

# EL PASO COUNTY

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
 CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO: El Paso County Board of County Commissioners**  
**Mark Waller, Chair**

**FROM: Nina Ruiz, Planner III**  
**Gilbert LaForce, PE Engineer II**  
**Craig Dossey, Executive Director**

**RE: Project File #: VR-17-017**  
**Project Name: Hadden Heights**  
**Parcel No.: 53130-01-010**

<b>OWNER:</b>	<b>REPRESENTATIVE:</b>
Jose and Mary Contreras 10684 Ross Lake Drive Colorado Springs, CO 80831	Jose and Mary Contreras 10684 Ross Lake Drive Colorado Springs, CO 80831

**Commissioner District: 2**

Planning Commission Hearing Date:	10/15/2019
Board of County Commissioners Hearing Date	11/12/2019

**EXECUTIVE SUMMARY**

A request by Jose and Mary Contreras for approval of a vacation and replat of a 5.10 acre parcel which was illegally conveyed from a 10.21 acre lot that was designated as a "park area dedicated for public use" on the original plat. The request includes removal of a plat note that restricts use of the property to a park for public use. Fees in lieu of park land dedication for the benefit of Regional Park Area 4 will be required when the plat is recorded.



The property is zoned RR-5 (Residential Rural) and is located north of Eggar Drive, approximately one-half (1/2) mile west of the Eggar Drive and Meridian Road intersection and is within Section 13, Township 13 South, Range 65 West of the 6<sup>th</sup> P.M. The property is located within the Falcon/Peyton Comprehensive Plan (2008).

#### **A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION**

**Request:** A request for approval of a vacation and replat of a portion of Lot 18 Hadden Heights Subdivision to legalize the illegal division of land. The request includes removing a plat note that dedicates the property as a park for public use.

**Waiver(s)/Deviation(s):** No waivers have been requested.

**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:** As a Consent item at the October 15, 2019 hearing.

**Recommendation:** Approval based on recommended conditions and notations.

**Waiver Recommendation:** N/A

**Vote:** 5 to 0

**Vote Rationale:** N/A

**Summary of Hearing:** The applicant was represented at the hearing.

**Legal Notice:** N/A

#### **C. APPROVAL CRITERIA**

Section 7.2.3.C, Actions Vacating or Altering a Recorded Plat, Replat, of the EI Paso County Land Development Code states that a replat, "involves two actions, the vacation of the portion of the subdivision plat where the change is proposed...and approval of a new subdivision plat." The Code goes on to define a replat as providing a replat of a subdivision or lots in a subdivision, in which the original subdivision is substantially modified or additional lots are created. In approving a replat, the following findings shall be made:

- The replat complies with this Code, and the original conditions of approval associated with the recorded plat;
- No nonconforming lots are created, and in the case of existing nonconforming lots, the nonconformity is not increased;
- The replat is in keeping with the purpose and intent of this Code;
- The replat conforms to the required findings for a minor or major subdivision, whichever is applicable;

- 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;
- The approval will not adversely affect the public health, safety, and welfare; and
- Where the lots or parcels are subject to any CC&Rs or other restrictions, that any potential conflict with the CC&Rs or other restrictions resulting from the replat has been resolved

**D. LOCATION**

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

**E. BACKGROUND**

The parcel was zoned A-1 (Agricultural) on September 21, 1965, when zoning was first initiated for this area of El Paso County. Due to changes in the nomenclature of the El Paso County Land Development Code, the A-5 zoning district has been renamed as the RR-5 (Residential Rural) zoning district. The Hadden Heights Subdivision was recorded on August 2, 1973. The plat included 24 single-family residential lots. Lot 18, which includes 10.21 acres, was designated as a “park area dedicated to public use” on the recorded plat. No mechanism was included within the recorded plat dedicating this land to El Paso County or any other private or public entity, nor was any action prescribed or taken to develop Lot 18 as a public park.

Despite the plat designation of Lot 18 as a public park, a building permit was issued and a single-family residence was constructed in 1980. Lot 18 was then illegally conveyed by deed into two (2) parcels on August 1, 1984. The existing residence is located on a 5.12 acre portion of Lot 18 (Parcel No. 53133-01-011) and the remaining 5.1 acre Contreras property (Parcel No. 53133-01-010) is vacant. No action has been taken to legalize either one of the illegal divisions of land. The remainder parcel has not been included in this action due to the neighbor choosing not to be a part of the application and will require a separate subdivision action to legalize the division of land prior to any additional building permits being issued.

**F. ANALYSIS**

**1. Land Development Code Compliance**

This application meets the requirements of Sections 7.2.3.A (Vacation) and 7.2.3.C (Replat), Actions Vacating or Altering a Recorded Plat, the vacation and

replat submittal requirements, the standards for Divisions of Land in Chapter 7, and the standards for Subdivision in Chapter 8 of the Land Development Code.

## 2. Zoning Compliance

The proposed vacation and replat will create one single-family residential lot, and as proposed, will conform to the standards of the RR-5 (Residential Rural) zoning district. The RR-5 (Residential Rural) zoning district density and dimensional standards are as follows:

- Minimum lot size: 5 acres
- Setbacks: 25 feet on all sides
- Maximum lot coverage: 30 percent
- Maximum building height: 30 feet

The proposed lot is vacant and is 5.1 acres in size, which complies with the minimum lot size requirement of the RR-5 zoning district.

## 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.*

The property is within, and surrounded by, properties zoned RR-5 (Residential Rural). The RR-5 zoning district requires a minimum lot size of 5 acres. The lot that is proposed to be legalized is 5.1 acres in size, which is similar in size to other lots within the Hadden Heights Subdivision. The proposed vacation and replat will be consistent with the Plan.

## 4. Small Area Plan Analysis

The subject parcel is within the Falcon/Peyton Comprehensive Plan (2008), specifically the Land Use Recommendations Map locates the property in an area identified as "Existing and Approved Rural Residential Density Development".

Rural Residential Density is defined as “Parcel sizes are between 2.5 acres and 5 acres, with some of these platted lots ranging up to 10 acres in area...” The parcel to be legalized is 5.1 acres in size. The plat is consistent with approved densities and land uses in the immediate vicinity and within the Hadden Heights Subdivision. The proposed vacation and replat is generally consistent with the Falcon/Peyton Plan.

