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PLANNING & COMMUNITY DEVELOPMENT

TO: El Paso County Planning Commission
Thomas Bailey, Chair

FROM: Kylie Bagley, Planner III
Carlos Hernandez, Engineer I
Meggan Herington, AICP, Executive Director

RE: Project File Number: VR2114
Project Name: Villa Casitas Filing No. 4
Parcel Number: 5735004001

OWNER:	REPRESENTATIVE:
Jesus Barron 10015 Calle Bernardo Point Fountain, CO 80817	Van Remortel, LLC Fred Van Remortel 2570 West Main Street Littleton, CO 80120

Commissioner District: 4

Planning Commission Hearing Date:	7/6/2023
Board of County Commissioners Hearing Date:	8/1/2023

EXECUTIVE SUMMARY

A request by Jesus Barron for approval of a 5.80-acre Vacation and Replat illustrating one single-family residential lot. The property is zoned RR-5 (Residential Rural), and is located at 10015 Calle Bernardo Point, directly south of the intersection of Calle Bernardo Point and La Piedra Point.

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A. WAIVERS/DEVIATIONS/AUTHORIZATION

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. APPROVAL CRITERIA

Section 7.2.3.C, Actions Vacating or Altering a Recorded Plat, Replat, of the El Paso County Land Development Code (2019) ("Code") states that a replat, "involves two actions, the vacation of the portion of the subdivision plat where the change is proposed...and approval of a new subdivision plat." The Code goes on to define a replat as providing a replat of a subdivision or lots in a subdivision, in which the original subdivision is substantially modified or additional lots are created. In approving a replat, the following findings shall be made:

- The replat complies with the Code, and the original conditions of approval associated with the recorded plat;
- No nonconforming lots are created, and in the case of existing nonconforming lots, the nonconformity is not increased;
- The replat is in keeping with the purpose and intent of the Code;
- The replat conforms to the required findings for a minor or major subdivision, whichever is applicable;
- Legal and physical access is provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with the Code and the ECM;
- The approval will not adversely affect the public health, safety, and welfare; and
- Where the lots or parcels are subject to any CC&Rs or other restrictions, that any potential conflict with the CC&Rs or other restrictions resulting from the replat has been resolved.

C. LOCATION

North:	RR-5 (Residential Rural)	Single-Family Residential
South:	Pueblo County	Agricultural
East:	RR-5 (Residential Rural)	Single-Family Residential
West:	RR-5 (Residential Rural)	Single-Family Residential

D. BACKGROUND

The property was platted in 1971, as lot 14, Villa Casitas Filing No. 1. In 2001, a modular home was placed on the property with a portion of the home being placed within the

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County right-of-way. The northeast corner of the house extends 1.9 feet into the existing right-of-way.

The applicant will not be creating additional lots as part of the Vacate Replat. The Vacate Replat will be vacating the existing 5.8-acre lot and replating the lot to include roughly 72 square feet of current right-of-way that is proposed to be vacated. This is necessary so that the existing home no longer encroaches into the right-of-way.

The applicant is requesting a Dimensional Variance (BOA219) for a 3-foot setback into the required 25-foot front setback, which is scheduled to be heard at the June 28, 2023, Board of Adjustment hearing. If the request is approved the applicant is required to Vacate and Replat the property with a portion of the existing County right-of-way in order to contain the existing single-family dwelling on his property.

E. ANALYSIS

1. Land Development Code Compliance

Section 3.2 of the Code states the following as the intent of the RR-5 zoning district:

“The RR-5 zoning district is a 5-acre district intended to accommodate low-density, rural, single-family residential development.”

The applicant intends to use the property for rural, single-family residential purposes, which is consistent with the intent of the RR-5 zoning district.

2. Zoning Compliance

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

*Minimum lot size: 5 acres **

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 ft from all property lines.*

The Vacate Replat will not create additional RR-5 lots but will bring an existing lot into conformance with the Land Development Code by replatting the existing lot and portions of existing County right-of-way so that the existing single-family dwelling is contained within a residential lot.

F. MASTER PLAN COMPLIANCE

1. Your El Paso County Master Plan

a. Placetype Character: 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*

Analysis:

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

The Vacate Replat will correct an existing issue from 2001 where the modular home was placed on the property and encroached into the County's right-of-way. The Vacate Replat will allow for the existing home to be within the boundary of a legal lot and not within the right-of-way.

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.

Analysis:

The Vacate Replat will not change the existing character of the neighborhood as it will not create new lots or new development on the property.

c. Key Area Influences: The property is not located within a key area.

2. 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

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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.

The Water Master Plan includes demand and supply projections for central water providers in multiple regions throughout the County. The property is located within Planning Region 7 of the Plan, which is an area anticipated to experience growth by 2040. The following information pertains to water demands and supplies in Region 7 for central water providers:

The Plan identifies the current demand for Region 7 to be 10,141 acre-feet per year (AFY) (Figure 5.1) with a current supply of 15,376 AFY (Figure 5.2). The projected demand in 2040 for Region 7 is at 15,846 AFY (Figure 5.1) with a projected supply of 25,241 AFY (Figure 5.2) in 2040. The projected demand at build-out in 2060 for Region 7 is at 26,969 AFY (Figure 5.1) with a projected supply of 27,840 AFY (Figure 5.2) in 2060. This means that by 2060 a surplus of 871 AFY is anticipated for Region 7.

3. 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 Environmental Services was sent a referral and have no outstanding comments.

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



G. PHYSICAL SITE CHARACTERISTICS

1. Hazards

There are no geological hazards associated with this request.

2. Floodplain

The property is not located within a FEMA floodplain area as determined by a review of the Federal Insurance Rate Map. The property is within Zone X, an area deemed to be a minimal flood hazard risk. The applicant's request for a partial right-of-way Vacation and Replat is not anticipated to adversely impact floodplains in the area or be affected by flood hazards.

3. Drainage and Erosion

The parcel is in the Young Hollow drainage basin. This drainage basin is an unstudied basin and has no basin and bridge fees. Based on the applicant's letter of intent, the parcel's impervious area is not increasing as no new structure is being built and the request is for an approximately 6-foot partial right-of-way vacation to resolve encroachment by the existing residence. Additionally, the applicant has further stated in their letter of intent that the proposed request will not adversely impact adjacent properties or existing drainage.

A grading and erosion control plan is not required with this application as there is no land disturbance proposed.

4. Transportation

The parcel is adjacent to and obtains access from Calle Bernardo Point which is a non-county maintained rural-local gravel roadway. The current El Paso County Engineering Criteria Manual shows that a rural local-gravel roadway has a 60-foot right-of-way. However, the Villa Casitas Filing No. 1 subdivision, which was platted in 1971, (plat number 3427) dedicated 140-feet of right-of-way for Calle Bernardo Point to El Paso County. The existing residence was built in 2001, and a portion of the structure was placed in the right-of-way. I think it should read "The applicant has requested a vacation of right-of-way to solve the property's encroachment. The right-of-way to be vacated will have a total area of 72 feet. The vacation will begin from the property's porch and extend 25.26 feet horizontally along the existing right of way line and taper to 5.56 feet at the northwest corner. The 2016 El Paso County Major Corridors Plan Update does not show roadway improvements to Calle Bernardo Point in the 2040



Roadway Plan nor in the 2060 Corridors Preservation Plan. During the review process the property obtained a driveway access permit with the county, AP22577.

Given the conditions above, the proposed partial right-of-way vacation to resolve the existing residence's encroachment is supported by County Engineering.

Road Impact Fees, as described in Resolution 19-471, are not accessed with this application since there is no additional vehicular traffic being generated nor a change in land use.

H. SERVICES

1. Water

The Vacate Replat will not create new lots, therefore a water sufficiency finding is not required.

