

Planning and Community Development

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Board of County Commissioners
 Holly Williams, District 1
 Carrie Geitner, District 2
 Bill Wysong, District 3
 Cory Applegate, District 4
 Cami Bremer, District 5

TO: El Paso County Planning Commission
Thomas Bailey, Chair

FROM: Ryan Howser, AICP, Principal Planner
Edward Schoenheit, Associate Engineer

RE: Project File Number: VR246
Project Name: Kettle Creek Estates Filing No. 2
Parcel Number: 6228005048

OWNER:	REPRESENTATIVE:
J+M Investments LLC Jay D. Stoner 5655 Bridlespur Ridge Place Colorado Springs, CO 80919	J+M Investments LLC Jay D. Stoner 5655 Bridlespur Ridge Place Colorado Springs, CO 80919

Commissioner District: 1

Planning Commission Hearing Date:	2/20/2025
Board of County Commissioners Hearing Date:	3/13/2025

EXECUTIVE SUMMARY

A request by J + M Investments, LLC for approval of a 5.13-acre Vacation and Replat creating 2 single-family residential lots from 1 single-family residential lot. The property is zoned RR-2.5 (Residential Rural) and is located at 10245 Otero Avenue.



ZONING MAP

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A. AUTHORIZATION TO SIGN: Final Plat and any other documents necessary to carry out the intent of the Board of County Commissioners.

B. APPROVAL CRITERIA

The Planning Commission and Board of County Commissioners (BoCC) shall determine that the following criteria for approval outlined in Section 7.2.3.C of the El Paso County Land Development Code (as amended) have been met to approve a Vacation and Replat:

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

C. BACKGROUND

The property was originally platted as portions of Lots 7 and 8 of the Spring Crest Amended Filing subdivision on December 4, 1959 (Plat No. 1898). The property was rezoned from RR-5 (Residential Rural) to RR-2.5 (Residential Rural) on August 3, 2022 (BoCC Resolution No. 22-268, PCD File No. P224). The subject property, which comprises the west portions of Lots 7 and 8 of the Spring Crest Amended Filing subdivision and the adjacent lot, which comprises the east portions of Lots 7 and 8 of the Spring Crest Amended Filing subdivision, were replatted as Lots 1 and 2 of the Kettle Creek Estates subdivision on August 23, 2023 (Plat No. 15184). The applicant now wishes to subdivide Lot 1 of Kettle Creek Estates to create 2 lots with a minimum lot size of 2.5 acres.

D. ZONING ANALYSIS

The proposed lots will conform to the standards of the RR-2.5 (Residential Rural) zoning district. The RR-2.5 (Residential Rural) zoning district density and dimensional standards are as follows:

- Minimum lot size: 2.5 acres

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- Minimum width at the front setback line: 200 feet
- Minimum setback requirement: front 25 feet, rear 25 feet, side 15 feet
- Maximum lot coverage: None
- Maximum height: 30 feet

In order to initiate any new residential uses on the property, the applicant will need to obtain Site Plan approval. All Site Plans will be reviewed to ensure that all proposed structures will comply with the zoning district Dimensional Standards as well as the General Development Standards of the Code and Engineering Criteria Manual requirements.

E. MASTER PLAN COMPLIANCE

1. Your El Paso County Master Plan

a. Placetype Character: Suburban Residential

Suburban Residential is characterized by predominantly residential areas with mostly single-family detached housing. This placetype can also include limited single-family attached and multifamily housing, provided such development is not the dominant development type and is supportive of and compatible with the overall single-family character of the area. The Suburban Residential placetype generally supports accessory dwelling units. This placetype often deviates from the traditional grid pattern of streets and contains a more curvilinear pattern. Although primarily a residential area, this placetype includes limited retail and service uses, typically located at major intersections or along perimeter streets. Utilities, such as water and wastewater services are consolidated and shared by clusters of developments, dependent on the subdivision or area of the County.

Recommended Land Uses:

Primary

- *Single-Family Detached Residential with lots sizes smaller than 2.5 acres per lot, up to 5 units per acre*

Supporting

- *Single-family Attached*
- *Multifamily Residential*
- *Parks/Open Space*
- *Commercial Retail*
- *Commercial Service*
- *Institutional*

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b. Area of Change Designation: Minimal Change: Developed

These areas have undergone development and have an established character. Developed areas of minimal change are largely built out but may include isolated pockets of vacant or underutilized land. These key sites are likely to see more intense infill development with a mix of uses and scale of redevelopment that will significantly impact the character of an area. For example, a large amount of vacant land in a suburban division adjacent to a more urban neighborhood may be developed and change to match the urban character and intensity so as to accommodate a greater population. The inverse is also possible where an undeveloped portion of a denser neighborhood could redevelop to a less intense suburban scale. Regardless of the development that may occur, if these areas evolve to a new development pattern of differing intensity, their overall character can be maintained.

c. Key Area Influences: Enclaves or Near Enclaves

Enclaves are areas of unincorporated El Paso County that are surrounded on all sides by an incorporated municipality, primarily the City of Colorado Springs but enclaves or near enclaves exist within or adjacent to other municipalities. The largest enclave is Cimarron Hills, an urbanized community with nearly 18,000 residents, but several smaller enclaves exist around other areas of Colorado Springs as well.

The majority of the enclaves are developed or partially developed in a manner that would require significant improvement for annexation. These include roadway improvements, stormwater improvements and utility infrastructure upgrades. Most enclave areas are accessed by municipal roads, experience the impacts of urban stormwater runoff, or are otherwise served by one or more municipal utilities. The character and intensity of new development or redevelopment in these enclaves should match that of the development in the municipality surrounding it. Discussion with the City of Colorado Springs and other municipalities regarding the possible annexation of these areas should be continued and revisited regularly to explore means to finance improvements and service debt to make annexation a feasible consideration.

Analysis:

The property is located within the Suburban Residential placetype. The proposed Vacation and Replat is not expected to substantially alter the character of the surrounding area. It is not anticipated that the proposed Vacation and Replat



will result in a level of change beyond that which is expected within the Minimal Change: Developed area of change. Relevant goals and objectives include:

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

Objective HC1-4 – *In Suburban Residential areas, clustered development should be encouraged to increase density while also preserving open space and such development should consist of a mix of single-family detached, single-family attached, and multifamily units.*

Objective LU2-2 – *The character and intensity of new development or redevelopment in County enclaves should match that of the development in the municipality surrounding it.*

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 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.*

See the Water section below for a summary of the water findings and recommendations.

3. Other Master Plan Elements

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

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The Master Plan for Mineral Extraction (1996) identifies upland 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.

F. PHYSICAL SITE CHARACTERISTICS

1. Hazards

No hazards were identified in the development area that would preclude development. However, the presence of Kettle Creek on the property will impose some limitations to development. Basements shall be prohibited, and an engineered site plan shall be required prior to construction on the two proposed lots. These limitations are included as plat notes. Additionally, the portion of the property encumbered by Kettle Creek is located within a FEMA-designated floodplain. This area is identified on the plat as a no-build and no storage of materials area; as such, no structures or fences are permitted in this area.