#### **5. Other Master Plan Elements**

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a high wildlife impact potential. The El Paso County Conservation District was sent a referral and have no outstanding comments.

The Master Plan for Mineral Extraction (1996) identifies potential upland deposits in the area of the subject parcels.

### **G. PHYSICAL SITE CHARACTERISTICS**

#### **1. Hazards**

No hazards were identified in the review of the replat. Colorado Geologic Survey (CGS) was sent a referral and had no objection to the replat.

#### **2. Wildlife**

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

#### **3. Floodplain**

FEMA Flood Insurance Rate Map No. 08041C0561G which has an effective date of December 7, 2018, shows the property is located outside the 500-year floodplain (Zone X).

#### **4. Drainage and Erosion**

The property is located in the Falcon drainage basin (CHWS1400), which is included in the Drainage Basin Fee Program. Drainage and bridge fees in the amount listed in the condition of approval shall be paid to El Paso County at the time of recording the replat map. The replat is expected to have a negligible drainage impact to surrounding properties.

#### **5. Transportation**

The property is accessed via Eggar Drive. No public improvements are proposed and the replat is expected to have a negligible impact to the County’s transportation network.

The property is subject to the El Paso County Road Impact Fee Program (Resolution No. 18-471). Fee shall be paid in full at the time of building permit issuance.

## **H. SERVICES**

### **1. Water**

Sufficiency:

Quality:

Quantity:

Dependability:

Attorney's summary: Sufficiency letter attached.

### **2. Sanitation**

Wastewater disposal will be provided by onsite wastewater treatment systems (OWTS).

### **3. Emergency Services**

The property is within the Falcon Fire Protection District.

### **4. Utilities**

Electric service will be provided by Mountain View Electric Association. Gas service will be via private natural gas distributor.

### **5. Metropolitan Districts**

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

### **6. Parks/Trails**

Fees in lieu of park land dedication in the amount of \$430.00 for regional fees and \$0.0 for urban park fees will be due at the time of recording the replat map.

### **7. Schools**

Fees in lieu of school land dedication in the amount of \$240.00 will be due at the time of recording the replat map.

## **I. APPLICABLE RESOLUTIONS**

See attached Resolution.

## **J. STATUS OF MAJOR ISSUES**

There are no major outstanding issues.

## **K. CONDITIONS AND NOTATION**

Should the Board of County Commissioners find that the request meets the criteria for approval outlined in Section 7.2.3.C, Actions Vacating or Altering a Recorded Plat, Replat, of the El Paso County Land Development Code (2018), 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 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. 18-471), 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. Park fees in lieu of land dedication for regional parks (Area 4) in the amount of \$430.00 and urban park (Area 3) fees in the amount of \$0.0 shall be paid at time of plat recordation.
9. Fees in lieu of school land dedication in the amount of \$240.00 shall be paid to El Paso County for the benefit of Falcon School District No. 49 at time of plat recording.
10. Drainage fees in the amount of \$7,441.00 and bridge fees in the amount of \$1,022.00 for the Falcon (CHWS1400) drainage basin shall be paid to El Paso County at the time of plat recordation.

#### **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 six (6) adjoining property owners on September 25, 2019, for the Board of County Commissioners meeting. Responses will be provided at the hearing.

#### **M. ATTACHMENTS**

Vicinity Map  
Letter of Intent  
Plat Drawing  
State Engineer's Letter  
County Attorney's Letter  
Planning Commission Resolution  
Board of County Commissioners' Resolution

# El Paso County Parcel Information

File Name:

PARCEL	NAME
5313001010	CONTRERAS JOSE A

Zone Map No.

ADDRESS	CITY	STATE
10684 ROSS LAKE DR	PIYTON	CO

ZIP	ZIPLUS
80831	7085

Date:



Please report any parcel discrepancies to:  
 El Paso County Assessor  
 1675 W. Garden of the Gods Rd.  
 Colorado Springs, CO 80907  
 (719) 520-6600



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May 9, 2019

**LETTER OF INTENT  
HADDEN HEIGHTS NO. 2 – VACATION AND REPLAT**

**Owner/Applicant:**

Jose & Mary Contreras  
10684 Ross Lake Dr.  
Peyton, CO 80831  
(719) 495-9203

**Site Location Size and Zoning:**

The proposed subdivision to be known as “Hadden Heights No. 2” is located in the Southeast Quarter of Section 13, Township 13 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado. The property has El Paso County Tax Schedule No. 53130-01-010 and is currently a vacant parcel with address of 11480 Eggar Drive. The proposed subdivision is located on the north side of Eggar Drive, west of Meridian Road and just east of Eggar Court. The area of land under consideration for replatting is 5.105± acres and the property is zoned RR-5 (Rural Residential 5 Ac).

**Request and Justification:**

The request is for approval of a Vacation and Replat of a parcel of land currently composed of a portion of Lot 18, Hadden Heights as recorded in Plat Book Z-2 at Page 24 under Reception Number 04040 of the records of El Paso County, Colorado. Lot 18 was originally platted in 1973 as a 10-acre park site. The El Paso County Board of County Commissioners disposed of the property in 1981 with Resolution 81-65, which made the property illegible for home construction. The subject parcel was separated from Lot 18 by deed in 1982. The proposed replat will create one (1) lot with an area of 5.105± acres to be designated Lot 18B. The property is proposed to be vacated and replatted in order to create a legal lot of the separated parcel to allow development of a single family residence on the site by the owners, Jose and Mary Contreras. The Contreras intend to build their retirement/primary home on the lot once replatted. Single-family dwellings are an allowed use in the RR-5 zone. The resulting residential density is 0.2 DU/Ac (1 DU/5.1 Ac) which complies with the zone density requirements. The proposed use will be identical and complimentary to the existing adjacent development surrounding the site.

The Owner/Applicant is requesting approval of the Vacation Replat for “Hadden Heights No. 2”. The property is eligible for subdivision under El Paso County Land Development Code. The proposed lot will provide an adequate site for a single-family home and is in a location and zone fitting for the purpose.

This application meets the Vacation and Replat submittal requirements, the standards for Divisions of Land in Chapter 7 (Section 7.2.3(A)(3) and Section 7.2.3(C)., and the standards for Subdivision in Chapter 8 of the El Paso County Land Development Code (2016). Vacation and Replats are reviewed and approved in consideration of the following review criteria found in the El Paso County Land Development Code.

