

# EL PASO

COMMISSIONERS:  
DARRYL GLENN (PRESIDENT)  
MARK WALLER (PRESIDENT PRO TEMPORE)



# COUNTY

STAN VANDERWERF  
LONGINOS GONZALEZ  
PEGGY LITTLETON

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO:** El Paso County Planning Commission  
Jim Egbert, Chair

**FROM:** Nina Ruiz, Planner II  
Daniel Torres, PE Engineer II  
Craig Dossey, Executive Director

**RE:** Project File #: MS-18-002  
Project Name: Hudson Minor Subdivision  
Parcel No.: 51000-00-323

OWNER:	REPRESENTATIVE:
Greg & Sheri Hudson 20310 Black Forest Road Colorado Springs, CO 80908	Jerome W. Hannigan & Associates, Inc. 19360 Spring Valley Road Monument, CO 80132

**Commissioner District: 1**

Planning Commission Hearing Date:	10/16/2018
Board of County Commissioners Hearing Date	11/13/2018

## EXECUTIVE SUMMARY

A request by Greg & Sheri Hudson for approval of a four (4) lot minor subdivision to split a 38 acre parcel into: one 18.14 acre lot, one 5.59 acre lot, one 5.73 acre lot, one 6.25 acre lot, dedicated right-of-way for a cul-de-sac for access to the four lots, and dedicated right-of-way along Black Forest Road. The parcel is located west of Black Forest Road, approximately one quarter (1/4) of a mile south of County Line Road and is within Section 5, Township 11 South, Range 65 West of the 6<sup>th</sup> 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/AUTHORIZATION**

**Request:** A request for approval of a minor subdivision approval to create four (4) single-family lots within the RR-5 (Residential Rural) zoning district.

**Waiver(s):** There are no waivers or modifications associated with the request.

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

## **B. PLANNING COMMISSION SUMMARY**

**Request Heard:**

**Recommendation:**

**Waiver Recommendation:**

**Vote:**

**Vote Rationale:**

**Summary of Hearing:**

**Legal Notice:**

## **C. APPROVAL CRITERIA**

In approving a minor subdivision, the Planning Commission and the Board of County Commissioners shall find that the request meets the criteria for approval for a final plat outlined in Section 7.2.1 of the El Paso County Land Development Code (2018):

- 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)	Residential
West: RR-5 (Residential Rural)	Vacant

#### **E. BACKGROUND**

The parcel was zoned A-5 (Agricultural) on September 21, 1965, when zoning was first initiated for this area of El Paso County. Due to changes in the nomenclature of the El Paso County Land Development Code, the A-5 zoning district has been renamed as the RR-5 (Residential Rural) zoning district. The original 806 square-foot dwelling was constructed in 2004. In 2017, the applicants received approval to convert the original 806 square-foot dwelling into a guest house in order to construct a new principle dwelling on the same property.

If the minor subdivision request is approved as proposed, then the guest house would become the principle dwelling on Lot 3 and the new home constructed in 2017 will be the principle dwelling on Lot 4. The wells and septic systems will be fully contained on the individual lots they serve and the existing structures will meet the setback requirements of the RR-5 zoning district.

## **F. ANALYSIS**

### **1. Land Development Code Compliance**

The subject property is zoned RR-5 (Residential Rural) and is surrounded by RR-5 zoned properties on all sides. The parcels located east of Black Forest Road have been developed and are part of the County Line Estates subdivision, which includes lot sizes ranging from 5 to 10 acres in size. The parcels located immediately adjacent to the north, south, and west are undeveloped but each property could be subdivided in the future into lots with a minimum lot size of 5 acres pursuant to the current RR-5 zoning. The Elk Creek Ranches development, located approximately one-half (1/2) mile to the west of the subject parcel, includes 131 lots and has an average lot size of 5.63 acres. The proposed subdivision is consistent with the surrounding development in terms of density and land use.

### **2. Zoning Compliance**

The subject parcel is 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 acre
- 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 applicants are requesting approval of a minor subdivision to split the 38 acre parcel into four lots and dedicated right-of-way. The proposed lots will meet the dimensional standards of the RR-5 zoning district. The existing homes discussed in the Background section above (guest house and principle dwelling) will meet the setback requirements of the RR-5 zoning district should the minor subdivision be approved.

### 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 9.2.2 – Require advance right-of-way reservation and/or dedication for transportation facilities as part of the land development process.***

The subject property is zoned RR-5 (Residential Rural) and is surrounded by RR-5 zoned properties on all sides. The parcels located east of Black Forest Road have been developed and are part of the County Line Estates subdivision, which includes lot sizes ranging from 5 to 10 acres in size. The parcels located immediately adjacent to the north, south, and west are undeveloped but each property could be subdivided in the future into lots with a minimum lot size of 5 acres pursuant to the current RR-5 zoning. The Elk Creek Ranches development, located approximately one-half (1/2) mile to the west of the subject parcel, includes 131 lots and has an average lot size of 5.63 acres. The proposed subdivision is contiguous to and compatible with the previously developed areas.

