

EL PASO COUNTY

COLORADO

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
 CRAIG DOSSEY, EXECUTIVE DIRECTOR

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

**FROM: Gabe Sevigny, Planner II
 Daniel Torres, PE Engineer II
 Craig Dossey, Executive Director**

**RE: Project File #: MS-19-002
 Project Name: Loudermilk Minor Subdivision
 Parcel Nos.: 51230-00-013 and 51230-00-014**

OWNER:	REPRESENTATIVE:
Loudermilk Living Trust Arvin and Cheryl Loudermilk – Trustees 13395 Voyager Pkwy #130-551 Colorado Springs, CO 80921	Bradley Design, LLC Brad Buss 22555 County Road 5 Elbert, CO 80106

Commissioner District: 1

Planning Commission Hearing Date:	8/6/2019
Board of County Commissioners Hearing Date	8/27/2019

EXECUTIVE SUMMARY

A request by Bradley Design, LLC, on behalf of Arvin and Cheryl Loudermilk for approval of a two (2) lot minor subdivision. If approved, the action will reconfigure two legally created parcels totaling 19.87 acres into one 14.87 acre single-family residential lot and one 5 acre single-family residential lot. The two parcels are zoned RR-5 (Residential Rural) and are located on the west side of East Goshawk Road, approximately 0.4 miles north of Hodgen Road and is within Section 23, Township 11 South, Range 65 West of the 6th P.M. The property is located within the Black Forest Preservation Plan (1987).

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



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

A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION

Request: A request by Bradley Design, LLC, on behalf of Arvin and Cheryl Loudermilk, for approval of a minor subdivision to create two (2) single-family residential lots.

Waiver(s)/Deviation(s): A waiver of Section 8.4.3.C.e of the Land Development Code (2019) that requires lots to have a minimum of 30 feet of frontage on and have access from a public road, except where private roads are approved by the BoCC pursuant to waiver granted under Section 8.4.4.E of the Code.

A waiver of Section 8.4.3.A.1 of the Code, which requires a division of land to have 60 feet of frontage on a public road, is being requested.

The proposed minor subdivision does not front a public road, nor does it have immediate access to a public road. Goshawk Road is a private road. The closest public road is Hodgen Road approximately 0.4 miles to the south. Existing access is granted by a reciprocal easement for a roadway in Book 2356, page 170.

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

B. PLANNING COMMISSION SUMMARY

Request Heard:

Recommendation:

Waiver Recommendation:

Vote:

Vote Rationale:

Summary of Hearing:

Legal Notice:

C. APPROVAL CRITERIA

In approving a final plat, the BoCC shall find that the request meets the criteria for approval outlined in Section 7.2.1 (Subdivisions) of the El Paso County Land Development Code (2019):

- The subdivision is in conformance with the goals, objectives, and policies of the Master Plan;
- The subdivision is in substantial conformance with the approved preliminary plan;
- The subdivision is consistent with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for

maps, data, surveys, analyses, studies, reports, plans, designs, documents, and other supporting materials;

- A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in the water supply standards [C.R.S. §30-28-133(6)(a)] and the requirements of Chapter 8 of this Code;
- A public sewage disposal system has been established and, if other methods of sewage disposal are proposed, the system complies with State and local laws and regulations, [C.R.S. §30-28-133(6)(b)] and the requirements of Chapter 8 of this Code;
- All areas of the proposed subdivision which may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified and that the proposed subdivision is compatible with such conditions [C.R.S. §30-28-133(6)(c)];
- Adequate drainage improvements are proposed that comply with State Statute [C.R.S. §30-28-133(3)(c)(VIII)] and the requirements of this Code and the ECM;
- Legal and physical access is provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with this Code and the ECM;
- Necessary services, including police and fire protection, recreation, utilities, and transportation systems, are or will be made available to serve the proposed subdivision;
- The final plans provide evidence to show that the proposed methods for fire protection comply with Chapter 6 of this Code;
- Off-site impacts were evaluated and related off-site improvements are roughly proportional and will mitigate the impacts of the subdivision in accordance with applicable requirements of Chapter 8;
- Adequate public facilities or infrastructure, or cash-in-lieu, for impacts reasonably related to the proposed subdivision have been constructed or are financially guaranteed through the SIA so the impacts of the subdivision will be adequately mitigated;
- The subdivision meets other applicable sections of Chapter 6 and 8; and
- The extraction of any known commercial mining deposit shall not be impeded by this subdivision [C.R.S. §34-1-302(1), et seq.]

D. LOCATION

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

E. BACKGROUND

The parcels were zoned A-4 (Agricultural) on September 21, 1965, when zoning was first initiated for this area of El Paso County. Due to changes in the nomenclature of the El Paso County Land Development Code, the A-4 zoning district has been renamed as the RR-5 (Residential Rural) zoning district. The parcels, a 15.96 acre parcel and a 4.04 acre parcel, were created on April 26, 1965, which pre-dates the subdivision regulations of July 17, 1972. The 4.04 acre parcel does not meet the required minimum lot size of the RR-5 (Residential Rural) zoning district. However, the reconfiguration of both parcels will meet the minimum lot size for the RR-5 zoning district.

The request for approval of a minor subdivision is to reconfigure two (2) existing legal parcels to create two (2) rural residential single-family lots. There is an existing single-family dwelling located on the 15.96 acre parcel which was constructed in 1994 and if the proposed minor subdivision application is approved it will not create non-conformity as it relates to the structure since the structure is planned to meet all the setback requirements of the RR-5 (Residential Rural) zoning district, as discussed below.

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

F. ANALYSIS

1. Land Development Code Compliance

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

2. Zoning Compliance

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

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

The applicant is requesting approval of a minor subdivision to reconfigure two (2) legally created parcels totaling 19.87 acres into two (2) single-family dwelling lots. The proposed lots will meet the dimensional standards of the RR-5 zoning district. The existing home, as discussed in the Background section above, will be in conformance with the setback requirements of the RR-5 zoning district should the minor subdivision be approved. Any future applications for structures will be required to meet the setback requirements above.