*Engineers • Surveyors*  
*1903 Lelaray Street, Suite 200 • Colorado Springs, CO 80909 • Phone 719-635-5736*  
*Fax 719-635-5450 • e-mail mve@mvecivil.com*

Vacation

1. *Vacation of the recorded plat will not leave any lots or parcels without adequate utility or drainage easements.* This vacation is accompanied by the replat creating Lot 18B of which will provide the necessary utility and drainage easements.
2. *Vacation of the recorded plat will not vacate road rights-of-way or access easements needed to access other property.* No road right-of-way or access easement are being vacated with this proposed vacation action.
3. *Vacation of the recorded plat will not inhibit the provision of adequate public facilities or services to other property as required by this Code.* There are not public facilities or services that will be affected by the vacation of the subject property. Also, the vacation action is accompanied by the replat that will replace the vacated portion with a viable legal conforming lot for single-family residential use.
4. *Vacation of the recorded plat is consistent with the Master Plan.* This proposed vacation is accompanied by a replat which is consistent with the Master Plan and satisfies the required findings for a Final Plat. There is no aspect of the proposed vacation that conflicts with the goals and policies of the Master Plan.
5. *Vacation of the recorded plat will not adversely affect the public health, safety, and welfare.* There is no aspect of this vacation that will adversely affect the public health, safety, and welfare. The proposed vacation action will make way for the proposed replat which will enable the use of this long-vacant property in an established neighborhood.
6. *Where the lots or parcels are subject to any CC&Rs or other restrictions, that any potential conflict with the CC&Rs or other restrictions resulting from the vacation of the plat has been resolved.* The recorded CC&Rs (Bk 2886, Pg 759) have been reviewed by the applicant and contain no restrictions that conflict with the implementation of the proposed vacation action.

Replat

1. *The replat complies with this Code, and the original conditions of approval associated with the recorded plat.* The proposed replat complies with the Land Development Code. The replat does not affect any original conditions of approval of the 1973 recorded plat, except as modified by BOCC Resolution 81-65 which established existing Lot 18 as a usable lot for single-family residential purposes. The reason for the replat is to establish the deeded parcel as a legal conforming lot in compliance with the RR-5 zone district requirements. The replat will establish one (1) new viable lot of the same size and area as the existing surrounding lots. The adjacent street right-of-way will remain in place. All easements currently established in the subdivision will be placed on the new lot.
2. *No nonconforming lots are created, and in the case of existing nonconforming lots, the nonconformity is not increased.* The purpose of the replat is to establish the existing deeded parcel as a legal conforming lot. No nonconforming lots will be created as indicated on the proposed Vacation and Replat.
3. *The replat is in keeping with the purpose and intent of this Code.* The proposed replat will establish one (1) new single-family residential lot in place of the existing nonconforming deeded parcel in order to meet the requirements contained in the Land Development Code in size, area and provision of adequate public facilities and services. The replat will allow use of the property according to the existing RR-5 zone. The development and use of the lots will be in conformance with the requirements of the Land Development Code.

4. *The replat conforms to the required findings for a minor or major subdivision, whichever is applicable.* This replat conforms to all the required findings of the applicable Minor Subdivision Plat, including compliance with the Master Plan. The Master Plan is comprised of several elements. One of the elements is the El Paso County Policy Plan (1998), which establishes broad policies and goals that are intended to serve as a framework for decision-making regarding development of the County. The project satisfies the following policies from the Policy Plan as they specifically relate to this request:

*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.*” The proposed replat will not create the need for additional roadways or public facilities. The site will remain rural residential and is in an area adjacent to the same type of rural residential development;

*Policy 6.1.7 - “Encourage infill development which complements existing uses, is consistent with Small Area and other adopted plans.”* This development will utilize an existing vacant parcel located between two established rural residential lots. The presence of the new lot and future single-family residential home will utilize an existing undeveloped area that is appropriate for the specified use in a long established neighborhood of identical zoning and use;

*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.”* The proposed replat will provide development of similar size and use and the surrounding neighborhood will be developed in accordance with the current Land Development Code;

*“Policy 6.1.13 – Encourage the use of carefully planned and implemented clustering concepts in order to promote efficient land use, conservation of open space and reduction of infrastructure costs”;* The proposed replat will utilize the existing adjacent roadways without adding new public facilities;

*Policy 6.2.11 - “Encourage compatible physical character, density and scale in existing neighborhoods.”* The proposed replat will allow the use of the existing parcel to be in the same manner and density as the existing surrounding neighborhood;

Another element of the Master Plan is the Small Area Plan. The Hadden Heights subdivision and the proposed Hadden Heights No. 2 subdivision site are located within the area of the Falcon/Peyton Small Area Master Plan (2008), specifically within the Far Southern Area. While general policies of the Far Southern area are aimed at discouraging traditional 2.5 acre and 5 acre rural residential development in favor of a clustered rural residential concept, the plan does not preclude the development of previously established subdivisions for 5 acre rural residential use. The proposed replat is matching the surrounding neighborhood in density and use of an individual septic system.

The proposed subdivision plat is in compliance with the El Paso County Parks Master Plan (2013), which does not call for trails or parks in the site vicinity. The nearest proposed trails are along Garrett Road, Meridian Road, and Falcon Highway. A Regional Park Fee will be paid at the time of the Vacation and Replat recording.

The proposed subdivision is in compliance with the El Paso County Water Master Plan (2018). The Colorado Division of Water Resources has rendered an opinion of that the water supply for the proposed subdivision can be provided without causing injury to decreed water rights. Colorado Ground Water Commission has issued favorable Findings and Orders for the Laramie Fox Hills, Arapahoe and Denver aquifers. The Colorado Division of Water Resources has also issued a permit to the Owner/Applicant to use the existing well on the property. A listing of some

of the policies of the Water Master Plan that are supported by the proposed development follow: *Policy 4.1.3 – Support enhanced monitoring of sources of surface and tributary groundwater in the County.* The well permit requires use of metering for the well to insure compliance with the terms of the permit; *Policy 6.2.1.2 – Encourage re-use of treated wastewater for irrigation and other acceptable uses when feasible.* The single-family residence on the proposed 5 acre lot will utilize onsite wastewater treatment system which will provide “Return Flows” the environment as a condition of the groundwater findings and order and the well permit.