With the minor subdivision, the applicant will dedicate right-of-way to El Paso County for a new cul-de-sac to serve the proposed four lots. The cul-de-sac, HT Ranch Trail, is proposed to align directly across Black Forest Road from Cooper Grove and, as designed, will meet all of the requirements of the Engineering Criteria Manual (2016). 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 6, the Northeastern Area. The Plan discourages development within this subarea but recommends a density of 1 dwelling unit per

5 acres should development occur. The applicants are proposing a four lot minor subdivision with an average density of one dwelling unit per 9.5 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 application.” 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 that development of the property will have 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 potential stream terrace deposits in the area of the subject property. A mineral rights certification was prepared by the applicant indicating that, upon researching the records with El Paso County, no severed mineral rights exist.

Consistency with the Major Transportation Corridors Plan is discussed in greater detail in the Transportation section of this report below.

## **G. PHYSICAL SITE CHARACTERISTICS**

### **1. Hazards**

A portion of the subdivision has slopes exceeding 30 percent. This specific area of the property has been designated as a “no build” area on the final plat. The Colorado Geologic Survey (CGS) was sent a referral for the minor subdivision and had no objection.

### **2. Wildlife**

The El Paso County Wildlife Habitat Descriptors (1996) identifies that development of the property will have a moderate wildlife impact potential.

### **3. Floodplain**

The site is not impacted by any designated floodplain as indicated by FEMA’s Flood Insurance Rate Map Number 08041CO325F, dated March 17, 1997.

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

The property is located within the East Cherry Creek (CYCY0200) drainage basin which is unstudied with no associated drainage and bridge fees.

The site generally drains southeasterly. Stormwater runoff is conveyed through the subdivision via 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 Section I.7.1 of the El Paso County Engineering Criteria Manual (2016).

Per the associated drainage report, platting and development of the four proposed lots will result in a minimal impact on downstream drainage facilities.

A grading and erosion control plan has been submitted with this application. The plan calls for construction best management practices (BMPs) to prevent sediment and debris from affecting adjoining properties and the public stormwater system before and during grading activities.

#### **5. Transportation**

Access to this subdivision is from Black Forest Road via a proposed cul-de-sac. The platting of this subdivision will result in the dedication of approximately 475 feet of developer-constructed rural gravel local roadway for ongoing County ownership and maintenance. The 2040 roadway classification in the 2016 Major Transportation Corridors Plan Update identifies Black Forest Road as a Rural Minor Arterial with a right-of-way width of 100 feet.

The Black Forest roadway is not centered within the existing right-of-way adjacent to this site. The existing right-of-way width along Black Forest Road is approximately 75 feet. This subdivision is dedicating 45 feet of right-of-way to assure we have adequate right-of-way on the west side of the road. This dedication will result in a total right-of-way width exceeding the 100 feet required for a Rural Minor Arterial roadway.

Lots within the subdivision are subject to the El Paso County Road Impact Fee Program (Resolution 16-454). Fees for each lot 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 residences on the subject property are served by onsite wastewater treatment systems (OWTS). All residence constructed in the future are also proposed to be served by individual OWTSs. The El Paso County Health and Environment Department had no objection to the proposed minor subdivision.

### **3. Emergency Services**

The site is located within the boundaries of the Tri-Lakes Monument Fire Protection District. The District was sent a referral and had no comment.

### **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**

Regional park fees (Region 2) in lieu of park land dedication in the amount of \$1,720.00 will be due at the time of plat recordation.



## **7. Schools**

The development is located within the boundaries of Lewis-Palmer School District No. 38. Fees in lieu of school land dedication in the amount of \$1,232.00 will be due at the time of plat recordation.

## **I. APPLICABLE RESOLUTIONS**

Approval	Page 19
Disapproval	Page 20

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

There are no major outstanding issues.

## **K. 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 (2018) staff recommends the following conditions and notations:

### **CONDITIONS**

1. All Deed of Trust holders shall ratify the plat. The applicant shall provide a current title commitment at the time of submittal of the Mylar for recording.
2. Colorado statute requires that at the time of the approval of platting, the subdivider provides the certification of the County Treasurer's Office that all ad valorem taxes applicable to such subdivided land, or years prior to that year in which approval is granted, have been paid. Therefore, this plat is approved by the Board of County Commissioners on the condition that the subdivider or developer must provide to the Planning and Community Development Department, at the time of recording the plat, a certification from the County Treasurer's Office that all prior years' taxes have been paid in full.
3. The subdivider or developer must pay, for each parcel of property, the fee for tax certification in effect at the time of recording the plat.
4. The Applicant shall submit the Mylar to Enumerations for addressing.
5. Developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers and the U.S. Fish and

Wildlife Service regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed species.