3. Policy Plan Analysis

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

***Policy 6.1.3-** Encourage new development which is contiguous and compatible with previously developed areas in terms of factors such as density, land use, and access.*

***Policy 6.1.11-** Plan and implement land development so that it will be functionally and aesthetically integrated within the context of adjoining properties and uses.*

***Policy 6.1.14-** Support development which complements the unique environmental conditions and established land use character of each sub-area of the County.*

The subject property is zoned RR-5 (Residential Rural) and is surrounded by RR-5 zoned properties on all sides. The adjacent parcels located west of East Goshawk Road and the parcel located directly south of the subject properties have been developed with single family dwelling structures with a minimum of 5 acres. The parcels located immediately adjacent to the north and east are undeveloped but each property could be subdivided in the future with a minimum lot size of 5 acres pursuant to the current RR-5 zoning. The proposed subdivision is contiguous to and compatible with the previously developed areas.

With the minor subdivision, the applicant is requesting waivers to the public road access and frontage requirements of the El Paso County Land Development Code (2019). If approved, the applicant will be required to secure the appropriate driveway permit for the newly created lot; the existing 15.96 acre parcel has an approved access on file with the El Paso County Planning and Community Development Department. Staff recommends that a finding of general consistency with the Plan can be made.

4. Small Area Plan Analysis

The subject parcel is within the Black Forest Preservation Plan (1987), specifically Subarea 1, the Timbered Area. The Plan encourages residential density of 1 dwelling unit per 5 acres. The applicant is proposing a two (2) lot minor subdivision with an average density of one dwelling unit per 9.9 acres.

The Black Forest Land Use Committee was sent a referral for this application and responded by stating “The Black Forest Land Use Committee recommends approval of this minor subdivision and finds it in conformance with the Black Forest Preservation Plan.” Staff generally concurs with this opinion and, therefore, recommends that a finding of general consistency with the Plan can be made.

5. Other Master Plan Elements

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

The Master Plan for Mineral Extraction (1996) identifies Floodplain Deposits 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

The Rocky Mountain Group prepared a Soils and Geology Report dated January 16, 2019, which indicates that there are no hazards present on the properties that would preclude development within the proposed minor subdivision.

Colorado Geological Survey (CGS) was sent a referral and has stated the site is not exposed to any geologic hazards or geotechnical constraints that would

preclude the existing and proposed residential use and slight increase in density, and has no objection to approval of the two-lot subdivision as proposed.

2. Wildlife

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

3. Floodplain

The property is not located within a defined floodplain as determined from FEMA Flood Insurance Rate Map panel number 08041C0310G, dated December 7, 2018.

4. Drainage and Erosion

The properties are located within the West Kiowa Creek (KIKI0200) drainage basin, which is an unstudied basin with no associated drainage and bridge fees.

The site generally drains to the south. Stormwater runoff is conveyed through the subdivision via sheet flow, roadside ditches, and culverts. A permanent water quality facility is not required for development areas of low density (rural) single family residential development (2.5 acre or larger lots) per Appendix I of the El Paso County Engineering Criteria Manual (2019). Furthermore, on-site detention was not required due to the minimal increase in imperviousness created by the additional residential lot. Per the associated drainage report the proposed minor subdivision will remain consistent with historical drainage patterns.

5. Transportation

The property is accessed via East Goshawk Road, which is an existing private road north of Hodgen Road. No internal roadways are proposed with this development. A traffic impact study was not required as the proposed minor subdivision is not expected to generate 100 daily vehicle trips more than the property would be expected to generate currently. The proposed minor subdivision will have a minimal impact to the County's transportation network.

The subdivision is subject to the El Paso County Road Impact Fee Program (Resolution 18-471), as amended. Traffic impact fees shall be paid in full at the time of building permit issuance.

H. SERVICES

1. Water

The subdivision will be served by individual wells. The State Water Engineer's office has provided an opinion stating that the water supply for the proposed subdivision is adequate. A recommendation of sufficiency has been made by the County Attorney's Office for water quantity and dependability.

Sufficiency:

Quality: Sufficient

Quantity: Sufficient

Dependability: Sufficient

In the absence of evidence to the contrary, a presumption, pursuant to Section 8.4.7.B.10.g of the Land Development Code, can be made that residential subdivisions of four (4) or fewer lots will meet the water quality standards.

2. Sanitation

The existing residence on the subject property is served by an onsite wastewater treatment system (OWTS). The residence to be constructed on the newly created lot is also proposed to be served by an individual OWTS. The El Paso County Department of Health and Environment had no objection to the proposed minor subdivision.

3. Emergency Services

The property is within the Falcon Fire Protection District. The District was sent a referral and has no objection to the minor subdivision as requested.

4. Utilities

Mountain View Electric Association and Black Hills Energy will provide electrical and gas service to the subdivision, respectively.

5. Metropolitan Districts

The property is not within a metropolitan district.

6. Parks/Trails

Fees in lieu of park land dedication in the amount of \$912.00 for regional 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 \$480.00 will be due at the time of recording the final plat.

I. APPLICABLE RESOLUTIONS

Approval Page 19
Disapproval Page 20

J. STATUS OF MAJOR ISSUES

There are no major outstanding 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 7.2.1 (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 Subdivider(s) agrees on behalf of him/herself and any successors and assignees that Subdivider and/or said successors and assigns shall be required to pay traffic impact fees in accordance with the El Paso County Road Impact Fee Program Resolution (Resolution No. 18-471), or any amendments thereto, at or prior to the time of building permit submittals. The fee obligation, if not paid at final plat recording, shall be documented on all sales documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.
8. Park fees in lieu of land dedication for regional parks (Area 2) in the amount of \$912.00 shall be paid at the time of plat recordation.
9. Fees in lieu of school land dedication in the amount of \$480 shall be paid to El Paso County for the benefit of Falcon School District No. 49 at the time of plat recording.

NOTATIONS

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

L. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified eight (8) adjoining property owners on July 17, 2019, for the Planning Commission meeting. Responses will be provided at the hearing.

