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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

TO: El Paso County Planning Commission
Brian Risley, Chair

FROM: Nina Ruiz, Planner III
Gilbert LaForce, PE Engineer II
Craig Dossey, Executive Director

RE: Project File #: MS-17-003
Project Name: SBR Racing Minor Subdivision
Parcel No.: 32000-00-325

| OWNER: | REPRESENTATIVE: |
|--|---|
| Kerry E Burt 21430 Spencer Rd Calhan, CO 80808 | Lee Seigel 12755 Thiebaud Ln Colorado Springs, CO 80908 |

Commissioner District: 2

| | |
|--|------------|
| Planning Commission Hearing Date: | 11/19/2019 |
| Board of County Commissioners Hearing Date | 12/10/2019 |

EXECUTIVE SUMMARY

A request by Kerry E Burt for approval of a minor subdivision of 40 acres to create two (2) agriculturally zoned lots. The applicant is requesting a waiver of Section 8.4.7 of the El Paso County Land Development Code (2019) for Lot 1 which requires a finding of water sufficiency. The County Attorney has made a recommendation of approval of the waiver request. The applicant has requested concurrent applications for a special use to allow for an outdoor amusement center and a rezoning of one of the parcels from the A-

35 (Agricultural) zoning district to the A-5 (Agricultural) zoning district. The property is located north of Spencer Road and approximately 2.25 acres west of North Ellicott Highway and is within Section 22, Township 12 South, Range 63 West of the 6th P.M. The property is located in the Falcon/Peyton Small Area Master Plan (2006).

The applicant wishes to subdivide the land into 2 lots (Lot 1 being 35 acres and Lot 2 being 5 acres) and sell the 35 acre racetrack area to the tenant who operates the racetrack. The racetrack is considered legal-nonconforming due to the use being established in 1994, prior to when zoning was initiated for this portion of the County in 1999. The purpose of Section 5.6, Legal Nonconformities is "This Section is intended to recognize the interests of the property owner in continuing the nonconformity but also to preclude the extension, expansion, or change in character of the nonconformity or the reestablishment of the nonconformity after it has been abandoned." An increase in the allowed density of the subject parcel due to subdivision would result in a change in character of the nonconforming use, which requires the use to be legalized.

A racetrack may be categorized as "Outdoor Amusement Center" and is defined as:

"An establishment, which can be contained in part by a structure, but is largely exposed to the weather, designed or intended to provide entertainment or recreation for the general public characterized by being open for specific hours, receiving remuneration, advertising activities or use of the property, using sanctioned leagues, or holding organized events. The term includes, among other things, drive-in theaters, amusement parks, carousels, miniature golf courses, golf courses and driving ranges, go-cart tracks, skateboard parks, water parks, and privately-owned outdoor recreational facilities, but does not include bars, nightclubs, or sexually-oriented businesses. Accessory uses may include the preparation and serving of food or sale of equipment related to the identified uses."

An outdoor amusement center is a special use in the A-35 zoning district. If the map amendment (rezone) and minor subdivision are approved, the PCD Director may approve the special use to allow the racetrack to continue onsite.

A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION

Request: A request by Kerry E Burt for approval of a minor subdivision to create two (2) agriculturally zoned lots.

Waiver(s)/Deviation(s): The applicant has requested a waiver of Section 8.4.7 of the El Paso County Land Development Code (2019) for Lot 1 only which requires a finding of sufficiency.

Section 8.4.7(A)(3) provides for certain exceptions:

- Subdivisions which will not use water;
- Agricultural uses not associated with residential, commercial, or industrial activities requiring subdivision approval;

- A proposed subdivision which, by reason of the nature, type and extent of the proposed development, will not require a water supply as prescribed herein. Subdivisions meeting this requirement are not designed or developed for permanent occupation or habitation. The determination shall be made by the BoCC, following recommendations by the OCA, PCD Director, or County Hydrogeologist, on a case-by-case basis, and shall be based on a specific request and supporting evidence presented by the applicant along with recommendations of the Planning Commission. If exempted by the BoCC, any subsequent change in the subdivision as approved may require compliance with this Section;
- A vacation or vacation and replat of an existing subdivision or lots within an existing subdivision or any plat change, any of which will not result in significantly greater total water use than previously anticipated for the subdivision. All determinations as to the significance of the change in water use shall be made by the BoCC, with recommendations by the County Hydrogeologist or OCA; and
- The Planning Commission may recommend and the BoCC may, on a case-by-case basis, waive any or all of the requirements of this Section pursuant to a waiver application; however the finding of sufficiency for the quality, quantity, and dependability for water supplies shall not be waived.