The Colorado Geological Survey (CGS) has reviewed the proposal, is agreeable to the proposed plat restrictions, and has no outstanding comments.

2. Floodplain

The eastern portion of the property is in a floodplain as determined by a review of the FEMA Flood Insurance Rate Map number 08041C0506G with an effective date of December 7th, 2018. The property is in Zone "AE" which is a Special Flood Hazard Area (SFHA) and regulatory floodway with surveyed base flood elevations as depicted on the Final Plat Drawing.

3. Drainage and Erosion

The property is located in the Kettle Creek Drainage Basin (FOMO3000). Basin fees in the amount of \$5,162.85 will be due at Final Plat recordation. Kettle Creek has no bridge fees. Stormwater runoff from the property drains eastward into the main channel of Kettle Creek, which flows southwesterly along the east side of the property, ultimately flowing to a downstream confluence with Monument Creek. A Drainage Report was prepared by JPS Engineering. The report concluded that implementation and maintenance of proper erosion control measures will ensure



the subdivision will not have adverse drainage impact on downstream properties or drainage facilities.

4. Transportation

The property is located along Otero Avenue which is a County maintained paved local road directly south of Old Ranch Road. A Traffic Impact Study was not required pursuant to the El Paso County Engineering Criteria Manual (ECM) Section B.1.2.D due to less than 100 average vehicle trips per day. The development is projected to generate approximately 19 daily trips per day to the surrounding road network. The development is subject to the El Paso County Road Impact Fee program to be paid at the time of building permit.

G. SERVICES

1. Water

Water is proposed to be provided by on-site wells. The applicant has shown a sufficient water supply for the required 300-year period. The State Engineer and the County Attorney's Office have recommended that the proposed subdivision has an adequate water supply in terms of quantity and dependability. El Paso County Public Health has recommended that there is an adequate water supply in terms of quality.

2. Sanitation

Wastewater is proposed to be provided by on-site wastewater treatment systems (OWTS).

3. Emergency Services

The property is within the Tri-Lakes Monument Fire Protection District. The District was sent a referral and has no outstanding comments.

4. Utilities

Electrical service is provided by Mountain View Electric Association (MVEA) and natural gas service is provided by Colorado Springs Utilities (CSU). Both MVEA and CSU were sent referrals and have no outstanding comments.

5. Metropolitan Districts

The property is not located in a metropolitan district.

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6. Parks/Trails

The 2022 El Paso County Parks Master Plan shows no impacts to existing or proposed parks, trails, or open space, nor impacts to existing or proposed City of Colorado Springs parks, trails, or open space. Fees in lieu of park land dedication in the amount of \$1,010.00 for regional fees are due at the time of recording the Vacation and Replat. Urban park fees are not applicable to this application.

7. Schools

The site is within the boundaries of the Academy District 20 school district. Fees in lieu of school land dedication in the amount of \$612.00 will be due at the time of recording the Vacation and Replat.

H. APPLICABLE RESOLUTIONS

See attached resolution.

I. STATUS OF MAJOR ISSUES

No major issues.

J. 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 of the El Paso County Land Development Code (as amended) 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.

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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 Final Plat.
4. 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.

NOTATIONS

1. The following fees are required to be paid to El Paso County at the time of Final Plat recordation:
 - a. Drainage Fees in the amount of \$5,162.85 for the Kettle Creek Drainage Basin (FOMO3000).
 - b. Park fees in lieu of land dedication in the amount of \$1,010.00 for Regional Parks (Area 2).
 - c. Fees in lieu of school land dedication in the amount of \$612.00 shall be paid for the benefit of Academy School District No. 20.
2. Final Plats not recorded within 24 months of Board of County Commissioner approval shall be deemed expired unless an extension is approved.
3. Site grading or construction, other than installation or initial temporary control measures, may not commence until a Preconstruction Conference is held with Planning and Community Development Inspections and a Construction Permit is issued by the Planning and Community Development Department.
4. The El Paso County Road Impact Fee Program Resolution: 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 Resolution No. 24-377), 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.



K. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified 20 adjoining property owners on February 3, 2025, for the Planning Commission and Board of County Commissioners meetings. Responses will be provided at the hearing.