M. ATTACHMENTS

Vicinity Map
Letter of Intent
Plat Drawing
State Engineer's Letter
County Attorney's Letter

El Paso County Parcel Information

File Name: MS-19-002

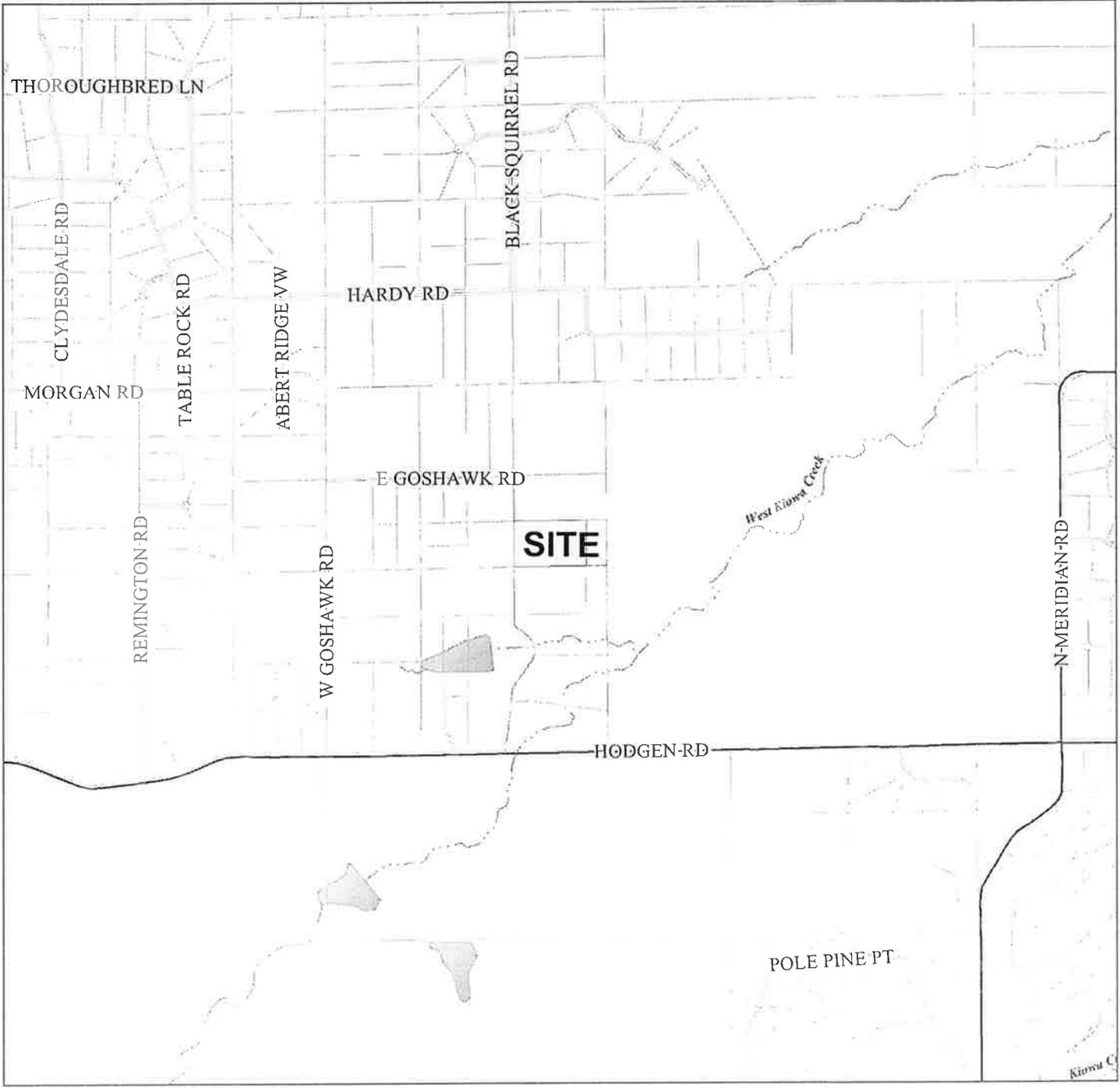
Zone Map No. --

PARCEL	NAME
5123000013	LOUDERMILK LIVING TRUST
5123000014	LOUDERMILK LIVING TRUST

Date: July 17, 2019

ADDRESS	CITY	STATE
13395 VOYAGER PARKWAY #130-551	COLORADO SPRINGS	CO
302 N 52ND AVE	PHOENIX	AZ

ZIP	ZIPLUS
80921	7676
85043	2723



Please report any parcel discrepancies to
 El Paso County Assessor
 1675 W Garden of the Gods Rd
 Colorado Springs, CO 80907
 919 520-6600



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February 11, 2019

**LETTER OF INTENT
LOUDERMILK SUBDIVISION – MINOR SUBDIVISION**

Owner:

Loudermilk Living Trust
Arvin and Cheryl Loudermilk – Trustees
13395 Voyager Parkway #130-551
Colorado Springs, CO 80921
(602) 768-0475

Applicant:

Bradley Design LLC
22555 County Rd. 5
Elbert, CO 80106
(719) 573-7938
Attn: Brad Buss

Site Location Size and Zoning:

The proposed subdivision to be known as “Loudermilk Subdivision” is located within the south half of the southeast quarter of the northeast quarter of Section 23, Township 11 South, Range 65 west of the 6th principal meridian in El Paso County, Colorado. The property has El Paso County Tax Schedule Numbers 5123000013 and 5123000014 and is currently developed with one residence having the address of 17115 Goshawk Road East. The site is situated on the east side of Goshawk Road East, west of Meridian Road and north of Hodgen Road and contains 19.873± acres. The site has never been platted, nor have the adjacent properties. The existing zone of the site is RR-5 (Rural Residential). The Loudermilk Subdivision is proposed to be platted into two single-family lots and is subject to an apparent twenty (20) foot right-of way for Goshawk Road East, which is posted as private. The road is maintained by an informal Homeowners Association. All adjacent properties are unplatted, zoned RR-5 (Rural Residential), and have single-family residences with the exception of the property to the east. The adjacent property directly to the east is currently vacant, unplatted and zoned RR-5 (Rural Residential) with land uses totaling 766.66 acres of which 100 acres is designated as dry farm land and 666.66 acres is designated as agricultural grazing land.

Request and Justification:

The request is for approval of the minor subdivision plat named Loudermilk Subdivision, containing 19.873± acres. This proposed minor subdivision will create two (2) rural residential single-family lots with an apparent twenty (20) foot right of way for Goshawk Road East, which is a private road. The site already contains one existing single-family residence with a well and onsite waste water treatment.

