

EL PASO COUNTY

COLORADO

Kevin Mastin, Interim Executive Director
El Paso County Planning & Community Development
 O: 719-520-6300
 KevinMastin@elpasoco.com
 2880 International Circle, Suite 110
 Colorado Springs, CO 80910

Board of County Commissioners
 Holly Williams, District 1
 Carrie Geitner, District 2
 Stan VanderWerf, District 3
 Longinos Gonzalez, Jr., District 4
 Cami Bremer, District 5

TO: El Paso County Planning Commission
Brian Risley, Chair

FROM: Kylie Bagley, Planner II
Lupe Packman, EI Engineer I
Kevin Mastin, Interim Executive Director

RE: Project File #: MS-22-001
Project Name: McDermott Minor Subdivision
Parcel No.: 52080-00-030

OWNER:	REPRESENTATIVE:
Craig McDermott 12930 Herring Rd Colorado Springs, CO 80908	Scott McDermott 6417 S Dallas Ct Englewood, CO 80111

Commissioner District: Choose an item.

Planning Commission Hearing Date:	8/18/2016
Board of County Commissioners Hearing Date	9/6/2022

EXECUTIVE SUMMARY

A request by Scott McDermott for approval of a minor subdivision to create three (3) single-family residential lots. The 29.52-acre property is zoned RR-5 (Residential Rural) and is located directly west of Herring Road, approximately one quarter of a mile northwest of the intersection of Shoup Road and Herring Road, and within Section 8, Township 12 South, Range 65 West of the 6th P.M.



A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION

Request: A request by Scott McDermott for approval of a minor subdivision to create three (3) single-family residential lots.

Waiver(s)/Deviation(s): There are no waivers or deviations associated with this request.

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: [Click here to enter text.](#)

Recommendation: [Click here to enter text.](#)

Waiver Recommendation: [Click here to enter text.](#)

Vote: [Click here to enter text.](#)

Vote Rationale: [Click here to enter text.](#)

Summary of Hearing: [Click here to enter text.](#)

Legal Notice: [Click here to enter text.](#)

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 (2021):

- The proposed subdivision is in general conformance with the goals, objectives, and policies of the Master Plan.
- The subdivision is consistent with the purposes of the Land Development Code ("Code").
- The subdivision is in conformance with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analysis, studies, reports, plans, designs, documents, and other supporting materials.
- A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in the water supply standards [C.R.S. § 30-28-133(6)(a)] and the requirements of Chapter 8 of the Code.



- A public sewage disposal system has been established and, if other methods of sewage disposal are proposed, the system complies with state and local laws and regulations, [C.R.S. § 30-28-133(6) (b)] and the requirements of Chapter 8 of the Code.
- All areas of the proposed subdivision, which may involve soil or topographical conditions presenting hazards or requiring special precautions, have been identified and the proposed subdivision is compatible with such conditions. [C.R.S. § 30-28-133(6)(c)].
- Adequate drainage improvements complying with State law [C.R.S. § 30-28-133(3)(c)(VIII)] and the requirements of the Code and the Engineering Criteria Manual (“ECM”) are provided by the design.
- The location and design of the public improvements proposed in connection with the subdivision are adequate to serve the needs and mitigate the effects of the development.
- Legal and physical access is or will be provided to all parcels by public rights-of-way or recorded easement, acceptable to the County and in compliance with the Code and the ECM.
- The proposed subdivision has established an adequate level of compatibility by (1) incorporating natural physical features into the design and providing sufficient open spaces considering the type and intensity of the subdivision; (2) incorporating site planning techniques to foster the implementation of the County's plans, and encourage a land use pattern to support a balanced transportation system, including auto, bike and pedestrian traffic, public or mass transit if appropriate, and the cost effective delivery of other services consistent with adopted plans, policies and regulations of the County; (3) incorporating physical design features in the subdivision to provide a transition between the subdivision and adjacent land uses; (4) incorporating identified environmentally sensitive areas, including but not limited to, wetlands and wildlife corridors, into the design; and (5) incorporating public facilities or infrastructure, or provisions therefor, reasonably related to the proposed subdivision so the proposed subdivision will not negatively impact the levels of service of County services and facilities.
- Necessary services, including police and fire protection, recreation, utilities, open space and transportation system, are or will be available to serve the proposed subdivision.
- The subdivision provides evidence to show that the proposed methods for fire protection comply with Chapter 6 of the Code.

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

- The proposed subdivision meets other applicable sections of Chapters 6 and 8 of the Code.
- Off-site impacts were evaluated, and related off-site improvements are roughly proportional and will mitigate the impacts of the subdivision in accordance with applicable requirements of Chapter 8 of the Code.
- Adequate public facilities or infrastructure, or cash-in-lieu, for impacts reasonably related to the proposed subdivision have been constructed or are financially guaranteed through the SIA so the impacts of the subdivision will be adequately mitigated.
- The extraction of any known commercial mining deposit shall not be impeded by this subdivision [C.R.S. §§ 34-1-302(1), et seq.].

D. LOCATION

North: RR-5 (Residential Rural)	Single-family residential
South: RR-5 (Residential Rural)	Single-family residential
East: RR-5 (Residential Rural)	Single-family residential
West: RR-5 (Residential Rural) and PUD (Planned Unit Development)	Single-family residential

E. BACKGROUND

The property was zoned A-4 (Agricultural) on September 20, 1965, when zoning was first initiated for this portion of the County. Due to changes in the nomenclature of the Code, the A-4 zoning district was renamed as the RR-5 (Residential Rural) zoning district in 2007.

There are two existing structures on the property, including a residence and a detached accessory living quarters. Please see the Zoning Compliance section below for information regarding the existing structures' conformance with the dimensional standards.

The applicant is requesting approval of a minor subdivision to create three (3) single-family residential lots from the existing 29.32-acre parcel. Two (2) lots are proposed to be 5 acres each and the third lot is proposed to be 19.32 acres. The existing dwellings are proposed to remain on proposed Lot 1, as well as the approved well and septic system. The existing dwelling and accessory structure on proposed Lot 1 would comply with all setback, lot coverage, and height standards of the RR-5 (Residential Rural) district as depicted on the final plat.



F. ANALYSIS

1. Land Development Code Compliance

The final plat application meets the final plat submittal requirements, the standards for Divisions of Land in Chapter 7, and the standards for Subdivision in Chapter 8 of the El Paso County Land Development Code (2021).

2. Zoning Compliance

The subject parcel is zoned RR-5 (Residential Rural). 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 width at the front setback line: 200 feet
- Minimum setback requirement: front 25 feet, rear 25 feet, side 25 feet *
- Maximum lot coverage: 25 percent
- Maximum height: 30 feet

* In the event that the land to be partitioned, platted, sold or zoned abuts a section line County road, the minimum lot area for lots abutting the road shall be 4.75 acres and minimum lot width shall be 165 ft.

*Agricultural stands shall be setback a minimum of 35 feet from all property lines.

All three (3) proposed lots will meet or exceed the minimum lot size of five (5) acres. The existing dwellings meet the required 25-foot setback from all property lines and is under 30 feet in height.

The applicant is not proposing to construct any new structures at this time. Any proposed additional structures constructed in the future will require site plan review and approval and will need to include confirmation that all site improvements (existing and proposed) comply with the dimensional standards included in Chapter 5 as well as any applicable development standards of Chapter 6 of the Code.



G. MASTER PLAN ANALYSIS

1. Your El Paso Master Plan

a. **Placetype:** Large-Lot Residential

“The Large-Lot Residential placetype consists almost entirely of residential development and acts as the transition between placetypes. Development in this placetype typically consists of single-family homes occupying lots of 2.5 acres or more, and are generally large and dispersed throughout the area so as to preserve a rural aesthetic. The Large-Lot Residential placetype generally supports accessory dwelling units as well. Even with the physical separation of homes, this placetype still fosters a sense of community and is more connected and less remote than Rural areas. Large-Lot Residential neighborhoods typically rely on well and septic, but some developments may be served by central water and waste-water utilities. If central water and wastewater can be provided, then lots sized less than 2.5 acres could be allowed if; 1.) the overall density is at least 2.5 acres/lot, 2.) the design for development incorporates conservation of open space, and 3.) it is compatible with the character of existing developed areas.

Conservation design (or clustered development) should routinely be considered for new development within the Large-Lot Residential placetype to provide for a similar level of development density as existing large-lot areas while maximizing the preservation of contiguous areas of open space and the protection of environmental features. While the Large-Lot Residential placetype is defined by a clear set of characteristics, the different large-lot areas that exist throughout the County can exhibit their own unique characters based on geography and landscape.”

Recommended Land Uses:

Primary

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

Supporting

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



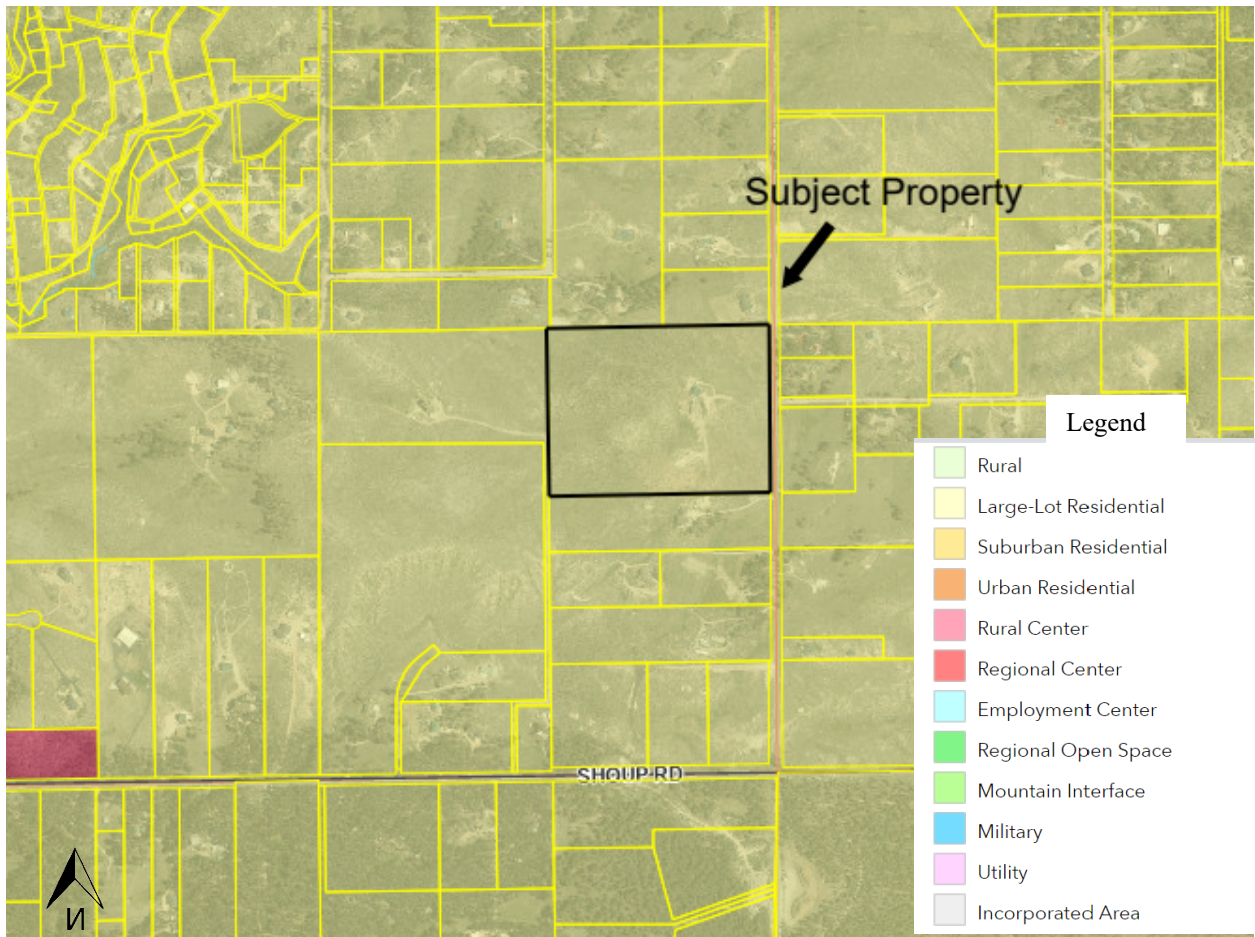


Figure G.1: Placetype Map

Analysis:

The property is located within the Large-Lot Residential placetype. The Large-Lot Residential placetype supports the rural character of the County while providing for unique and desirable neighborhoods. Relevant goals and objectives are as follows:

Goal LU1 – *Ensure compatibility with established character and infrastructure capacity.*

Objective LU3-1 – *Development should be consistent with the allowable land uses set forth in the placetypes first and second to their built form guidelines.*

Objective HC1-5 – Focus detached housing development in Large-Lot Residential and Suburban Residential areas given the increasing infrastructure and environmental constraints associated with such development to help maintain the established character of rural communities.