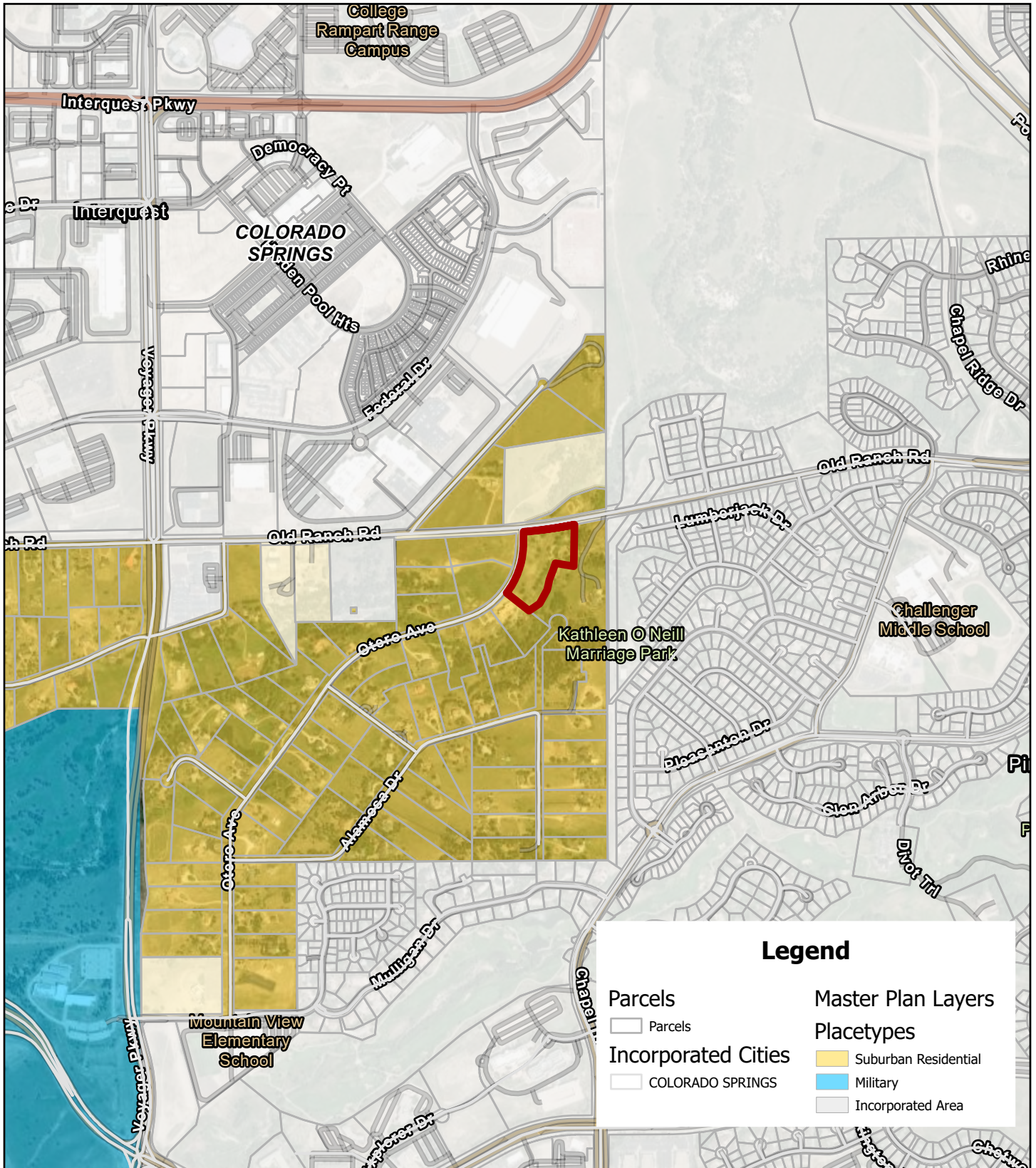
L. ATTACHMENTS

- Map Series
- Plat Drawings
- Letter of Intent
- County Attorney's Letter
- Draft Resolution

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Placetype Map

File No. VR246

Map Series No. 1



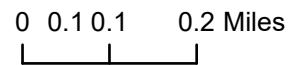
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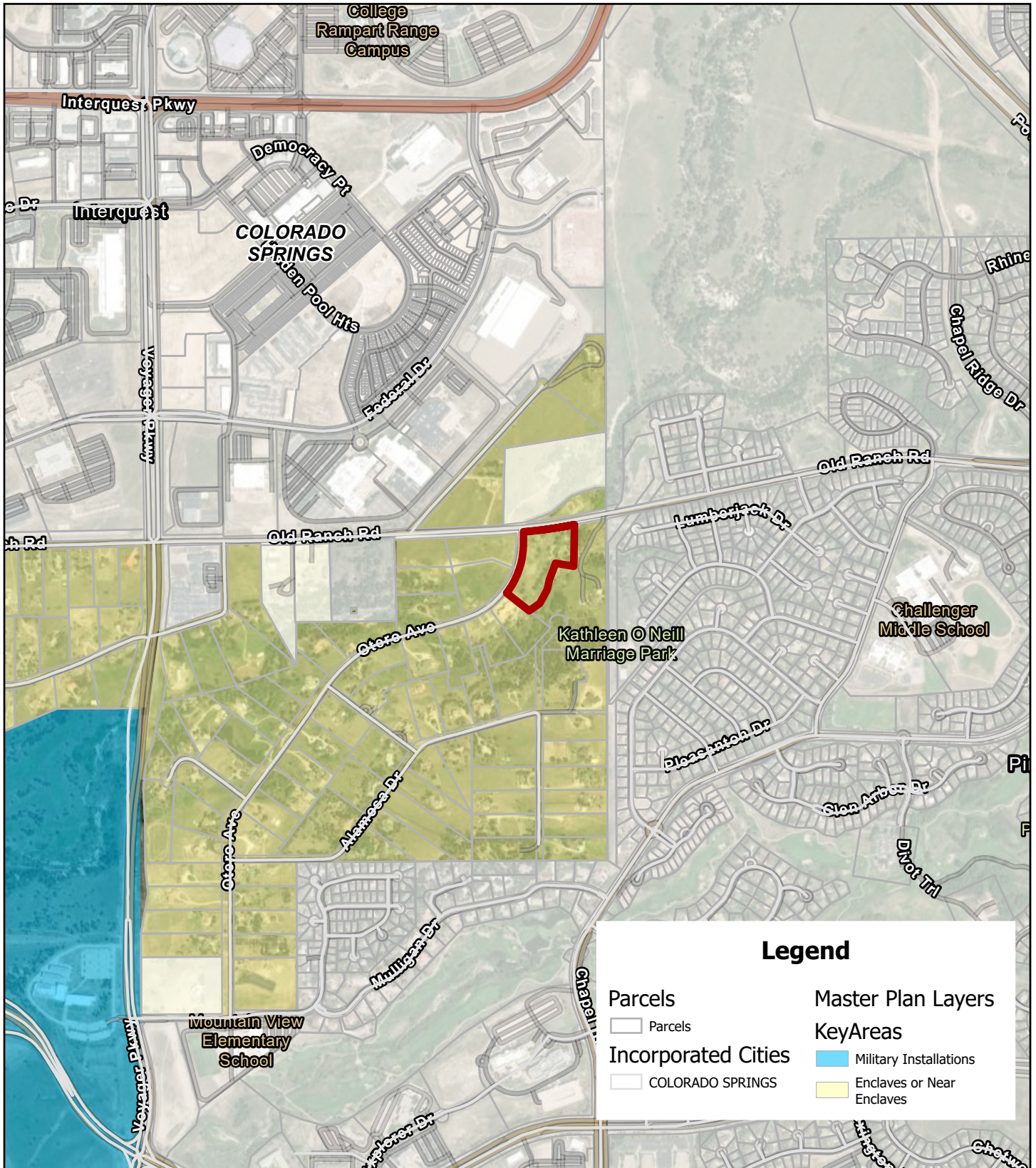


Area of Change Map

File No. VR246

Map Series No. 2

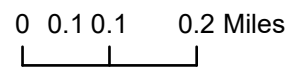




Key Area Map

File No. VR246

Map Series No. 2



KNOW ALL MEN BY THESE PRESENTS that, **J + M INVESTMENTS, LLC**, is the owner of the following described land:

TO WIT
 LOT 1, KETTLE CREEK ESTATES, AS RECORDED IN THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDERS UNDER RECEPTION NO. 223715184,
 CONTAINING 5.13 ACRES MORE OR LESS
 EL PASO COUNTY
 STATE OF COLORADO
DEDICATION

The undersigned, J + M INVESTMENTS, LLC, being the owners, mortgagees, beneficiaries of deeds of trust and holders of other interests in the land described herein, have had our subdivided and platted said lands into lots and easements as shown hereon under the name and subdivision of KETTLE CREEK ESTATES FILING NO. 2. All public improvements will be constructed to El Paso County standards and that proper drainage and erosion control for some will be provided at said owner's expense, all to the satisfaction of the Board of County Commissioners of El Paso County, Colorado. Upon acceptance by resolution, all public improvements so dedicated will become matters of maintenance by El Paso County, Colorado. The utility easements shown hereon are hereby dedicated for public utilities and communication systems and other purposes as shown hereon. The entities responsible for providing the services for which the easements are established are hereby granted the perpetual right of ingress and egress from and to adjacent properties for installation, maintenance, and replacement of utility lines and related facilities.

Joy Stoner — Member
 State of Colorado
 County of El Paso
 Signed before me on _____, 20____, by Joy Stoner,
 (Notary's official signature)

 (Title of Office)

 (Commission Expiration)

REGISTERED LAND SURVEYOR'S CERTIFICATE

I, **MATTHEW J. KOCH, P.L.S.**, 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 **8-2-2022**, by me or under my direct supervision and that all monuments set as shown hereon, that mathematical closure errors are less than 1:10,000, and that said plat has been prepared in full compliance with all applicable laws of the State of Colorado dealing with monuments, subdivision, or surveying of land and all applicable provisions of the El Paso County Land Development Code.