The applicant's letter of intent provides the following justification:

Applicant is requesting a waiver to allow approval of the final plat for the subdivision with approval of Lot 1 as a "dry lot" with no requirement of water for approval, consistent with Section 8.4.7(A)(3) of the Land Development Code. Presently, no water is used in the kart racing operation on Lot 1, and Applicant does not expect any need for a water source in the near future. The groundwater determination process through the Colorado Ground Water Commission, including approval of a replacement plan that was recently completed for the Property, provides evidence of a 300-year water supply on Lot 2 for continued in-house use of the existing well, without the requirement that a well be constructed on Lot 1. The replacement plan further provides that the owner of Lot 1 may, but is not required to, elect to drill a nontributary Arapahoe aquifer well for commercial uses thereon, which will then allow for expanded types of use from the existing Denver aquifer well on Lot 2 if and only if such Arapahoe well is drilled and utilized on Lot 1. In either scenario, a 300-year water supply will be evidenced as described in the approved replacement plan. Initially, and for the foreseeable future, Lot 1 may be a "dry lot".

The County Attorney's Office believes the Applicant's historic use and stated intent is to continue to use the Lot 1 as a "dry lot" without a requirement for running water and sewer service, and therefore recommends approval of the waiver request. Should the Board of County Commissioners approve the waiver request, the applicant has added a plat note to the minor subdivision to notify future owners that this lot has been designated as a "dry lot" and will require change in water supply approval if water is to be utilized onsite in the future.

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

B. PLANNING COMMISSION SUMMARY

Request Heard:

Recommendation:

Waiver Recommendation:

Vote:

Vote Rationale:

Summary of Hearing:

Legal Notice:

C. APPROVAL CRITERIA

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

- The subdivision is in conformance with the goals, objectives, and policies of the Master Plan;
- The subdivision is in substantial conformance with the approved preliminary plan;
- The subdivision is consistent with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analyses, studies, reports, plans, designs, documents, and other supporting materials;
- A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in the water supply standards [C.R.S. §30-28-133(6)(a)] and the requirements of Chapter 8 of this Code;
- A public sewage disposal system has been established and, if other methods of sewage disposal are proposed, the system complies with State and local laws and regulations, [C.R.S. §30-28-133(6)(b)] and the requirements of Chapter 8 of this Code;
- All areas of the proposed subdivision which may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified and that the proposed subdivision is compatible with such conditions [C.R.S. §30-28-133(6)(c)];

- Adequate drainage improvements are proposed that comply with State Statute [C.R.S. §30-28-133(3)(c)(VIII)] and the requirements of this Code and the ECM;
- Legal and physical access is provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with this Code and the ECM;
- Necessary services, including police and fire protection, recreation, utilities, and transportation systems, are or will be made available to serve the proposed subdivision;
- The final plans provide evidence to show that the proposed methods for fire protection comply with Chapter 6 of this Code;
- Off-site impacts were evaluated and related off-site improvements are roughly proportional and will mitigate the impacts of the subdivision in accordance with applicable requirements of Chapter 8;
- Adequate public facilities or infrastructure, or cash-in-lieu, for impacts reasonably related to the proposed subdivision have been constructed or are financially guaranteed through the SIA so the impacts of the subdivision will be adequately mitigated;
- The subdivision meets other applicable sections of Chapter 6 and 8; and
- The extraction of any known commercial mining deposit shall not be impeded by this subdivision [C.R.S. §34-1-302(1), et seq.]

D. LOCATION

| | |
|----------------------------|--------------|
| North: A-35 (Agricultural) | Agricultural |
| South: A-35 (Agricultural) | Agricultural |
| East: A-35 (Agricultural) | Agricultural |
| West: A-35 (Agricultural) | Agricultural |

E. BACKGROUND

The property was zoned A-35 (Agricultural) on March 25, 1999, when zoning was first established for this area of the County. The applicant wishes to subdivide the land into 2 lots (Lot 1 being 35 acres and Lot 2 being 5 acres) and sell the 35 acre racetrack area to the operator of the racetrack. The minimum lot size requirement for the A-35 zoning district is 35 acres. The applicant is requesting to rezone five (5) acres of the 40 acre parcel to the A-5 zoning district, which requires a minimum lot size of five (5) acres, so that the land may be subdivided.