6. Driveway permits will be required for each access to an El Paso County owned and maintained roadway. Driveway permits are obtained from the El Paso County Planning and Community Development Department.
7. The Subdivision Improvements Agreement, including the Financial Assurance Estimate, as approved by the El Paso County Planning and Community Development Department, shall be filed at the time of recording the Final Plat.
8. Collateral sufficient to ensure that the public improvements as listed in the approved Financial Assurance Estimate shall be provided when the final plat is recorded.
9. The Subdivider(s) agrees on behalf of him/herself and any developer or builder successors and assignees that Subdivider and/or said successors and assigns shall be required to pay traffic impact fees in accordance with the El Paso County Road Impact Fee Program Resolution (Resolution No. 16-454), or any amendments thereto, at or prior to the time of building permit submittals. The fee obligation, if not paid at final plat recording, shall be documented on all sales documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.
10. Regional park fees (Region 2) in-lieu of park land dedication in the amount of \$1,720.00 will be due at the time of plat recordation.
11. Fees in-lieu of school land dedication in the amount of \$1,232.00 will be due at the time of plat recordation.

## **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 six (6) adjoining property owners on September 26, 2018, 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

PARCEL	NAME
5100000323	HUDSON GREGORY JOSEPH

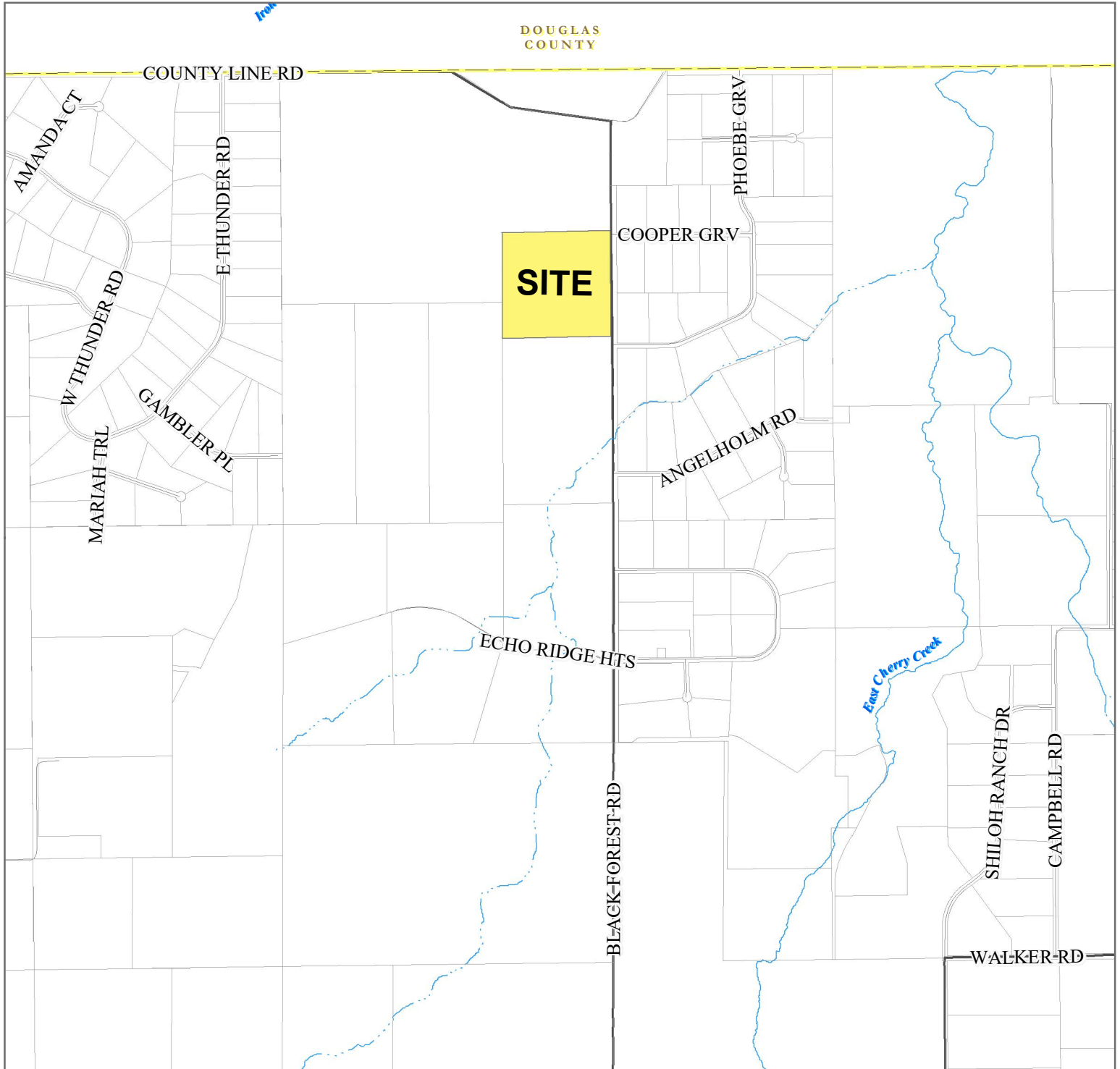
File Name: MS-18-002

Zone Map No.: --

ADDRESS	CITY	STATE
20310 BLACK FOREST RD	COLORADO SPRINGS	CO

ZIP	ZIPLUS
80908	1152

Date: September 18, 2018



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



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LETTER of INTENT  
for the proposed  
HUDSON MINOR SUBDIVISION  
El Paso County, Colorado.

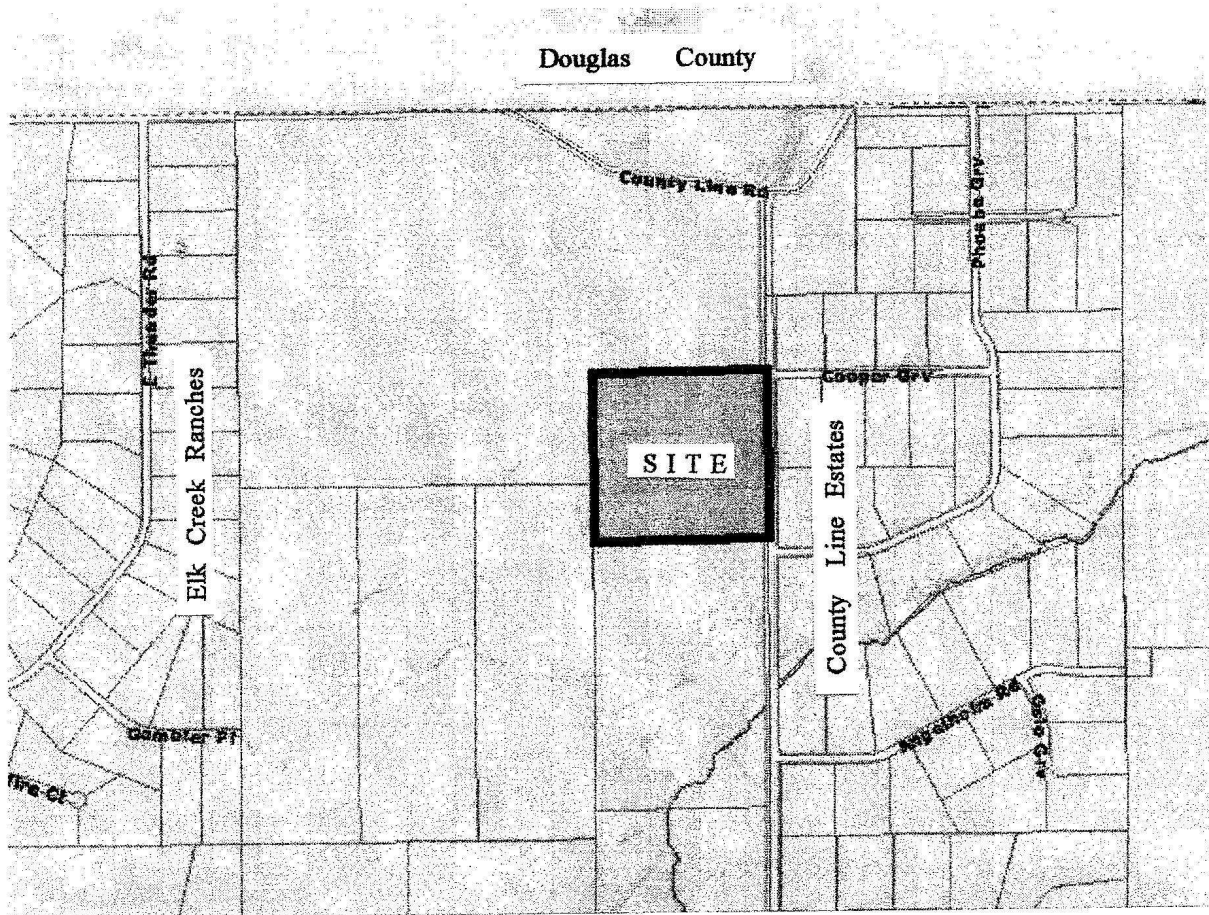
Prepared for: Greg & Sheri Hudson  
20310 Black Forest Road  
Colorado Springs, Colorado 80908

and Jon & Marcy Hudson  
18015 Woodhaven Drive  
Colorado Springs, Colorado 80908

Prepared by: Jerome W. Hannigan and Associates, Inc  
19360 Spring Valley Road  
Monument, Colorado 80132  
February - March, 2018  
Revised May 09, 2018  
Revised August 17, 2018

LETTER of INTENT  
for the proposed  
HUDSON MINOR SUBDIVISION  
El Paso County, Colorado.