I attest the above on this _____ day of _____, 20____.

MATTHEW J. KOCH, P.L.S.
 Colorado registered P.L.S. # 37907
 Date _____

ACKNOWLEDGMENT AND ACCEPTANCE OF PLAT

This plat for KETTLE CREEK FILING NO. 2 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 (easements) are accepted, but the 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.

Precious plat, KETTLE CREEK ESTATES, is vacated and amended for the areas described by this report 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 # _____.

Chair, Board of County Commissioners _____ Date _____

Executive Director, Planning and Community Development _____ Date _____

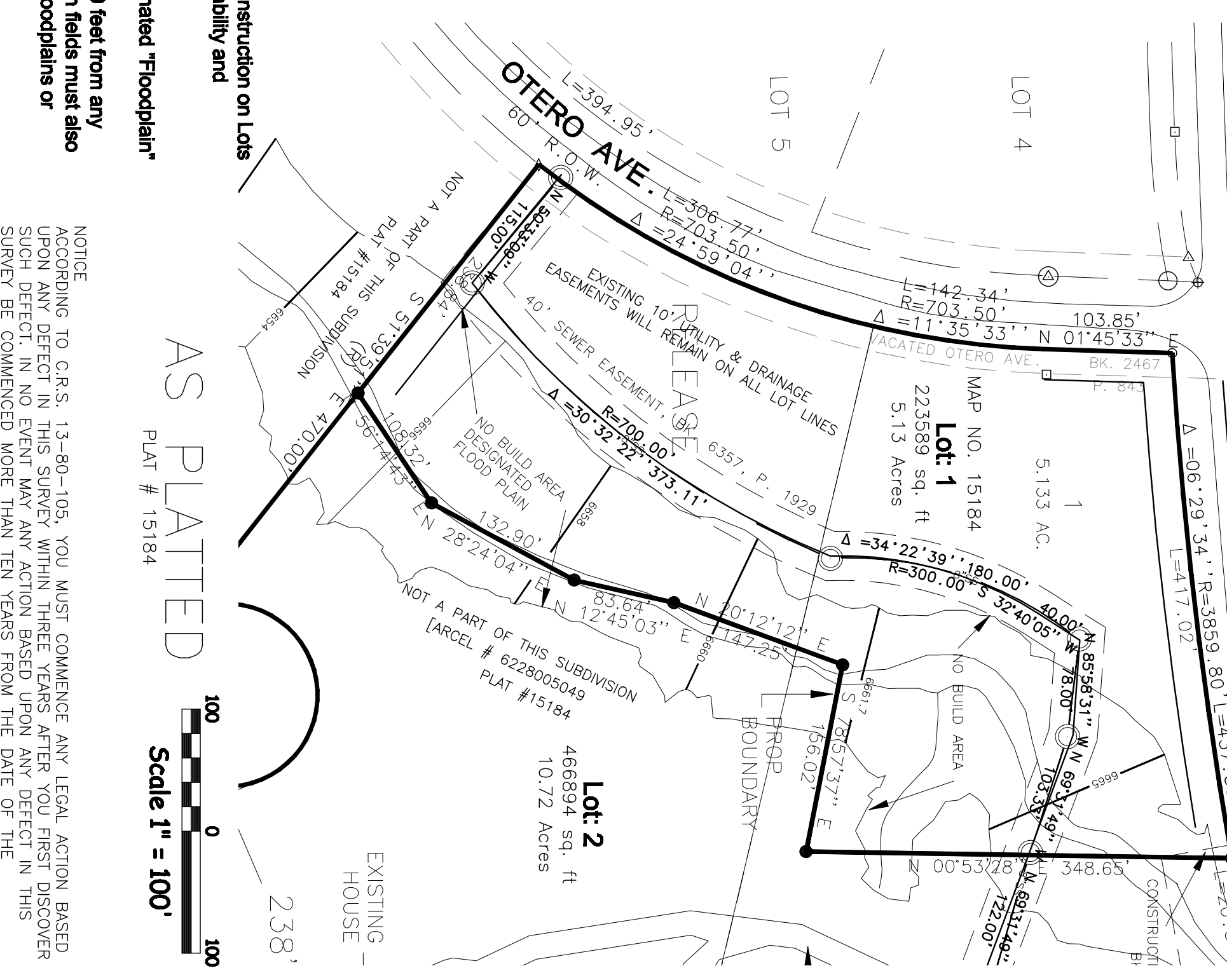
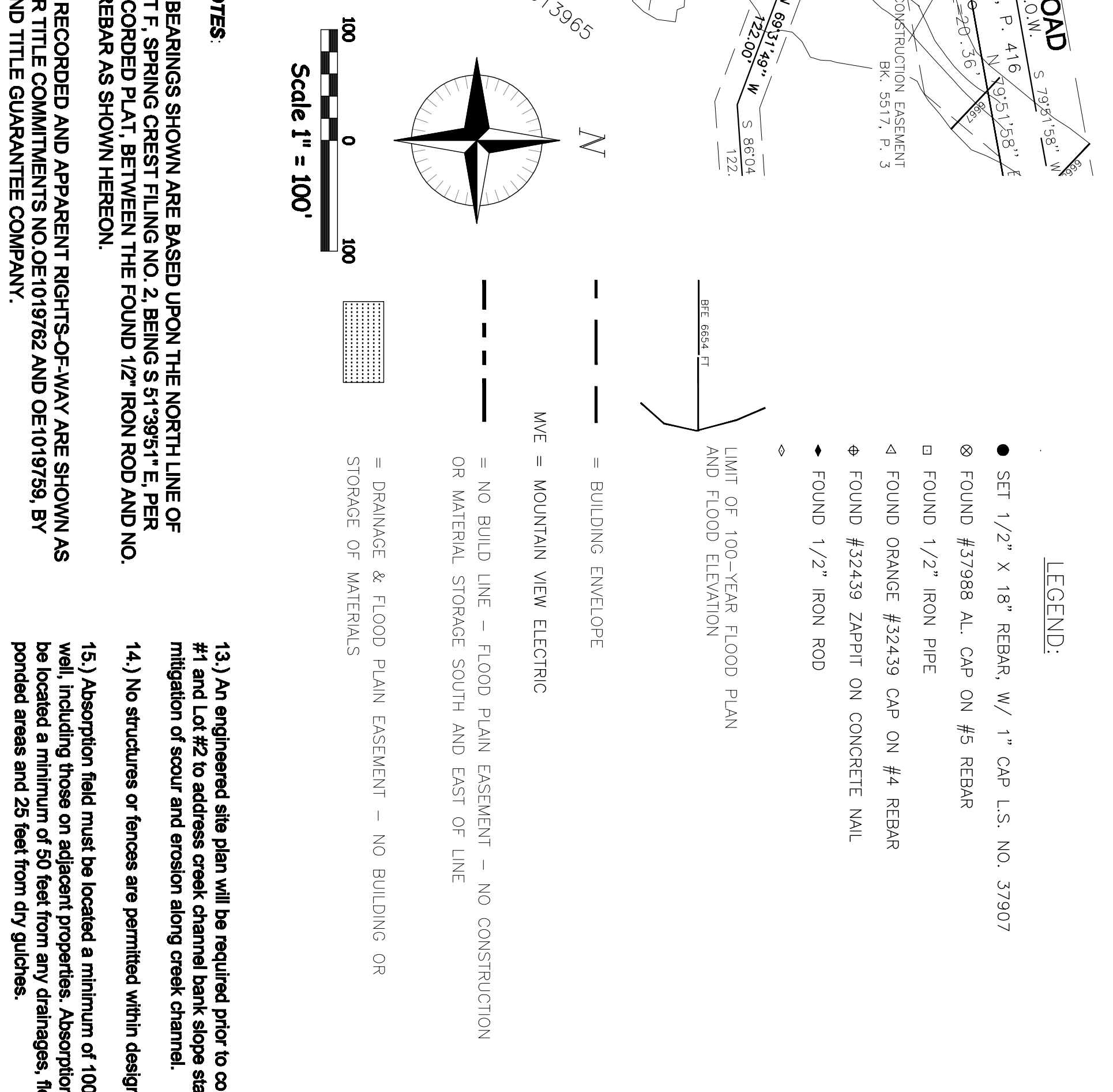
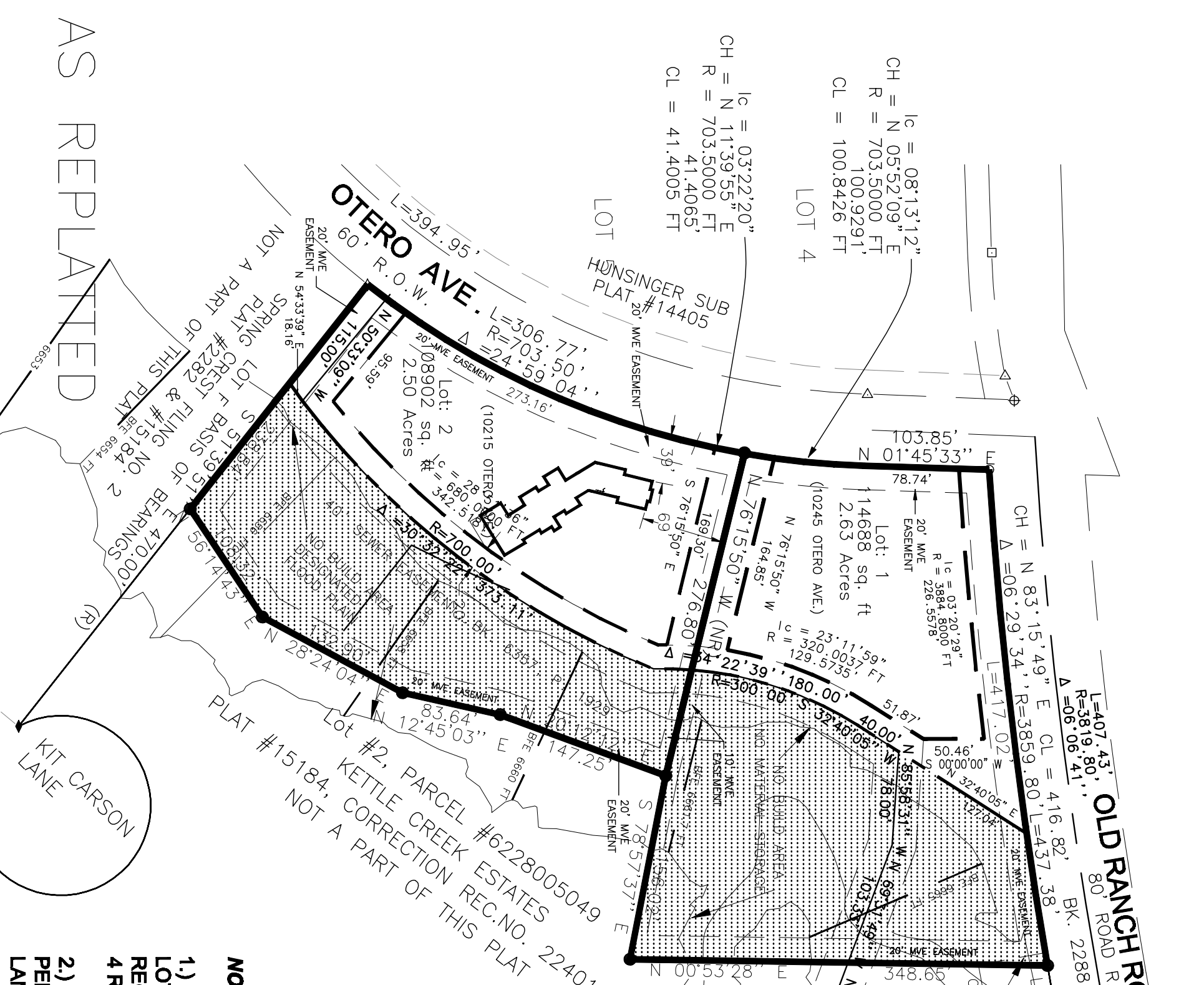
EASEMENT STATEMENT