The racetrack is considered legal-nonconforming due to the use being established in 1994, prior to when zoning was initiated for this portion of the County in 1999. The purpose of Section 5.6, Legal Nonconformities is "This Section is intended to recognize the interests of the property owner in continuing the nonconformity but also to preclude the extension, expansion, or change in character of the nonconformity or the reestablishment of the nonconformity after it has been abandoned." An increase in the allowed density of the subject parcel due to subdivision would result in a change in character of the nonconforming use, which requires the use to be legalized.

A racetrack falls under the use categorization of “Outdoor Amusement Center” and is defined as:

An establishment, which can be contained in part by a structure, but is largely exposed to the weather, designed or intended to provide entertainment or recreation for the general public characterized by being open for specific hours, receiving remuneration, advertising activities or use of the property, using sanctioned leagues, or holding organized events. The term includes, among other things, drive-in theaters, amusement parks, carousels, miniature golf courses, golf courses and driving ranges, go-cart tracks, skateboard parks, water parks, and privately-owned outdoor recreational facilities, but does not include bars, nightclubs, or sexually-oriented businesses. Accessory uses may include the preparation and serving of food or sale of equipment related to the identified uses.

An outdoor amusement center is a special use in the A-35 zoning district. If the map amendment (rezone) and minor subdivision are approved, the PCD Director may approve the special use to allow the racetrack to continue onsite.

F. ANALYSIS

1. Land Development Code Compliance

The final plat application meets the final plat submittal requirements, the standards for Divisions of Land in Chapter 7, and the standards for Subdivision in Chapter 8 of the El Paso County Land Development Code (2019) with the exception of the requested waiver.

2. Zoning Compliance

A request for approval of a map amendment (rezoning) of 5 acres of the 40 acre parcel to the A-5 (Agricultural) zoning district is being processed concurrently.

The purpose of the A-35 Zoning District is:

The A-35 zoning district is a 35 acre district primarily intended to accommodate rural communities and lifestyles, including the conservation of farming, ranching and agricultural resources.

The purpose of the A-5 Zoning District is:

The A-5 zoning district is a 5 acre district primarily intended to conserve agricultural resources and ranching operations and accommodate limited residential use.

The density and dimensional standards for the zoning districts are as follows:

- Minimum lot size – 5 acres in A-5 and 35 acres in A-35
- Setbacks – front 25 feet on all sides.
- Maximum building height – 30 feet

The existing structures meet the dimensional standards of the existing and proposed zoning districts after the minor subdivision.

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 policy is 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.

The subject parcel is currently zoned A-35 (Agricultural) and is surrounded by other A-35 parcels. Although the parcels immediately adjacent are 35 acres or greater, there are multiple parcels within the vicinity which are 5 acres or less. One half (1/2) of a mile to the west and 2.25 miles to the east are parcels within the RR-5 (Residential Rural) zoning district, which require a minimum lot size of 5 acres. One fourth (1/4) of a mile to the east of the site is a 1 acre parcel within the A-35 zoning district. One mile to the south are parcels within the RR-2.5 (Residential Rural) zoning district, which requires a minimum lot size of 2.5 acres. The proposed subdivision will create one 35 acre parcel and one five (5) acre parcel. The proposed lot sizes are compatible with the previously developed areas in terms of density. The proposal is in general conformance with the Policy Plan.

4. Small Area Plan Analysis

The parcel is included within the boundaries of the Falcon/Peyton Small Area Master Plan (2006), specifically the proposed future rural development area. The Plan defines rural residential density as "Parcel sizes are between 2.5 acres and 5 acres, with some of these platted lots ranging up to 10 acres in area."

Relevant goals and policies are as follows:

3.1.4 Provide a variety of different densities of development options.

3.5.6 Balance long term transportation infrastructure needs with current requirements.

3.5.7 Ensure the coordination of land use and transportation planning.

3.1 Provide a balance of land uses that respects existing and historical patterns while providing opportunities for future residents and businesses.