2. Sanitation

Sanitation is provided by an existing onsite wastewater treatment system.

3. Emergency Services

The property is within the Hanover Fire Protection District.

4. Utilities

Mountain View Electric Association (MVEA) will service electricity to the subject property.

5. Metropolitan Districts

The subject property is not located within a metropolitan district.

6. Parks/Trails

There are no required fees in lieu of park land dedication.

7. Schools

There are no required fees in lieu of school land dedication.

I. APPLICABLE RESOLUTIONS

See attached resolution.

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J. STATUS OF MAJOR ISSUES

There are no outstanding major issues.

K. 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 7.2.3.C, Actions Vacating or Altering a Recorded Plat, Replat, of the El Paso County Land Development Code (2019) staff recommends the following conditions and notation:

CONDITIONS

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

NOTATION

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

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L. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified five (5) adjoining property owners on June 13, 2023, for the Planning Commission and Board of County Commissioners meetings. Responses will be provided at the hearing.

M. ATTACHMENTS

Map Series

Letter of Intent

Plat Drawing

Draft Resolution



Map Exhibit #1: Aerial



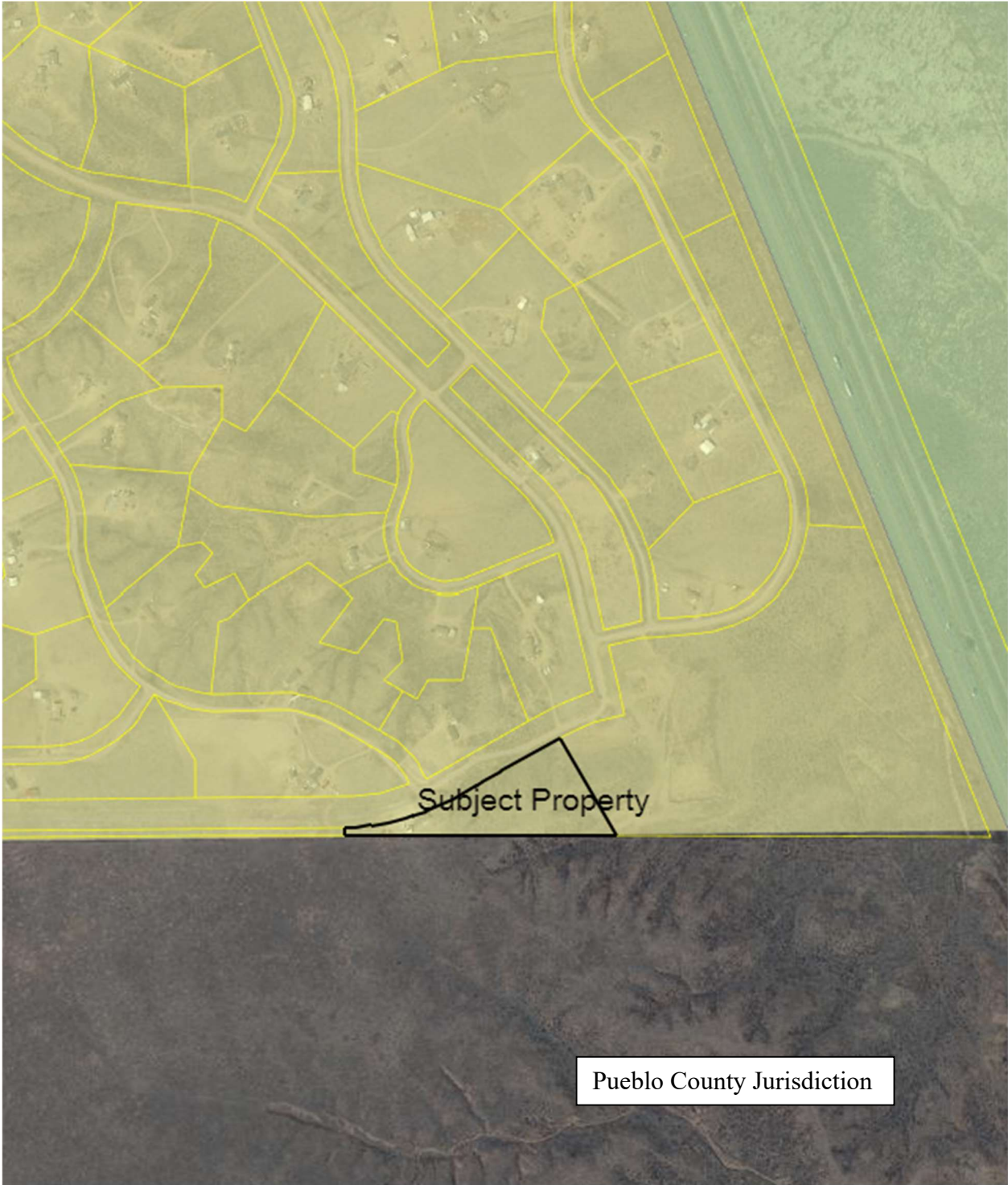
Map Exhibit #2: Aerial















Map Exhibit #3: Zoning



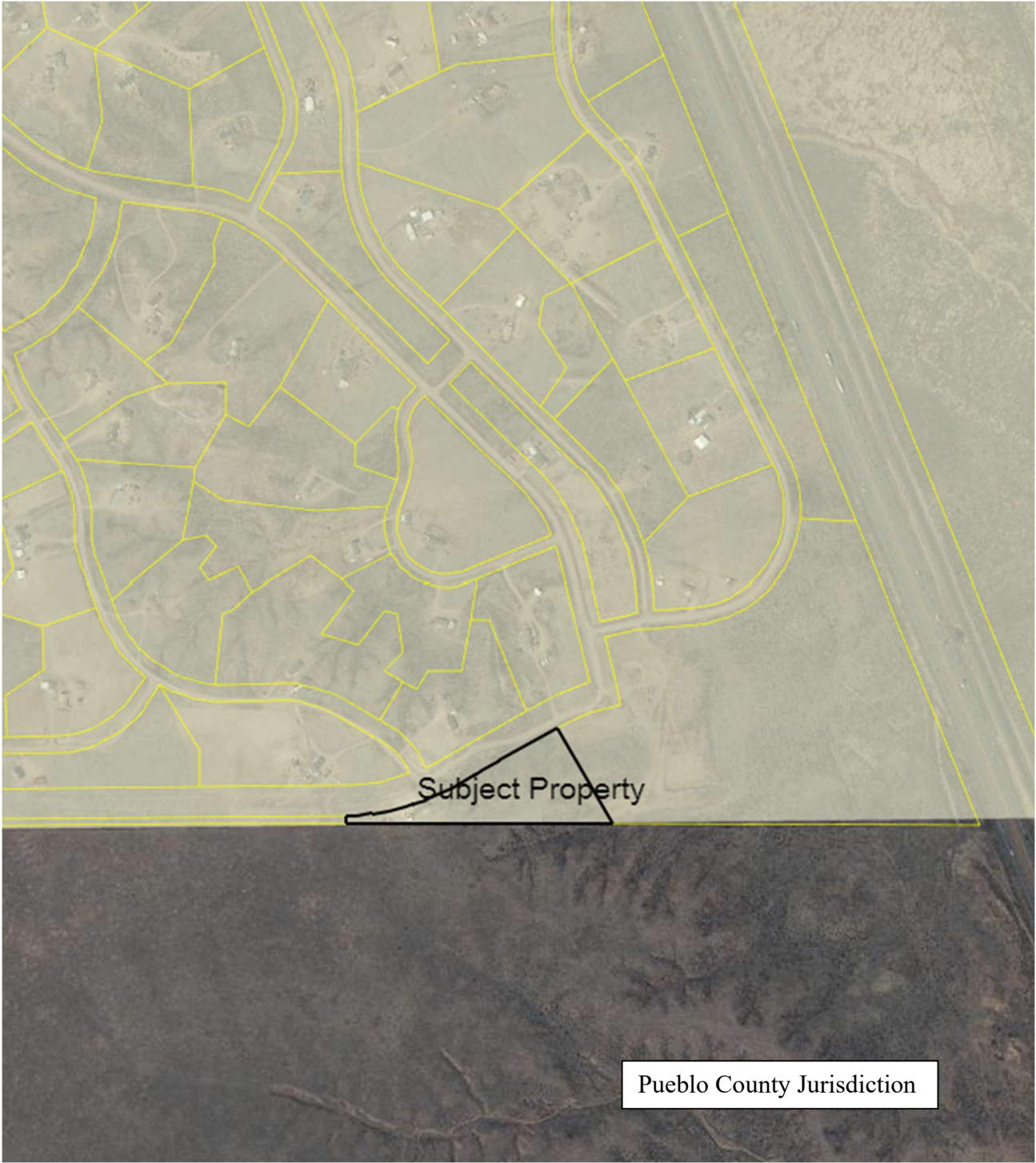
Map Exhibit #4: Placetype



Legend

	Rural		Employment Center
	Large-Lot Residential		Regional Open Space
	Suburban Residential		Mountain Interface
	Urban Residential		Military
	Rural Center		Utility
	Regional Center		Incorporated Area

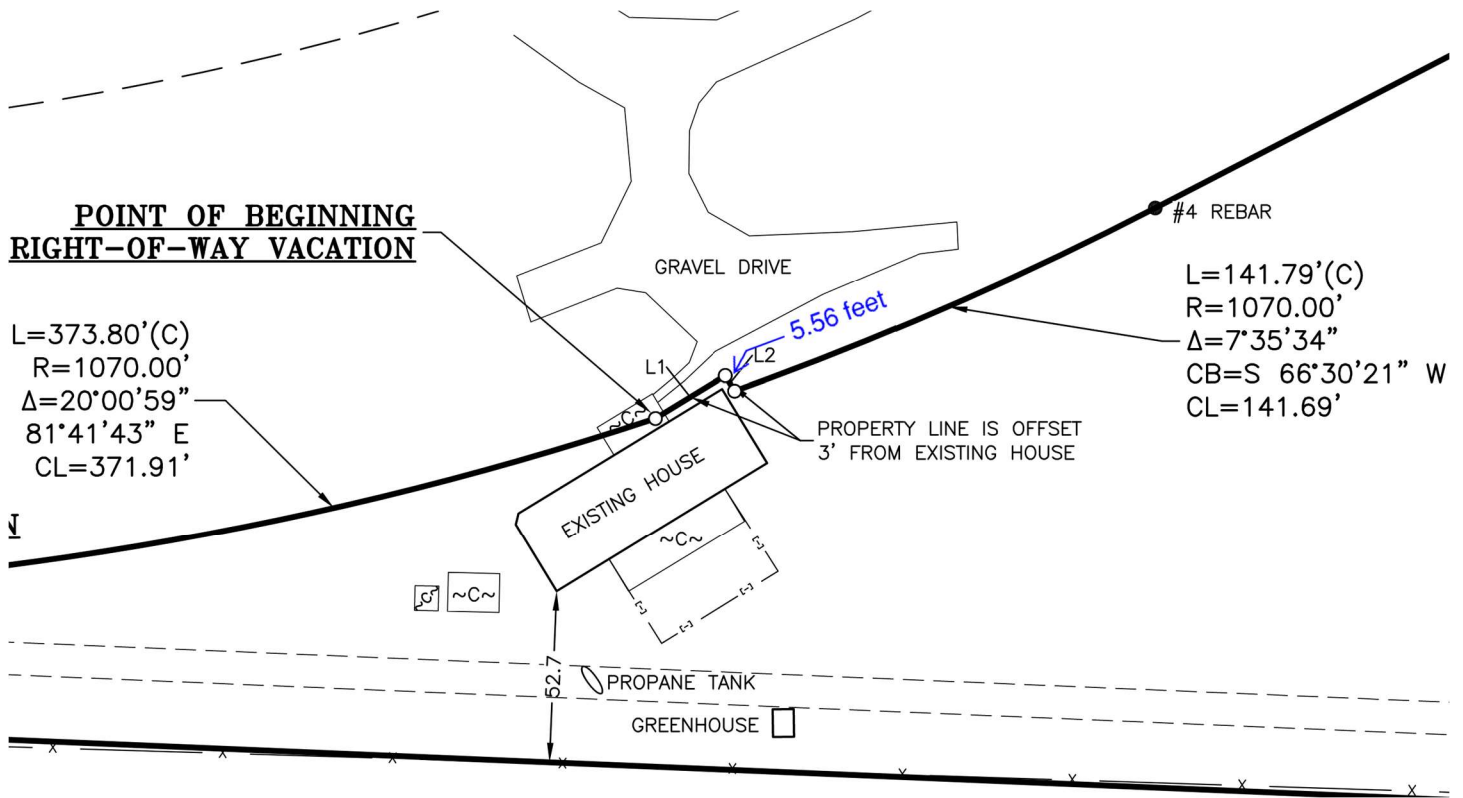
Map Exhibit #5: Area of Change



Legend

- Protected/Conservation Area
- Minimal Change: Undeveloped
- Minimal Change: Developed
- New Development
- Transition

Map Exhibit #6: Right-of-Way Vacation Plat Detail



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Fred Van Remortel
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February 14, 2023

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

By E-Application and Email

Re: PCD File No. VR-2114 and PCD File No. BOA-219
Owner/Applicant: Jesus Barron 10015 Calle Bernardo Point, Fountain CO 80817