Unless otherwise indicated, all side, front, and rear lot lines are hereby platted on either side with a 5 foot public utility and drainage easement unless otherwise indicated. All exterior subdivision boundaries are hereby platted with a 7 foot public utility and drainage easement. The sole responsibility for maintenance of these easements is hereby vested with the individual property owners.

KETTLE CREEK ESTATES FILING NO. 2

A REPLAT OF LOT 1, KETTLE CREEK ESTATES

LOCATED IN THE NW 1/4 OF SECTION 28, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE 6TH P.M. EL PASO COUNTY, COLORADO



SOILS & GEOLOGY

A Soils, Geology, and Wastewater Study, Southeast corner of Old Ranch Rd and Otero Ave, Lots 1 and 2, Kettle Creek Estates, Filing No. 2, El Paso County, Colorado prepared by RMG Rocky Mountain Group, last dated August 7, 2024, indicated the geologic hazard found at the site was a regulatory floodway. The geologic constraints found onsite include:

expansive soils/bedrock, compressible soils, seasonally shallow groundwater, radon, and seismicity
 The geologic conditions are to be mitigated as such. Basement construction shall not be allowed on Lot 1 or Lot 2 unless a 12 month monitoring program established the depth and fluctuations of groundwater at the home location or unless test borings performed with the building footprint demonstrate that groundwater is not within 20 feet of the final proposed ground surface. The regulated floodway is considered a Preservation Area and is considered a No Build Zone. Appropriate surface grading and drainage should be established during construction and maintained over the life of the structure by the homeowner(s). Additional mitigation measures can be found in said report, File #RZ46 available at the El Paso County Planning and Community Development Department.