The owner is planning to build a new single family residence on Lot 2 for their granddaughter and four great-grandchildren. The Loudermilks have a tight-knit family that needs room to grow while having an essential, convenient and close proximity to one another. Currently under construction are an addition to the existing residence and one adjacent detached garage. There are three existing outbuildings. The two planned lots meet the bulk and dimensional standards of the RR-5 district. All existing buildings are located on Lot 1 of the proposed plat and currently meet the zoning district setback requirements of 25 foot front, side, and rear yard setbacks. After subdivision, the residence and all outbuildings will maintain compliance with the setback requirements from all new property lines. Lot 1 will contain 14.873± acres, and originate entirely from the land designated in El Paso County Tax Schedule No. 5123000013 and partially from the land designated in Tax Schedule No. 5123000014. On the east end of Lot 1, there will be a public service easement of 75 feet plus 150 feet as recorded in book 2030, Pg. 229 plus a drainage and utility easement of 10 feet at the east property line. Lot 2 will be located at the northwest portion of the subdivision and contain 5.000± acres, and originate entirely from the land designated in El Paso County Tax Schedule No. 5123000014.

The County small area plan that applies to this parcel is the Black Forest Preservation Plan. The property lies in Plan Unit 1, "The Timbered Area" of the Master Plan. It is recommended under the Land Use Scenario that The Timbered Area remain primarily open or rural residential with overall residential densities strictly held to an average of one dwelling unit per five (5) acres. This subdivision is in conformance with the goals, objectives, and policies of the Master Plan and also of the El Paso County Policy Plan (1998), which does not include site-specific land use policies, but establishes broad policies and goals which are intended to serve as a framework for decision making regarding development of the County.

The subdivision is consistent with its current RR-5 zoning and meets the requirements of the El Paso County Land Development Code. The subdivision is consistent with the subdivision design standards, engineering, and surveying requirements of the county for maps, data, surveys, analyses, studies, reports, plans designs, documents and other supporting materials.

As required by County standards and requirements, a sufficient water supply has been acquired from the Colorado Groundwater Commission (the appropriate jurisdiction for this property) in terms of quantity, quality, and dependability for the proposed Loudermilk Subdivision. Water service is intended to be provided by individual on site wells under new permits and operated under the approved Colorado Groundwater Commission approved water replacement (augmentation) plan. Waste water is intended to be treated with individual septic systems designed, constructed and operated under State and County Health Department rules and regulations.

A geology and soils report has been prepared for the site and the owner will comply with the reported recommendations.

A drainage report has been prepared for the site and the owner will comply with the recommendations of the final report.

The Loudermilk Subdivision is Located within the Falcon Fire Protection District which provides fire protection for the surrounding area. The District has committed to serve this subdivision. Building permits for each structure shall be in accordance with the requirements of the Falcon Fire Protection District as administered by the Pikes Peak Regional Building Department.

Existing and proposed facilities:

Existing improvements within this parcel are related to the existing residential use of the site. There are no required public subdivision improvements required for this site.

Fire Protection:

The Loudermilk Subdivision is located within the Falcon Fire Protection District. The lots and buildings are subject to the codes and policies adopted by the District regarding fire protection.

Proposed Access Locations:

The existing residence and outbuildings on Lot 1 will continue to be accessed from the existing driveway. Future improvements to Lot 2 will include a new driveway access located approximately 50 feet south of the north property line and off the private road (Goshawk Road East). No additional access points are proposed.

Waiver Request and Justification:

A waiver of Section 8.4.4.C of the El Paso County Land Development Code that requires divisions of land, lots, and tracts be served by public roads. The site does not front a public road. Access to the site is from Goshawk Road East, a private road which intersects with Hodgen Road (the nearest public road) approximately 1/2 mile to the south.

0817943-8-2-2
henrya

SECOND AMENDMENT TO THE COMPLETE RESTATEMENT OF TRUST AGREEMENT
CERTIFICATE OF TRUST EXISTENCE AND AUTHORITY
(Previously recorded as document 2014-0765205 11/19/14)

On the 28th day of June 1989 the undersigned established the Loudermilk Living Trust, with Arvin Loudermilk and Cheryl Loudermilk as Trustors and naming Arvin Loudermilk and Cheryl Loudermilk duly qualified and acting Trustees of said Trust. The beneficiary of said Trust is the Trustor during his/her lifetime.

On the 14th day of April 2014, Trustor and Trustee executed the Complete Restatement of the Loudermilk Living Trust.

On the 17th day of November 2014, Trustor and Trustee executed the First Amendment to the Complete Restatement of the Loudermilk Living Trust.

On the 25 day of September 2015, Trustor and Trustee executed the Second Amendment to the Complete Restatement of the Loudermilk Living Trust.

Now, therefore, the undersigned hereby certify that the following constitutes a true and correct copy of certain provisions in said Trust Agreement and may be relied upon as a full statement of the matters covered by such provisions by anyone dealing with any of the original Trustee or her successors:

Second Amended Certificate of Trust Existence and Authority
of the
Complete Restatement of the Loudermilk Living Trust
Page 1 of 8

ARTICLE I
TRUSTORS' RESERVED RIGHTS

2.2 Revocation and Amendment.

2.2.1 Right to Revoke or Change Trust. Trustor reserves the right, at any time, to amend or revoke this Trust in whole or in part. Any instrument of amendment or revocation shall be effective immediately upon its signing, but until a copy has been received by a Trustee, the Trustee shall not incur any liability for failing to act in accordance with such instrument. The duties, powers or liabilities of a Trustee shall not be changed materially without the Trustee's written consent. Trustor's reserved powers are personal and shall not be exercisable by any other person, any guardian, or any legal representative. Upon the death of Trustor, this Trust shall be irrevocable and unamendable subject to any power of appointment or right of withdrawal or revocation hereinafter granted.

ARTICLE IV
TRUST MANAGEMENT

4.1 Trustee's Powers. With respect to each trust created by this instrument and the property of each trust, Trustee shall have all powers given it by law. Additionally, Trustee may perform every act in the management of the trust estate and may exercise every power with respect to each item of trust property which may be performed or exercised by individuals owning similar property in their own right, including the following powers:

4.1.1 Retention. To retain assets for any period, with no liability for loss due to depreciation in value, in the same form in which they are received, regardless of whether they are authorized as estate or trust investments and regardless of any requirement that they be diversified.