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

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

The proposed subdivision would create three (3) single-family detached residential lots. The proposed use and lot size are consistent with the character and intent of the Large-Lot Residential placetype. The three lots are each proposed to be a minimum of 5 acres. By maintaining a larger lot size than the recommended 2.5 acres, which has been identified as suitable within the Large-Lot Residential placetype, the proposed subdivision is in line with preserving the rural character of the area. The increased lot size also accommodates the large electrical easement that bisects the property. Additionally, the proposed lot sizes are consistent with the surrounding properties, which vary in size but still maintain a density of one (1) dwelling unit per five (5) acres.

b. Area of Change Designation: Minimal Change: Undeveloped

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



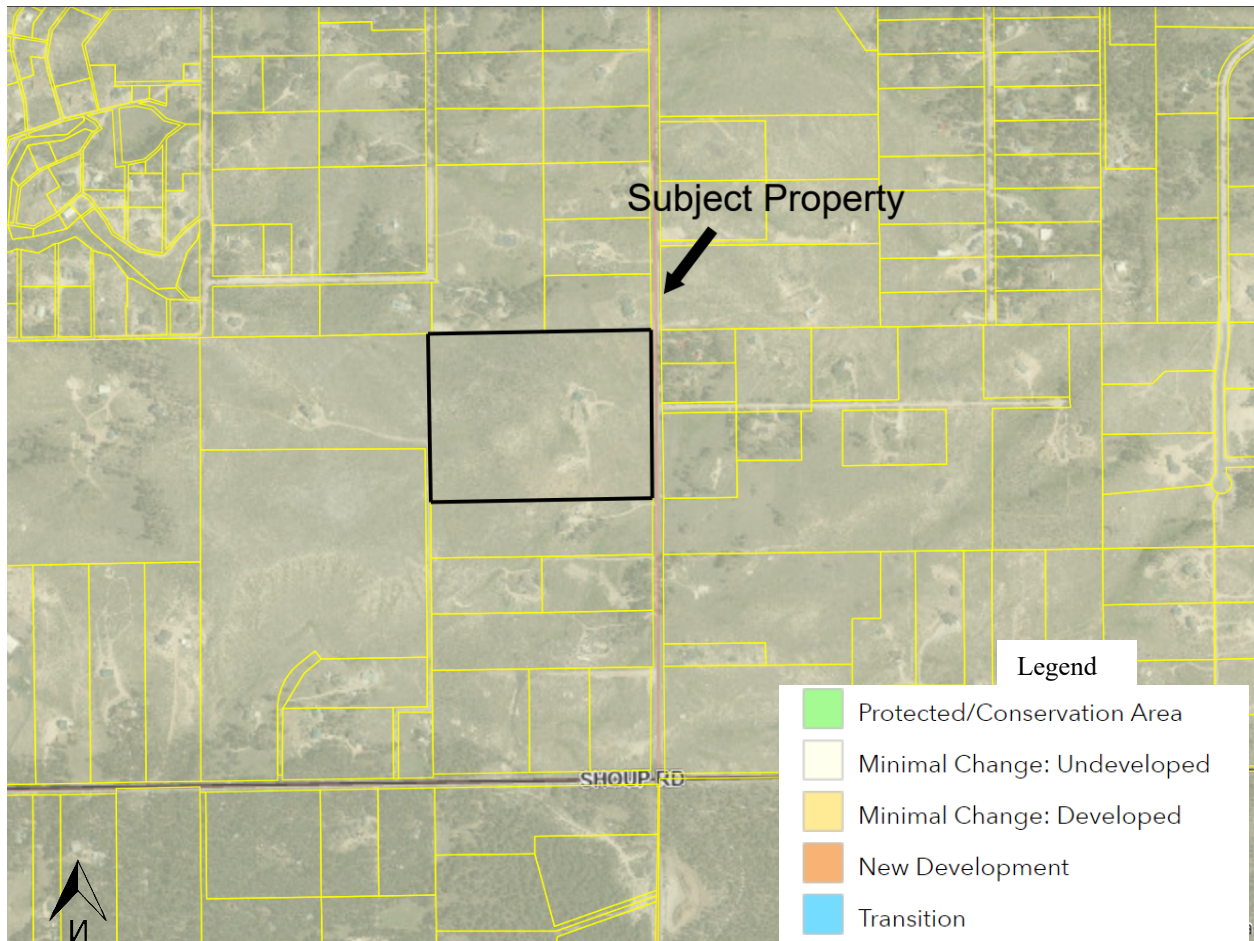


Figure G.2: Area of Change Map

Analysis:

The subject property is adjacent to rural residential properties on all sides. The properties to the north, south, east, and west of the subject property range in size from 20 acres to five (5) acres. These properties are used for single-family detached residential purposes.

The proposed minor subdivision to create three (3) rural residential lots is compatible with the surrounding lot sizes, which vary in size but are all a minimum of five (5) acres. The character of the surrounding area is consistent with the Area of Change designation, which identifies that existing vacant land may be developed in the future. Since the subject property is surrounded primarily by developed land, it is unlikely that the character of the area may change substantially in the future. The current minor subdivision proposal is consistent with the Area of Change



designation and with the current development pattern of the surrounding properties.

c. Key Area Influences

El Paso County represents a vast area composed of many distinct areas. These “Key Areas” have their own unique identities and are generally localized into smaller geographic areas with distinct characteristics that distinguish them from other areas of the County. The subject property is potentially influenced by the Forested Area.

Forested Area

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

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



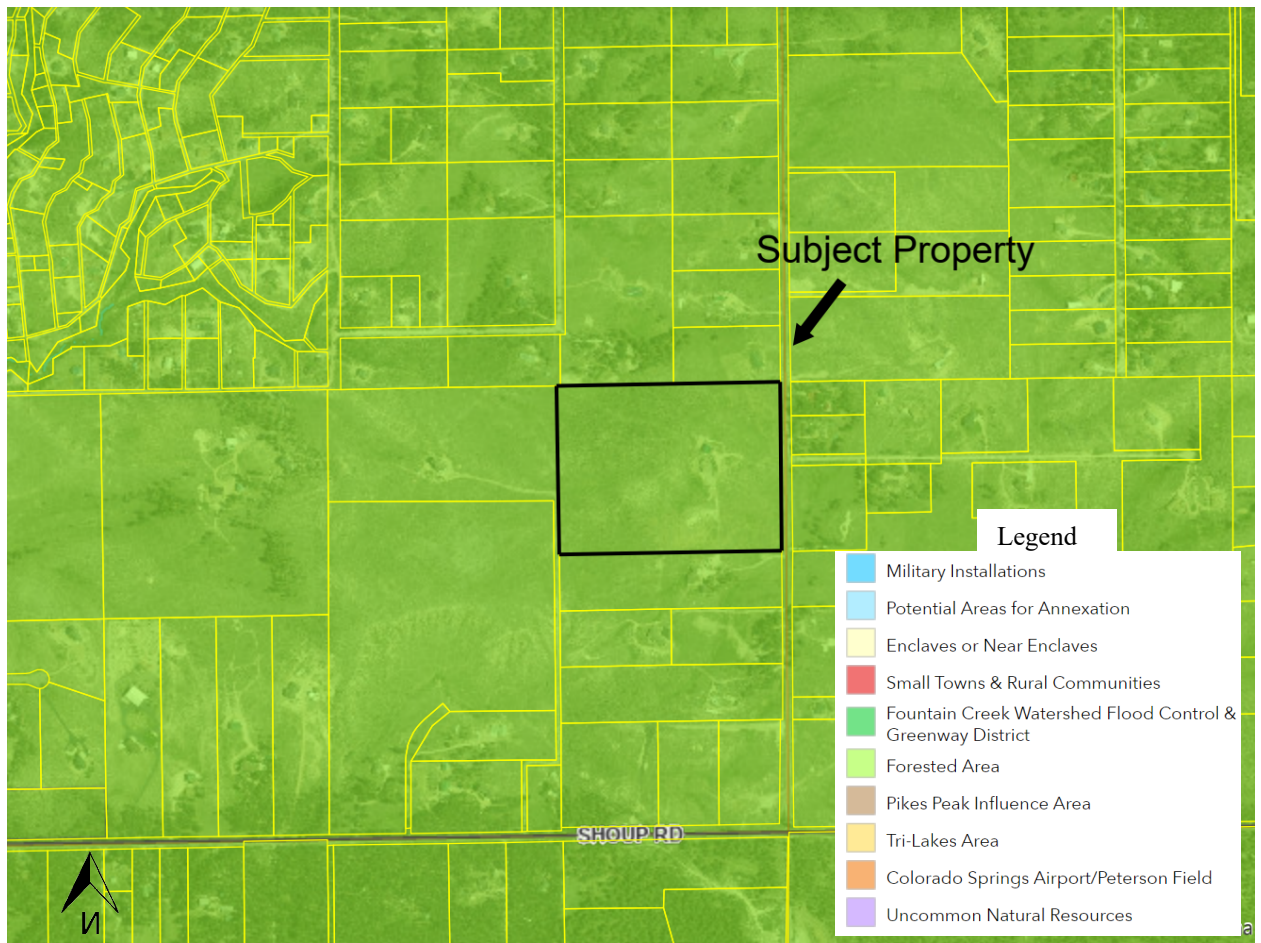


Figure G.3: Key Area Map

Analysis:

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

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

The lot sizes and lot layout of the proposed subdivision are consistent with the existing development pattern in the area, which largely protects the character of the Forested Area, and specifically within Black Forest. In addition, the proposed subdivision will serve as an extension of the existing “small-scale, low intensity development” that has already occurred in area.

3. Water Master Plan Analysis

The El Paso County Water Master Plan (2018) has three main purposes; better understand present conditions of water supply and demand; identify efficiencies that can be achieved; and encourage best practices for water demand management through the comprehensive planning and development review processes. Relevant policies are as follows:

Goal 1.1 – Ensure an adequate water supply in terms of quantity, dependability and quality for existing and future development.

Policy 1.1.1 – Adequate water is a critical factor in facilitating future growth and it is incumbent upon the County to coordinate land use planning with water demand, efficiency, and conservation.

Goal 1.2 – Integrate water and land use planning.

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

The Water Master Plan includes demand and supply projections for central water providers in multiple regions throughout the County. The proposed development will not be served by a central water system. The following has been included for informational purposes only as it pertains to water demands and supplies in Region 2 for central water providers:

The property is located within Planning Region 2 of the Plan, which is an area anticipated to experience growth by 2040. The Plan identifies the current demand for Region 2 to be 7,532 acre-feet per year (AFY) (Figure 5.1) with a current supply of 13,607 AFY (Figure 5.2). The projected demand in 2040 is at 11,713 AFY (Figure 5.1) with a projected supply of 20,516 AFY (Figure 5.2) in 2040. The projected demand at build-out in



2060 is 13,254 AFY (Figure 5.1) with a projected supply of 20,756 AFY (Figure 5.2) in 2060. This means that by 2060 a surplus of 7,502 AFY is anticipated for Region 2.

Water sufficiency has been analyzed with the review of the proposed minor subdivision. The augmentation decree for the property allows the subdivision to draw 2.55 acre-feet of water per year over a 300-year period from the Dawson Aquifer for the three (3) proposed lots. The applicant's water resources report indicates an estimated use of approximately 2.55 acre-feet per year.

The applicant's water resources report and augmentation plan include measures for recharging renewable water resources in the Dawson aquifer. The applicant has shown a sufficient water supply for the required 300-year period. 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. El Paso County Public Health has recommended that the proposed minor subdivision has an adequate water supply in terms of quality. Please see the Water section below for a summary of the water findings and recommendations for the proposed minor subdivision.

4. Other Master Plan Elements

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a low wildlife impact potential. El Paso County Community Services Department, Environmental Services Division, and Colorado Parks and Wildlife were each sent a referral and have no outstanding comments.

The Master Plan for Mineral Extraction (1996) does not identify any deposits in the area of the subject property. A mineral rights certification was prepared by the applicant indicating that, upon researching the records of El Paso County, no severed mineral rights exist.

Please see the Parks Section below for information regarding conformance with The El Paso County Parks Master Plan (2013).

Please see the Transportation Section below for information regarding conformance with the El Paso County 2016 Major Transportation Corridors Plan Update (MTCP).



H. PHYSICAL SITE CHARACTERISTICS

1. Hazards

No hazards were identified during the review of the minor subdivision.