UTILITY EASEMENT CLAUSE:

ALL EASEMENTS SHOWN OR DEDICATED HEREON FOR PUBLIC UTILITY PURPOSES SHALL BE SUBJECT TO THOSE TERMS AND CONDITIONS AS SPECIFIED IN THE INSTRUMENT RECORDED AT RECEPTION NO. 224029391 OF THE RECORDS OF EL PASO COUNTY, COLORADO. ALL OTHER EASEMENTS OR INTERESTS OF RECORD AFFECTING ANY OF THE PLATTED PROPERTY DEDICATED HEREON SHALL NOT BE AFFECTED AND SHALL REMAIN IN FULL FORCE AND EFFECT.

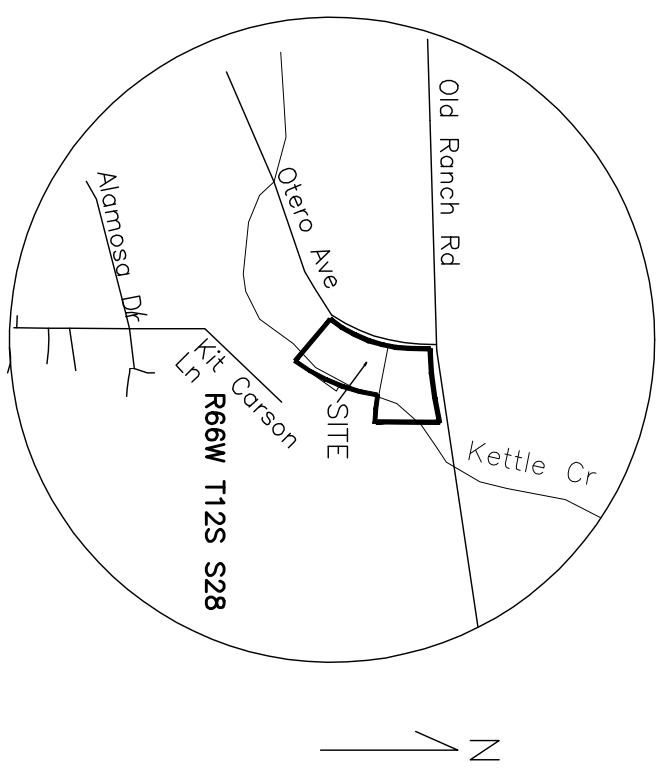
COUNTY CLERK AND RECORDERS STATEMENT

STATE OF COLORADO
 COUNTY OF EL PASO
 I hereby certify that this instrument was filed in my office on this _____ day of _____, 20____, and was recorded at Reception Number _____ of the records of El Paso County.

El Paso County Clerk & Recorder

POD File # VR246

CORNERSTONE
LAND SURVEYING, L.L.C.
 1022 PHAY AVE.
 CANON CITY, COLORADO 81212
 719-275-8881
 8-18-2023
 JOB NO. KETTLECREEK rev 8-14-2024



Kettle Creek Estates Filing No.2

Letter of Intent

Owner/Applicant:

J+M Investments LLC
Jay D Stoner, Managing Member
P-970-566-4891
E-jay@LDIColorado.com
Mailing Address
5655 Bridlespur Ridge Place
Colorado Springs, CO 80918

February 2, 2024

Scott Weeks
Project Manager, Planner II
El Paso County, Planning and Community Development
2880 International Circle, Suite 110
Colorado Springs, CO 80910

RE: Kettle Creek Estates Filing No. 2 – 10245 Otero Ave. Owner: J+M Investments LLC
PCD File #VR246

The property is located at the southeast corner of Old Ranch Road and Otero Ave in Section 28, Township 12 South, Range 66 West of the 6th P.M., in El Paso County, Colorado. The site is located in a neighborhood that has been developed as similar single family uses as the proposed subdivision plan.

The parcel in its entirety consists of 5.13 acres and is currently zoned “RR2.5” for Residential Rural under TSN:5304002017. The proposal is consistent with the use standards in Section 4.3 of the land use code. The proposal consists of subdividing the existing 5.13-acre site into two separate 2.5+ acre parcels and planned for one single family home on each lot. Lot 1 being 2.63 acres and Lot 2 being 2.50 acres. The proposed lots are currently vacant.

The proposed lots will use wells for potable water and septic systems for sewer. Gas and electric lines are located in the front of the lots. Colorado Springs Utilities will provide gas service and Mountain View Electric will provide electrical service. Both Lots shall have direct access to Otero Avenue.

The proposal complies with all criteria within Chapter 7 of the Land Development Code. The proposal is for a two lot Major Subdivision. The site has been reviewed by the required drainage engineers for impacts and design. Proposed building envelopes will be enforced and platted to protect the creek, flood plain and any Prebble’s Jumping Mouse in the area.

The site is within a neighborhood with lots of similar designs and characteristics. The soils analysis shows the site is suitable for the proposed use and structures. There are no geologic

hazards that would prohibit the subdivision, and no mitigation is required per the attached reports. No mining or anticipated mining exists in the area and the proposal will not affect the extraction of any minerals. The proposal makes use of areas away from the creek and flood plain and protects the natural resources and landforms. The site is protected by the Monument Fire District and will be provided with fire and emergency services. The site topography and soils have been evaluated and the proposal has been designed based upon those evaluations.

The previous plat designated regulatory easements for drainage and utilities. These easements will be vacated and replaced with the regulatory requirements and the requests from the utility companies based upon this review.

The proposal will not require any improvements or dedications other than regulatory easements. No proposed open space or public areas are proposed or required. The lots are designed to fit with the nature, uses and sizes of the neighborhood. The proposed wells will not impact the adjacent uses in a negative way. The proposed septic designs will no impact adjacent uses, Kettle Creek or ground water in the area. All required notifications to the neighbors have been made to notify them of this proposal.

The additional traffic being 19.2 trips per day for the entire subdivision. The proposed uses are residential in nature and the traffic will be as such. The proposed traffic will be of the same nature as the neighborhood. The local roadway system is planned for residential uses with the roadways and structures in place and in good repair.

Each lot will apply for the necessary driveway permits at the time of building permit application. The impact is minimal, and a Traffic Impact Study is requested to be waived due to the minor impact. Approx 50 lots exist in this area with 480 trips per day, the proposal adds one additional residential lot to the area adding approx. 0.02 percent to the area traffic.

Topography and Hazards conditions:

The site consists of areas suitable for residential construction, sloping gently from west to east down to Kettle Creek. Kettle Creek is designated as a Flood Hazard Area and is denoted on the plat as no build areas. No wetlands or endangered habitat exist on the site.

The site has no existing mining and will not interfere with the extraction of any known commercial deposits. The size and nature of the site with the location of the creek does not allow for proper and sensible extraction of minerals.

The site has been designed and is appropriate for the buildable areas based upon the soils report, geologic hazard report and all reviews and information provided.

Drainage Concerns:

The site consists of two large residential lots with natural drainage patterns. The impacts are minimal residential impacts. BMP's will be utilized per requirements during all development.

Utilities:

All required utilities are existing and located adjacent to the site. A well and individual septic system will be required for both lots.

Traffic Impact:

The traffic impact will be the common residential type of traffic. The impact is assumed to be based upon a family with three drivers, being 12 total trips, one trip is out, and one trip is in, per day.