4.1.2 Investments. To invest and reinvest assets in other assets, including but not limited to any and all types of real and personal property, with no liability for loss due to depreciation in value, regardless of their location; regardless of whether they are acquired from a beneficiary, the estate of a deceased beneficiary, a business, a trust or other estate in which a beneficiary has an interest, or any other person; regardless of whether they are acquired for cash or wholly or partly for a series of installment payments or on credit for any period; regardless of whether they are authorized as estate or trust investments; regardless of the relation that any asset bears to the type or character of other assets in the trust estate; and regardless of any requirement that they be diversified, even though any asset is, or becomes, speculative.

4.1.3 Certain Government Securities. To purchase and retain treasury bonds or other debt securities issued by the United States Government redeemable at par in payment of federal estate taxes and to borrow funds and collateral for the purchase of such securities, with the direction to resolve doubts in favor of the exercise of this discretion and to overestimate rather

than underestimate the amount of such securities to acquire should it at any time appear that Trustor is seriously ill.

4.1.4 Dispositions.

(A) Sales. To sell assets to any person, at public or private sale, without notice, for cash or wholly or partly for a series of installment payments or on credit for any period, regardless of any law limiting that period, with or without security, and upon any terms and conditions; to make short sales of assets, even if those assets are not in the trust estate, and to borrow assets from any person with which to make short sales.

(B) Exchanges. To exchange assets with any person for other assets of equivalent fair market value, regardless of whether they are of similar kind or use.

(C) Options. To grant options to any person to purchase assets, upon any terms and conditions, for any period, regardless of any law limiting that period, and regardless of whether consideration is received for that grant.

4.1.5 Securities.

(A) Voting. To vote at any security holders' meeting for any purpose, including electing Trustee, any employee, partner or officer of Trustee, or any other person, as a director or officer of a corporation, the securities of which are in the trust estate; to grant discretionary proxies to any person to vote at any security holders' meeting, with or without power of substitution.

(B) Reorganization. To consent to, join in, become a party to, or oppose, any reorganization, readjustment, recapitalization, exchange, sale, encumbrance, or lease of assets, or other corporate action, and to deposit securities with a protective, reorganization or similar committee, depository or Trustee.

(C) Rights. To exercise warrants, options, conversion rights, subscription rights and other rights, or to sell any rights, or to refrain from exercising any rights, permitting them to expire.

(D) Deposits. To deposit securities with a clearing corporation, and to permit them to be merged with securities owned by others, and held in bulk in the name of the clearing corporation's nominee, regardless of whether the Trustee owns capital stock of the clearing corporation; to deposit securities payable by, or guaranteed by, the United States of America or any of its departments, agencies or instrumentalities, with a federal reserve bank; to permit ownership of, and other interests in, deposited securities to be transferred by entries on the books of the clearing corporation or federal reserve bank, without physical delivery of any securities.

(E) Buying, Selling & Trading Securities. The Trustee(s) are authorized to:

(i) Buy, sell and trade in securities of any nature, including short sales, on margin, and for such purposes may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by them with such brokers as security for loans and advances made to the Trustees.

(ii) Invest in and buy and sell options with or without ownership of the asset optioned and to buy, sell and trade in securities of any nature including short sales, on margin and for such purposes may maintain and operate margin accounts with brokers and may pledge any securities held or purchased by them with such brokers as security for loans and advances made to the Trustees and further authorizes the appointment of an investment manager or advisor to manage any and all investment of assets of trust.

(iii) To invest in and buy and sell any securities, commodities, foreign currencies, and any other assets by use of cash, credit, or on margin with brokers; be able to pledge any securities held or purchased by them with such brokers as security for loans and advances made to the Trustee; buy or write puts, calls, options, interest options and futures, including but not limited to covered or naked commodity options, covered or naked index options, covered or naked interest options, options on futures, and enter into short sales or any other position in the security, futures or options market that may be made available in the future.

(F) Miscellaneous. To give investment letters and other assurances in connection with the acquisition of any securities; to rely upon advice of counsel in disposing of securities subject to investment letters or other restrictions; to retain as an investment for any period any asset resulting from any of the foregoing actions.

4.1.6 Management.

(A) Title. To hold assets in a nominee's name with or without indication of their fiduciary character, or in form permitting title to pass by delivery.

(B) Operations. To possess, manage, operate, develop, subdivide, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, demolish, construct and reconstruct, exchange, re-exchange, partition, make ordinary and extraordinary repairs, alter, improve and change, structurally or otherwise, any asset in the trust estate; to grant or release easements or other charges of any kind, upon any terms and conditions, for any period, regardless of any law limiting that period, and regardless of whether any consideration is received for that grant.

(C) Mortgages and Deeds of Trust. To mortgage assets to any person, to secure by deed of trust, and to modify, renew, extend, refinance, reduce, continue beyond maturity, pay off, and satisfy liens on any asset, and to pay or prepay any installment of principal or interest due on any mortgage or deed of trust; to waive any default; to foreclose any mortgage; to purchase any mortgaged property or to accept a deed from a mortgagor in lieu of foreclosure.

(D) Abandonment. To permit any asset to be lost by tax sale, foreclosure or other similar proceeding; to abandon, destroy or convey for nominal or no consideration any asset which is or becomes worthless, hazardous, subject to confiscatory taxation, or of insufficient value to justify keeping or protecting, and thereafter to have no further responsibility to keep informed as to its status.

(E) Insurance. To insure assets or the Trustee personally against any risk or liability.

(F) Leases. To lease, assign or sublease assets to any person upon any terms and conditions, for any period, regardless of any law limiting that period; to renew, modify or extend leases and subleases; to grant options to any person to lease or sublease and to renew leases and subleases, for any period, regardless of whether any consideration is received for that grant.

(G) Removal. To transfer the situs of any trust property to any other jurisdiction as often as the Trustee deems it advantageous to the Trust, appointing a substitute Trustee to itself to act with respect thereto; to delegate to the substitute Trustee any or all of the powers, discretionary or otherwise, given to the Trustee, who may then elect to act as advisor to the substitute Trustee and shall receive reasonable compensation for so acting; and to remove any acting substitute Trustee and appoint another or reappoint itself at will.

4.1.7 Businesses.

(A) Participation. To form one or more corporations, alone or with any person in any jurisdiction, and to transfer assets in the trust estate to any new or existing corporation in exchange for its securities; to form one or more partnerships, with any person in any jurisdiction, to determine whether the trust estate shall be a general or limited partner, and to transfer assets in the trust estate to any new or existing partnership as a capital contribution; to enter into one or more joint ventures or associations, with any person in any jurisdiction, and to commit assets in the trust estate to the purposes of those ventures or associations; to retain as an investment for any period any securities, partnership interests, undivided interests or other assets resulting from any of those actions.