2. Floodplain

The property is not located within a defined floodplain as determined from review of the FEMA Flood insurance Rate Map panel number 08041C0320G, dated December 7, 2018.

3. Drainage and Erosion

The property is located within the Kettle Creek (FOMO3000) drainage basin, which is included in the El Paso County Drainage Basin Fee program. Drainage fees in the amount of \$11,413 and bridge fees in the amount of \$0 (zero), per impervious acre, shall be paid at the time of plat recordation. The applicant qualifies for a 25 percent reduction of drainage fees per ECM L.3.10.2a.

Per the submitted drainage report, the site historically drains towards the west, and will continue to drain to the west in natural swales. Minimal drainage impacts are expected and no significant drainage impacts to downstream lots are associated with the proposed subdivision.

No public improvements are required for this project. Water quality and detention facilities are not required due to the nature and size of the lots.

4. Transportation

Access to Lot Nos. 1-3 will be provided through an access easement via a shared driveway that connects to Herring Road which is classified as a rural local road maintained by the county. The applicant obtained a driveway access permit (APBF149) from El Paso County in 2014. A traffic study was not required as the proposed subdivision is not expected to generate 100 daily vehicle trips.

One (1) waiver is requested for Section 8.4.3.C.2.E of the LDC to allow lots that do not meet the required minimum lot frontage to a public roadway.

The El Paso County 2016 Major Transportation Corridors Plan Update depicts roadway improvements to Herring Road, which is forecasted to be updated to a rural collector by 2040. The applicant is proposing the following driveway access design:



- A 24' gravel road for substantially all of the driveway from the entrance on Herring Road
- to both Lot 2 & Lot 3 shown on the Easement Exhibit. This allows for two way traffic on
- substantially all of the approximately 1,383' driveway to both properties.
- There will be 30' by 30' turn outs included in both sections of the driveway.
- The road will be rated to carry a 75,000 pound vehicle per the fire department requirement.
- No grades on this driveway will exceed 10 percent.
- There is no plan for a gate at this time, but if we do build a gate, we will adhere to LDC
- Section 6.3.3.C.4 requirements.
- There are no trees and not entry way portico for overhead clearance concern.
- Roads or emergency vehicle lanes shall be provided within 150 feet of all development
- except single family residential development.
- • The dead end of the driveway will be at the Lot 3 residence. The dead-end turnaround at
- the terminus shall have a minimum radius of 50 feet.
- • The 90 Degree turn has the appropriate easement to build the road with a curve that will
- allow large emergence appropriate turning radius.

The development is subject to the El Paso County Road Impact Fee Program (Resolution No. 19-471, as amended). Road impact fees shall be paid in full at the time of subsequent building permits if not paid at the time of final plat recordation.

I. SERVICES

1. Water

Sufficiency: [Click here to enter text.](#)

Quality: Sufficient

Quantity: Sufficient

Dependability: Sufficient

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

Attorney's summary: Water will be provided by individual onsite wells. The State Water Engineer's Office has made a finding of adequacy and has stated water can be provided without causing injury to decreed water rights. The County Attorney's Office is recommending a finding of sufficiency with regard to water quantity and dependability.

2. Sanitation

Individual onsite wastewater treatment systems (OWTS) are proposed to serve the residential lots. The applicant submitted an OWTS report which indicated that the lots are suitable for the construction of these systems. El Paso County Public Health was sent a referral and has no outstanding comments.

3. Emergency Services

The property is within the Black Forest Fire Protection District. The District was sent a referral and did not provide a response.

4. Utilities

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

5. Metropolitan Districts

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

6. Parks/Trails

Fees in lieu of park land dedication in the amount of \$1,380.00 for regional park fees will be due at the time of recording the final plat.

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

J. APPLICABLE RESOLUTIONS

Approval Page 19
Disapproval Page 20



K. STATUS OF MAJOR ISSUES

There are no major issues.

L. RECOMMENDED CONDITIONS AND NOTATIONS

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 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 Subdivision Improvements Agreement, including the Financial Assurance Estimate, as approved by the El Paso County Planning and Community Development Department, shall be filed at the time of recording the Final Plat.
8. Collateral sufficient to ensure that the public improvements as listed in the approved Financial Assurance Estimate shall be provided when the final plat is recorded.
9. 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.
10. Drainage fees in the amount of \$11,413 and bridge fees in the amount of \$0.00 shall be paid for the Kettle Creek drainage basin (FOMO3000) at the time of plat recordation.
11. Park fees in lieu of land dedication for regional parks (Area 2) in the amount of \$1,380.00 shall be paid at the time of plat recordation.
12. 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.
13. The County Attorney's Conditions of Compliance shall be adhered to at the appropriate time.

NOTATIONS

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



M. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified eleven adjoining property owners on July 29, 2022, for the Planning Commission meeting. Responses will be provided at the hearing.

N. ATTACHMENTS

Vicinity Map

Letter of Intent

Plat Drawing

State Engineer's Letter

County Attorney's Letter

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

El Paso County Parcel Information

PARCEL	NAME
5208000030	MCDERMOTT CRAIG A

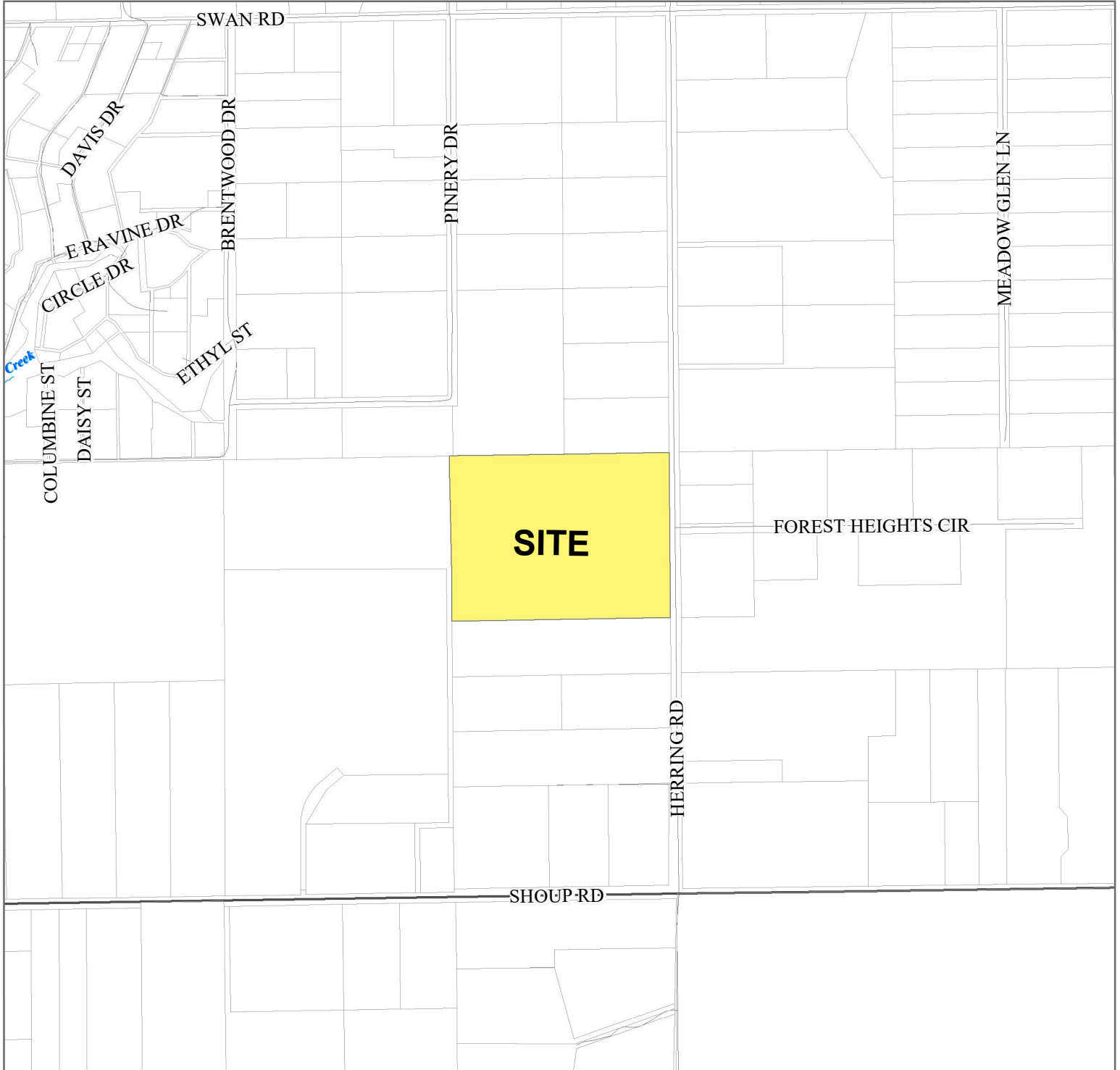
File Name: MS-22-001

Zone Map No.: --

ADDRESS	CITY	STATE
12930 HERRING RD	COLORADO SPRINGS	CO

ZIP	ZIPLUS
80908	3489

Date: July 28, 2022



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



COPYRIGHT 2022 by the Board of County Commissioners, El Paso County, Colorado. All rights reserved. No part of this document or data contained hereon may be reproduced; used to prepare derivative products; or distributed without the specific written approval of the Board of County Commissioners, El Paso County, Colorado. This document was prepared from the best data available at the time of printing. El Paso County, Colorado, makes no claim as to the completeness or accuracy of the data contained hereon.

4/15/22

Owner

Craig and Sally McDermott
12830 Herring Rd., Colorado Springs, CO 80908
craigmcderm@hotmail.com
719-495-6679

Applicant

Scott McDermott
P.O. Box 88079, Colo Springs, CO 80908
scottmcou812@hotmail.com
303-358-7234

Site Information:

Legal Description: N 990 FT OF NE4SE4 EX E 30 FT SEC 8-12-65

THE NORTH THREE-FOURTHS OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO.

Parcel #: 5208000030

<https://property.spatalest.com/co/elpaso/#/property/5208000030>

29.32 Acres

Zoned RR-5 (Rural Residential District)

Property currently is a vacant site with a single-family residence and an extended family dwelling on the center-east portion of the parcel. The existing land uses in the area are of rural residential/agriculture parcels improved with homes.

12930 HERRING RD Minor Subdivision Letter of Intent**Request:**

The Owner/Applicant requests approval of a three lot minor subdivision, including 2, 5 acre lots and 1, 20 acre lot from the Property to be known as the 12830 Herring Rd. property ("Subdivision"). The Subdivision will create three new rural residential single family lots in the RR5 zone, with each lots at or exceeding the 5 acres minimum. Lot 1 will be the remaining 19.525 acre with the original residences. Lot 2 will be a 5 acre lot located at the northwest corner of the property and will be retained by the owner. Lot 3 is a 5 acres lot located at the southwest corner of the property and will be sold to the owner's brother Scott McDermott upon the completion of the subdivision so he can build a single family home.

There is not legal physical access to both new Lots (2 & 3) proposed as they are, so we are seeking a waiver for Section 7 subdivision regulations to allow a lot without any public roadway frontage. To create legal physical access to new Lots 2 & 3, the owner proposes to put in place an Access and Utility Easement and Maintenance Agreement for driveway and utility access across the North border of Lot 1 and East border of Lot 2 to benefit Lots 2 & 3 as shown in the Final Plat. Driveway access will be from Herring Rd., which is East of the property. Access to the 2 new lots will be a private driveway on the North side of Lot 1. The drive will then run along the East side of Lot 2 for access to Lot 2 and Lot 3.

As background, the entire 29.32 acre property was a total loss of forest and structures in the 2013 fire. All of the structures and more have been rebuilt since the 2013 fire.

Justification:

The proposed 12930 HERRING RD Minor Subdivision is in conformance with all El Paso County requirements for creation of a minor subdivision. The proposal is consistent with the RR5 zoning and is compatible with the surrounding neighborhood zoned RR5, which consists of large lots or parcels of at least 5 acres in size.

The Property contains a single family residence with an extended family dwelling, which are located on Lot 1. Lot 2 and Lot 3 are on the western portion of the Property. The proposed layout of the subdivision will comply with the requirements of the RR5 zone with respect to land use (single-family residential), lot size, minimum building setbacks, water supply and wastewater disposal.

The Property was purchased by the Owner/Applicant from his father who purchased the 29.32 acre property with the intent of being utilized by his family in 1969. The Owner and his brother (Applicant), who will be purchasing Lot 3, intend to share the care for elderly parents, which live 8.3 miles from the property.