5. *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.* Access to the new lot is provided by existing Eggar Drive, a 60' wide public right-of-way that is constructed with gravel surface and roadside ditches. The new lot will access the public street with standard El Paso County rural driveway entrance.
6. *The approval will not adversely affect the public health, safety, and welfare.* There is no aspect of this replat that will adversely affect the public health, safety, and welfare. The proposed replat will enable the use of this long-vacant property in a manner originally intended and provided for on the originally recorded plat and established public infrastructure.
7. *Where the lots or parcels are subject to any CC&Rs or other restrictions, that any potential conflict with the CC&Rs or other restrictions resulting from the replat has been resolved.* The recorded CC&Rs (Bk 2886, Pg 759) have been reviewed by the applicant and contain no restrictions that conflict with the implementation of the proposed replat action.

#### Easements

Existing platted easements are being vacated with the Vacation Request and new easements are being created by the Replat to replace them. New side lot line easements will also be added on the common lot line between existing Lot 18 and the new Lot 18B. All side lot lines will be platted with a ten (10') foot public utility and drainage easement, all rear lot lines will be platted with a twenty (20') foot public utility easement, all front lot lines will be platted with a fifteen (15') equestrian easement as noted on the original plat of Hadden Heights. The sole responsibility for maintenance of these easements will be vested with the property owner.

#### Traffic Impact

The one (1) new proposed single-family residential unit will access the public Eggar Drive, a gravel local residential road. Eggar Drive connects to Meridian Road to the east and Garrett Road on the south. The subject replatted lot is expected to generate a total of 10 trips per day (Average weekday trips ends) and 1 trip in the peak hour based on 9.52 trips per unit for Single Family Detached Housing (according to Trip Generation, 9th Edition, 2012 by the Institute of Transportation Engineers). This number of trips is below the County threshold of 100 trips per day or 10 trip during the peak hour. Therefore, a Transportation Impact Study (TIS) is not required for the replat. This replat creates one (1) additional lot in the existing subdivision and will have the effect of generating additional traffic compared to the previously platted subdivision. Therefore, in accordance with the Road Impact Fee Program Update (Resolution 18-471) and the 2018 Road Impact Fee Implementation Document, this development is subject to road impact fees to be paid at the time of building permit.

Z:\61126\Documents\Correspondance\61126 LetterOfIntent-Vacation Replat.odt

**M.V.E., Inc. • Engineers • Surveyors**  
**1903 Lelaray Street, Suite 200 • Colorado Springs, CO 80909 • Phone 719-635-5736**  
**Fax 719-635-5450 • e-mail mve@mvecivil.com**





## COLORADO

Division of Water Resources

Department of Natural Resources

1313 Sherman Street, Room 821  
Denver, CO 80203

July 11, 2019

Raimere Fitzpatrick  
El Paso County Planning Department  
Transmitted via email:  
[raimerefitzpatrick@elpasoco.com](mailto:raimerefitzpatrick@elpasoco.com)

RE: Hadden Heights No. 2, Lot 18B  
SE ¼ of Sec 13, T13S, R65W, 6<sup>th</sup> P.M.  
Upper Black Squirrel Creek Designated Ground Water Basin  
Water Division 2, Water District 10

Dear Mr. Fitzpatrick:

We have received your June 19, 2019 submittal concerning the above-referenced proposal to vacate an existing 10.210 acre lot (original Lot 18, Hadden Heights Subdivision) and re-plat 5.105 acres of that original lot into a new residential lot (Hadden Heights No. 2, Lot 18B).

We previously commented on this proposal in a letter dated March 23, 2018. The reason for the current submittal is because of a change in well permit for the existing Denver Aquifer well that is the proposed current water supply (from permit no. 1611023 to permit no. 82920-F), and the inclusion of water supplies from the Arapahoe and/or Laramie-Fox Hills aquifers. This letter replaces our March 23, 2018 letter.

According to the information provided in the submittal Lot 18 of Hadden Heights Subdivision was originally platted in 1973 as a 10-acre park site. The El Paso County Board of County Commissioners disposed of the property in 1981 with Resolution 81-65, which made the property illegible for home construction. The subject parcel was separated from Lot 18 by deed in 1982. This proposed replat will create one (1) lot with an area of 5.105± acres to be designated Hadden Heights No. 2, Lot 18B. The property is proposed to be vacated and replatted in order to create a legal lot to allow development of a single family residence on the site by the owners, Jose and Mary Contreras.

This submittal is presented as a one lot subdivision (Hadden Heights No. 2, Lot 18B). This submittal does not address the water supply of the remaining 5.105 acre portion of original Lot 18, Hadden Heights.

### Water Supply Demand

According to the Water Supply Information Summary, the estimated annual water requirement for the lot is 1 acre-foot for in-house use, irrigation of 0.14 acres of lawn, garden and greenhouse, and the watering of 5 large domestic animals.

### Source of Water Supply

According to a May 10, 2019 letter from MVE, Inc. ("water supply letter") the proposed water source for the first 216 years is an existing Denver aquifer well currently permitted under well



permit no. 82920-F, with the source after that time proposed to be wells into the Laramie-Fox Hills aquifer and/or Arapahoe aquifer.

On February 5, 2019 our office issued well permit no. 82920-F pursuant to 37-90-107(7), C.R.S. and the Findings and Order of the Colorado Ground Water Commission dated February 4, 2019, for Determination of Water Right No. 3640-BD and its associated Replacement Plan. The well permit, Determination of Water Right and replacement plan allow the well to divert 1 acre-foot annually for 215 years for domestic use (in home use, lawn and garden irrigation and domestic animal watering), irrigation and replacement. Permit no. 82920-F was issued for the use of an existing well constructed under permit no. 191102 and well permit no. 191102 was cancelled upon issuance of well permit no. 82920-F.

Determination of Water Right nos. 3638-BD and 3639-BD were issued by the Ground Water Commission on February 4, 2019, for water beneath the parcel that is the subject of this submittal in the Laramie-Fox Hills and Arapahoe aquifers respectively. The following amounts of water were determined to be available.