4.5.1.5 Identify basic land use expectations in the Plan, but allow for the market and the detailed site planning process to specify detailed uses

within the overall character, density and timing parameters established by the Plan.

As discussed in the Background Section above, the racetrack has been in existence since prior to zoning, and prior to adoption of the Plan. The applicant wishes to sever the racetrack land to allow the business to continue while the remainder is under separate ownership. The subdivision will result in a parcel less than 35 acres in size which necessitates a map amendment (rezoning) action. The proposed 5 acre lot size is consistent with the recommended densities in the Falcon/Peyton Small Area Master Plan. The proposal is in general conformance with the Plan.

6. 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.

The minor subdivision application was submitted prior to the County adopting the Water Master Plan; therefore, it is not an applicable review criteria.

7. Other Master Plan Elements

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

The Master Plan for Mineral Extraction (1996) identifies potential 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, severed mineral rights exist. The mineral rights owner has been notified of the application and hearing date.

G. PHYSICAL SITE CHARACTERISTICS

1. Hazards

No hazards were identified in the review of the proposed map amendment (rezone).

2. Wildlife

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

3. Floodplain

FEMA Flood Insurance Rate Map No. 08041C0585G which has an effective date of December 7, 2018 shows the property is located within flood zone X which is an area of minimal flood hazard and determined to be outside the 500-year floodplain.

4. Drainage and Erosion

The property is located in La Vega Ranch drainage basin (CHBR0400) which is unstudied and has no drainage or bridge fees. A drainage report was not required since no improvements are proposed, and the property is located outside the FEMA 100-year floodplain.

5. Transportation

The property is accessed via Spencer Road approximately one half mile west of North Log Road. A traffic impact study was not required, and the County road impact fee does not apply to this request because the rezone will not generate 100 more daily vehicle trips than the property would be expected to generate under the previous zoning.

H. SERVICES

1. Water

Sufficiency:

Quality: Assumed Sufficiency

Quantity: Sufficient

Dependability: Sufficient

Attorney's summary:

The State Engineer's Office 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 as well as a recommendation for approval of the waiver request. 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

Wastewater for lot 2 is provided by individual onsite wastewater treatment systems. The applicant is not proposing a permanent wastewater treatment system for Lot 1 at this time and intends to utilize portable toilets.

3. Emergency Services

The property is within the Peyton Fire Protection District.

4. Utilities

Electric is provided by Mountain View Electric Association. There is no gas available for this portion of El Paso County at this time.

5. Metropolitan Districts

The property is not within a Metropolitan District.

6. Parks/Trails

Fees in lieu of park land dedication in the amount of \$814.00 for regional fees and \$0.0 for urban park fees will be due at the time of recording the final plat.

7. Schools

Fees in lieu of school land dedication in the amount of \$185.00 shall be paid to El Paso County for the benefit of Peyton School District 23J at the time of plat recording

I. APPLICABLE RESOLUTIONS

Approval Page 19

Disapproval Page 20

J. STATUS OF MAJOR ISSUES

The applicant is requesting a waiver of Section 8.4.7 of the Land Development Code for Lot 1 only.

The applicant's letter of intent provides the following justification:

Applicant is requesting a waiver to allow approval of the final plat for the subdivision with approval of Lot 1 as a "dry lot" with no requirement of water for approval, consistent with Section 8.4.7(A)(3) of the Land Development Code. Presently, no water is used in the kart racing operation on Lot 1, and Applicant does not expect any need for a water source in the near future. The groundwater determination process through the Colorado Ground Water Commission, including approval of a replacement plan that was recently completed for the Property, provides evidence of a 300-year water supply on Lot 2 for continued in-house use of the existing well, without the requirement that a well be constructed on Lot 1. The replacement plan further provides that the owner of Lot 1 may, but is not required to, elect to drill a nontributary Arapahoe aquifer well for commercial uses thereon, which will then allow for expanded types of use from the existing Denver aquifer well on Lot 2 if and only if such Arapahoe well is drilled and utilized on Lot 1. In either scenario, a 300-year water supply will be evidenced as described in the approved replacement plan. Initially, and for the foreseeable future, Lot 1 may be a "dry lot".