Property Address: 10015 Calle Bernardo Point, Fountain, CO 80817
Application: Board of Adjustment and Plat Vacation with ROW

Dear Planning and Community Development Department:

This firm, Van Remortel, LLC represents owner/applicant, Jesus Barron (“Mr. Barron” or “Applicant”), the owner of property commonly known as 10015 Calle Bernardo Point, Fountain, Colorado 80817 and more specifically described as:

Lot 14, Villa Casitas Filing No. 1,
County of El Paso, State of Colorado

Tax ID/Parcel No.: 5735004001
Existing Land Use/Development: RR-5
Zoning District: RR-5

the (“Property”).

This letter is intended to constitute as the cover letter as required with application, and referred in the application as *Exhibit A*. We are requesting a “bump-out” of approximately 3 feet from El Paso County (the “County”) in order to resolve an encroachment of part of the residence on the Property into the Calle Bernardo right-of-way (the “ROW”). Calle Bernardo runs over part of the ROW, but not the part containing the residence or any of Applicant’s Property. The part of the ROW over Applicant’s Property was originally platted for a road which is not and has never been utilized. This letter is submitted in connection with such application.

Applicant is requesting from the Board of adjustment a partial vacation of a 140-foot County ROW and encroachment of Calle Bernardo Point in Township 17S, Range 65W, Section 35. Applicant is also seeking a variance from the 25 feet setback requirement.

Standards

Applicant is requesting from the Board of Adjustment a partial vacation of a 140-foot County ROW and encroachment located at Calle Bernardo Point in Township 17S, Range 65W, Section 35. The purpose of the request is clear title to Applicant's property so that it may become marketable.

The Property is zoned RR-5. The portion of the existing ROW sought to be vacated is not now and never has been in use as a ROW. The portion of the existing ROW sought to be vacated does not serve a legitimate government or utility purpose. As a result of the requested action "there will be no impact on the status of the lot or parcel, and if a nonconformity will result the nonconforming lot or parcel will be conforming with respect to lot size and will be eligible to apply for a variance in the event they do meet the development standard of the applicable zone district. (LDC 7.2.2(E)(5)(c)). This request complies with C.R.S. §§ 43-2-301, *et seq.* (LDC 7.2.4(2)).