Aquifer	Determination of Water Right Number	Annual amount available based on 100 yr. allocation approach (acre-feet/year)	Type
Arapahoe	3639-BD	1.95	Not-Nontributary (4% replacement)
Laramie-Fox Hills	3638-BD	1.53	Nontributary

The proposed sources of water for this subdivision are from bedrock aquifers in the Denver Basin. The State Engineer’s Office does not have evidence regarding the length of time for which these sources will be a physically and economically viable source of water. According to 37-90-107(7)(a), C.R.S., “Permits issued pursuant to this subsection (7) shall allow withdrawals on the basis of an aquifer life of 100 years.” Based on this allocation approach, the annual amounts of water determined in 3638-BD and 3639-BD are equal to one percent of the total amount, as determined by Rule 5.3.2.1 of the Designated Basin Rules, 2 CCR 410-1. Therefore, the water may be withdrawn in those annual amounts for a maximum of 100 years.

The subdivision lies within the allowed place of use of Determination of Water Right nos. 3638-BD and 3639-BD and the proposed uses are uses allowed by those Determinations.

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 Applicant’s replacement plan under Determination of Water Right 3640-BD allows withdrawal of Denver aquifer ground water for 215 years, and Determinations of Water Rights nos. 3639-BD and/or 3638-BD allow withdrawals for at least another 100 years from the Arapahoe and/or Laramie-Fox Hills aquifers. This plan would meet the county’s requirement of providing the average annual demand of the subdivision for a period of 300 years.

**State Engineer's Office Opinion**

Based upon the above and pursuant to Sections 30-28-136(1)(h)(l), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to water rights.

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 on the subdivided land is greater than the annual amount of water required to supply existing water commitments and the demands of the proposed subdivision.

Our opinion is qualified by the following:

The amounts of water in the Denver Basin aquifers, and identified in this letter, are 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 100 years (or 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.

If you, or the applicant, have any questions, please contact Joanna Williams at 303-866-3581 ext. 8265.

Sincerely,



Keith Vander Horst  
Chief of Water Supply, Basins

Cc: Division 1  
Well permit no. 82920-F

HaddenHeights2Lot18B\_July2019.docx

# EL PASO COUNTY

## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

**Diana K. May, County Attorney**

### Assistant County Attorneys

M. Cole Emmons  
Lori L. Seago  
Lisa A. Kirkman  
Steven A. Klaffky  
Peter A. Lichtman  
Mary Ritchie  
Bryan E. Schmid

October 9, 2019

VR-17-017      Hadden Heights No. 2, Lot 18B (Contreras)  
Vacation and Replat

Reviewed by:      M. Cole Emmons, Senior Assistant County Attorney *M. C. E.*  
Edi Anderson, Paralegal

### **FINDINGS AND CONCLUSIONS:**

1. This is a proposal by Jose and Mary Contreras ("Applicant") for a vacation and replat of their property located at 11480 Eggar Drive ("subject property") into a legal lot. The subject property is part of a 10.210 acre lot identified as Lot 18 of the Hadden Heights subdivision. Lot 18 originally included a "park area" for public use. In 1981, pursuant to Resolution No. 81-65, El Paso County authorized conveyance of the park area via quitclaim deed to a private property owner. This portion of Lot 18 then became a single-family residence, but was never platted as part of a legal subdivision. The current vacation and replat will plat the 5.105 acre lot owned by Jose and Mary Contreras into a legal lot to permit construction of a new residence on the subject property. The new legal lot will now be identified as Lot 18B of Hadden Heights No. 2 Subdivision. The adjacent lot that is referred to above as a previous "park area" is not part of this subdivision action and this proposal does not address the water supply for that property. The subject property (Lot 18B) is located in a RR-5 (Residential Rural) zoning district.

2. The Applicant has provided for the source of water for the 1-lot subdivision to derive from an individual existing well on the subject property, previously identified as exempt Well Permit No. 191102, but which is now a well permitted with Well Permit No. 82920-F pursuant to the Replacement Plan—Determination of Water Right No. 3640-BD by the Colorado Ground Water Commission ("Replacement Plan"). There are three sources of water for this subdivision. The primary source of water for years 1-215 is water from the not nontributary Denver aquifer, adjudicated under Determination of Water Right No. 3640-BD.<sup>1</sup> For years 216-300 (85 years), Applicant will use water from either or both

<sup>1</sup> Determination 3640-BD adjudicated an allowed average annual withdrawal from the Denver aquifer of 2.16 acre-feet, with total volume that can be withdrawn not to exceed 216 acre-feet (based on 100 year aquifer life). The Replacement Plan states that pumping under the Plan is limited to 215 years. This water review is based on the 215

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of the not nontributary Arapahoe aquifer, adjudicated under Determination of Water Right No. 3639-BD (which requires a 4% replacement returned to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal of the annual amount withdrawn)(“Determination 3639-BD”) or nontributary Laramie-Fox Hills aquifer, adjudicated under Determination of Water Right No. 3639-BD (“Determination 3638-BD”). Applicant estimates its annual water needs for the 1 residential lot at 1.0 acre-feet per year. Based on these figures, Applicant must be able to provide a supply of 300 acre-feet of water (1.0 x 300 years) to meet the County’s 300 year water supply requirement.

The subject property will be served by the Denver, Arapahoe, and Laramie-Fox Hills aquifers in amounts and pursuant to the Determinations as noted in the table below.

Aquifer	Determination of Water Right	Total amount of acre-feet	Annual amount of acre-feet
Denver	3640-BD	216 a/f (NNT)	1.0 a/f (first 216 years)
Arapahoe	3639-BD	195 a/f (NNT)	1.95 a/f
Laramie-Fox Hills	3638-BD	153 a/f (NT)	1.53 a/f

3. In a letter dated July 11, 2019, the State Engineer reviewed the submittal to replat the 10.210 acre parcel into one 5.105 acre residential lot to be identified as Lot 18B. The Engineer reviewed the Water Supply Information Summary and the water supply letter dated May 10, 2019, from MVE, Inc. The State Engineer stated that the estimated water requirement for the 1-lot subdivision is 1.0 acre-feet per year for “in-house use, irrigation of 0.14 acres of lawn, garden and greenhouse, and the watering of 5 large domestic animals.” The State Engineer describes the water supply as follows: “the proposed water source for the first 216 years is an existing Denver aquifer well currently permitted under well permit no. 82920-F, with the source after that time proposed to be wells into the Laramie-Fox Hills aquifer and/or Arapahoe aquifer.”