Applicant has requested a waiver of the requirement of a finding of water sufficiency as to Lot 1, specifically, to approve Lot 1 as a “dry lot” pursuant to Section 8.4.7(A)(3), LDC. That provision allows exceptions to the requirements of Section 8.4.7, LDC, Water Supply Standards, for the following:

A proposed subdivision which, by reason of the nature, type and extent of the proposed development, will not require a water supply as prescribed herein. Subdivisions meeting this requirement are not designed or developed for permanent occupation or habitation.

The determination of the waiver is made on a case-by case basis by the BoCC upon recommendations by the County Attorney’s Office, PCD Director, and Planning Commission, based on a specific request by Applicant with supporting evidence.

The applicant asserts that the go-kart operation on Lot 1 has operated historically as a “dry lot” with bottled drinking water sold to patrons and sewer services provided by portable restrooms. The County Attorney’s Office believes the Applicant’s historic use and stated intent is to continue to use the Lot 1 as a “dry lot” without a requirement for running water and sewer service, and therefore recommends approval of the waiver request.

Should the Board of County Commissioners approve the waiver request, the applicant has added a plat note to the minor subdivision to notify future owners that this lot has been designated as a “dry lot” and will require change in water supply approval if water is to be utilized onsite in the future.

K. RECOMMENDED CONDITIONS AND NOTATIONS

Should the Planning Commission and Board of County Commissioners find that the request meets the criteria for approval outlined in Section 7.2.1 (Subdivisions) of the El Paso County Land Development Code (2019) staff recommends the following conditions and notations:

CONDITIONS

1. All Deed of Trust holders shall ratify the plat. The applicant shall provide a current title commitment at the time of submittal of the Mylar for recording.
2. Colorado statute requires that at the time of the approval of platting, the subdivider provides the certification of the County Treasurer’s Office that all ad valorem taxes applicable to such subdivided land, or years prior to that year in which approval is granted, have been paid. Therefore, this plat is approved by the Board of County Commissioners on the condition that the subdivider or developer must provide to the Planning and Community Development Department, at the time of recording the plat, a certification from the County Treasurer’s Office that all prior years’ taxes have been paid in full.

3. The subdivider or developer must pay, for each parcel of property, the fee for tax certification in effect at the time of recording the plat.
4. The Applicant shall submit the Mylar to Enumerations for addressing.
5. Developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed species.
6. Driveway permits will be required for each access to an El Paso County owned and maintained roadway. Driveway permits are obtained from the El Paso County Planning and Community Development Department.
7. The Subdivider(s) agrees on behalf of him/herself and any 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. 18-471), or any amendments thereto, at or prior to the time of building permit submittals. The fee obligation, if not paid at final plat recording, shall be documented on all sales documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.
8. Park fees in lieu of land dedication for regional parks (Area 4) in the amount of \$814.00 and urban park (N/A) fees in the amount of \$0.0 shall be paid at the time of plat recordation.
9. Fees in lieu of school land dedication in the amount of \$185.00 shall be paid to El Paso County for the benefit of Peyton School District 23J at the time of plat recording.
10. The County Attorney's Conditions of Compliance shall be adhered to at the appropriate time.

NOTATIONS

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

L. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified three (3) adjoining property owners on November 4, 2019, for the Planning Commission meeting. Responses will be provided at the hearing.