Pursuant C.R.S. § 43-2-302(1)(b) "[i]n the event that less than the entire width of a roadway is vacated, title to the vacated portion shall vest in the owners of the land abutting such vacated portion." Pursuant C.R.S. § 43-2-302(1)(f) "[n]otwithstanding any other provision of this subsection (1), a board of county commissioners may provide that title to the vacated roadway shall vest, subject to a public-access easement or private-access easement to benefit designated properties, in the owner of the land abutting the vacated roadway, in other owners of land who use the vacated roadway as access to the owners' land, or in a legal entity that represents any owners of land who use the vacated roadway as access to the owners' land. Title shall vest to the owner of the land abutting the vacated roadway as otherwise required by paragraphs (a) to (d) of this subsection (1), unless the board expressly requires the title to vest pursuant to the authority set forth in this paragraph (f) in the resolution to vacate the roadway that is approved by the board." Applicant (and subsequent owners of the Property) is the owner person to use or benefit from the part of the ROW that is sought to be vacated.

The requested ROW vacation complies with the LDC and applicable State law. The portion of the ROW sought to be vacated has not been used as a public road. C.R.S. § 43-2-303(2)(e); *see also*, *Martini v. Smith*, 42 P.3d 629 (Colo. 2002). Accordingly, the strict requirements of the vacation statute do not apply. *Martini*, 42 P.3d at 636.

Vacation of the ROW will not create any parcels without access. C.R.S. § 43-2-303(2)(b). The approval of the requested ROW vacation will not adversely affect the public health, safety, and welfare. No land, by reason of the requested vacation, is left without an established public right-of-way or private access easement connecting said land with an established public road. The ROW, if vacated as requested may be reserved for the continued use of existing sewer, gas,

water or similar pipelines and appurtenances, for ditches or canals and appurtenances, and for electric, telephone and similar lines appurtenances. However, such use is amply available from the existing, non-vacated part of the ROW.

The portion of the ROW that is sought to be vacated lies entirely on Applicant's Property and has not been maintained by El Paso County or any municipality. This request and the action sought hereby do not adversely impact adjacent properties or existing drainage patterns.

Applicant applied for an Access Permit (standalone), File No. AP22577 and the Access Permit was approved on April 4, 2022 by El Paso County Planning and Community Development Department.

Introduction

Applicant seeks a partial vacation of a 140-foot ROW for part of the ROW for "bump-out" of approximately 3 feet so that the residence will not encroach the ROW. Calle Bernardo travels over for part of the ROW, but does not travel over Applicant's Property. The part of the ROW that goes over Applicant's property was originally platted for a road, but was never used as such. The porch of Applicant's house and the northeast corner of Applicant's house encroach on the ROW, approximately 70' from the path of Calle Bernardo. Additionally, Applicant desires to build a garage at the end of his gravel driveway, and that garage would fall in the ROW, but not the road. *A true and correct copy of the Land Survey Plat is submitted herewith as **Exhibit 1**.* A survey obtained of the Property shows that the house extends roughly 1.9 feet into the ROW (the "Encroachment").

A gravel road, Calle Bernardo, lies in the ROW and consumes approximately 8-15 feet of the 140-foot ROW. **Exhibit 2** identifies the road highlighted in orange. **Exhibit 3**, from the El Paso County Assessor's office, shows Calle Bernardo in the ROW and then turning Northwest in front of Applicant's property (specifically his driveway) to where it meets Avenida Alegre. It also shows that there is no road over the ROW West of the point where Calle Bernardo turns Northwest, and proceeds West along the Northerly edge of Applicant's Property. In fact, that part of the ROW is unused for a road or anything else.

Photographs submitted herewith show views of Calle Bernardo, the unused ROW and Avenida Alegre. See **Exhibit 4-8**. All of the properties that border the Northern edge of the ROW, West of the Property are accessible by Avenida Alegre, and in fact use Avenida Alegre for ingress and egress.

Accordingly, Applicant seeks a "bump out" of approximately 3 feet, so the residence is entirely out of the ROW; and a variance of the setback requirement of 25 feet from the ROW. The actual road, Calle Bernardo is not implicated by this request.

Background of the Application

On January 30, 2020, Mr. Barron acquired title to the Property from Superior Properties, Inc., via General Warranty Deed recorded February 3, 2020, at Reception No. 220015077. *A true and correct copy of the General Warranty Deed is submitted herewith as **Exhibit 9**.*¹ The ROW is not identified in the General Warranty Deed and is not identifiable by a site visit. An affixed, manufactured home (the “residence”) is located on the Property. Per an Affidavit of Real Property for a Manufactured Home, recorded July 12, 2012, it appears that the residence was affixed to the Property at least by 2012.

In or around July of 2020, Applicant applied to the County for a building permit to construct a detached garage on the Property. El Paso County denied the building permit, asserting that the Property is noncompliant because the residence “appears to be over the [P]roperty line.”

In August of 2020, Applicant obtained a Land Survey Plat that depicts the north easterly corner of the residence extending 1.9' over the Property line causing the Encroachment, onto the 140' ROW, but not the road. The ROW was dedicated to the County per the 1971 subdivision plat, titled Villa Casitas Filing No. 1, El Paso County, Colorado ("Subdivision Plat"). Calle Bernardo is a gravel road located on roughly the northerly half of the ROW, approximately 70' from the residence. Therefore, while the ROW directly abuts the Property and the residence encroaches onto the ROW, the Road, itself does not abut the Property, and the residence does not encroach the Road. *A true and correct copy of the Survey is submitted herewith as **Exhibit 1**.* In fact, the residence is approximately 70 feet from Calle Bernardo.

Applicant originally requested that El Paso County vacate 70' of the ROW, through an application with El Paso County and an EA file No. 20114. On August 26, 2020, Engineer Meeting notes were obtained with all requirements and policies. This request was denied, due to Applicant not completing all the County’s right-of-way vacation request requirements. *A true and correct copy of the El Paso County Checklist for EA-20-114 is submitted herewith as **Exhibit 10**.*

In September 2021, Applicant completed a traffic survey that meets the county requirements. *A true and correct copy of the Traffic Memorandum is submitted herewith as **Exhibit 11**.* Applicant also procured a Title Commitment, which is submitted herewith as **Exhibit 12**.

Historic Background

It appears that the ROW was granted by virtue of a subdivision plat titled Villa Casitas Filing No. 1, dated and ratified April 21, 1971, and recorded May 29, 1971 in Plat Book R-2,

¹ All references to “recorded” documents are to documents recorded in El Paso County, unless specifically identified otherwise.

Page 63, Reception No. 803466 (the “Filing”). *A true and correct copy of the Filing is submitted herewith as Exhibit 13.* The Filing states “All streets so platted shall be dedicated to public use . . . upon acceptance at resolution, all streets and drainage ways so dedicated will become matters of maintenance by El Paso County, Colorado.”

The Filing demonstrates that Calle Bernardo was originally planned to jog Southwest beginning at about the Property’s Northeast corner until about the Property’s Southwest corner and then proceed due West. However, that plan was not realized and Calle Bernardo actually takes a jog Northwest (away from Applicant’s property) onto what is labeled Los Taos on the Filing, but subsequently and currently is identified as Calle Bernardo. *See El Paso County Assessor Information at Exhibit 3.*

Exhibit 14 shows the current Calle Bernardo in yellow, and the ROW labeled Calle Bernardo, but never used as a road in green. It also shows what was labeled as Los Taos, but is now part of Calle Bernardo in orange. Calle Bernardo now continues in a Northwesterly direction, away from Applicant’s Property, until it intersects with Avenida Alegre.