Criteria for Approval:

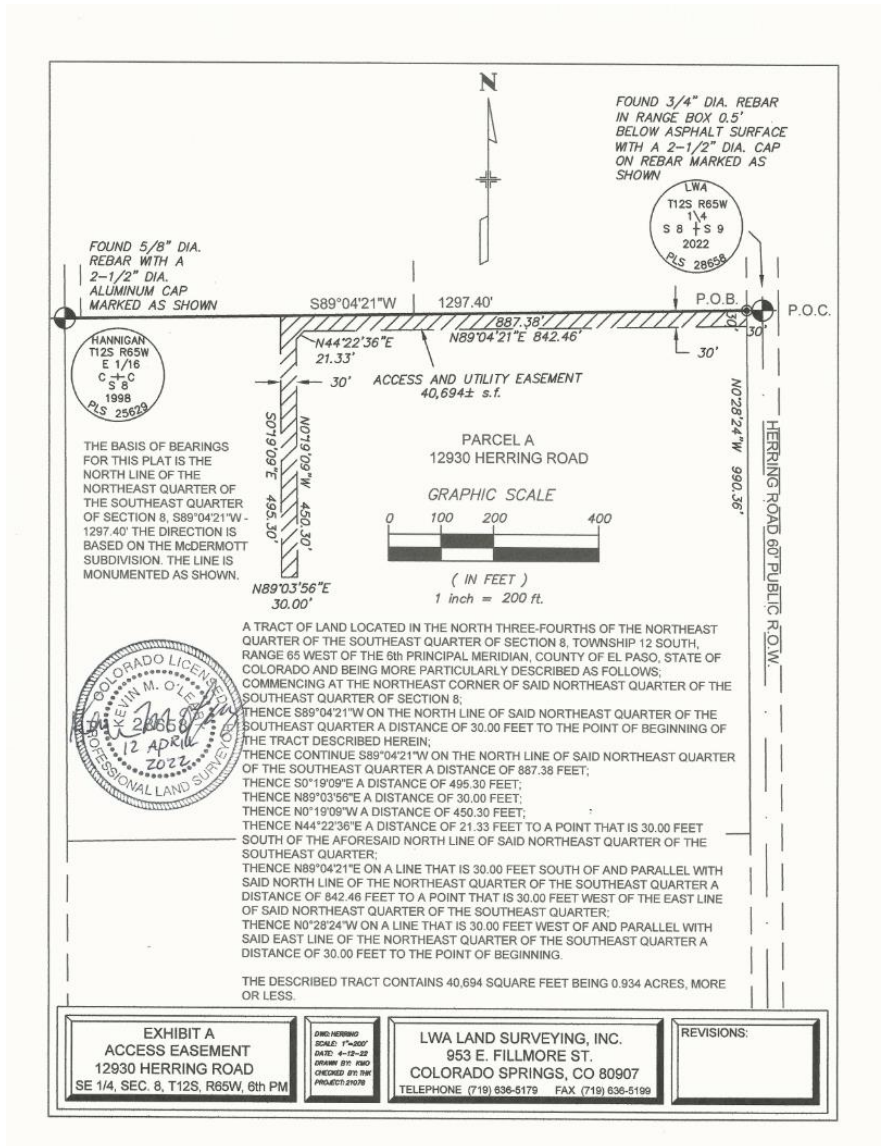
The Subdivision complies with all requirements for approval of a minor subdivision contained in

Section 7.2.1 (C) and the plans and standards set forth in Chapter 8 of the County Land Development Code (“Code”). Section 7.2. 1 (c) states that a minor subdivision shall be required to conform to all preliminary plan and final plat requirements including the criteria for approval, except to the extent the requirements are modified by the Code or the Procedures Manual.

Preliminary Plan Approval Criteria

The Subdivision meets all criteria for approval under Section 7.2.1 (D) (2) of the Code for preliminary plan approval and sections of Chapters 6 and 8 of the Code as follows:

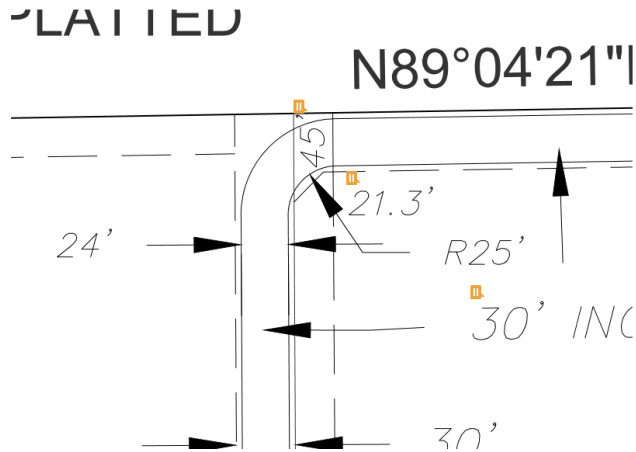
- The Subdivision is consistent with the purposes of the Code.
- The Subdivision is in conformance with the subdivision design standards.
- As shown in the Engineered water reports submitted as part of the application, a sufficient water supply has been acquired in terms of quantity, quality and dependability for the proposed minor subdivision, as determined in accordance with the standards set forth in the water supply standards (C.R.S. § 30-28-133 (6) (a)) and the requirements of Chapter 8 of the Code.
- The septic system for the existing residence and the septic system proposed for the new home meet all criteria of Chapter 8 of the Code and is in compliance with state and local laws and regulations, per C.R.S. § 30-28-133 (6) (b).
- Any soil or topographical conditions presenting hazards or requiring special precautions were identified in the accompanying geology and soils reports and to the extent identified, the Subdivision is compatible with such conditions. per C.R.S. § 30-28-133 (6) (c).
- Adequate drainage improvements complying with State law (C.R.S. § 30-28-133 (6)(C)(VIII)) and the requirements of the Code and the ECM are provided with the design of the Subdivision.
- As there are no public improvements proposed in connection with the Subdivision, no determination of the adequacy of the location and design of any public improvements is required.
- The Subdivision has established an adequate level of compatibility by incorporating natural physical features in the design. As there will only one single family residence planned for the two new 5 acre subdivisions (Lot2 & Lot 3) with Lot 1 being 20 acres which will be sufficient open spaces. The Subdivision’s site planning techniques will foster the implementation of the County’s plans. Physical design features of the Subdivision will remain consistent with the adjacent land uses and will remain rural residential. Any environmentally sensitive areas in the Subdivision have been identified and incorporated into the Subdivision design. The Subdivision will not negatively impact the levels of service of County services and facilities.
- Necessary services, including police and protection, recreation, utilities, open space and transportation system, are available to serve the Subdivision.
- (New Section Added) There is not legal and physical access to both new Lots (2 & 3) proposed as they are, so we are seeking a waiver for Section 7 subdivision regulations to allow a lot without any public roadway frontage. To create legal physical access to new Lots 2 & 3, the owner proposes to put in place with a Access and Utility Easement and Maintenance Agreement across the North border of Lot 1 and East border of Lot 2 to benefit Lots 2 & 3 as shown in the Final Plat and Recorder with the county and referenceable with the El Paso County Clerk and Recorder Reception #: 222051376.



The new driveway off of Herring Road that will be shared by Lot 2 & Lot 3 will meet Land Development Code Section 6.3.3.C.2 & 6.3.3.C.3 & 6.3.3.C.4 including:

- A 24' gravel road for substantially all of the driveway from the entrance on Herring Road to both Lot 2 & Lot 3 shown on the Easement Exhibit. This allows for two way traffic on substantially all of the approximately 1,383' driveway to both properties.
- There will be 30' by 30' turn outs included in both sections of the driveway.
- The road will be rated to carry a 75,000 pound vehicle per the fire department requirement.
- No grades on this driveway will exceed 10 percent.
- There is no plan for a gate at this time, but if we do build a gate, we will adhere to LDC Section 6.3.3.C.4 requirements.
- There are no trees and not entry way portico for overhead clearance concern.

- Roads or emergency vehicle lanes shall be provided within 150 feet of all development except single family residential development.
- The dead end of the driveway will be at the Lot 3 residence. The dead-end turnaround at the terminus shall have a minimum radius of 50 feet.
- The 90 Degree turn has the appropriate easement to build the road with a curve that will allow large emergence appropriate turning radius.



Final Plat Approval Criteria:

The Subdivision meets all criteria for approval under Section 7.2.1 (D) (3) of the Code for final plat approval, as follows:

The Subdivision is in conformance with the goals, objectives and policies contained in the County Master Plan, including the Policy Plan, and it is in compliance with the County’s Water Master Plan. The Black Forest Preservation Plan (the “Plan”) is the Small Area Plan under the County Master Plan that provides guidelines for land use in the Black Forest area, including the Property.

1. The Subdivision is in conformance with the goals, objectives, and policies of the Master Plan and Policy Plan.

An element of the Master Plan is the Policy Plan, which establishes goals and policies in connection with approval of new development in the County. The McDermott Minor Subdivision proposal satisfies the following goals and policies from the Policy Plan:

Key Areas – The property is in the Forested Area key area. The area is zoned R5 and all of the new lots are 5 acres or larger. The vegetation has come back across the property so there is no erosion issues. The lots will be rural residences with a mix of native forest and grasses. The 2013 fire burned all the forest on the property. Since the fire we have been remediating the burned timber and have planted over 1,000 trees. We have followed best practices for fire mitigation with the property using natural features to create defensible space.

The approximately 20 acre Lot 1 has a single-family residence and an extended family dwelling on the center-east portion of the parcel that match the character of the area. This is where remediation and replanting have been completed. There is no plan to do anything with Lot 2, which would only be used as a single family home. The plan is to let this area transition naturally back to a forested area. I will be purchasing Lot 3 to build a single family home that matches the character of the surrounding residences. I have mitigated most of the burned forest and will follow the same plan as the Lot 1 reforestation following fire mitigation best practices.

The new minor subdivision will have **Minimal Change** on the area. The plan is to add one new single family home to one of the two new 5 acre lots. The existing residences would remain on the 20 acres that is remaining. Although we are adding one residence to one of the newly created 5 acre lots, the addition has minimal change to the established character of the area. The house that will be built is as or more expensive construction than the other homes in the area but matches the character of the area.

The goal of the minor subdivision is to add one **Large-Lot Residential** unit to the area. The architecture of the new home and outbuilding will match the other residential buildings in the area. The community horse trail access on the property will be maintained as part of the new subdivision so members of the community will continue to have recreational access.

We will be adding a new driveway off Herring Road that will be shared by Lot 2 & Lot 3 will meet Land Development Code Section 6.3.3.C.2 & 6.3.3.C.3 & 6.3.3.C.4. The existing driveways back to this area were not deemed large enough by the fire marshal to provide adequate access for emergency equipment. The new driveway improves the access of emergency vehicles to the area. The driveway will include appropriate culverts to fit the natural drainage of the topography. No roads or houses will be built on or around or encumbering drainage easements.

Goal 1.1 - Ensure compatibility with established character and infrastructure capacity.

Goal 2.2 - Preserve the character of rural and environmentally sensitive areas.

Goal 2.2 - Preserve the character of rural and environmentally sensitive areas.

The proposed minor subdivision is compatible with adjacent properties, all of which are Large-Lot Residential of at least 5 acres in size, and located within the Forested Black Forest area. These properties are rural residential in character and do not negatively impact the natural environment. The existing natural environment on the Property will be preserved following approval of this subdivision using mitigation and landscaping to maintain the properties natural environment.

Goal 3.1 - Recruit new businesses and spur the development of growing sectors.

The proposal will subdivide an existing 29.32 acre parcel into three lots, which will only increase the number of homes on the Property from one to three with the possibility of a third house sometime in the future. There will be limited impact on the existing carrying capacity of the area by the addition of three lots upon approval of the minor subdivision. The lot sizes of the three

lots exceed the minimum 5-acre size required under RR5 zoning, and will ensure the existing rural residential nature of the area is maintained. Water for the second lot (Lot 3) has been adjudicated with the State, the well for the existing residence has been re-permitted, and a well permit for the new residence has been authorized.

2. The Subdivision meets goals and policies set forth in the Black Forest Preservation Plan.

The Property is within the planning area of the Plan, and more specifically, within the “Timbered Area” unit defined by the Plan. Uses in the Timbered Area are generally limited to low density residential or open space.

3. Residential - Goal 3.A - Promote a residential environment which perpetuates the rural residential character of the Black Forest Planning Area.

Policy 3.1 – Continue the promotion of residential subdivisions with an overall average minimum lot area of 5 acres in the Timbered Area and other designated portions of the Planning Area....

8. Natural Environment – Goal 8.A – Protect the integrity of the natural systems in the Black Forest.

Policy 8.1 – Preserve and enhance the natural environment and wildlife of the planning area.

Policy 8.2 – Protect and maintain the area’s drainage courses in their natural condition by promoting designs and densities which are sensitive to natural drainage patterns.