Public Improvements and Public Facilities:

No public Improvements will be required for this proposal. All roadways are constructed, and no proposed drainage improvements will be required or constructed.

Public Services:

All public services including police, fire, medical and road maintenance already serve the property and surrounding area.

El Paso County Criteria for Approval:

The proposed subdivision is in general conformance with the goals, objectives, and policies of the Master Plan.

The proposed subdivision is in conformance with the requirements of the Code.

The proposed subdivision is compatible with existing land uses adjacent to the project.

The water supply report provides sufficient information to identify probable compliance with the water supply standards as it relates to quality and quantity.

Services are available to meet the needs of the subdivision including roads, police and fire protection, schools, recreation facilities, and utility services.

The soil is suitable for the subdivision.

The geologic hazards do not prohibit the subdivision.

The subdivision will not interfere with the extraction of any known commercial mining deposit.

The design of the subdivision protects the natural resources and unique landforms. \

The proposed methods for fire protection are adequate to serve the subdivision.

The subdivision is appropriate, and the design is based on mitigating the constraints of topography, geologic hazards, environmental resources, floodplain, or other constraints.

El Paso County Design Considerations and Standards

The land is suitable for development and will be divided in a manner that allows it to be used safely.

The soils reports that we have delivered to the County indicated that the ground water levels are at least 20 feet below the bottom of the foundations and the soils conditions are non-expansive. The soils report also indicates that the OWTS will function appropriately.

The topography is appropriate for home building with slopes of less than 30% within the building envelopes.

The lot layout is designed to provide for lots that are appropriate in size and configured in such a way to preserve the existing natural landscape.

A drainage easement will be recorded with the plat for the 100-year floodplain with the restriction of “No Build” and “No Storage of Materials”. 100-year floodplain boundaries shall also be shown on the plat.

The lots will use OWTS so the lots will be a minimum of 2.5 acres with a minimum buildable area of 1 acre.

The drainage will follow historical flow patterns and preserve the natural character of the subject property.

All utilities including gas, electricity and internet are currently installed underground. Domestic wells will provide water and OWTS will be used for sewer.

The water quality reports that we have delivered to the County indicate that the two wells will provide good quality water and adequate quantity.

All building and development codes will be complied with. All required fees for road impact, storm drainage, school impact and building permits will be paid at the time of building application.

Turning one 5+ acre lot into two 2.5-acre lots utilizes the El Paso County infrastructure resources more efficiently and sustainably. The two new lots fit well contextually with the surrounding existing homes that are on similarly sized lots.

Should you require any additional information, please email me at jay@LDIColorado.com or you can call me at 970-566-4891.

Respectfully,
Jay D Stoner, Managing Member, J+M Investments LLC

County Attorney

Kenneth R. Hodges, County Attorney
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Board of County Commissioners
Holly Williams, District 1
Carrie Geitner, District 2
Bill Wysong, District 3
Cory Applegate, District 4
Cami Bremer, District 5

January 15, 2025

VR-24-6 Kettle Creek Estates Filing No. 2

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

WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal for approval of Kettle Creek Estates Filing No. 2, an application by J & M Investments LLC (“Applicant”) to subdivide a parcel of 5.13 acres of land (the “property”) into two single-family residential lots. The property is zoned RR 2.5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary (“WSIS”), the water demand for the subdivision is 0.72 acre-feet/year comprised of 0.26 acre-feet per year per household, irrigation in the amount of 0.158 acre-feet and stock watering for 4 horses at 0.011 per animal for a total of 0.044 acre-feet. Based on this total demand, Applicant must be able to provide a supply of 216 acre-feet of water (0.72 acre-feet per year x 300 years) to meet the County’s 300-year water supply requirement.

Proposed Water Supply

3. The Applicant has provided for the source of water for Lot 2 to derive from an individual on-lot well in the Arapahoe aquifer as provided in the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 2023CW3045 (“Decree and Augmentation Plan”). The groundwater decreed underlying the property includes 87.2 acre-feet in the Denver aquifer, 227 acre-feet in the Arapahoe aquifer and 135 acre-feet in the Laramie-Fox Hills aquifer. The Decree and Augmentation Plan approved the pumping of up to 0.50 acre-feet per year for a maximum of 300 years for the yet to be constructed well on Lot 2 from the Arapahoe aquifer.

ATTORNEYS

NATHAN J. WHITNEY
STEVEN W. MARTYN

STEVEN A. KLAFFKY
DOREY L. SPOTTS

LORI L. SEAGO

BRYAN E. SCHMID
MERI V. GERINGER

TERRY A. SAMPLE
ERIKA M. KEECH

There is an exempt domestic well currently located on the Applicant's property under Well Permit No. 172655. This well will continue to be used on one of the subdivided lots (Lot 1) and will not be included in the augmentation plan based on the Decree. This permitted well may pump up to 0.29 acre-feet per year.

The approved augmentation plan has a term of 300 years and requires that non-evaporative septic system return flows be used for augmentation during the pumping period for the approved well yet to be constructed on Lot 2.¹ Applicant must reserve 135 acre-feet of its water rights in the Laramie-Fox Hills aquifer which shall be used for replacement of post-pumping depletions.

State Engineer's Office Opinion

4. In a letter dated December 23, 2024, the State Engineer broke down the estimated annual water requirement totals to be . . . "0.72 acre-feet for both lots. The proposed well for Lot 2 will be completed into the Arapahoe aquifer and withdraw 0.44 acre-feet/year for use in a single-family residence, lawn and garden irrigation and animal watering. The applicant is proposing to continue use of the existing well with Permit no. 172655 for Lot 1 at an estimated rate of 0.28 acre-feet/year." The State Engineer noted that the wells will produce from the Denver and Arapahoe aquifers pursuant to the augmentation plan decreed in Case No. 2023CW3045.

Finally, the State Engineer provided their opinion, ". . . pursuant to CRS 30-28-136(1)(h)(l), it is our opinion that the proposed water supply can be provided without causing material injury to decreed water rights, and is **adequate**, so long as the plan for augmentation is operated according to its decreed terms and conditions."

Recommended Findings

5. Quantity and Dependability. Applicant's water demand for Kettle Creek Estates Filing No. 2 is 0.72 acre-feet per year for a total demand of 216 acre-feet for the subdivision for 300 years. The Decree allows for the permitted well to withdraw 0.29 acre-feet from the Denver aquifer for a total of 87 acre-feet over 300 years and the Decree and Augmentation Plan allows for an additional well to withdraw water from the Arapahoe aquifer for a maximum withdrawal of 0.50 acre-feet per year, for a total of 150 additional acre-feet over 300 years.

Based on the water demand of 0.72 acre-feet/year for Kettle Creek Estates Filing No. 2 and the Decree's allowable amount of 0.29 acre-feet per year for the permitted well on Lot 1 and up to 0.50 acre-feet per year for the additional well for Lot 2, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for Kettle Creek Estates Filing No. 2.

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

¹ The augmentation plan does not apply to the permitted well #172655.