By virtue of a Grant of Right Way from LWD, LLC (“LWD”), as grantor to Mountain View Electric Association, Inc., as grantee dated November 16, 2000 and recorded November 20, 2000 at Reception No. 200140056, LWD granted an easement for power lines, among other things (the “Power Line Easement”). *A true and correct copy of the Power Line Easement is submitted herewith as Exhibit 15.* The requested bump out vacation of the ROW, will not affect the Power Line Easement.

Legal Authorities and Support for the Requested Vacation

A right of way may be an easement. *DeReus v. Peck*, 162 P.2d 404 (Colo. 1945). The term “right of way” is generally construed to describe an easement. *See Hutson v. Agric Ditch & Reservoir Co.*, 723 P.2d 736 (Colo. 1986). The term may be merely descriptive of the purpose to which the is being put. *Dep’t of Transp. v. Gypsum Ranch Co., LLC*, 244 P.3d 127 (Colo. 2010).

Easements may be created by the filing of a plat “specifically dedicating certain portions of the land as avenues to the use of the occupants of the platted tracts” *Page v. Lane*, 211 P.2d 549 (Colo. 1949). An easement is created “if the owner of the property to be burdened . . . conveys a lot or unit in a general-plan development or for the development or community.” *Allen v. Nickerson*, 155 P.3d 595 (Colo. App. 2006). Under this general principle, a plat can give rise to an express easement or dedication for private or public use. *Bolinger v. Neal*, 259 P.3d 1259 (Colo. App. 2010).

The existence of an easement does not preclude the creating of additional easements so long as the additional easements do not unreasonably interfere with the enjoyment of the prior easement holders. *Bolinger*, 259 P.3d 1259.

Mere nonuse of an easement acquired by grant, however long continued, does not constitute an abandonment. *People ex rel. Standart v. Farmer High Line Canal & Reservoir Co.*, 54 P. (Colo. 1898). Failure to use the full width of the right of way does not constitute an abandonment. *Dep't of Transp. v. First Place, LLC*, 148 P.3d (Colo. App. 2006). Cessation of the primary purpose for which an easement was granted does not terminate the easement if such purpose was not the sole purpose of the grant. *Smith v. Wright*, 424 P.2d 384 (Colo. 1967).

An easement may be terminated by abandonment. *Williams v. Stirling* 583 P.2d 290 (Colo. 1978). To establish an abandonment of an easement, the party asserting the easement was abandoned must show affirmative acts manifesting an intention on the part of the owner of the dominant estate to abandon the easement. *Rivera v. Queree*, 358 P.2d 40 (Colo. 1960); *but see* C.R.S. § 13-25-127.

However, a use by the owner of the servient estate which is inconsistent with the enjoyment of the easement for a period of time long enough to create a prescriptive right will terminate the easement. The servient owner's use of the land must (1) adverse to the use of the easement, (2) open or notorious, and (3) continued with effective interruption for 18 years.

A platted public road or part thereof, may not be vacated so as to leave any land adjoining the public road without an established public road or private access easement connecting the land to another public road. C.R.S. § 43-2-303(2)(a). If a roadway is vacated, the documents vacating the road, including but not limited to any resolution, ordinance, deed, conveyance document, plat, or survey, must be recorded in the office of the clerk and recorder of the county in which the road is located. C.R.S. § 43-2-303(2)(f).

All right, title, or interest of a county in and to any roadway is divested upon vacation by any of the following methods (C.R.S. § 43-2-303(1)):

The board of county commissioners of any county may vacate any roadway or any part thereof located entirely within the county if the roadway is not within the limits of any city or town. If a roadway has been established as a county road at any time, the roadway may not be vacated by any method other than a resolution approved by the board of county commissioners of the county at a meeting ten days' notice of which has been provided to landowners owning one acre or more adjacent to the roadway. This provision does not apply to a roadway that has been established but has not been used after such establishment.

We now amend and revise to application for Board of Adjustment and Plat Vacation with ROW, and submit additional required documents for these requests. Applicant hereby requests that the 3' bump out and variance be approved. Please let the undersigned know if you have any questions or require additional information.

Thank you.

El Paso County, Colorado
Planning & Community Development Department
February 14, 2023
Page 7

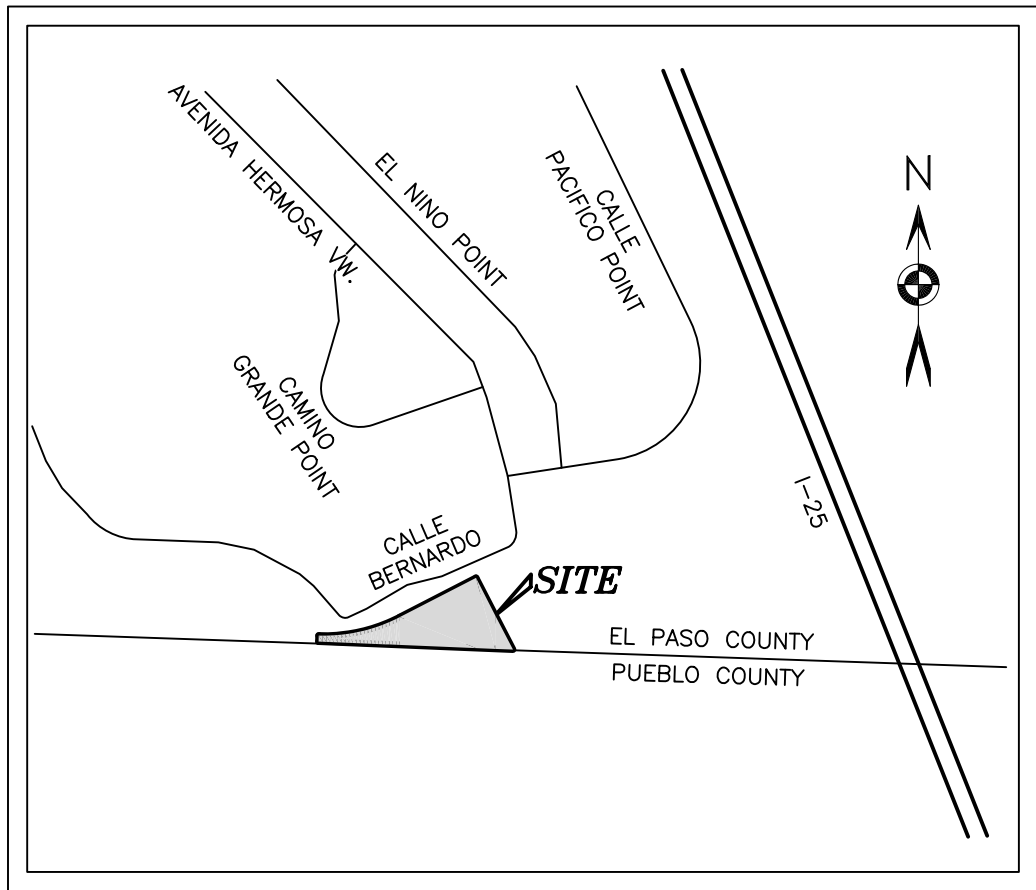
Sincerely,

VAN REMORTEL LLC

/s/ Fred Van Remortel
Fred Van Remortel, Esq

cc: Jesus Barron

FINAL PLAT
VILLA CASITAS FILING No. 4
A REPLAT OF LOT 14 AND A PORTION OF CALLE BERNARDO RIGHT-OF-WAY, VILLA CASITAS FILING No. 1,
LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 17 SOUTH, RANGE 65 WEST OF THE 6TH P.M.
COUNTY OF EL PASO, STATE OF COLORADO



VICINITY MAP
(NOT TO SCALE)

KNOW ALL BY THESE PRESENTS:

That Jesus Barron, being the owner of the following described tract of land to wit:

Lot 14, Villa Casitas Filing No. 1, County of El Paso, State of Colorado;

AND

That the County of El Paso, State of Colorado, being the owner of the following described tract of land to wit:

That portion of the Calle Bernardo right-of-way lying adjacent to the Northerly line of Lot 14, Villa Casitas Filing No. 1, as recorded under Plat Book R-2 at Page 63, records of El Paso County, lying within the Southwest Quarter of Section 35, Township 17 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado, being more particularly described as follows:

BASIS OF BEARINGS: Bearings are based upon the South line of Lot 14, Villa Casitas Filing No. 1, monumented at the East end with a #5 rebar and orange plastic cap stamped "PLS 38141", and on the West end with a #4 rebar and is assumed to bear N 87°37'25" W, a field measured distance of 1,251.81 feet.