Hudson Minor Subdivision is a proposed four lot subdivision of 38 acres located in Section 05, T11S, R65W of the 6th P.M., El Paso County. More generally, the property lies in the northeastern part of the County, about 4.5 miles east of Highway 83, just south of County Line Road, and on the west side of Black Forest Road. The street address is 20310 Black Forest Road. The parcel schedule number is 51000-00-323. The property has previously been used as grazing for cattle. Currently the property includes one existing home constructed in 2004 (on proposed lot 3) and one new home currently under construction (on lot 4). Each home has an onsite wastewater treatment system. Currently there is one well onsite, now being re-permitted. Existing and proposed zoning is RR-5. Each of the four lots is proposed to become the new residence of a family member.



(2)

Adjoining to the north and northwest of the property is about 200 acres of ranch land, still used for grazing. West of that is Elk Creek Ranches, a residential subdivision of 5 acre homesites. Adjoining the property to the southwest are three 50 acre parcels that are also used for grazing and directly south lies a 60 acre parcel that is residential/agricultural in use. Across, on the east side of Black Forest Road lies County Line Estates, with perhaps fifty or sixty 5 acre lots. Shiloh Pines Subdivision lies south of that. This area of the County is rather more populated than most folks realize. Subdivisions of 5 acre residential lots are common.

The County small area plan that applies to this parcel is the Black Forest Preservation Plan. The property lies in Plan Unit 7, The Northeastern Area. Recommended lot sizes are 5 acres or greater. The four lot sizes proposed are Lot 1 = 18.14 acres, Lot 2 = 5.59 acres, Lot 3 = 5.73 acres and Lot 4 = 6.25 acres.

Access to the property will be through a short cul-de-sac that is to be constructed directly across from the existing Cooper Grove, a County dedicated road in County Line Estates. This new-cul-de-sac will be dedicated to the County and the four new lots will each access from it, rather than from Black Forest Road. The gravel drive that serves the two existing homes will be abandoned and reclaimed. Separate new drives will serve these two homes and the two to be constructed. The east property line of the 38 acres lies within Black Forest Road and a total width of 45 feet will be dedicated along the entire east line for Black Forest Road right of way so that in the future adequate right of way will be available for expansion.

Soils are suitable for residential uses. The site is not undermined and it is located outside any mapped FEMA floodplain. It does not contain, nor is it exposed to any identified geologic hazards that would preclude the proposed residential use and density. Steep slopes (in excess of 30%) may be encountered along drainages. These have been mapped and identified as No Build Areas. Individual lot specific geotechnical investigations, prepared by a Professional Geologist for both structural and leach field design, are required prior to building permit application.

Electricity is provided by Mountain View Electric. Natural gas is provided by Black Hills Energy. Individual onsite wastewater systems have been permitted and installed that serve each of the two existing homes and two more individual on lot systems are proposed to address the need for those homes. Fire protection is provided by the Tri Lakes Monument Fire Protection District who have agreed to serve. The property is grass land and wildfire concerns are therefore somewhat lower than areas that are forested. TLMFPD Station Number 2 is closest at Highway 105 and Roller Coaster Road. Station 2 houses an engine, an ambulance and a brush truck. It is manned with 4 personnel at all times. Response time is 8 minutes. Two other stations (#1 & 3) are located in Monument.

Water is, and will be provided to each home through an individual on lot well drilled into the Dawson formation in accordance with the Court approved water adjudication and augmentation plan. The existing well is located on what is proposed to be Lot 2.

(3)

Water and water rights were decreed to the Hudsons in Water Division No. 1 in Consolidated Case No. 16CW3180 and 16CW3090 in the following amounts:

3498 acre feet of water and water rights in the not nontributary Dawson aquifer;  
2747 acre feet of water and water rights in the nontributary Denver aquifer;  
1745 acre feet of water and water rights in the nontributary Arapahoe aquifer;  
1141 acre feet of water and water rights in the nontributary Laramie-Fox Hills aquifer.

The approved plan for augmentation allows for the use of up to 6 wells completed in the Dawson aquifer. Each well may withdraw up to 0.815 acre feet (265,569 gallons) of water per year. Not more than 4.89 acre feet per year may be withdrawn in total. Each well must be used for a residence and is limited to a maximum pumping rate of 15 gallons per minute. The water is expected to be used for indoor uses for drinking and sanitary purposes in the principal houses and in detached guest houses or offices, for livestock watering, for landscape and garden irrigation, hot tubs, swimming pools, and decorative ponds and fountains, for augmentation purposes through septic system return flows, and for all beneficial uses except municipal uses. Thus it can be seen that sufficient water to support the proposed four lots is available for the County required 300 years.