The minor subdivision will preserve the rural-residential character of the Black Forest Planning Area. The lot sizes will be 5 acres required under the RR5 zoning, with Lot 1 being 19.525 acres and Lot 2 being 5.003 acres and Lot 3 being 5.003 acres. The Property contains a single family home and an extended family dwelling. Upon approval of the minor subdivision, the Owner/Applicant will build one residence on Lot 3, which is sited in the Southwest corner of the property which will preserve a majority of the open space and all the future forested areas (2013 fire burned all the trees). As shown in the final drainage report submitted for this application, there are no special easements required for drainage.

3. The Subdivision meets the goals and policies set forth in the El Paso County Water Master Plan.

Goal 1.1 Ensure an adequate water supply in terms of quantity, dependability and quality for existing and future development.

Policy 1.1.1 – Adequate water is a critical factor in facilitating future growth and it is incumbent upon the County to coordinate land use planning with water demand, efficiency and conservation.

As part of this land use planning action, Owner/Applicant has demonstrated the quantity, dependability and quality of the water to be utilized in this development, demonstrating adequate water quality through testing, and adequacy and sufficiency of supply consistent with the County’s 300-year rule concerning water supplies. Use of shallow Dawson aquifer groundwater,

as contemplated here, is typical of rural residential lots in Black Forest, and further consistent with the Water Master Plan as concerns rural residential lots where municipal or quasi-municipal water supplies are unavailable.

The new lots (Lot 2 & Lot 3) have a total of 1.3 Acre feet of water use per year from the Dawson Aquifer. Household use of 0.3 AF/year per lot, Irrigation demand 0.3 AF/year per lot and 0.05 AF/year for domestic animals for a total of 1.30 Acre feet total for both lots.

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

Policy 4.3.1 – Denver Basin groundwater should be preserved as much as practical through water conservation and efficiency, extending the economic useful life.

Policy 4.3.2 – Encourage the systematic monitoring and careful administration of the bedrock aquifers to avoid over-allocation of groundwater.

Owner/Applicant, consistent with the County's 300-year rule, seeks a long-term sustainable use of the Dawson aquifer, consistent with local historical practices and vested property rights in the underlying Denver Basin aquifers. Such uses will prolong the economic life of not only the Dawson aquifer to be utilized in the Subdivision, but also deeper underlying Denver Basin aquifers available to the Owner/Applicant which are not to be utilized as part of the primary water source for this Subdivision.

Goal 5.5 Identify any water supply issues early on in the land development process.

Policy 5.5.1 – Discourage individual wells for new subdivisions with 2.5 acre or smaller average lot sizes, especially in the near-surface aquifers, when there is a reasonable opportunity to connect to an existing central system, alternatively, or construct a new central water supply system when the economies of scale to do so can be achieved.

Goal 5.6 Protect property rights.

The Subdivision proposed at this site concerns approximately 5, 5 and 20 acre lots, considerably larger than those for which individual wells are to be discouraged under the WMP, and there currently is no opportunity in this location to connect to an existing system or construct a new central system. Approval of individual wells in this circumstance protects the vested property rights of Owner/Applicant.

Goal 6.0 Require adequate water availability for proposed development.

Policy 6.0.1 – Continue to require documentation of the adequacy or sufficiency of water, as appropriate, for proposed development.

As described above, and in the Water Resources Report and Water Quality Report, adequacy and sufficiency of water for the proposed development, for a period of at least 300-years, has been documented and demonstrated. See also WMP p. 111 (“El Paso County understands that each landowner has property rights, and, in many cases, those property rights include water rights. The County’s goal is not to infringe on those rights, but to assure sufficient water supplies are available to foster a sustainable place for people to live and work”).

The Subdivision is consistent with the 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.

- As shown in the water reports submitted as part of the application, a sufficient water supply has been acquired in terms of quantity (1.3 acre feet per lot per year), quality (tested and passed all quality reports for safe drinking) and dependability for the proposed minor subdivision, as determined in accordance with the standards set forth in the water supply standards (C.R.S. § 30-28-133 (6) (a)) and the requirements of Chapter 8 of the Code.
- The septic system for the existing residence and the septic system proposed for the new home meet all criteria of Chapter 8 of the Code and is in compliance with state and local laws and regulations, per C.R.S. § 30-28-133 (6) (b). Lot 1 septic system is an engineered septic system due to clay levels, and test pits from holes for lot 2 will also need to be an engineered septic system.
- Any soil or topographical conditions presenting hazards or requiring special precautions were identified in the accompanying geology and soils reports and to the extent identified, the Subdivision is compatible with such conditions. per C.R.S. § 30-28-133 (6) (c). The surveyor and engineer did find 4.003 acres across lot 1 and 2 as geo Hazard/ Drainage Easements that are no build areas, but will not impact either purposed site.
- Adequate drainage improvements complying with State law (C.R.S. § 30-28-133 (6)(C)(VIII)) and the requirements of the Code and the ECM are provided with the design of the Subdivision. Culvert has already been installed in lot 1 for driveway access and will also be assessed for lot 2 driveway per standards.

New legal physical access will be provided for both new Lots (2 & 3). We are seeking a waiver for Section 7 subdivision regulations to allow a new public roadway frontage. To create legal physical access to new Lots 2 & 3, the owner has put in place an Access and Utility Easement and Maintenance Agreement across the North border of Lot 1 and East border of Lot 2 to benefit Lots 2 & 3 as shown in the Final Plat. Driveway access will be from Herring Rd., which is East of the property. Access to the 2 new lots will be a private driveway on the North side of Lot 1. The drive will then run along the East side of Lot 2 for access to Lot 2 and Lot 3. Herring road is a paved road that is designated as a north-south through connecting Hodgen on the north, to Burgess Rd on the south. Detail driveway description provided previously.

Necessary services, including police and protection, recreation, utilities, open space and transportation system, are available to serve the Subdivision.

- The final plans of the Subdivision show that the proposed methods for fire protection comply with Section 6 of the Code as there is no forest left after the 2013 fire. Therefore, there is no reason for a Wildland Mitigation Report.
- Off-site impacts of this Subdivision are addressed below. No mitigation for off-site impacts are necessary under the applicable requirements of Chapter 8.
- To the Owner/Applicant's knowledge, no public facilities or infrastructure, or cash-in-lieu, for impacts reasonably related to the Subdivision, are required.
- The Subdivision meets other applicable sections of Chapters 6 and 8.
- The subdivision will not interfere with the extraction of any known commercial mining deposit.

Public Improvements

There are no required public subdivision improvements required for the Subdivision. The Property has frontage along Herring Road, where county required right of way will be maintained.

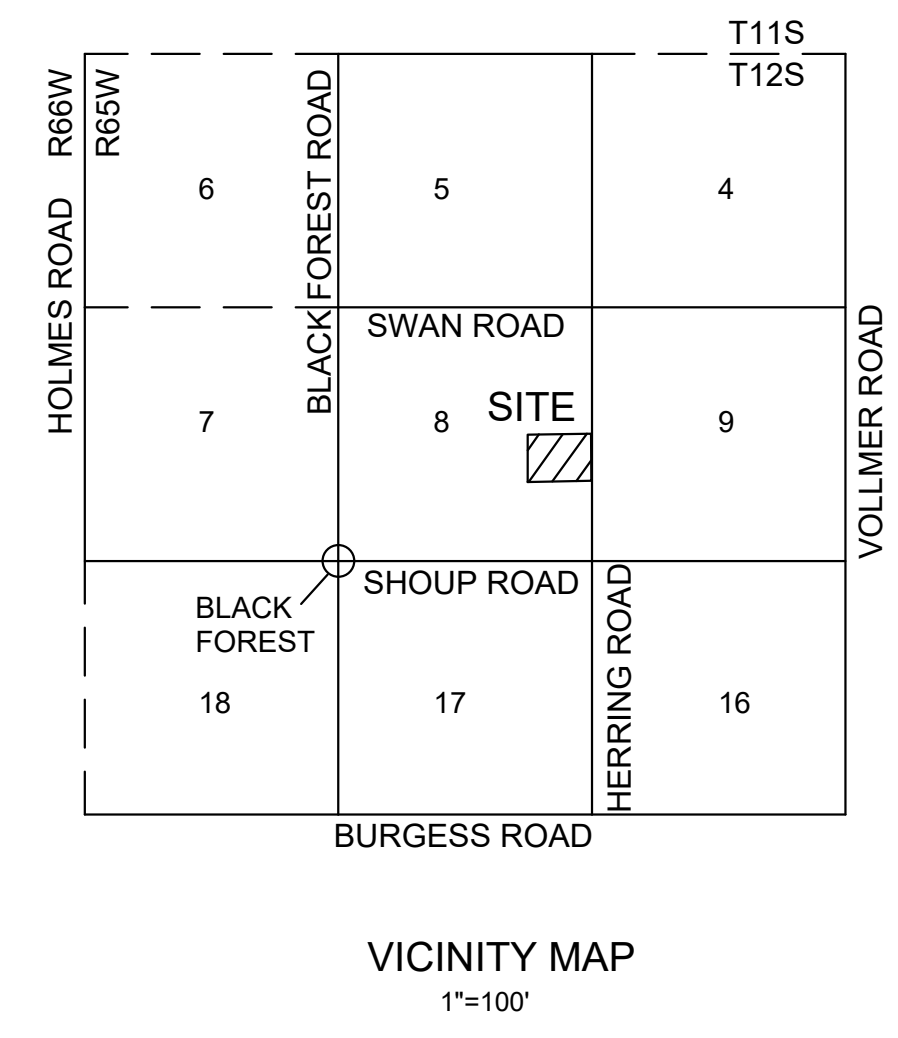
Respectfully,

Scott McDermott

Applicant commits to pay road impact fees, which will be due as part of the building permit for new construction on lots.

McDERMOTT SUBDIVISION FILING NO. 1

A PORTION OF THE NORTHEAST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 12
SOUTH, RANGE 65 WEST OF THE 6TH P.M.
EL PASO COUNTY, COLORADO



- NOTES:
- FOUND ALIQUOT CORNER AS NOTED
 - FOUND A 5/8" DIAMETER REBAR OR AS NOTED
 - ⊙ SET A 5/8" DIAMETER REBAR, 18" IN LENGTH WITH A 1-1/2" DIAMETER ALUMINUM CAP "LWA PLS 28658".

ALL MONUMENTS ARE FLUSH WITH THE GROUND UNLESS NOTE OTHERWISE. "A.G. (ABOVE GRADE) OR B.G. (BELOW GRADE)

UNITS OF MEASURE ARE U.S. SURVEY FEET

THE BASIS OF BEARINGS FOR THIS PLAT IS THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 8, S89°01'38"W - 2669.26' THE DIRECTION IS BASED ON THE UP&E LAND SURVEY PLAT DEPOSIT NUMBER 204900192 AND THE LINE IS MONUMENTED AS SHOWN.

TITLE NOTES:

1. RESEARCH FOR RECORDED RIGHTS OF WAY AND EASEMENTS WAS DONE BY LAND TITLE GUARANTEE COMPANY, ORDER NO. SR55081582-3, EFFECTIVE DATE SEPTEMBER 2, 2021.
2. THIS DRAWING DOES NOT CONSTITUTE A TITLE SEARCH BY KEVIN M. O'LEARY OR LWA LAND SURVEYING INC.
3. THE PROPERTY IS SUBJECT TO THE MINERAL RIGHTS PER THE U.S. PATENT RECORDED IN BOOK 72 AT PAGE 40.
4. THE EAST 30 FEET OF THE PROPERTY IS PUBLIC RIGHT OF WAY PER THE COUNTY RESOLUTION RECORDED IN ROAD BOOK A AT PAGE 78.
5. THE PROPERTY IS INCLUDED WITHIN THE BLACK FOREST FIRE PROTECTION DISTRICT BY THE DOCUMENT RECORDED IN BOOK 2772 AT PAGE 121.
6. THE MVEA POWER LINE IS LOCATED APPROXIMATELY 10 FEET EAST OF THE WEST RIGHT OF WAY LINE OF HERRING ROAD, THEREBY THE 20 FEET WIDE EASEMENT RECORDED AT REC. NO. 099160893 IS WITHIN THE PUBLIC RIGHT OF WAY FOR HERRING ROAD.
7. LOT 1 IS SUBJECT TO RESOLUTION 20-369 REGARDING A SPECIAL USE CONDITION, RECORDED AT RECEPTION NO. 220163436.
8. LOT 1 IS SUBJECT TO THE AFFADAVIT REGARDING OCCUPANCY, RECORDED AT RECEPTION NO. 220190975.