7. Basis. The County Attorney's Office reviewed the following documents in preparing this review: a *Water Resources Report* dated March 2024, the *Water Supply Information Summary*, the *State Engineer's Office Opinion* dated December 23, 2024, and Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 2 Case No. 2023CW3045 entered on December 3, 2024. The recommendations herein are based on the information contained in such documents and on compliance with the requirements set forth below. ***Should the information relied upon be found to be incorrect, or should the below requirements not be met, the County Attorney's Office reserves the right to amend or withdraw its recommendations.***

REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with all requirements of the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 2023CW3045, specifically, that water withdrawn from the Arapahoe aquifer by the not yet constructed well shall not exceed 0.50 annual acre-feet, and the exempt well under permit no. 172655 shall not withdraw in excess of 0.29 annual acre-feet. Depletions during pumping for the not yet constructed well shall be replaced by individual on-lot non-evaporative septic systems.

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

C. Applicant shall create restrictive covenants 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 the Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 2 Case No. 2023CW3045.

Covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve at least 132 acre-feet of Arapahoe aquifer water, 84 acre-feet of Denver aquifer water and 135 acre-feet of Laramie-Fox Hills aquifer water pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 2023CW3045 to satisfy El Paso County's 300-year water supply requirement for the 2 lots of the Kettle Creek Estates Filing No. 2. The Covenants shall further identify that 84 acre-feet of Denver aquifer water is allocated to Lot 1, and that 132 acre-feet (0.44 acre-feet/year) of Arapahoe aquifer water and 135 acre-feet of Laramie-Fox Hills aquifer water is allocated to Lot 2, in accordance with the Augmentation Plan. Said reservations shall not be

separated from transfer of title to the property and shall be used exclusively for primary water supply and augmentation.

2) Advise of responsibility for costs. The Covenants shall advise the lot owners and their successors and assigns of their obligations regarding the costs of operating the plan for augmentation, which include pumping of the Arapahoe well on Lot 2 in a manner to replace depletions during pumping and the cost of drilling a Laramie-Fox Hills aquifer well in the future to replace post-pumping depletions.

3) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require the owner of Lot 2 to use a non-evaporative septic system to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping and shall state that said return flows shall not be separately sold, traded, assigned, or used for any other purpose. The Covenants shall also include the following or similar language to ensure that such return flows shall only be used for replacement purposes: "Return flows shall only be used for replacement purposes, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned, or encumbered in whole or in part for any other purpose."

4) Address future lot conveyances. The following or similar language shall be included in the Covenants to address future conveyances of the lots subsequent to the initial conveyance made by Applicant/Declarant:

"The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 23CW3045 and the water rights therein are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."

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

6) Require well permits. The Covenants shall require that well permits be obtained pursuant to the requirements of Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 23CW3045 and C.R.S. § 37-90-137(4) and (10).

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

“Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which would alter, impair, or in any manner compromise the water supply for Kettle Creek Estates Filing No. 2 pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 23CW3045. Further, written approval of any such proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioners, after review by the County Attorney’s Office. Any amendments must be pursuant to the Division 2 Water Court approving such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such determination.”

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

“These Covenants shall not terminate unless the requirements of Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 23CW3045 are also terminated by the Division 2 Water Court and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

D. Applicant and its successors and assigns shall reserve in any deeds of the property Denver aquifer water in the decreed amount of 87 acre-feet for Lot 1 and Arapahoe aquifer water in the decreed amount of 150 acre-feet and Laramie-Fox Hills aquifer water in the decreed amount of 135 acre-feet for Lot 2. Said reservation shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for primary and replacement supply.

E. Applicant and its successors and assigns shall convey by recorded warranty deed these reserved Arapahoe, Denver and Laramie-Fox Hills aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Arapahoe, Denver and/or Laramie-Fox Hills aquifers underlying the respective lots to satisfy El Paso County’s 300-year water supply requirement.

Any and all conveyance instruments shall also recite as follows:

For the water rights and return flows conveyed for the primary supply (Arapahoe and Denver aquifers): “These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year water supply, and replacement

during pumping, for each of the lots of Kettle Creek Estates Filing No. 2. The water rights so conveyed and the return flows therefrom shall be appurtenant to each of the respective lots with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned, or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title.”

F. Applicant and its successors and assigns shall submit a Declaration of Covenants, Conditions, and Restrictions, form deeds, and any plat notes required herein to the Planning and Community Development Department and the County Attorney’s Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney’s Office prior to recording the final plat. Said Declaration shall cross-reference Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 2023CW3045 and shall identify the obligations of the individual lot owners thereunder.

G. Applicant and its successors and assigns shall record all applicable documents, including but not limited to agreements, assignments, warranty deeds regarding the water rights, and Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

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

cc: Ryan Howser, Project Manager, Planner

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. VR246
KETTLE CREEK ESTATES FILING NO. 2

WHEREAS, J + M Investments, LLC did file an application with the El Paso County Planning and Community Development Department for approval of a Vacation and Replat request creating 2 single-family residential lots from 1 single-family residential lot within the RR-2.5 (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 February 20, 2025; 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 Section 7.2.3.C.4 of the Land Development Code ("Code") (as amended):

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 Engineering Criteria Manual ("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, a sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of Subdivision proposed, as determined in accordance with the standards set forth in the water supply standards [C.R.S. § 30-28-133(6)(a)] and the requirements of Chapter 8 of the Code.

NOW, THEREFORE, BE IT RESOLVED, the El Paso County Planning Commission recommends that the petition of J + M Investments, LLC for approval of a Vacation and Replat creating 2 single-family residential lots from 1 single-family residential lot within the RR-2.5 (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 Final Plat.
4. 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.

NOTATIONS

1. The following fees are required to be paid to El Paso County at the time of Final Plat recordation:
 - a. Drainage Fees in the amount of \$5,162.85 for the Kettle Creek Drainage Basin (FOMO3000).
 - b. Park fees in lieu of land dedication in the amount of \$1,010.00 for Regional Parks (Area 2).
 - c. Fees in lieu of school land dedication in the amount of \$612.00 shall be paid for the benefit of Academy School District No. 20.
2. Final Plats not recorded within 24 months of Board of County Commissioner approval shall be deemed expired unless an extension is approved.
3. Site grading or construction, other than installation or initial temporary control measures, may not commence until a Preconstruction Conference is held with Planning and Community Development Inspections and a Construction Permit is issued by the Planning and Community Development Department.

- 4. The El Paso County Road Impact Fee Program Resolution: 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 Resolution No. 24-377), 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.

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
Jim Byers	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
Eric Moraes	aye / no / non-voting / recused / absent
Bryce Schuettpelz	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 20th day of February 2025 at Colorado Springs, Colorado.

EL PASO COUNTY PLANNING COMMISSION

By: _____
Chair

EXHIBIT A

LOT 1, KETTLE CREEK ESTATES, AS RECORDED IN THE RECORDS OF THE EL PASO COUNTY CLERK
AND RECORDERS UNDER RECEPTION NO. 223715184.
CONTAINING 5.13 ACRES MORE OR LESS
EL PASO COUNTY
STATE OF COLORADO