The State Engineer’s Office issued Well Permit No. 82920-F pursuant to C.R.S. § 37-90-107(7), as permitted by Colorado Ground Water Commission Determination of Water Right No. 3640-BD and the Replacement Plan. The State Engineer states that “[p]ermit no. 82920-F was issued for the use of an existing well constructed under permit no. 191102 and well permit no. 191102 was cancelled upon issuance of well permit no. 82920-F.” And further, pursuant to Determination 3640-BD and well permit no. 82920-F, the well is permitted to “divert 1 acre-foot annually for 215 years for domestic use (in home use, lawn and garden irrigation and domestic animal watering), irrigation and replacement.”

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acre-feet/ year figure. Therefore, based on Applicant’s demand of 1.0 acre-feet per year, the Denver aquifer can only supply water for 215 years under the Preplacement Plan. An additional 85 acre-feet of water is required to meet the County’s 300-year aquifer life requirement.

The State Engineer described the Determinations of Water Rights, noting that the “replacement plan under Determination of Water Right 3640-BD allows withdrawal of Denver aquifer ground water for 215 years, and Determinations of Water Rights nos. 3639-BD and/or 3638-BD allow withdrawals for at least another 100 years from the Arapahoe and/or Laramie-Fox Hills aquifers. This plan would meet the county’s requirement of providing the average annual demand of the subdivision for a period of 300 years.”

Finally, the State Engineer stated that “pursuant to Section 30-28-136(1)(h)(l), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights.”

4. Determination 3640-BD. This Determination adjudicates water in the not nontributary Denver aquifer underlying 5.105 acres (Lot 18B) located within the Upper Black Squirrel Creek Designated Ground Water Basin. The Determination noted the existing small-capacity well, Permit No. 191102, located on the property, that is permitted to withdraw 1.0 acre-feet per year, but which must be cancelled when a new well permit is issued under the Replacement Plan (Well Permit No. 82920-F replaces this permit). Determination 3640-BD adjudicated an allowed average annual withdrawal from the Denver aquifer of 2.16 acre-feet, with total volume that can be withdrawn not to exceed 216 acre-feet (based on 100 year aquifer life). Allowed uses are: domestic, irrigation of lawn and garden, greenhouse irrigation, vehicle and structure washing, stock watering, and replacement.

Replacement Plan. The Replacement Plan states the allowed annual amount that will be withdrawn from the Denver aquifer is 1.0 acre-foot, “for domestic (in home use, lawn and garden irrigation and domestic animal watering), irrigation and replacement.” Pumping is limited to 215 years. Return flows from in-house use shall come through individual on-lot non-evaporative septic systems located on the property. The Plan states “[t]o assure adequate return flows, the well must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system before any irrigation or animal watering is allowed to be served by the well.” The Plan further states “Applicant proposes to provide 0.18 acre-feet per year of replacement water to the alluvial aquifer system of the Upper Black Squirrel Creek Designated Ground Water Basin. The proposed source of replacement water is septic and leaching field return flows from the in-house use of ground water to be pumped under the plan. The Applicant estimates that return flows will consist of 90% of the water used for in-house purposes. Assuming a total annual amount for in-house use of 0.20 acre-feet, the return flow would be 0.18 acre-feet annually.” The Plan indicates that the return flows will be adequate if Applicant complies with the Plan: “[s]o long as the well continues to pump and supply an occupied dwelling, the plan’s required replacement obligations, shown in Exhibit A, will be met.” Finally, the Plan includes typical metering, monitoring, and reporting requirements.

5. Section 8.4.7.B.10.g. of the El Paso County Land Development Code allows for the presumption of acceptable water quality for minor subdivision projects such as this proposal.

6. Analysis. As described above, pursuant to Determination Nos. 3640-BD, 3639-BD, and 3638-BD, the Applicant has 3 sources of water to serve the subject property. The Replacement Plan allows withdrawal of 1.0 acre-foot/year of Denver aquifer water for 215 years. Based on an annual withdrawal of 1.0 acre-foot/year, the water demand for the subdivision requires a total of 300 acre-feet for 300 years. Pursuant to the Replacement Plan, Applicant may withdraw 215 acre-feet from the Denver aquifer adjudicated by Determination 3640-BD. The balance of the water supply for years 216-300 (85 years) will require 85 acre-feet total, which will need to be supplied from either the Arapahoe aquifer pursuant to Determination 3639-BD (195 acre-feet of total water supply available) or the Laramie-Fox Hills aquifer pursuant to Determination 3638-BD (153 acre-feet of total water supply available), or both. As indicated above, if Arapahoe aquifer is used, 4% annual replacement is required. As noted in the letter from MVE, Inc., the Applicant intends to withdraw a total of "1.00 Ac-Ft per year from either individual or combined sources." Therefore, based upon the finding of sufficiency and no injury by the State Engineer and the Colorado Ground Water Commission in the Replacement Plan (if the Plan is operated appropriately), based on the State Engineer's issuance of Well Permit No. 82920-F pursuant to C.R.S. § 37-90-107(7), and based on the Requirements below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. There is a presumption of sufficient water quality.

#### **REQUIREMENTS:**

A. Applicant, its successors and assigns, shall comply with all requirements of the Replacement Plan, Determination 3640-BD, Determination 3639-BD, Determination 3638-BD, and the Denver aquifer Well Permit No. 82920-F.

B. When Applicants, their successors and assigns, convey the Property, then at the time of lot sale, they shall convey by warranty deed to individual lot owner(s) sufficient water rights in the Denver Basin aquifers as follows:

- 1) 215 acre-feet of not nontributary Denver aquifer water pursuant to the Replacement Plan and Determination 3640-BD underlying the subject property to satisfy the first 215 years of El Paso County's 300 year water supply requirement. Denver aquifer requirements for the single-family lot are a total of 215 acre-feet based on annual withdrawal of 1.0 acre-

foot/year x 215 years).<sup>2</sup> Said conveyance instrument shall recite that the annual withdrawal is limited to 1.0 acre-feet per year, from which the lot owner is responsible for meeting the annual replacement required by the Replacement Plan from return flows through a non-evaporative septic system.

- 2) 85 acre-feet of either not nontributary Arapahoe aquifer water pursuant to Determination 3639-BD underlying the subject property or 85 acre-feet of nontributary Laramie-Fox Hills aquifer water pursuant to Determination 3638-BD underlying the property to satisfy the remaining 85 years of El Paso County's 300 year water supply requirement, or some combination of the two to arrive at a total of 85 acre-feet to meet the annual withdrawal of 1.0 acre-foot/year. Said conveyance instrument shall recite that the annual withdrawal is limited to 1.0 acre-feet per year, and if the Arapahoe aquifer water is conveyed, it shall also recite that the lot owner is responsible for meeting the 4% annual replacement required from this amount conveyed.