In summary, this proposed four lot minor subdivision is in general conformance with the master plan, it is compatible with the uses and parcel sizes in the area and it will be adequately served by utility and service providers. Soils are suitable for the proposed onsite wastewater treatment, geology presents no hazards that cannot be avoided or mitigated (No Build excessive slope areas are mapped) and water, sufficient in quantity and dependability is available. Water quality in the Dawson aquifer is quite good as attested by the existing well water.







March 29, 2018

Nina Ruiz  
El Paso County Development Services Department  
[DSDcomments@elpasoco.com](mailto:DSDcomments@elpasoco.com)

**RE:** Hudson Minor Subdivision  
Part of the SW ¼ of the NW ¼ and the NW ¼ of the SW ¼, Section 5, T11S, R65W, 6<sup>th</sup> P.M.  
Water Division 1, Water District 8

Dear Ms. Ruiz,

We have reviewed the submittal documents related to Hudson Minor Subdivision, concerning the above referenced proposal to subdivide a 38 acre parcel into 4 single-family residential lots (greater than 5 acres per lot).

#### Water Supply Demand

Based on the water supply information summary provided, the estimated annual demand for each residential lot is 0.815 acre-feet per year for 300 years, which will be used for in house use (0.26 acre-feet), irrigation of 0.2 acres of irrigated area (1.8 acre-feet), and stockwatering of up to 8 large domestic animals (0.099 acre-feet) and other uses not limited to drinking and sanitary purposes inside principal house and in stand-alone home offices or guest cottages, for livestock watering, for landscape and garden irrigation, hot tubs, swimming pools and decorative uses such as decorative ponds and fountains and augmentation through septic system return flows (0.321 acre-feet). The total annual water requirement for the four proposed lots is 3.26 acre-feet.

#### Source of Water Supply

The proposed water source is individual on lot wells constructed in the Dawson aquifer operating pursuant to the decreed augmentation plan in consolidated case nos. 2016CW3180 (Division 1) and 2016CW3090 (Division 2). The decree quantified the amount of water underlying the subject 38.02 acre parcel. According to the decree the following amounts of water were determined to be available underlying the 38.02-acre parcel:

Aquifer	Annual amount available for 38.02 acre parcel (acre-feet)	
	Based on 100 year allocation approach	Based on 300 year allocation approach
Dawson	35	11.7
Denver	27.5	9.2
Arapahoe	17.5	5.8
Laramie-Fox Hills	11.4	3.8

There is an existing well on the property with well permit no. 81832-F. This well is constructed in the Dawson aquifer and operates pursuant to the decreed augmentation plan in Division 1 Water Court Case no. 16CW3180 and may withdraw 0.815 acre-foot/year for household use inside one single family dwelling, livestock watering and the irrigation of home lawn and garden.



The decreed augmentation plan in Division 1 Water Court Case no. 16CW3180 allows for the annual withdrawal of 4.89 acre-feet from the not nontributary Dawson aquifer for up to six individual on lot wells, based on a 300 year allocation approach. The augmentation plan states the ground water allocation for each residential lot is 0.815 acre-feet per year for 300 years, which will be used for indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, for livestock watering, for landscape and garden irrigation, hot tubs, swimming pools and decorative uses such as decorative ponds and fountains and augmentation through septic system return flows.

The proposed source of water for this subdivision is a bedrock aquifer in the Denver Basin. The State Engineer's Office does not have evidence regarding the length of time for which this source will be a physically and economically viable source of water. According to 37-90-137(4)(b)(I), C.R.S., "Permits issued pursuant to this subsection (4) shall allow withdrawals on the basis of an aquifer life of one hundred years." Based on this allocation approach, the annual amounts of water decreed in consolidated case nos. 16CW3180 and 16CW3090 are equal to one percent of the total amount, as determined by rules 8.A and 8.B of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7. Therefore, the water may be withdrawn in those annual amounts for a maximum of 100 years.

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

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

The State Engineer's Office does not have evidence regarding the length of time for which this source will "meet the average annual demand of the proposed subdivision." However, treating El Paso County's requirement as an allocation approach based on three hundred years, the annual demand for the subdivision is less than the allowed average annual amount of withdrawal of 4.89 acre-feet/year, allowed by the augmentation plan. As a result, the water may be withdrawn in that annual amount for a maximum of 300 years.

Applications for on lot well permits, submitted by entities other than the water court Applicants, must include evidence that the Applicant has acquired the right to the portion of the water being requested on the application.

### **State Engineer's Office Opinion**

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

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

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

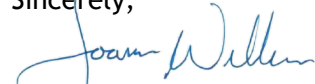
Our opinion is qualified by the following:

The Division 1 Water Court has retained jurisdiction over the final amount of water available pursuant to the above-referenced decree, pending actual geophysical data from the aquifer.