(B) Agreements. To enter into, modify, renegotiate or terminate agreements with any person, governing voting rights, management, operation, retention or disposition of interests in corporations, partnerships, joint ventures, associations or other businesses in the trust estate,

Second Amended Certificate of Trust Existence and Authority
of the

Complete Restatement of the Loudermilk Living Trust

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regardless of whether any agreement is in effect at the time the asset is transferred to the trust; to continue to operate any business transferred to the trust on the same or different terms which governed at the time of transfer; to discontinue any such business; and to dispose of that business interest to any person, on any terms and conditions with no liability for loss due to depreciation in value.

4.1.8 Borrowing. To borrow assets from any person, including the Trustee, any personal representative, a beneficiary, the estate of a deceased beneficiary, or a trust or other estate in which a beneficiary has an interest, without the Trustee incurring personal liability to the lender, upon any terms or conditions, for any period, for any purpose connected with administering, preserving or distributing the trust estate, including for the purpose of making investments, exercising options or other rights, making distribution to a beneficiary, and paying taxes and expenses; to renew, modify or extend existing loans on similar or different terms and conditions; to mortgage or pledge any asset in the trust estate as security for the repayment of any borrowings.

4.3.5 Trustee's Authority and Third Parties. No person dealing with Trustee with reference to any property in this Trust shall be required to ascertain the authority of Trustee to make any transaction concerning the trust property nor shall any such person be permitted or required to inquire into the expediency, propriety, validity or necessity of any transaction made by Trustee nor shall they be in any way responsible for the proper use or application of funds paid by them to Trustee under the terms of this Trust. Such persons dealing with Trustee shall be entitled to rely upon the delivery, transfer, assignment or other instrument or act disposing of or pledging or mortgaging such property by Trustee as having been duly authorized in all particulars. The receipt of Trustee for any payment made to Trustee or for any assets added to this Trust shall be a complete discharge to the extent specified in such receipt.

ARTICLE X SUCCESSOR TRUSTEE

10.1 Resignation and Removal. Any Trustee may resign at any time upon giving written notice to the person next designated to succeed as Trustee, or if none is designated, to the person or authority entitled to appoint a Successor Trustee or, if none, to all of the then current income beneficiaries. Any Trustee may be removed at any time upon written notice given to the Trustee by Trustor during her lifetime. A person shall cease serving as Trustee upon such person's death, resignation, removal or incapacity, and shall be succeeded by the person next entitled to serve.

10.2 Rights and Immunities of Successors. Each Successor Trustee shall have all the powers and discretions as are granted to the original Trustee and shall have all of the duties and obligations imposed upon the original Trustee. Upon becoming Trustee, title to all of the assets of the trust estate shall vest in a Successor Trustee, but any resigning Trustee shall execute and deliver all such instruments and do all such acts as are necessary or desirable to vest such title in the Successor

Trustee. No Successor Trustee shall be liable or responsible for any act or omission on the part of any prior Trustee. No Successor Trustee shall have any duty to audit or investigate the accounts or administration of any prior Trustee, nor, unless requested in writing to do so, any duty to take action to obtain redress for breach of any trust.

10.3 Guardians. The court-appointed guardian of the person, or, if there is none, the person having lawful custody of the person of minor or other legally incompetent person who is entitled to vote or otherwise participate with respect to removal or resignation of a Trustee or the appointment of a Successor Trustee, shall have the right and authority to act in such matters on behalf of such minor or incompetent.

10.4 Acts of Co-Trustees. If there are two (2) Trustees, either Trustee alone may act to bind the Trust. If there are three (3) or more Trustees, then the act of a majority of the Trustees shall constitute the act of the Trustee. In the event there are two (2) or more Trustees, each Trustee shall be responsible only for his own acts or omissions in bad faith.

10.5 Appointment of Successor Trustee. Upon the death, incapacity, resignation or removal of either Trustor as a Trustee, the remaining original Trustee shall act as sole Trustee. Upon the death, incapacity, resignation or removal of both original Trustees, JAY DONKERSLOOT shall serve as Successor Trustee.

IN CONFIRMATION AND AFFIRMATION of the foregoing, the undersigned, as Trustor and Trustee hereby states that the assertion by any Trustee hereinabove designated that (1) he is acting alone or with another as a qualified Trustee, or (2) that he is acting with full delegated powers from a Co-Trustee, shall be sufficient on its face and no person shall be put to further inquiry into the right of such Trustee to act.

Reproductions of this executed original dated this 25 day of September 2015, (with reproduced signatures) shall be deemed to be original counterparts of this Certificate.

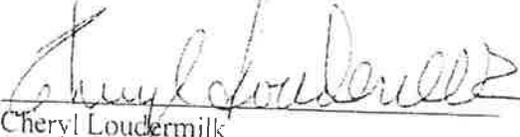
TRUSTOR:


Arvin Loudermilk


Cheryl Loudermilk

TRUSTEE:


Arvin Loudermilk


Cheryl Loudermilk

STATE OF ARIZONA)

Second Amended Certificate of Trust Existence and Authority
of the
Complete Restatement of the Loudermilk Living Trust
Page 7 of 8

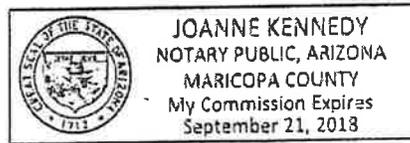
County of Maricopa

)ss:
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On this 25 day of September, 2015, before me, the undersigned notary public, appeared Arvin Loudermilk and Cheryl Loudermilk, whose names are subscribed to the foregoing instrument and who are acknowledged to me that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Joanne Kennedy
Notary Public





May 3, 2019

Gabe Sevigny, Project Planner
 El Paso Planning & Community Development
 Transmitted via email: GabeSevigny@elpasoco.com

RE: Loudermilk Minor Subdivision, MS192
 S1/2 of the SE1/4 of the NE1/4 of Section 23, T11S, R65W, 6th P.M.
 Kiowa Bijou Designated Basin
 Water Division 1, Water District 1

Dear Mr. Sevigny:

We have reviewed the information received on April 11, 2019 regarding the above referenced proposal to subdivide a 19.873-acre property into two lots.