EASEMENTS:

UNLESS SHOWN GREATER IN WIDTH, FOR ALL LOTS; SIDE LOT LINES ARE HEREBY PLATTED WITH A FIFTEEN (15) FOOT EASEMENT FOR DRAINAGE AND PUBLIC UTILITIES, FRONT LOT LINES ARE HEREBY PLATTED WITH A TWENTY FIVE (25) FOOT EASEMENT FOR DRAINAGE AND PUBLIC UTILITIES ONLY; REAR LOT LINES AND THE SUBDIVISION BOUNDARY ARE HEREBY PLATTED WITH A TWENTY (20) FOOT EASEMENT FOR DRAINAGE AND PUBLIC UTILITIES.

THE SOLE RESPONSIBILITY FOR MAINTENANCE OF THESE EASEMENTS IS HEREBY VESTED WITH THE INDIVIDUAL PROPERTY OWNERS.

LOT SUMMARY TABLE:

3 RESIDENTIAL LOTS	29.53 ACRES	100.0%
TOTAL AREA	29.53 ACRES	100%
TOTAL LOT AREA:	29.53 ACRES	
GROSS DENSITY	0.14 DU/AC	
NET DENSITY	0.14 DU/AC	

OWNER:

SALLY A. AND CRAIG A. McDERMOTT
12930 HERRING ROAD
COLORADO SPRINGS, CO 80908
719-337-4207

SURVEYOR'S CERTIFICATION:

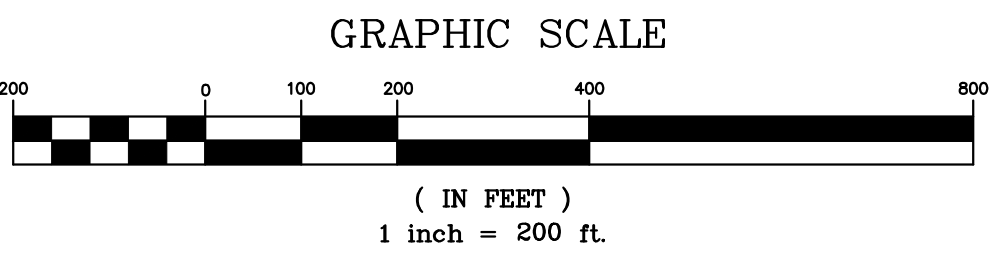
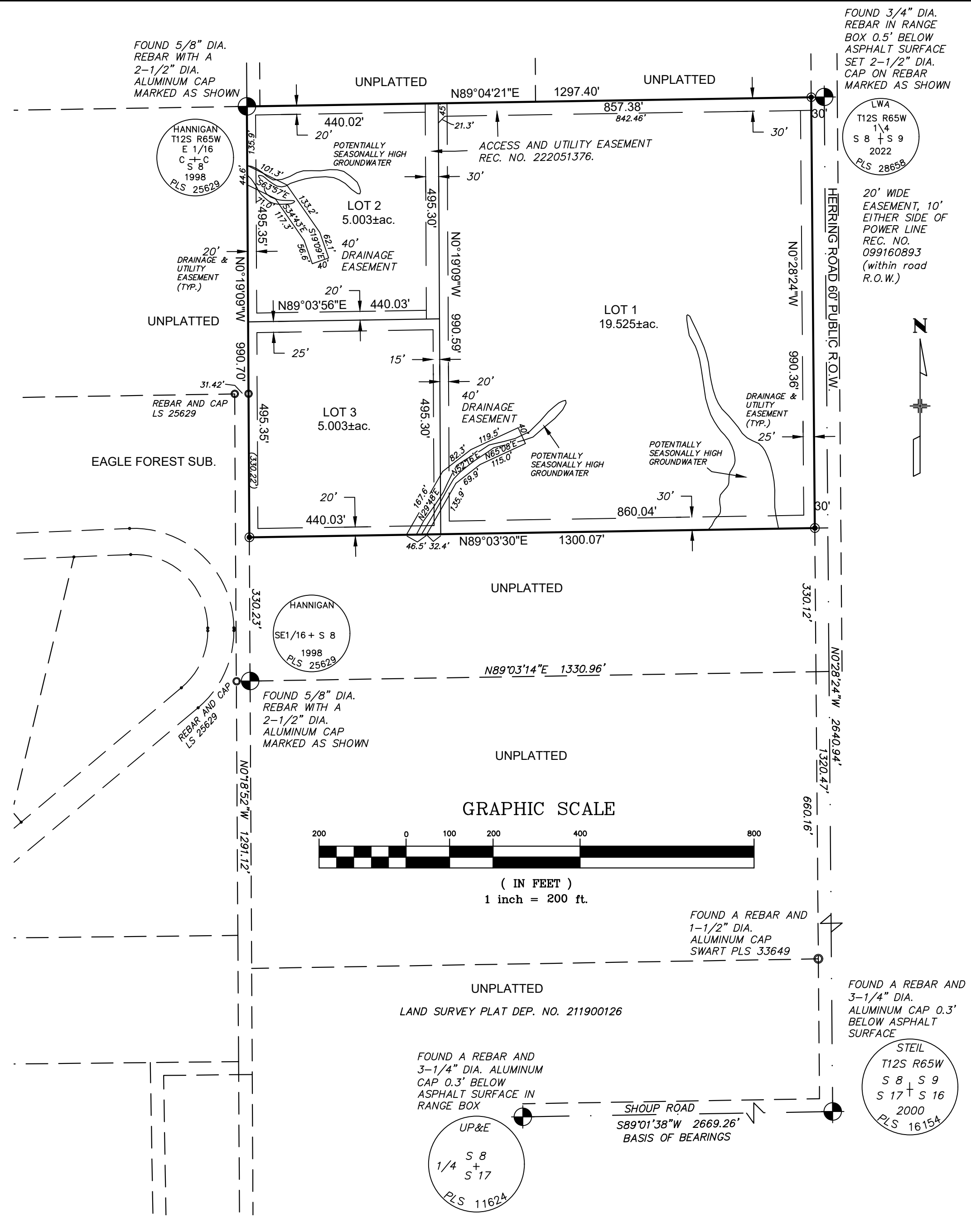
I, KEVIN M. O'LEARY, A DULY REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS PLAT TRULY AND CORRECTLY REPRESENTS THE RESULTS OF A SURVEY MADE ON THE DATE OF THE SURVEY, BY ME OR UNDER MY DIRECT SUPERVISION AND THAT ALL MONUMENTS EXIST AS SHOWN HEREON; THAT MATHEMATICAL CLOSURE ERRORS ARE LESS THAN 1:10,000; AND THAT SAID PLAT HAS BEEN PREPARED IN FULL COMPLIANCE WITH ALL APPLICABLE LAWS OF THE STATE OF COLORADO DEALING WITH MONUMENTS, SUBDIVISION, OR SURVEYING OF LAND AND ALL APPLICABLE PROVISIONS OF THE EL PASO COUNTY LAND DEVELOPMENT CODE.

I ATTEST THE ABOVE ON THIS ___ DAY OF _____, 2022.

KEVIN M. O'LEARY
COLORADO REGISTERED PLS #28658
FOR AND ON BEHALF OF
LWA LAND SURVEYING, INC.

DATE

"NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON."



NOTES:

1. STRUCTURAL FOUNDATIONS ON THE LOT IN THIS SUBDIVISION SHALL BE DESIGNED BY A COLORADO REGISTERED PROFESSIONAL ENGINEER.
2. INDIVIDUAL WELLS ARE THE RESPONSIBILITY OF EACH PROPERTY OWNER. PERMITS FOR INDIVIDUAL WELLS MUST BE OBTAINED FROM THE STATE ENGINEER WHO BY LAW HAS THE AUTHORITY TO SET CONDITIONS FOR THE ISSUANCE OF THESE PERMITS.
3. SEWAGE TREATMENT IS THE RESPONSIBILITY OF EACH INDIVIDUAL PROPERTY OWNER. THE EL PASO COUNTY HEALTH DEPARTMENT MUST APPROVE EACH SYSTEM. DUE TO AREAS THAT MAY NOT BE SUITABLE FOR SEPTIC SYSTEMS AS IDENTIFIED IN THE WASTE WATER STUDY INCLUDED IN THE SOIL AND GEOLOGY REPORT, AN ENGINEERED SEPTIC SYSTEM PRIOR MAY BE REQUIRED.
4. THE FOLLOWING REPORTS ARE ON FILE AT THE EL PASO COUNTY DEVELOPMENT SERVICES DEPARTMENT: SOIL AND GEOLOGY STUDY, DRAINAGE REPORT AND WATER RESOURCES REPORT.
5. ADDRESSES: THE ADDRESSES EXHIBITED ON THIS PLAT ARE FOR INFORMATIONAL PURPOSES ONLY. THEY ARE NOT THE LEGAL DESCRIPTION AND ARE SUBJECT TO CHANGE.
6. ALL PROPERTY OWNERS ARE RESPONSIBLE FOR MAINTAINING PROPER STORM WATER DRAINAGE IN AND THROUGH THEIR PROPERTY. PUBLIC DRAINAGE EASEMENTS AS SPECIFICALLY NOTED ON THE PLAT SHALL BE MAINTAINED BY THE INDIVIDUAL LOT OWNERS UNLESS OTHERWISE INDICATED. STRUCTURES, FENCES, MATERIALS OR LANDSCAPING THAT COULD IMPEDE THE FLOW OR RUNOFF SHALL NOT BE PLACED IN DRAINAGE EASEMENTS.
7. MAILBOXES SHALL BE INSTALLED IN ACCORDANCE WITH ALL EL PASO COUNTY DEPARTMENT OF TRANSPORTATION AND UNITED STATES POSTAL SERVICE REGULATIONS.
8. THE OWNER, ITS SUCCESSORS AND ASSIGNS SHALL ADVISE ALL FUTURE OWNERS OF THESE LOTS OF ALL APPLICABLE REQUIREMENTS OF THE DETERMINATION OF WATER RIGHT AND REPLACEMENT PLAN NO. _____.
9. 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 HOMEOWNERS 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.
10. ACCESS: NO DRIVEWAY SHALL BE ESTABLISHED UNLESS AN ACCESS PERMIT HAS BEEN GRANTED BY EL PASO COUNTY. INDIVIDUAL LOT PURCHASERS ARE RESPONSIBLE FOR CONSTRUCTING DRIVEWAYS, INCLUDING THE NECESSARY DRAINAGE CULVERTS FROM HERRING ROAD PER LAND DEVELOPMENT CODE SECTION 6.3.3.C.3. DUE TO THE LENGTH OF THE DRIVEWAY, IT WILL NEED TO BE APPROVED BY THE BLACK FOREST FIRE PROTECTION DISTRICT.
11. DUE TO WILDFIRE CONCERNS, THE APPLICANTS AND SUBSEQUENT HOMEOWNERS ARE ENCOURAGED TO INCORPORATE WILDFIRE FUEL BREAK PROVISIONS AS RECOMMENDED BY THE COLORADO STATE FOREST SERVICE AND ILLUSTRATED THROUGH PUBLICATIONS AVAILABLE THROUGH THE STATE FOREST SERVICE. HOMEOWNERS SHOULD ALSO REFER TO THE WILDFIRE MITIGATION PLAN AS AN ASSISTANCE GUIDE.
12. ENVIRONMENTAL: THE DEVELOPER SHALL COMPLY WITH FEDERAL AND STATE LAWS, REGULATIONS, ORDINANCES, REVIEW AND PERMIT REQUIREMENTS, AND OTHER AGENCY REQUIREMENTS, IF ANY, OF APPLICABLE AGENCIES INCLUDING, BUT NOT LIMITED TO, THE COLORADO DEPARTMENT OF WILDLIFE, COLORADO DEPARTMENT OF TRANSPORTATION, U.S. ARMY CORP. OF ENGINEERS AND THE U.S. FISH AND WILDLIFE SERVICE REGARDING THE ENDANGERED SPECIES ACT, PARTICULARLY AS IT RELATES TO THE LISTED SPECIES (E.G. PREBLES MEADOW JUMPING MOUSE).
13. INDIVIDUAL PROPERTY OWNERS WITHIN THIS SUBDIVISION ARE SUBJECT TO ROAD IMPACT FEES IN ACCORDANCE WITH THE EL PASO COUNTY IMPACT FEE PROGRAM RESOLUTION (RESOLUTION 19-471) AS AMENDED. FEES FOR EACH LOT WITHIN THIS SUBDIVISION SHALL BE PAID IN FULL AT THE TIME OF BUILDING PERMIT ISSUANCE.
14. THIS PROPERTY IS LOCATED WITHIN ZONE X "AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOOD PLAIN" AS DETERMINED BY THE FLOOD INSURANCE RATE MAP NUMBER 08041C0320G, DATED DECEMBER 7, 2018.
15. GEOLOGIC HAZARD NOTE: THIS SUBDIVISION HAS BEEN FOUND TO BE IMPACTED BY GEOLOGIC HAZARDS. MITIGATION MEASURES AND EXPLANATION OF CONSTRAINTS IN THE AREA AND CAN BE FOUND IN THE WASTEWATER STUDY BY ENTECH ENGINEERING, INC., FEBRUARY 15, 2022 IN PCD FILE NO. MS221 AVAILABLE AT THE EL PASO COUNTY PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT.
- POTENTIALLY SEASONALLY HIGH GROUNDWATER AS SHOWN HEREON.
16. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT OR LAND BOUNDARY MONUMENT OR ACCESSORY COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO C.R.S. 18-4-508.