The amounts of water in the Denver Basin aquifers, and identified in this letter, are calculated based on estimated current aquifer conditions. For planning purposes the county should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than the 100 years (or 300 years) used for allocation due to anticipated water level declines. We recommend that the county determine whether it is appropriate to require development of renewable water resources for this subdivision to provide for a long-term water supply.

Should you or the Applicant have any questions, please contact Ailis Thyne of this office at 303-866-3581 x8216.

Sincerely,



Joanna Williams, P.E.  
Water Resource Engineer

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

**First Assistant County Attorney**  
Diana K. May

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MS-18-002 Hudson Minor Subdivision

Reviewed by: Lori Seago, Senior Assistant County Attorney   
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### FINDINGS AND CONCLUSIONS:

1. This is a proposal by Gregory Joseph Hudson, Sheri Lynne Hudson, Jonathan Ronald Hudson, and Marcy Lyn Hudson ("Applicant") for a 4-lot minor subdivision on a parcel of approximately 38 acres of land (the "Property"). There is currently an existing residence on the Property. A second residence is being constructed and there will eventually be 4 residences on the Property. The parcel is currently zoned RR-5 (Rural Residential).

2. The Applicant has provided for the source of water to derive from individual on-lot wells as decreed in District Court Water Division Consolidated Case Nos. 16CW3180 (Division 1) and 16CW3090 (Division 2) ("Decree"). An existing well (Well Permit No. 81832-F) is located on the Property. Pursuant to the Water Supply Information Summary, the source of the water supply will derive from the Dawson aquifer, operating pursuant to the augmentation plan noted in the Decree. Applicant estimates the annual water needs to serve the Property at 0.815 acre-feet per year for each of the lots (3.26 acre-feet/total), to include 0.26 acre-feet for in-house demand, 0.45 acre-feet for irrigation, and 0.247 acre-feet for stock watering of 2 large domestic animals, and 0.08 acre-feet for other uses. Based on Applicant's total demand of 3.26 acre-feet per year for the minor subdivision, Applicant must be able to provide a supply of 978 acre-feet of water (3.26 acre-feet per year x 300 years) to meet the County's 300 year water supply requirement.

3. In a letter dated March 29, 2018, the State Engineer reviewed the submittal to plat the approximately 38 acre parcel into a 4-lot minor subdivision. The State Engineer reviewed the Water Supply Information Summary, the Decree, and existing Well Permit No. 81832-F. The Engineer stated that the "water source is individual on-lot wells

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constructed in the Dawson aquifer operating pursuant to the decreed augmentation plan in consolidated case nos. 2016CW3180 (Division 1) and 2016CW3090 (Division 2).” The amounts of water decreed as identified by the State Engineer are summarized as follows:

Aquifer	Annual Allocation 100 Year (AF/Year)	Annual Allocation 300 Year (AF/Year)
Dawson	35	11.7
Denver	27.5	9.2
Arapahoe	17.5	5.8
Laramie-Fox Hills	11.4	3.8

The State Engineer notes that the Decree “allows for the annual withdrawal of 4.89 acre-feet from the not non-tributary Dawson aquifer for up to six individual on lot wells, based on a 300 year allocation approach. The augmentation plan states the ground water allocation for each residential lot is 0.815 acre-feet per year for 300 years, which will be used for indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, for livestock watering, for landscape and garden irrigation, hot tubs, swimming pools and decorative uses such as decorative ponds and fountains and augmentation through septic system return flows.”<sup>1</sup> The State Engineer further states that pursuant to C.R.S. § 30-28-136(1)(h)(I) and (II), “the proposed water supply is adequate and can be provided without causing injury to decreed water rights.”

The State Engineer also notes that there is an existing well located on the Property, which is identified in the Decree as Well Permit No. 185701 (subsequently known as Permit No. 81832), and pursuant to the decreed augmentation plan may withdraw 0.815 acre-feet of water per year. The State Engineer further notes that Applications for well permits submitted by entities other than the water court Applicants, “must include evidence that the Applicant has acquired the right to the portion of the water being requested on the application.”

4. Analysis. Applicant’s total water demand for the Hudson Minor Subdivision is 3.26 acre-feet/year. Pursuant to District Court Water Division Consolidated Case Nos. 16CW3180 (Division 1) and 16CW3090 (Division 2), there is an available water supply from the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers. The Decree permits withdrawal of 0.815 acre-feet/year for 6 wells from the Dawson aquifer for 300 years for a total water supply of 4.89 acre-feet/year. Based on the permitted withdrawal of 4.89 acre-feet annually for 300 years and an annual water demand of 3.26 acre-feet/year (4 wells at 0.815 acre-feet) there appears to be a sufficient water supply to meet the demands of the Hudson Subdivision utilizing the Dawson aquifer water supply.