Water Supply Demand

According to the December 18, 208 letter from James J. Petrock (Water Supply Letter), the estimated annual water requirements for each lot total 1 acre-foot for in-house use (0.3 acre-feet per year), irrigation of 10,000 square-feet of home lawn, garden and trees (0.65 acre-feet per year) and the watering of 4 large domestic animals (0.05 acre-feet per year). The total annual demand for the subdivision would be 2 acre-feet.

Source of Water Supply

According to the Water Supply Letter each lot will be served by an individual well in the not nontributary Dawson aquifer which will be permitted pursuant Determination of Water Right no. 3619-BD and its associated replacement plan.

Determination of Water Right nos. 3616-BD, 3617-BD, 3618-BD and 3619-BD were issued by the Ground Water Commission (“Commission”) on December 11, 2018, for the parcel that is the subject of this referral. The following amounts of water were determined to be available:

Aquifer	Determination of Water Right Number	Annual amount available based on 100 yr. allocation approach (acre-feet/year)	Type
Dawson	3619-BD	17.1	Not Nontributary-Actual
Denver	3618-BD	12.2	Nontributary
Arapahoe	3617-BD	8.84	Nontributary
Laramie-Fox Hills	3616-BD	6.0	Nontributary

The proposed source of water for this development 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 37-90-107(7)(a), C.R.S., "Permits issued pursuant to this subsection (7) shall allow withdrawals on the basis of an aquifer life of 100 years." Based on this **allocation** approach, the annual amounts of water determined in 3616-BD, 3617-BD, 3618-BD and 3619-BD are equal to one percent of the total amount, as determined by Rule 5.3.2.1 of the Designated Basin Rules, 2 CCR 410-1. Therefore, the water may be withdrawn in those annual amounts for a maximum of 100 years.

Withdraw of the not-nontributary Upper Dawson Aquifer ground water that is the subject of Determination of Water Right no. 3619-BD requires Ground Water Commission ("Commission") approval of a replacement plan. That replacement plan was approved by the Commission on December 11, 2018. The replacement plan allows for 2 wells with each well limited to use in 1 single family residence, irrigation of 10,000 square feet of lawn, garden and trees and watering of 4 domestic animals. These allowed uses are consistent with the proposed uses specified in the Water Supply Letter.

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

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

The Applicant's replacement plan allows withdrawal of Dawson aquifer water for 300 years, therefore withdrawals under that plan would meet the county's requirement of providing the average annual demand of the subdivision for a period of 300 years.

Well permit no. 83011-F was issued on March 18, 2019 for use of an existing well located on the subject property, that was previously operated under well permit no. 171879. The well permit is issued pursuant to Determination of Water Right No. 3619-BD and its associated Replacement Plan. Based on the Water Supply Letter this well will be used to serve one of the proposed lots.

State Engineer's Office Opinion

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

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

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

Our opinion is qualified by the following:

The amounts of water in the Denver Basin aquifer, and identified in this letter, are calculated based on estimated current aquifer conditions. For planning purposes the county should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer

may be less than the 100 years (or 300 years) used for allocation due to anticipated water level declines. We recommend that the county determine whether it is appropriate to require development of renewable water resources for this subdivision to provide for a long-term water supply.

Should you or the applicant have any questions, please contact Joanna Williams at (303) 866-3581 x8265.

Sincerely,



Keith Vander Horst, P.E.
Chief of Water Supply, Basins

Ec: Division 1 Division Engineer
District 1 Water Commissioner
Loudermilk Minor Sub_May2019.docx
Subdivision File 26474
Permit No. 171879

EL PASO COUNTY

OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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Mary M. Ritchie

July 15, 2019

MS-19-2 Loudermilk Minor Subdivision

Reviewed by: Lori L. Seago, Senior Assistant County Attorney *LS*
Edi Anderson, Paralegal

FINDINGS AND CONCLUSIONS:

1. This is a proposal by the Loudermilk Living Trust ("Applicant") for a 2 lot minor subdivision on 19.873 +/- acres of land ("Property"). There is an existing single-family dwelling on one of the lots and the property is zoned RR-5 (Residential Rural).

2. The Applicant has provided for the source of water to derive from individual on-lot wells withdrawing from the not nontributary Dawson Aquifer pursuant to Determination of Water Right No. 3619-BD ("Water Right No. 3619-BD" or "Determination") and corresponding Replacement Plan ("Replacement Plan"). Applicant estimates its annual water needs at 2.0 acre-feet per year for the 2 lot minor subdivision (1 acre-foot per lot per year). The water requirements for each lot total 0.3 acre-feet per year for household use, 0.65 acre-feet per year for irrigation, and 0.05 acre-feet per year for stock watering of 4 large domestic animals, for a total water demand of 1.0 acre-feet per year for each lot. Based on Applicant's demand, Applicant must be able to provide a supply of 600 acre-feet of water (2.0 acre-feet/year x 300 years) to meet the County's 300 year water supply requirement.

3. In a letter dated May 3, 2019, the State Engineer reviewed the submittal to plat the 19.873 +/- acre parcel into a 2 lot minor subdivision. The State Engineer reviewed the Water Supply Information Summary, Water Supply Letter from James J. Petrock dated December 18, 2018 ("Water Supply Letter"), and Water Right No. 3619-BD and Replacement Plan. The State Engineer stated that the total annual demand for the subdivision would be 2 acre-feet and recited the water requirements as noted in Paragraph 2 above and as further cited in the Water Supply Letter. The State Engineer stated that pursuant to Water Right No. 3619-BD, there are 17.1 acre-feet of Dawson Aquifer water available annually for the minor subdivision based on a 100 year allocation approach. Pursuant to El Paso County's 300 year water supply rule, the average annual amount of withdrawal of 17.1 acre-feet/year from the Dawson Aquifer would be reduced

200 S. CASCADE AVENUE
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COLORADO SPRINGS, CO 80903
FAX: (719) 520-6487

to one third of that amount or 5.7 acre-feet/year. As a result, there is an available water supply in that amount each year for 300 years. The proposed annual supplies are greater than the demand of 2.0 acre-feet/year for a period of 300 years. Therefore, the State Engineer states that "pursuant to Sections 30-28-136(1)(h)(l), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to water rights."