Any and all conveyance instruments shall recite as follows:

For the water rights conveyed for the primary supply (Denver and Arapahoe and/or Laramie-Fox Hills aquifer waters): "These water rights conveyed are intended to provide a 300-year supply for Lot 18B, Hadden Heights No. 2 Subdivision. 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."

For the return flows for replacement: "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."

Applicant shall provide a form warranty deed(s) for review and approval to the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat.

C. Because the water supply derives from three sources and must meet the County's 300 year water supply requirement by using different sources over the 300 year

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<sup>2</sup> Determination of Water Right Nos. 3640-BD, 3639-BD, and 3638-BD base the water commitments on a 100-year aquifer life. Due to El Paso County's 300-year rule, the acre-feet of water per year to be supplied to the single-family lot is computed to reflect El Paso County's 300-year requirement.

period, Applicant, their successors and assigns, shall create restrictive covenants (Declaration of Covenants, Conditions, and Restrictions), upon and running with the property which shall advise and obligate future lot owner(s) of this subdivision, their successors and assigns, regarding all applicable requirements of Colorado Ground Water Commission Replacement Plan—Determination of Water Right No. 3640-BD, Determination of Water Right Nos. 3640-BD, 3639-BD, and 3638-BD, and Well Permit No. 82920-F. The covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 215 acre-feet of not nontributary Denver aquifer water pursuant to the Replacement Plan and Determination 3640-BD to satisfy the first 215 years of El Paso County's 300 year water supply requirement; 85 acre-feet of either not nontributary Arapahoe aquifer water pursuant to Determination 3639-BD (from 195 acre-feet total available) or 85 acre-feet of nontributary Laramie-Fox Hills aquifer water pursuant to Determination 3638-BD (from 153 acre-feet total available) or some combination of the two to arrive at a total of 85 acre-feet to satisfy the remaining 85 years of El Paso County's 300 year water supply requirement and meet the annual withdrawal of 1.0 acre-foot/year for 300 years. The following or similar language shall be included: "These water rights are intended to provide a 300-year supply for Lot 18B, Hadden Heights No. 2 Subdivision, shall be appurtenant to Lot 18B, 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."

2) The following or similar language shall be included to address conveyances of Lot 18B 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 the Determination or Decree and the water rights 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."

3) Address return flows required from use of Denver aquifer water. Covenants shall ensure that return flows by the use of non-evaporative septic systems are made to address the replacement requirements. This shall include the following language from the Replacement Plan: "To assure adequate return flows, the well must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system before any irrigation or animal watering is allowed to be served by the well." 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 4% replacement for use of not nontributary Arapahoe aquifer. Covenants shall ensure that the 4% annual replacements are made and shall include the following language derived from the Determination: "Pursuant to Determination No. 3639-BD, at least four percent (4%) of the allowed amount of Arapahoe aquifer withdrawn annually must be returned to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal, unless other locations are approved by the Colorado Ground Water Commission." The Covenants shall also include the following or similar language to ensure that such replacement water is used only for replacement purposes: "These 4% replacement waters 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."

5) The Covenants shall advise future lot owners of this subdivision, their successors and assigns, of their responsibility for any metering and data collecting that may be required regarding water withdrawals from the existing Denver aquifer well and future wells to be constructed in the Arapahoe and/or Laramie-Fox Hills aquifers.

6) The Covenants shall advise future lot owners of this subdivision, their successors and assigns, of their obligations regarding construction of a well or wells that will be required to be constructed in the future to withdraw water from either the Arapahoe aquifer or the Laramie-Fox Hills aquifer, or both, to provide a supply of water for years 216-300 in order to satisfy the remaining 85 years of El Paso County's 300 year water supply requirement, and to withdraw water only from the specific aquifer intended, as required by the applicable Determination(s).

7) 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 Lot 18B, Hadden Heights No. 2 Subdivision, provided by the Colorado Ground Water Commission Replacement Plan—Determination of Water Right No. 3640-BD, Determination of Water Right Nos. 3640-BD, 3639-BD, and 3638-BD, and Well Permit No. 82920-F. Further, written approval of the proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioners, after review by the County Attorney's Office. Any amendments must be pursuant

to a Determination from the Colorado Ground Water Commission approving such amendment, with notice to El Paso County Planning and Community Development for an opportunity for the County to participate in any such adjudication."

8) The Covenants shall address termination using the following or similar language: "These Covenants shall not terminate unless the requirements of the Colorado Ground Water Commission Replacement Plan—Determination of Water Right No. 3640-BD, Determination of Water Right Nos. 3640-BD, 3639-BD, and 3638-BD, and Well Permit No. 82920-F are also terminated by order of the Colorado Ground Water Commission, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County."

D. Applicant shall submit the Declaration of Covenants, Conditions, and Restrictions and any plat notes required herein to the Planning and Community Development Department and the County Attorney's Office for review, and the same must be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. Said Covenants shall cross-reference the Determinations and shall recite the obligations of the individual lot owners under the same.

E. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, Replacement Plan—Determination of Water Right No. 3640-BD, Determination of Water Right Nos. 3640-BD, 3639-BD, and 3638-BD, 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.

F. The following plat note shall be added 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. 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 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."

cc: Nina Ruiz, Planner III

VACATION AND REPLAT (RECOMMEND APPROVAL)

Commissioner Creely moved that the following Resolution be adopted:

**BEFORE THE PLANNING COMMISSION**

**OF THE COUNTY OF EL PASO**

**STATE OF COLORADO**

**RESOLUTION NO. VR-17-017**

**Hadden Heights Vacation and Replat**

WHEREAS, Joe and Mary Contreras did file an application with the Planning and Community Development Department of El Paso County for approval of a vacation and replat of Hadden Heights 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 this Commission on October 15, 2019; 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. That the vacation and replat complies with the El Paso County Land Development Code and the original conditions of approval associated with the recorded plat.
6. No nonconforming lots are created and, in the case of existing nonconforming lots, the degree of nonconformity is not increased.