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<sup>1</sup> Note: The State Engineer’s Office indicated stock watering of up to 8 large domestic animals. 8 animals is the total number permitted in the subdivision, not per each lot. Their analysis of stock watering of 0.099/acre-feet per the subdivision (0.247/lot) is accurate.

Applicant will also need to provide appropriate amounts of water to meet the replacement requirement in the Decree. Pursuant to the Decree, during pumping of the Dawson aquifer water, Applicant will replace actual depletions to the affected stream system utilizing non-evaporative septic system return flows. The Decree also requires post-pumping depletion augmentation and requires that the Applicant reserve 1,332 acre-feet of water from the nontributary Denver aquifer for replacement of post-pumping depletions.

5. 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 the Hudson Minor Subdivision.

6. Therefore, based on the finding of sufficiency and no injury by the State Engineer pursuant to their review of District Court Water Division Consolidated Case Nos. 16CW3180 (Division 1) and 16CW3090 (Division 2) and pursuant to the requirements below, the County Attorney's Office recommends a finding that the proposed water supply is sufficient in terms of quantity and dependability. There is a presumption of sufficient water quality.

#### REQUIREMENTS:

- A. Applicant and its successors and assigns shall comply with all requirements of Well Permit No. 81832-F.
- B. Applications for future well permits submitted by entities other than the water court Applicants must include evidence that the Applicant has acquired the right to the portion of the water being requested on the application.
- C. Pursuant to Section 8.4.7(B)(4)(e)(iii), Land Development Code, when there are 4 or more lots in a subdivision and there is a plan for replacement, the Applicant and its successors and assigns must create a homeowners' association ("HOA"). Applicant and its successors and assigns shall create restrictive covenants upon and running with the Property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of District Court Water Division Consolidated Case Nos. 16CW3180 (Division 1) and 16CW3090 (Division 2) ("Decree") and their obligations to comply with the same. Pursuant to the Decree, the water on the lots is "expected to be, but shall not be limited to, some or all of the following uses: for indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, for livestock watering, for landscape and garden irrigation, hot tubs, swimming pools, and decorative uses such as decorative ponds and fountains, and augmentation through septic system return flows." Said Covenants shall also ensure that return flows by the use of non-evaporative septic systems are made to the stream systems 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. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the Decree.

- D. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the Property the decreed amount of at least 0.815 acre-feet per lot annually or shall reserve a total decreed amount of at least 244.5 acre-feet of Dawson aquifer water for each lot for 300 years. 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. Applicant shall convey by recorded warranty deed these reserved Dawson aquifer water rights to the individual lot owners. Applicant shall provide copies of said Covenants or other such reservation and conveyance instruments to be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.
- E. Applicant shall assign or convey to the individual lot owners Applicant's interests, rights, and obligations in the Decree, including the replacement requirement, and shall create restrictive covenants upon and running with the Property which shall advise and obligate future lot owner(s) of this filing and their successors and assigns regarding all applicable requirements of the Decree as well as their obligations to comply with the replacement requirement ensuring that replacement water shall be withdrawn annually and be returned to the uppermost aquifer in the vicinity of the permitted points of withdrawal. Such assignment or conveyance shall be accomplished by an appropriate agreement and assignment or conveyance instrument that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.
- F. Given the replacement requirement of the augmentation plan in the Decree, Applicant, its successors and assigns, shall reserve in the Covenants a supply of 1,332 acre-feet of water from the Denver aquifer for post-pumping depletion augmentation. Applicants, its successors and assigns, shall be required to construct a Denver aquifer well at the time replacement of post-pumping depletions commences, pursuant to the Decree. Applicant and 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 Denver aquifer underlying the Property to comply with the Decree. Said Covenants or conveyance instruments shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for the replacement supply for the lots. Applicant shall provide said Covenants or other such reservation and/or conveyance instruments to 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.

- G. Applicant shall submit the Declaration of Covenants, Conditions, and Restrictions and any plat notes required herein to the Planning and Community Development Department and the County Attorney's Office for review, and the same must be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. Said Declaration shall cross-reference the Decree and shall recite the obligations of the individual lot owners under each of these documents.
- H. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, District Court Water Division Consolidated Case Nos. 16CW3180 (Division 1) and 16CW3090 (Division 2) agreements, assignments, and warranty deeds regarding the water rights, and Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.
- I. The following plat note shall be added that addresses the State Engineer's admonition to advise landowners of potential limited water supplies in the Denver Basin:

"Water in the Denver Basin Aquifers is allocated based on a 100 year aquifer life; however, for El Paso County planning purposes, water in the Denver Basin Aquifers is evaluated based on a 300 year aquifer life. Applicants, the Home Owners Association, and all future owners in the subdivision should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than either the 100 years or 300 years used for allocation indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers. Alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply."

cc: Nina Ruiz, Project Manager, Planner II