BE IT KNOWN BY THESE PRESENTS:

THAT SALLY A. AND CRAIG A. McDERMOTT ARE THE OWNERS OF THE FOLLOWING DESCRIBED TRACT OF LAND, TO WIT:

THE NORTH THREE-FOURTHS OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO.

EXCEPTING THEREFROM THE EASTERLY 30 FEET FOR COUNTY ROAD RIGHT OF WAY.

THE DESCRIBED TRACT CONTAINS 29.531 ACRES, MORE OR LESS.

OWNERS CERTIFICATE

THE UNDERSIGNED, BEING ALL THE OWNERS, MORTGAGEES, BENEFICIARIES OF DEEDS OF TRUST AND HOLDERS OF OTHER INTERESTS IN THE LAND DESCRIBED HEREIN, HAVE LAID OUT, SUBDIVIDED AND PLATTED SAID LANDS INTO LOTS, STREETS AND EASEMENTS AS SHOWN HEREON UNDER THE NAME AND SUBDIVISION OF McDERMOTT SUBDIVISION FILING NO. 1. ALL PUBLIC IMPROVEMENTS REQUIRED BY THIS LAND USE ACTION ARE HEREBY DEDICATED TO PUBLIC USE AND SAID OWNER DOES HEREBY COVENANT AND AGREE THAT THESE PUBLIC IMPROVEMENTS WILL BE CONSTRUCTED TO EL PASO COUNTY STANDARDS AND THAT PROPER DRAINAGE AND EROSION CONTROL FOR THE SAME WILL BE PROVIDED AT SAID OWNER'S EXPENSE, ALL TO THE SATISFACTION OF THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO. UPON ACCEPTANCE BY RESOLUTION, ALL PUBLIC IMPROVEMENTS SO DEDICATED WILL BECOME MATTERS OF MAINTENANCE BY EL PASO COUNTY, COLORADO. THE UTILITY EASEMENTS SHOWN HEREON ARE HEREBY DEDICATED FOR PUBLIC UTILITIES, COMMUNICATION SYSTEMS AND OTHER PURPOSES AS SHOWN HEREON. THE ENTITIES RESPONSIBLE FOR PROVIDING THE SERVICES FOR WHICH THE EASEMENTS ARE ESTABLISHED ARE HEREBY GRANTED THE PERPETUAL RIGHT OF INGRESS AND EGRESS FROM AND TO ADJACENT PROPERTIES FOR INSTALLATION, MAINTENANCE AND REPLACEMENT OF UTILITY LINES AND RELATED FACILITIES.

IN WITNESS WHEREOF:

THE AFOREMENTIONED SALLY A. AND CRAIG A. McDERMOTT HAVE EXECUTED THIS INSTRUMENT THIS ___ DAY OF _____, 2022.

SALLY A. McDERMOTT

CRAIG A. McDERMOTT

NOTARIAL:

STATE OF COLORADO) SS
COUNTY OF EL PASO)
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS ___ DAY OF _____, 2022 BY SALLY A. AND CRAIG A. McDERMOTT.

MY COMMISSION EXPIRES: _____ NOTARY PUBLIC

BOARD OF COUNTY COMMISSIONERS APPROVAL:

THIS PLAT FOR McDERMOTT SUBDIVISION FILING NO. 1 WAS APPROVED FOR FILING BY THE EL PASO COUNTY, COLORADO BOARD OF COUNTY COMMISSIONERS ON THIS ___ DAY OF _____, OF 2022, SUBJECT TO ANY NOTES SPECIFIED HEREON AND ANY CONDITIONS INCLUDED IN THE RESOLUTION OF APPROVAL. THE DEDICATIONS OF LAND TO THE PUBLIC, STREETS AND EASEMENTS ARE ACCEPTED, BUT PUBLIC IMPROVEMENTS THEREON WILL NOT BECOME THE MAINTENANCE RESPONSIBILITY OF EL PASO COUNTY UNTIL PRELIMINARY ACCEPTANCE OF THE PUBLIC IMPROVEMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF THE LAND DEVELOPMENT CODE AND ENGINEERING CRITERIA MANUAL, AND THE SUBDIVISION IMPROVEMENTS AGREEMENT.

PRESIDENT, BOARD OF COUNTY COMMISSIONERS DATE

RECORDING:

STATE OF COLORADO) SS
COUNTY OF EL PASO)

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD AT MY OFFICE AT ___ O'CLOCK ___ M., THIS ___ DAY OF _____, 2022, AND IS DULY RECORDED AT RECEPTION NO. _____ OF THE RECORDS OF EL PASO COUNTY, COLORADO.

CHUCK BRORMAN

BY: COUNTY CLERK AND RECORDER

FEE: _____

SURCHARGE: _____

FEES: _____

DRAINAGE FEES: _____

BRIDGE FEES: _____

SCHOOL FEES: _____

PARK FEES: _____

PCD FILE NO. MS221

PREPARED BY
LWA LAND SURVEYING, INC.

953 E. FILLMORE STREET
COLORADO SPRINGS, COLORADO 80907
Phone (719) 636-3179

HERRING PLAT.DWG
JUNE 10, 2022
PROJECT 21078
SHEET 1 OF 1



March 21, 2022

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

RE: 12930 Herring Road Minor Subdivision
NE1/4 SE1/4 of Sec. 8, Twp. 12S, Rng. 65W, 6th P.M.
Water Division 2, Water District 10
CDWR Assigned Subdivision No. 29126

To Whom It May Concern,

We have received the submittal for the referenced proposal to subdivide a 29.32 ± acre tract of land into three new lots. Lot 1 will have two single-family residences. The proposed supply of water to the subdivision will be three individual on-lot wells operating pursuant to two court decreed water rights (19CW3031 and 21CW3023), with wastewater being disposed of through individual on-site septic disposal systems.

Water Supply Demand

According to the updated Water Supply Information Summary received in the submittal, the estimated water demand for the development is 2.55 acre-feet/year for the entire development. This amount breaks down to 1.25 acre-feet/year for Lot 1 and 0.65 acre-foot/year each for both Lot 2 and Lot 3.

It should be noted that water use rates, as found in Division 2 Water Court case no. 19CW3031 are 0.30 acre-foot per year for each ordinary household, 0.0125 acre-foot per year per horse, and 0.065 acre-foot per year for each 1,000 square feet of lawn and garden irrigation. Water use rates, as found in Division 2 Water Court case no. 21CW3023 are 0.30 acre-foot per year for each ordinary household, 0.0125 acre-foot per year per horse, and 0.05 acre-foot per year for each 1,000 square feet of lawn and garden irrigation.

Source of Water Supply

The anticipated source of water is to be provided by three on-lot wells producing from the Dawson aquifer that will operate pursuant to the augmentation plans decreed in Division 2 Water Court case nos. 19CW3031 and 21CW3023. The following amounts of water shown in Table 1, below, were determined to be available underlying the 29.32 ± acre tract of land and owned by the applicant.



Table 1 - Denver Basin Ground Water Rights

Aquifer	Tributary Status	Volume (AF)	Annual Allocation 100 Year (AF/Year)	Annual Allocation 300 Year (AF/Year)
Dawson	NNT	2,050	20.17	6.72
Denver	NNT	1,960	19.6	6.53
Arapahoe	NT	1,300	13.0	4.33
Laramie-Fox Hills	NT	855	8.55	2.85

The plan for augmentation decreed in Division 2 Water Court case no. 19CW3031 allows for diversion of 1.25 acre-feet annually from Dawson aquifer for a maximum of 300 years. Permit No. 84196-F was issued pursuant to CRS 37-90-137(4) for use of a well constructed under Permit No. 217838, for use in ordinary household purposes inside not more than two single family dwellings, the irrigation 8,500 square-feet of home gardens and lawns, and the watering of 8 domestic animals. It appears that this well is located on proposed Lot 1 of the property and the applicant has proposed to continue to utilize the existing well pursuant to the decreed plan for augmentation.

The plan for augmentation decreed in Division 2 Water Court case no. 21CW3023 allows for the additional diversion of 2.55 acre-feet annually from Dawson aquifer for a maximum of 300 years.

Permit No. 86389-F was issued pursuant to CRS 37-90-137(4) to construct a well for use in ordinary household purposes inside not more than one single family dwelling, the irrigation 6,000 square-feet of home gardens and lawns, and the watering of 4 domestic animals. It appears that this well will be located on proposed Lot 3 of the property for use pursuant to the decreed plan for augmentation.

The proposed source of water for this subdivision is a bedrock aquifer in the Denver Basin. The State Engineer's Office does not have evidence regarding the length of time for which this source will be a physically and economically viable source of water. According to 37-90-137(4)(b)(I), C.R.S., "Permits issued pursuant to this subsection (4) shall allow withdrawals on the basis of an aquifer life of one hundred years." Based on this **allocation** approach, the annual amounts of water decreed is equal to one percent of the total amount available as determined by Rules 8.A and 8.B of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7. Therefore, the water may be withdrawn in those amounts for a maximum of 100 years.

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

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

The State Engineer's Office does not have evidence regarding the length of time for which this source will "meet the average annual demand of the proposed subdivision." However, treating El Paso County's requirement as an **allocation** approach based on three hundred years, the annual estimated demand, for the entire subdivision, is 2.55 acre-feet as allowed by the augmentation plan. As a result, the water may be withdrawn in that annual amount for a maximum of 300 years.

State Engineer's Office Opinion

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

Our opinion that the water supply is **adequate** is based on our determination that the amount of water required annually to serve the subdivision is currently physically available, based on current estimated aquifer conditions.

Our opinion that the water supply can be **provided without causing injury** is based on our determination that the amount of water that is legally available on an annual basis, according to the statutory **allocation** approach, for the proposed uses is greater than the annual amount of water required to supply the demands of the proposed subdivision.

Our opinion is qualified by the following:

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

The amounts of water in the Denver Basin aquifers, and identified in Division 2 Water Court case nos. 19CW3031 and 21CW3023, was calculated based on estimated current aquifer conditions. For planning purposes, the county should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than the 300 years used for **allocation** due to anticipated water level declines. We recommend that the county determine whether it is appropriate to require development of renewable water resources for this subdivision to provide for a long-term water supply. Furthermore, that applicant will need to apply for, and obtain a new well permits issued pursuant to Section 37-90-137(4) C.R.S.

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

Sincerely,



Kate Fuller, P.E.
Water Resource Engineer

cc: Bill Tyner, Division 2 Engineer
Doug Hollister, District 10 Water Commissioner



OFFICE OF THE COUNTY ATTORNEY
CIVIL DIVISION

Steven A. Klaffky, Interim County Attorney

Assistant County Attorneys

Lori L. Seago
Mary Ritchie
Bryan E. Schmid
Nathan J. Whitney
Christopher M. Strider
Terry A. Sample
Dorey L. Spotts
Steven Martyn

June 6, 2022

MS-22-1 McDermott Subdivision Filing No. 1¹
Minor Subdivision

Reviewed by: Lori L. Seago, Senior Assistant County Attorney
April Willie, Paralegal

WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal by Craig and Sally McDermott (“Applicants”) for subdivision of 3 single-family lots (4 dwellings) on an existing 29.32-acre parcel (the “property”). The existing lot 1 will be 19.525 acres and will contain 2 single-family dwellings, lots 2 and 3 will each be 5.0 acres and will each contain a single-family dwelling. The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary (“WSIS”), the subdivision demand is 1.2 acre-feet for in-house use for four dwellings, 0.550 and .600 acre-feet for irrigation, and 0.200 acre-feet for animal watering, for a total of 2.55 acre-feet/year for the 3-lot (4-dwelling) subdivision. Based on the total demand, Applicants must be able to provide a supply of 765 acre-feet of water (2.55 acre-feet per year x 300 years) to meet the County’s 300-year water supply requirement.

Proposed Water Supply

3. The Applicants have provided for the source of water to derive from individual on-lot wells, as provided in Findings of Fact, Conclusions of Law, Ruling of the Referee, Judgment and Decree and Plans for Augmentation in District Court, Water Division 2, Case Nos. 19CW3031 and 21CW3023 dated February 20, 2020 and October 7, 2021, respectively (“Decree and/or

¹ This is the name of the subdivision as identified on the plat. The EPC file name is 12930 Herring Road.