7. That the vacation and replat conforms to the required findings for a minor or major subdivision, whichever is applicable.
8. That 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)(1)] and the requirements of Chapter 8 of the Land Development Code.
9. Where lots or parcels are subject to any Covenants, Conditions and Restrictions (CC&Rs) or other restrictions, the vacation and replat will not result in a conflict with the CC&Rs or other restrictions unless specifically approved by the Homeowners Association or controlling authority.
10. The vacation and replat is in general conformance with the goals, objectives, and policies of the Master Plan.
11. 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.
12. The proposed replat of land conforms to the El Paso Zoning Resolutions.
13. For the above-stated and other reasons, the vacation and replat is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission recommends approval of the vacation and replat of Hadden Heights with the following conditions, notation, and waiver:

**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. 18-471), 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. Park fees in lieu of land dedication for regional parks (Area 4) in the amount of \$430.00 and urban park (Area 3) fees in the amount of \$0.0 shall be paid at time of plat recordation.
9. Fees in lieu of school land dedication in the amount of \$240.00 shall be paid to El Paso County for the benefit of Falcon School District No. 49 at time of plat recording.
10. Drainage fees in the amount of \$7,441.00 and bridge fees in the amount of \$1,022.00 for the Falcon (CHWS1400) drainage basin shall be paid to El Paso County at the time of plat recordation.

#### **NOTATION**

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

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.

Commissioner Dillon seconded the adoption of the foregoing Resolution.

The roll having been called, the vote was as follows:

Commissioner Risley	aye
Commissioner Lucia-Treese	aye
Commissioner Brittain Jack	aye
Commissioner Creely	aye
Commissioner Dillon	aye

The Resolution was adopted by a vote of 5 to 0 by the El Paso County Planning Commission, State of Colorado.

DATED: October 15, 2019

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Brian Risley, Chair

## EXHIBIT A

A tract of land located in a portion of the Southeast One-quarter (SE1/4) of Section 13, Township 13 South (T13S), Range 65 West (R65W) of the 6TH P.M., County of El Paso, State of Colorado, being more particularly described as follows:

Lot 18, Hadden Heights Subdivision; Except that portion described as follows:

Beginning at the Northwest corner of said Lot 18; Thence South along the West line thereof, a distance of 765.33 feet to the Southwest corner of said Lot 18; Thence N89°15' 00" E along the Southerly line of said Lot 18 a distance of 147.63 feet to a point of Curvature; Thence on a curve to the left, said curve having a radius of 921.40 feet, and an arc distance of 262.60 feet; thence N17°52' 20"W, a distance of 759.49 feet, to a point on the North line of said Lot 18; Thence West along the North line of said Lot 18, a distance of 173.09 feet to the Point of Beginning, according to the Plat thereof recorded in Plat Book Z-2 at Page 24 and under Reception No. 04040 in the records of the Clerk and Recorder's Office of said County

Said Tract contains 5.105 acres (222,395 s.f.) more or less.

RESOLUTION NO. 19-

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

APPROVE VACATION AND REPLAT OF GLENEAGLE GOLF COURSE  
RESIDENTIAL INFILL DEVELOPMENT FILING NO. 2 (VR-18-018)

WHEREAS, Joe and Mary Contreras did file an application with the Planning and Community Development Department of El Paso County for approval of a vacation and replat of Hadden Heights 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 15, 2019, upon which date the Planning Commission did by formal resolution recommend approval of the vacation and replat; and

WHEREAS, a public hearing was held by the El Paso County Board of County Commissioners on November 12, 2019; 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 of El Paso County.
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. That the vacation and replat complies with the El Paso County Land Development Code and the original conditions of approval associated with the recorded plat.
6. No nonconforming lots are created and, in the case of existing nonconforming lots, the degree of nonconformity is not increased.
7. That the vacation and replat conforms to the required findings for a minor or major subdivision, whichever is applicable.
8. That 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)(1)] and the requirements of Chapter 8 of the Land Development Code.
9. Where the lots or parcels are subject to any Covenants, Conditions and Restrictions (CC&Rs) or other restrictions, the vacation and replat will not result in a conflict with the CC&Rs or other restrictions unless specifically approved by the Homeowners Association or controlling authority.
10. The vacation and replat is in general conformance with the goals, objectives, and policies of the Master Plan.
11. 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.
12. The proposed Replat of land conforms to the El Paso County Zoning Resolutions.
13. For the above-stated and other reasons, the proposed vacation and replat is in the best interest of the health, safety, morals, convenience, order, prosperity, and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED the Board of County Commissioners of El Paso County, Colorado, hereby approves the vacation and replat of Hadden Heights;

BE IT FURTHER RESOLVED that the following conditions 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. 18-471), 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. Park fees in lieu of land dedication for regional parks (Area 4) in the amount of \$430.00 and urban park (Area 3) fees in the amount of \$0.0 shall be paid at time of plat recordation.
9. Fees in lieu of school land dedication in the amount of \$240.00 shall be paid to El Paso County for the benefit of Falcon School District No. 49 at time of plat recording.
10. Drainage fees in the amount of \$7,441.00 and bridge fees in the amount of \$1,022.00 for the Falcon (CHWS1400) drainage basin shall be paid to El Paso County at the time of plat recordation.

**NOTATION**

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

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

DONE THIS 12th day of November, 2019, at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

ATTEST:

By: \_\_\_\_\_  
Chair

By: \_\_\_\_\_  
County Clerk & Recorder

**EXHIBIT A**

A tract of land located in a portion of the Southeast One-quarter (SE1/4) of Section 13, Township 13 South (T13S), Range 65 West (R65W) of the 6TH P.M., County of El Paso, State of Colorado, being more particularly described as follows:

Lot 18, Hadden Heights Subdivision; Except that portion described as follows:

Beginning at the Northwest corner of said Lot 18; Thence South along the West line thereof, a distance of 765.33 feet to the Southwest corner of said Lot 18; Thence N89°15' 00" E along the Southerly line of said Lot 18 a distance of 147.63 feet to a point of Curvature; Thence on a curve to the left, said curve having a radius of 921.40 feet, and an arc distance of 262.60 feet; thence N17°52' 20"W, a distance of 759.49 feet, to a point on the North line of said Lot 18; Thence West along the North line of said Lot 18, a distance of 173.09 feet to the Point of Beginning, according to the Plat thereof recorded in Plat Book Z-2 at Page 24 and under Reception No. 04040 in the records of the Clerk and Recorder's Office of said County

Said Tract contains 5.105 acres (222,395 s.f.) more or less.