COMMENCING at the Northwest corner of said Lot 14; thence along the Northerly line of said Lot 14, 373.80 feet along the arc of a 1070.00 foot radius curve to the left, having a central angle of 20°00'59" and a chord that bears N 81°41'43" E, 371.91 feet to the POINT OF BEGINNING; thence N 58°35'26" E, a distance of 25.26 feet; thence S 31°24'34" E, a distance of 5.56 feet to a point on the Northerly line of said Lot 14; thence along the Northerly line of said Lot 14, 25.86 feet along the arc of a 1070.00 foot radius curve to the right, having a central angle of 01°23'05" and a chord that bears S 70°59'41" W, 25.86 feet to the POINT OF BEGINNING.

Containing a calculated area of 72 square feet of land, more or less.

DEDICATION

The above owners have caused said parcel of land to be platted into a lot as shown hereon. The undersigned does hereby grant and convey to the County of El Paso all right-of-way dedications and easements for public use. The tract of land herein platted shall be known as VILLA CASITAS FILING No. 4 in the County of El Paso, State of Colorado.

OWNERS CERTIFICATE

The undersigned, being all the owners, mortgagees, beneficiaries of the deeds of trust and holders of other interests in the land described herein, have laid out, subdivided, and platted said lands into a lot as shown hereon under the name and subdivision of VILLA CASITAS FILING No. 4.

By: _____
Jesus Barron Date

STATE OF _____ }
COUNTY OF _____ } SS

The above and aforementioned instrument was acknowledged before me this ____ day of _____, 20____, A.D.

By: Jesus Barron, Owner

Witness my hand and seal:

My Commission expires _____

Notary Public _____

By: _____
COUNTY OF EL PASO OFFICIAL Date

STATE OF _____ }
COUNTY OF _____ } SS

The above and aforementioned instrument was acknowledged before me this ____ day of _____, 20____, A.D.

By:

Witness my hand and seal:

My Commission expires _____

Notary Public _____

EASEMENT STATEMENT:

Unless otherwise indicated, all side and rear lot lines are hereby platted on either side with a 10 foot (use 5 feet for lots smaller than 2.5 acres) public utility and drainage easement. All exterior subdivision boundaries are hereby platted with a 20 foot (use 7 feet for lots smaller than 2.5 acres) public utility and drainage easement. The sole responsibility for maintenance of these easements is hereby vested with the individual property owners.

FLOOD PLAIN CERTIFICATION:

The Federal Emergency Management Agency, Flood Insurance Rate Map No. 08041C1170G, effective date December 7, 2018, indicates this parcel of land to be located in Zone X (Areas determined to be outside the 0.2% annual chance floodplain).

SURVEYOR'S NOTES

1. 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.
2. The approval of this Replat vacates all prior plats for the area described by this plat.
3. The lineal units used in this drawing are U.S. Survey Feet. A U.S. Survey Foot is defined as 1200/3937 meters.
4. This survey does not constitute a title search by Barron Land, LLC to determine ownership, rights-of-way, or easements of record. A current title commitment was not provided at the time of survey and the client did not request rights-of-way or easements to be shown as part of this survey.
5. This survey was performed in the field on August 7, 2020.
6. The overall subject parcel contains a calculated area of 252,581 square feet (5.798 acres) of land, more or less.
7. BASIS OF BEARINGS: Bearings are based upon the South line of Lot 14, Villa Casitas Filing No. 1, monumented at the East end with a #5 rebar and orange plastic cap stamped "PLS 38141", and on the West end with a #4 rebar and is assumed to bear N 87°37'25" W, a field measured distance of 1,251.81 feet.
8. Found monuments shown hereon are flush with grade, unless noted otherwise.
9. For boundary determination of subject parcel, refer to Land Survey Plat as recorded under Reception No. 222900018.
10. The addresses exhibited on this plat are for informational purposes only. They are not the legal description and are subject to change.
11. Lot 14, Villa Casitas Filing No. 1 is currently zoned RR-5 (Residential Rural).
12. All property owners are responsible for maintaining proper storm water drainage in and through their Property. Any 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 of runoff shall not be placed in drainage easements.
13. No driveway shall be established unless an access permit has been granted by El Paso County.
14. Mailboxes shall be installed in accordance with all El Paso County and United States Postal Service regulations.
15. 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 listed species (e.g., Preble's Meadow Jumping Mouse).
16. Individual lot purchasers are responsible for constructing driveways, including necessary drainage culverts from Calle Bernardo Road per Land Development Code Section 6.3.3.C.2 and 6.3.3.C.3. Due to their length, some of the driveways will need to be specifically approved by the (Hanover Fire Protection District).
17. The 60 foot wide public highway contained within this plat as ordered by the Board of County Commissioners for El Paso County on October 3, 1887, and recorded in Road Book "A" and Page 78 of the records of El Paso County, is hereby vacated upon recordation of this plat.
18. 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.
19. 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 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.

SURVEYOR'S CERTIFICATE:

I Spencer J. Barron, 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 August 7, 2020, by me or under my direct supervision and that the monuments exist as shown hereon; that mathematical closure errors are less than 1:10,000; and that said plat has been prepared in compliance with the applicable laws of the State of Colorado dealing with monuments, subdivision, or surveying of land and the applicable provisions of the El Paso County Land Development Code, to the best of the surveyor's knowledge, opinion, and belief.

This certification is neither a warranty nor guarantee, either expressed or implied.

Spencer J. Barron
Colorado Professional Land Surveyor No. 38141
For and on behalf of Barron Land, LLC

COUNTY APPROVAL

This plat for VILLA CASITAS FILING No. 4 was approved for filing by the El Paso County, Colorado Planning

and Community Development Department this ____ day of _____, 20____

Planning and Community Development Director Date

This plat for VILLA CASITAS FILING No. 4 was approved for filing by the El Paso County, Colorado Board of

County Commissioners on the ____ day of _____, 20____, subject to any notes specified hereon and any conditions included in the resolution of approval. The dedications of land to the public 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.

Villa Casitas Filing No. 1 in entirety is vacated and amended for the areas described by this replat subject to all covenants, conditions, and restrictions recorded against and appurtenant to the original plat recorded in the Office of the El Paso County Clerk and Recorder, Reception #803466.

Chair, Board of County Commissioners Date

RECORDING

STATE OF COLORADO }
COUNTY OF EL PASO } SS

I hereby certify that this instrument was filed for record at my office at ____ O'clock __M., this
day of _____, 2023 A.D., and is duly recorded under Reception Number _____
of the records of El Paso County, Colorado.