“Augmentation Plans”). The Decree in Case No. 19CW3031 adjudicated the following water supply beneath Applicants’ property:

AQUIFER	Annual Average Withdrawal 100 Years (Acre Feet)	Annual Average Withdrawal 300 Years (Acre Feet)	Total Withdrawal (Acre Feet)
Dawson (NNT)	20.17	6.72	2,050
Denver (NNT)	19.6	6.53	1,960
Arapahoe (NT)	13.0	4.33	1,300
Laramie-Fox Hills (NT)	8.55	2.85	855

The Decree and Augmentation Plans provide for the total withdrawal of up to 2.55 acre-feet of water per year from the Dawson aquifer. In Case No. 19CW3031, the approved augmentation plan permits the withdrawal of 1.25 acre-feet of water per year for two residences, including annual amounts of 0.6 acre-feet for in-house use, 0.55 acre-feet for irrigation, and 0.1 acre-feet for stock watering. Case No. 21CW3023 approves an amended augmentation plan permitting the withdrawal of an additional 1.3 acre-feet annually for up to two residences, including 0.6 acre-feet for in-house use, 0.6 acre-feet for irrigation, and 0.1 acre-feet for stock watering. The Augmentation Plans require the replacement of actual stream depletions during pumping through septic return flows which will “return to the Monument Creek stream system and such flows are sufficient to replace total actual depletions.” Further, Applicants must reserve a total of 780.3 acre-feet of Laramie-Fox Hills aquifer water to replace post-pumping depletions.

4. Applicants provided a *Water Resources Report for 12930 Herring Road Subdivision* dated January 2022 by JDS-Hydro Consultants (“*Report*”). The *Report* summarizes the wells and water demands as follows:

Currently constructed Well No. 1 (Lot 1) – Well Permit No. 84196-F²

In-house use for 2 residences: 0.30 acre-feet per year per residence
 Irrigation and stock-watering use: 0.325 acre-feet per year per residence
 (Total = 0.625 acre-feet/year for 300 years or 375 acre-feet total for 300 years)

To be constructed Well No. 2 (Lot 3) – Well Permit No. 86389-F

In-house use: 0.30 acre-feet per year
 Irrigation and stock watering use: 0.35 acre-feet per year
 (Total = 0.65 acre-feet/year for 300 years or 195 acre-feet total for 300 years)

² The original Permit No. 217838 was re-permitted to Permit No.84196-F on April 10, 2020.

To be constructed Well No. 3 (Lot 2)

In-house use: 0.30 acre-feet per year
Irrigation and stock watering use: 0.35 acre-feet per year
(Total = 0.65 acre-feet/year for 300 years or 195 acre-feet total for 300 years)

The *Report* states that the “current water rights and augmentation plan in place are adequate to meet the estimated overall demand and resulting alluvial depletions of 0.59 acre-feet for three (3) lots and four (4) total residences.” Further, it states that the Augmentation Plans require replacement of actual stream depletions and reservation of 780.3 acre-feet total of the nontributary Laramie-Fox Hills aquifer water but reserves the right to substitute the use of other nontributary groundwater, including return flows.

State Engineer’s Office Opinion

5. In a letter dated March 21, 2022, the State Engineer reviewed the proposal to subdivide the 29.32 +/- acre parcel into 3 lots. Lot 1 will have two single-family residences. The State Engineer stated that the “proposed supply of water is to be provided by three on-lot wells, operating pursuant to two court decreed water rights (19CW3031 and 21CW3023).…” The water underlying this property was adjudicated and the Applicants are the owner of water rights in the Dawson, Denver, Arapahoe, and Laramie Fox-Hills aquifers. The State Engineer identified the total estimated water requirement at 2.55 acre-feet/year (1.25 acre-feet/year for Lot 1 and 0.65 acre-foot/year each for both Lot 2 and Lot 3). Water use rates from Water Court case no. 19CW3031 are .30 acre-foot per year for each ordinary household, 0.0125 acre-foot per year per horse, and 0.065 acre-foot per year for each 1,000 square feet of lawn and garden irrigation. Water use rates from Water Court case no 21CW3023 are 0.30 acre-foot per year for each ordinary household, 0.0125 acre-foot per year per horse, and 0.05 acre-foot per year for each 1,000 square feet of lawn and garden irrigation.

The State Engineer noted that there is a currently operating well permit no. 84196-F which was re-permitted from the previous permit no. 217838 and which operates on Lot 1 and may not serve more than two single-family dwellings.

The State Engineer stated that the “annual estimated demand, for the entire subdivision, is 2.55 acre-feet as allowed by the augmentation plan. And finally, “[b]ased on the above, it is our opinion, pursuant to CRS 30-28-136(1)(h)(I), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(4) and the plan for augmentation noted herein, for all wells in the subdivision”

Recommended Findings

6. Quantity and Dependability. Applicants’ water demand for McDermott Subdivision Filing No. 1 Minor Subdivision is 2.55 acre-feet per year from the Dawson aquifer for a total demand of 765 acre-feet for the subdivision for 300 years, with replacement water provided

through the septic system return flows to replace actual stream depletions during pumping and with 780.3 acre-feet of Laramie-Fox Hills aquifer water post-pumping, but reserving the right as decreed to substitute the use of other nontributary groundwater for post-pumping depletions.

Based on the water demand of 2.55 acre-feet/year for the McDermott Subdivision Filing No. 1 Minor Subdivision and the Decree and Augmentation Plans permitting withdrawals in that amount, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for the McDermott Subdivision Filing No. 1 Minor Subdivision.

7. Quality. The water quality requirements of Section 8.4.7.B.10 of the Land Development Code must be satisfied. **El Paso County Public Health shall provide a recommendation as to the sufficiency of water quality.**

8. Basis. The County Attorney's Office reviewed the following documents in preparing this review: the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree and Augmentation Plans, Case Nos. 19CW3031 dated February 20, 2020 and 21CW3023 dated October 7, 2021, the Water Supply Information Summary provided February 25, 2022, the Water Resources Report dated February 23, 2022, Well Permit No. 84196-F dated December 8, 2021, and the State Engineer Office's Opinion dated March 21, 2022. The recommendations herein are based on the information contained in such documents and on compliance with the requirements set forth below. ***Should the information relied upon be found to be incorrect, or should the below requirements not be met, the County Attorney's Office reserves the right to amend or withdraw its recommendations.***

REQUIREMENTS:

A. Applicants and their successors and assigns shall comply with the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree and Augmentation Plans in Case Nos. 19CW3031 and 21CW3023 ("Decree and Augmentation Plans"). Water use shall not exceed 2.55 acre-feet annually for the 3-lot subdivision. Withdrawals from Well No. 1 shall not exceed 1.25 acre-feet/year and withdrawals from Well Nos. 2 and 3 shall not exceed 1.3 acre-feet/year. Stream depletions shall be replaced with septic system return flows for a period of 300 years and post-pumping depletions will be replaced by Laramie-Fox Hills aquifer water pursuant to the Augmentation Plans.

B. The County prefers that when there is an augmentation plan, Applicants create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water determinations and replacement plans for the property. For minor subdivisions such as this, however, Applicants may elect to solely rely on the covenant provisions required below and forego creation of an HOA.

C. Applicants and their successors and assigns shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of the

Decree and Augmentation Plan, including their obligations to comply with the augmentation plan.

The covenants shall specifically address the following:

- 1) Identify the water rights associated with the property. The Covenants shall reserve 765 acre-feet of not nontributary Dawson aquifer water pursuant to the Decree and Augmentation Plans to satisfy El Paso County's 300-year water supply requirement for the 3 lots of McDermott Subdivision Filing No. 1. The Covenants shall further identify that 375 acre-feet (1.25 AF/year) of Dawson aquifer water is allocated to Lot 1 and 195 acre-feet (0.65 AF/year) of Dawson aquifer water is allocated to each of Lots 2 and 3.
- 2) Advise of responsibility for costs. The Covenants shall advise lot owners and their successors and assigns of their obligations regarding the costs of compliance with the Decree and Augmentation Plans, which include pumping of the Dawson wells in a manner to replace depletions during pumping and drilling Laramie-Fox Hills aquifer wells in the future to replace post-pumping depletions.
- 3) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each residential lot owner to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping, shall reserve said return flows to replace depletions during pumping, and shall state that said return flows shall not be separately sold, traded or used for any other purpose. The Covenants more specifically shall require the Dawson aquifer well on each lot to be serving an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from 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) Require reservation of 780.3 acre-feet of Laramie-Fox Hills aquifer water to replace post-pumping depletions pursuant to the Decree and Augmentation Plans. The Covenants shall further identify that 382.5 acre-feet of Laramie-Fox Hills aquifer water is allocated to Lot 1 and 198.9 acre-feet of Laramie-Fox Hills aquifer water is allocated to each of Lots 2 and 3. The Covenants shall recite that this water shall not be separated from transfer of title to the property and shall be used exclusively for augmentation supply.
- 5) Address future lot conveyances. The following or similar language shall be included in the Covenants to address future conveyances of the lots subsequent to the initial conveyance made by Applicants/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 Findings of Fact, Conclusions of Law, Ruling of Referee, Decree and Augmentation Plans in Case Nos. 19CW3031 or 21CW3023 and the water rights therein are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title.”

6) Advise of monitoring requirements. The Covenants shall advise future lot owners of this subdivision and their successors and assigns of their responsibility for any metering and data collecting that may be required regarding water withdrawals from Dawson aquifer wells.

7) Address amendments to the covenants. The Covenants shall address amendments using the following or similar language:

“Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which would alter, impair, or in any manner compromise the water supply for the McDermott Subdivision Filing No. 1 minor subdivision pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee, Decree and Augmentation Plans in Case Nos. 19CW3031 or 21CW3023. 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 an Order from the Division 2 Water Court approving such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such adjudication.”

8) Address termination of the Covenants. The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of the Findings of Fact, Conclusions of Law, Ruling of Referee, Decree and Augmentation Plans in Case Nos. 19CW3031 or 21CW3023 are also terminated by order of the Division 2 Water Court and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

D. Applicants and their successor assigns shall reserve and convey by recorded warranty deed the reserved Dawson and Laramie-Fox Hills aquifer water rights at the time of lot sales. Specifically, Applicants and future lot owners shall convey sufficient water rights in the Dawson and Laramie-Fox Hills aquifers underlying the respective lots pursuant to the Decree and Augmentation Plans. Sufficient water rights are 375 acre-feet of Dawson aquifer water and 382.5 acre-feet of Laramie-Fox Hills aquifer for Lot 1 and 195 acre-feet of Dawson aquifer water and 198.9 acre-feet of Laramie-Fox Hills aquifer water for each of Lots 2 and 3.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson and Laramie-Fox Hills aquifers): “These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, replacement during pumping, and replacement of post-pumping depletions for each lot of the McDermott Subdivision Filling No. 1 minor subdivision. The water rights so conveyed, and the return flows therefrom, shall be appurtenant to each of the respective lots with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title.”

E. Applicants and their successors and assigns shall submit Covenants, form deeds, and any plat notes required herein to the Planning and Community Development Department and the County Attorney’s Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney’s Office prior to recording the final plat. Said documents shall cross-reference Findings of Fact, Conclusions of Law, Ruling of Referee, Decree and Augmentation Plans in Case Nos. 19CW3031 or 21CW3023 and shall identify the obligations of the individual lot owners thereunder.

F. Applicants and their successors and assigns shall record all applicable documents, including, but not limited to, Findings of Fact, Conclusions of Law, Ruling of Referee, Decree and Augmentation Plans in Case Nos. 19CW3031 or 21CW3023 and any assignments thereof, any warranty deeds regarding the water rights, and any Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

G. Applicants and/or lot owners must obtain well permits pursuant to the Findings of Fact, Conclusions of Law, Ruling of Referee, Decree and Augmentation Plans in Case Nos. 19CW3031 or 21CW3023.

H. Prior to recording the final plat, Applicants shall upload the following updated documents to EDARP:

- Application Form identifying that the subdivision includes 3 lots with 4 dwellings.

- Water Supply Information Summary indicating 4 total units/households in Section 9 and correcting the name of the development to be consistent with that on the final plat.

I. The following plat note shall be added that addresses the State Engineer's admonition to advise landowners of potential limited water supplies in the Denver Basin:

"Water in the Denver Basin aquifers is allocated based on a 100-year aquifer life; however, for El Paso County planning purposes, water in the Denver Basin aquifers is evaluated based on a 300-year aquifer life. Applicants 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: Kylie Bagley, Planner I