The State Engineer further noted that "Well permit no. 83011-F was issued on March 18, 2019 for use of an existing well located on the subject property, that was previously operated under well permit no. 171879. The well permit is issued pursuant to Determination of Water Right No. 3619-BD and its associated Replacement Plan. Based on the Water Supply Letter this well will be used to serve one of the proposed lots."

4. Determination of Water Right No. 3619-BD, Findings and Order and Replacement Plan. On December 11, 2018, the Colorado Ground Water Commission approved Determination of Water Right No. 3619-BD and the accompanying Replacement Plan.

Water Right No. 3619-BD notes that the quantity of ground water in the Dawson Aquifer underlying the proposal's approximately 20 acres of land is 1,860 acre-feet; therefore, the "allowed average annual amount of withdrawal from the Aquifer that could be allocated from beneath the Overlying Land would be 18.6 acre-feet per year." The Determination notes that there is a small-capacity well identified as Permit No. 171879 on the land that is permitted to withdraw "1.5 acre-feet per year of ground water from the Aquifer from beneath the Overlying Land." Therefore, based on Designated Basin Rules (Rule 5.3.2.4), "the allowed average annual amount of withdrawal ... is reduced to 17.1 acre-feet per year so as to reserve water for that well. The effect of this reservation is to reduce the quantity of Underlying Ground Water which is considered available for allocation to 1,710 acre-feet." In the Replacement Plan, the Ground Water Commission ordered that the "allowed annual amount of ground water to be withdrawn from the aquifer by all wells operating under this plan shall not exceed 2 acre-feet. The allowed annual amount of water to be withdrawn from each well shall not exceed 1 acre-foot."

The Replacement Plan provides that the use of ground water for the subdivision is limited to 2.0 acre-feet annually from the Dawson Aquifer and the use for each well is limited to "1 single family residence; irrigation of 10,000 square feet of lawn, garden, and trees; and watering of 4 domestic animals." The Replacement Plan further directs that return flows from in-house use of ground water "shall occur through individual on-lot non-evaporative septic systems located within the 20 acres of overlying land that are the subject of Determination of Water Right No. 3619-BD" and further, replacement of depletions must be provided annually in the specific amounts as noted in the Replacement Plan to insure alluvial depletions are replaced.

5. Analysis. Applicant's total annual water demand for the Loudermilk Minor Subdivision is 1.0 acre-feet per lot or 2.0 acre-feet for the subdivision. Based on the demand, Applicant must have available 600 acre-feet to adhere to the County's 300-year rule (2.0 acre-feet x 300 years). Pursuant to the Colorado Ground Water Commission's Determination of Water Right No. 3619-BD, Determination of Water Right and the accompanying Replacement Plan, Applicant has available 5.7 acre-feet per year or 1,710 acre-feet total to withdraw during the 300 years. Based on the foregoing, there appears to be a sufficient water supply to meet the water demands of the Loudermilk Minor Subdivision.

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

7. Therefore, based upon the finding of sufficiency and no injury by the State Engineer, Determination of Water Right No. 3619-BD and Replacement Plan, and based on the requirements below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. There is a presumption of sufficient water quality.

REQUIREMENTS:

A. The County prefers that when there is a replacement plan, that Applicant, its successors and assigns, create a homeowners' association ("HOA"); however, alternatively to establishing an HOA, Applicant, its successors and assigns, shall create restrictive covenants or deed restrictions upon and running with the Property which shall advise and obligate future lot owners of this subdivision, their successors and assigns, regarding all applicable requirements of Determination of Water Right No. 3619-BD, including the Replacement Plan, and Well Permit No. 83011-F. Pursuant to the Replacement Plan, replacement obligations include providing return flows from a non-evaporative septic system for each lot located within the approximately 20 acres of overlying land. As noted in the Determination, Applicant, its successors and assigns, are required to replace the specified amount of annual depletions. The Covenants or deed restrictions shall recite that return flows from non-evaporative septic systems shall comply with those amounts set forth in Exhibit A to Replacement Plan No. 3619-BD, which is also attached hereto as Exhibit A to this letter, and that such return flows shall only be used to replace depletions and shall not be sold, traded, or assigned in whole or in part for any other purpose.

The Covenants or deed restrictions shall recite the specific requirement of the Replacement Plan, which requires that at least one Dawson Aquifer well ". . . must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system before any irrigation or animal watering is allowed to be served

by any of the wells.” In addition, the Covenants or deed restrictions shall advise future lot owners of this subdivision, their successors and assigns, of their obligations regarding costs of operating the Replacement Plan. Such Covenants or deed restrictions shall also address responsibility for installing totalizing flow meters on the Dawson wells and the obligations for operation, monitoring and accounting of the Replacement Plan. Finally, the Covenants or deed restrictions shall recite that because the Replacement Plan limits the wells to pumping for 300 years, there are no post-pumping depletion requirements.

B. Applicant, its successors and assigns, shall reserve in the Covenants or the deed restrictions the total supply of 1,710 acre-feet of Dawson Aquifer water for use in the subdivision. Applicant, its successors and assigns, shall convey in any deeds of the Property at the time of lot sales to successor owners, sufficient water rights in the Dawson Aquifer underlying the Property, pursuant to the Determination of Water Right No. 3619-BD and Replacement Plan, to satisfy El Paso County's 300 year water supply requirement. Said Covenants or deed restrictions or conveyance instrument shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for the primary supply for the lots. Applicant shall provide said Covenants or deed restrictions or other such reservation and/or conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording of the final minor subdivision plat.

C. Applicant, its successors and assigns, shall submit the Declaration of Covenants, Conditions, and Restrictions or deed restrictions and any plat notes required herein to the Planning and Community Development Department and the County Attorney's Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. Said Covenants or deed restrictions shall cross-reference the Colorado Ground Water Commission's Determination of Water Right No. 3619-BD, and the accompanying Replacement Plan, and shall identify the obligations of the lot owner thereunder.

D. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, the Colorado Ground Water Commission's Determination of Water Right No. 3619-BD and the Replacement Plan in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

E. 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, which is based on an allocation approach. Applicants, the Home Owners Association, and all future

owners in the subdivision should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than either the 100 years or 300 years indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers, and alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply.”

cc: Gabe Sevigny, Reviewer, Planner II