Fee: _____

Surcharge: _____

Steve Schleiker, Recorder

By: _____
Deputy

FEES:

School Fee: _____

Bridge Fee: _____

Park Fee: _____

Drainage Fee: _____

OWNERS OF RECORD:

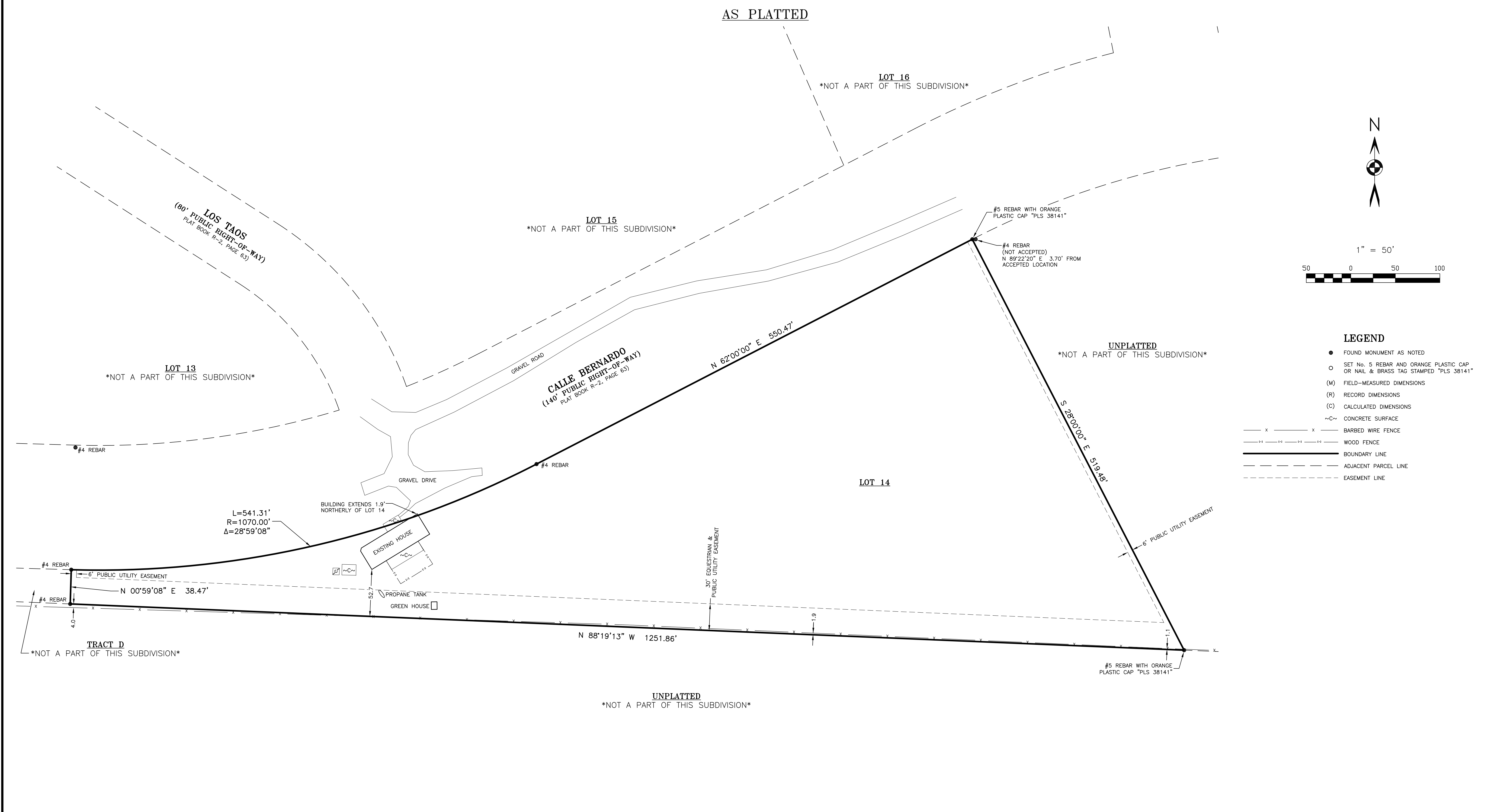
Jesus Barron
10015 Calle Bernardo Point
Fountain CO 80817
720-688-1659
County of El Paso, State of Colorado
1675 W. Garden of the Gods Road
Suite 2201
719-520-6202

DATE: 12/22/2022		REVISIONS	
No.	Remarks	Date	By
1	ADDRESS COUNTY COMMENTS	3/22/23	KPB

PCD FILE No. VR-21-014

BARRON  LAND	
BOUNDARY & MAPPING & SURVEYING & CONSTRUCTION	
2790 N. Academy Blvd., Suite 311 Colorado Springs, CO 80917 www.BARRONLAND.com	P: 719.360.6827 F: 719.466.6527
PROJECT No.: 20-041	SHEET 1 OF 3

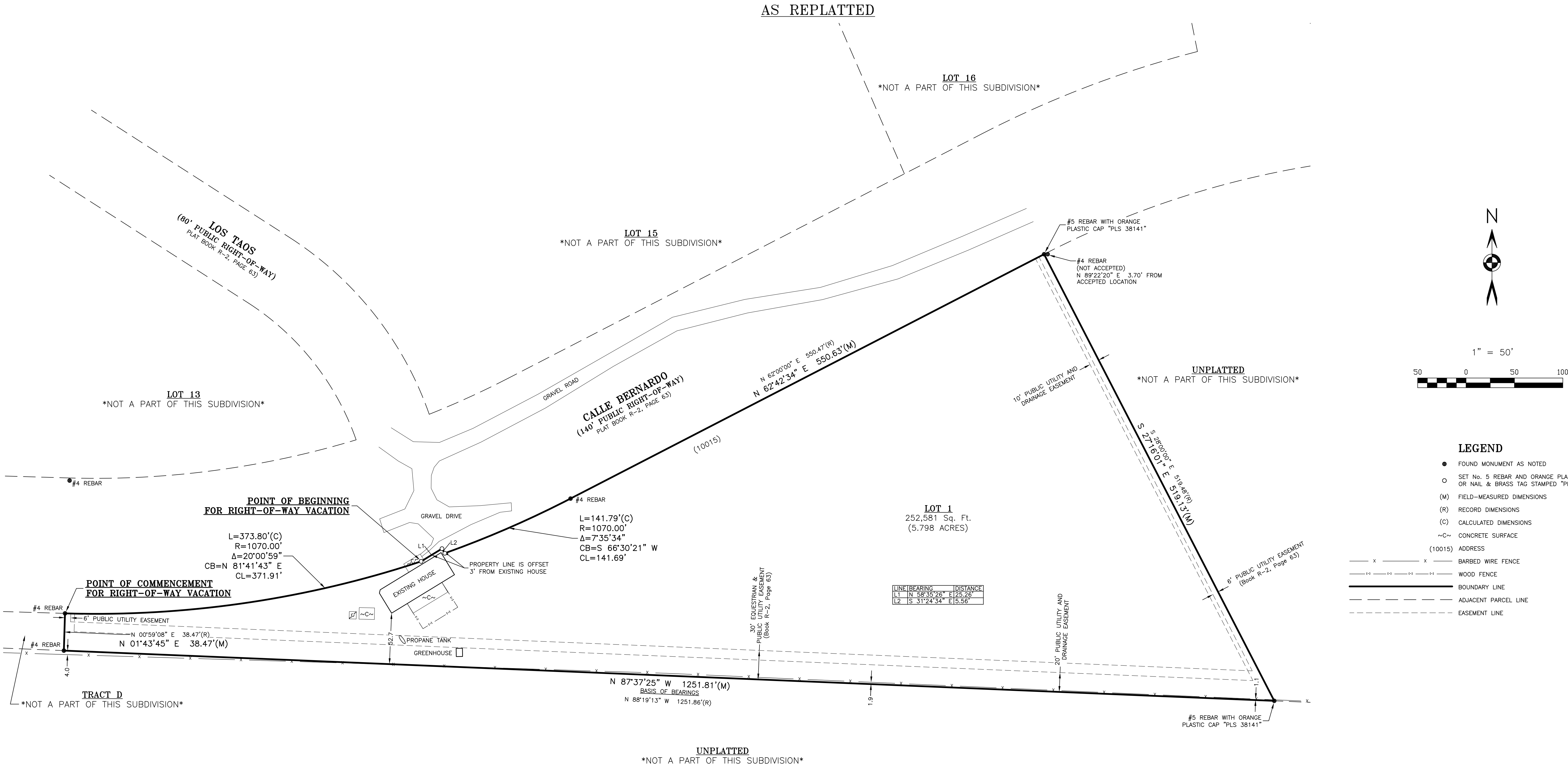
FINAL PLAT
VILLA CASITAS FILING No. 4
A REPLAT OF LOT 14 AND A PORTION OF CALLE BERNARDO RIGHT-OF-WAY, VILLA CASITAS FILING No. 1,
LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 17 SOUTH, RANGE 65 WEST OF THE 6TH P.M.
COUNTY OF EL PASO, STATE OF COLORADO



