FEMA's Flood Insurance Rate Map No. 08041C0320G, which has an effective date of December 7, 2018.

4. Drainage and Erosion

The property is located within the Kettle Creek drainage basin (FOMO3000) which is an unstudied basin and is included in the El Paso County drainage basin fee program. Drainage fees will be due at the time of final plat recordation

The site generally drains to the west. Surface runoff is conveyed via a natural channel flowing through the site. The channel is located within a drainage easement with a no build and no storage of materials restriction. The sole responsibility for maintenance will be vested with the individual property owner(s). Permanent water quality control measures are not required based on the exclusion identified in Engineering Criteria Manual (ECM) Appendix I Section I.7.1.B.5. The exclusion states water quality capture volume for single-family residential lots greater than or equal to 2.5 acres in size per dwelling unit and having a total lot impervious area of less than 10 percent are excluded from providing water quality. Flood control detention was not required since the

residential dwelling units generates a negligible increase to the stormwater runoff.

5. **Transportation**

The subdivision is subject to the El Paso County road impact fee program (Resolution No. 19-471). The obligation to pay the fee is triggered with the final land use approval.

The 2016 Major Transportation Corridors Plan Update (MTCP) does not call for any improvement projects in the immediate vicinity of the site. The MTCP classifies Shoup Road as a rural minor arterial having an existing 60 feet right-of-way (100 feet required) and Herring Road as a rural major collector having an existing 60 feet right-of-way (90 feet required). The subdivision is dedicating 20 feet of right-of-way for Shoup Road and 15 feet of right-of-way for Herring Road.

Access to the three anticipated lots is proposed to be provided via a shared driveway from Herring Road. No private or public interior roadways are proposed with the subdivision.

H. SERVICES

1. **Water**

Sufficiency:

Quality: Presumed
Quantity: Sufficient
Dependability: Sufficient

Attorney's summary: 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 recommended a finding of sufficiency with regard to water quantity and dependability.

2. **Sanitation**

Individual onsite wastewater treatment systems (OWTS) are proposed to serve the development. El Paso County Public Health has made a favorable recommendation regarding wastewater disposal.

3. **Emergency Services**

The requested minor subdivision is within the Black Forest Fire Protection District. The Fire District received a referral to review the application and did not respond with any objections. The Fire District has committed to serve the development.

4. **Utilities**
   Mountain View Electric Association will provide electrical service and Black Hills Energy will provide natural gas service to the development. Public utility easements have been depicted on the final plat.

5. **Metropolitan Districts**
   The property is not within a metropolitan district.

   The property is not anticipated to be included in a public improvement district. Traffic impact fees shall be paid in accordance with Resolution 19-471.

6. **Parks/Trails**
   Regional park fees (Region 2) of $1,368.00 in lieu of land dedication shall be paid at the time of final plat recordation.

7. **Schools**
   Fees in lieu of school land dedication in the amount of $918.00 shall be paid to El Paso County for the benefit of Academy School District No. 20 at the time of plat recording.

I. APPLICABLE RESOLUTIONS

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J. STATUS OF MAJOR ISSUES

There are no major outstanding issues.

K. RECOMMENDED CONDITIONS AND NOTATION

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 (2019) staff recommends the following conditions and notation:

CONDITIONS

1. All Deed of Trust holders shall ratify the plat. The applicants 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 Applicants 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. 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.

7. Park fees in lieu of land dedication for regional parks (Area 2) in the amount of $1,368.00 shall be paid at the time of final plat recording.

8. Fees in lieu of school land dedication in the amount of $918.00 shall be paid to El Paso County for the benefit of Academy School District No. 20 at the time of plat recording.

9. The County Attorney's Conditions of Compliance shall be adhered to at the appropriate time.

10. A drainage fee for the Kettle Creek Drainage Basin in the amount of $7,060.16 shall be paid at the time of final plat recording.

11. No direct access to Shoup Road will be granted.

NOTATION

1. Final plats not recorded within 24 months of Board of County Commissioner approval shall be deemed expired, unless an extension is approved.

L. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified ten (10) adjoining property owners on January 29, 2020, for the Planning Commission hearing. Responses will be provided at the hearing.

M. ATTACHMENTS

Vicinity Map
Letter of Intent
Plat Drawing
State Engineer's Letter
County Attorney's Letter
El Paso County Public Health Recommendation Letter