- LEGEND**
- FOUND MONUMENT AS NOTED
 - SET No. 5 REBAR AND ORANGE PLASTIC CAP OR NAIL & BRASS TAG STAMPED "PLS 38141"
 - (M) FIELD-MEASURED DIMENSIONS
 - (R) RECORD DIMENSIONS
 - (C) CALCULATED DIMENSIONS
 - ~C~ CONCRETE SURFACE
 - X X X BARBED WIRE FENCE
 - ~C~ WOOD FENCE
 - BOUNDARY LINE
 - - - ADJACENT PARCEL LINE
 - - - EASEMENT LINE

DATE: 12/22/2022				REVISIONS	
No.	Remarks	Date	By		
1	ADDRESS COUNTY COMMENTS	3/22/23	KPB		
PROJECT No.: 20-041				SHEET 2 OF 3	

FINAL PLAT
VILLA CASITAS FILING No. 4
A REPLAT OF LOT 14 AND A PORTION OF CALLE BERNARDO RIGHT-OF-WAY, VILLA CASITAS FILING No. 1,
LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 17 SOUTH, RANGE 65 WEST OF THE 6TH P.M.
COUNTY OF EL PASO, STATE OF COLORADO



VACATION AND REPLAT (RECOMMEND APPROVAL)

_____ moved that the following Resolution be adopted:

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF EL PASO

STATE OF COLORADO

RESOLUTION NO. VR-21-014

VILLA CASITAS FILING NO. 4

WHEREAS, Jesus Barron did file an application with the El Paso County Planning and Community Development Department for approval of a vacation and replat to replat 5.80 acres illustrating one single-family residential lot within the RR-5 (Residential Rural) zoning district for property in the unincorporated area of El Paso County as described in Exhibit A, which is attached hereto and incorporated herein by reference; and

WHEREAS, a public hearing was held by this Commission on July 6, 2020; and

WHEREAS, based on the evidence, testimony, exhibits, consideration of the Master Plan for the unincorporated area of the County, presentation and comments of the El Paso County Planning and Community Development Department and other County representatives, comments of public officials and agencies, comments from all interested persons, comments by the general public, and comments by the El Paso County Planning Commission Members during the hearing, this Commission finds as follows:

1. The application was properly submitted for consideration by the Planning Commission;
2. Proper posting, publication, and public notice were provided as required by law for the hearing before the Planning Commission;
3. The hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters, and issues were submitted and that all interested persons and the general public were heard at that hearing;
4. All exhibits were received into evidence;
5. The proposed land use does not permit the use of an area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor;

6. All data, surveys, analyses, studies, plans, and designs as are required by the State of Colorado and El Paso County have been submitted, reviewed, and found to meet all sound planning and engineering requirements of the El Paso County Subdivision Regulations; and
7. For the above-stated and other reasons, the proposed vacation and replat is in the best interest of the health, safety, morals, convenience, order, prosperity, and welfare of the citizens of El Paso County.

WHEREAS, in approving a vacation and replat of a subdivision, the El Paso County Planning Commission and Board of County Commissioners shall find that the application meets the criteria of approval listed in Land Development Code 7.2.3(C)(4):

1. The replat complies with the Code, and the original conditions of approval associated with the recorded plat;
2. No nonconforming lots are created, and in the case of existing nonconforming lots, the nonconformity is not increased;
3. The replat is in keeping with the purpose and intent of the Code;
4. The replat conforms to the required findings for a minor or major subdivision, whichever is applicable;
5. Legal and physical access is provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with the Code and the ECM;
6. The approval will not adversely affect the public health, safety, and welfare; and
7. Where the lots or parcels are subject to any CC&Rs or other restrictions, that any potential conflict with the CC&Rs or other restrictions resulting from the replat has been resolved.

WHEREAS, Sufficiency: 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 Land Development Code.

NOW, THEREFORE, BE IT RESOLVED, the El Paso County Planning Commission recommends that the petition of Jesus Barron for approval of the vacation and replat to allow for a 5.80-acre single-family residential lot within the RR-5 (Residential Rural) zoning district be approved by the Board of County Commissioners with 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 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.

NOTATIONS

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

AND BE IT FURTHER RESOLVED that this Resolution and the recommendations contained herein be forwarded to the El Paso County Board of County Commissioners for its consideration.

_____ seconded the adoption of the foregoing Resolution.

The roll having been called, the vote was as follows: (circle one)

Thomas Bailey	aye / no / non-voting / recused / absent
Sarah Brittain Jack	aye / no / non-voting / recused / absent
Jay Carlson	aye / no / non-voting / recused / absent
Becky Fuller	aye / no / non-voting / recused / absent
Jeffrey Markewich	aye / no / non-voting / recused / absent
Brandy Merriam	aye / no / non-voting / recused / absent
Eric Moraes	aye / no / non-voting / recused / absent
Kara Offner	aye / no / non-voting / recused / absent
Bryce Schuettpeiz	aye / no / non-voting / recused / absent
Wayne Smith	aye / no / non-voting / recused / absent
Tim Trowbridge	aye / no / non-voting / recused / absent
Christopher Whitney	aye / no / non-voting / recused / absent

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

DONE THIS 6th day of July 2023 at Colorado Springs, Colorado.

EL PASO COUNTY PLANNING COMMISSION

By: _____
Thomas Bailey, Chair

EXHIBIT A

Lot 14, Villa Casitas Filing No. 1, County of El Paso, State of Colorado;

AND

That portion of the Calle Bernardo right-of-way lying adjacent to the Northerly line of Lot 14, Villa Casitas Filing No. 1, as recorded under Plat Book R-2 at Page 63, records of El Paso County, lying within the Southwest Quarter of Section 35, Township 17 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado, being more particularly described as follows:

BASIS OF BEARINGS: Bearings are based upon the South line of Lot 14, Villa Casitas Filing No. 1, monumented at the East end with a #5 rebar and orange plastic cap stamped "PLS 38141", and on the West end with a #4 rebar and is assumed to bear N 87°37'25" W, a filed measured distance of 1,251.81 feet.

COMMENCING at the Northwest corner of said Lot 14;

Thence along the Northerly line of said Lot 14, 373.80 feet along the arc of a 1070.00 foot radius curve to the left, having a central angle of 20°00'59" and a chord that bears N 81°41'43" E, 371.91 feet to the POINT OF BEGINNING;

thence N 58°35'26" E, a distance of 25.26 feet;

thence S 31°24'34" E, a distance of 5.56 feet to a point on the Northerly line of said Lot 14;

thence along the Northerly line of said Lot 14, 25.86 feet along the arco of a 1070.00 foot radius curve to the right, having a central angle of 01°23'05" and a chord that bears S 70°59'41" W 25.86 feet to the POINT OF BEGINNING.

Containing a calculated area of 72 square feet of land, more or less.