M. ATTACHMENTS

Vicinity Map

Letter of Intent

Plat Drawing

State Engineer's Letter

County Attorney's Letter

El Paso County Parcel Information

File Name: MS-17-003/P-17-002

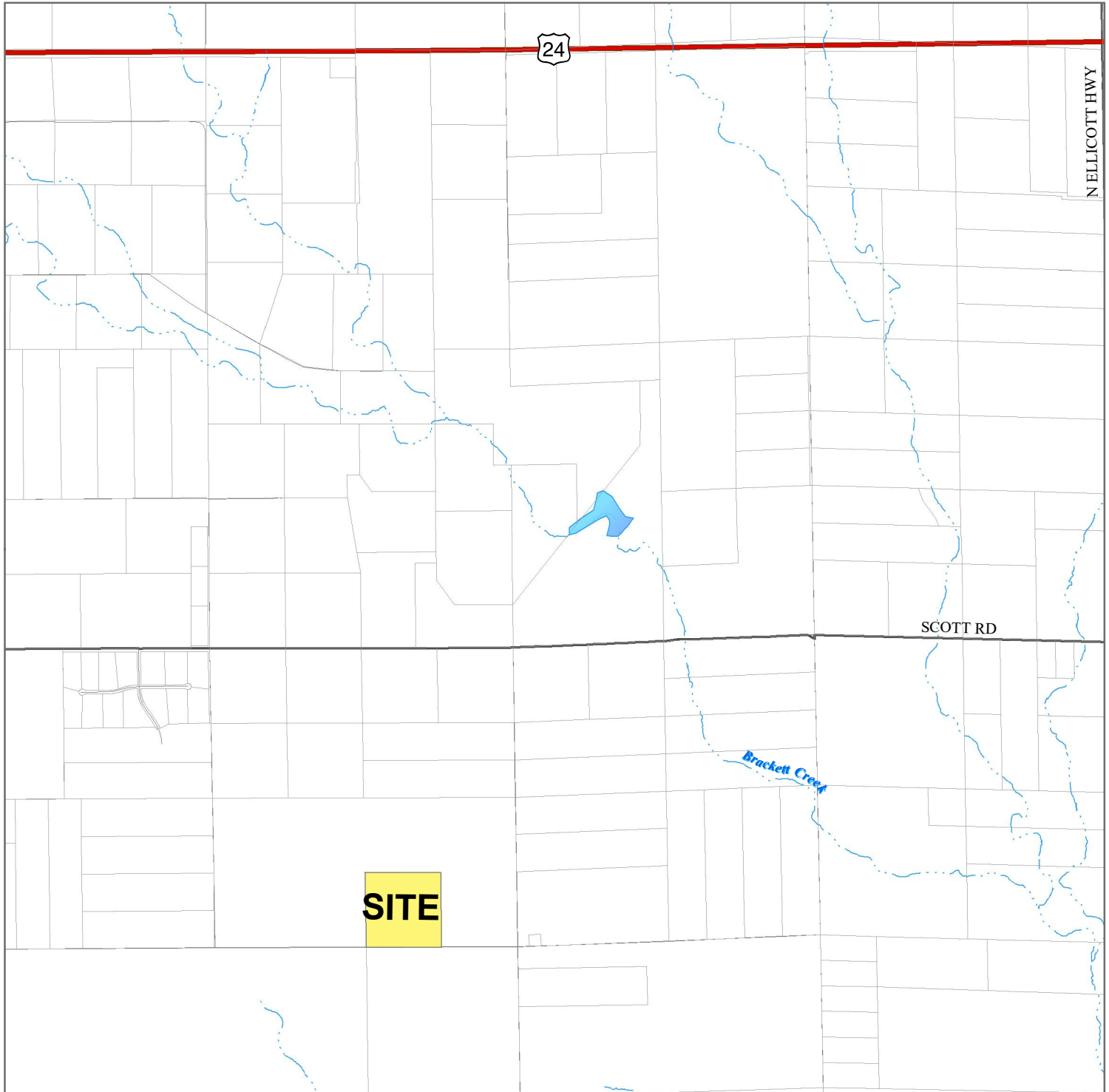
| PARCEL | NAME |
|------------|--------------|
| 3200000325 | BURT KERRY E |

Zone Map No. --

| ADDRESS | CITY | STATE |
|------------------|--------|-------|
| 21430 SPENCER RD | CALHAN | CO |

| ZIP | ZIPLUS |
|-------|--------|
| 80808 | 9113 |

Date: October 30, 2019



Please report any parcel discrepancies to:
El Paso County Assessor
1675 W. Garden of the Gods Rd.
Colorado Springs, CO 80907
914 520-6600



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**Letter of Intent
Seigel Boys Racing
Minor Subdivision, Rezone, Special Use
11/13/2017 – REVISED 12/12/2018**

OWNER: Kerry Burt
2066 Sather Drive
Colorado Springs, CO 80915

APPLICANT: Lee Seigel
12755 Thiebaud Lane
Colorado Springs, CO 80908

SITE LOCATION/SIZE/ZONING: 21430 Spencer Road
Calhan, Colorado 80808-9113
40 Acres, A-35, Agricultural

REQUEST/JUSTIFICATION: The request of this petition is to facilitate a land sale of 35-acres of a 40-acre parcel. To accomplish this land sale, the approximate 40-acre parcel must be subdivided to create an approximate five (5) acre lot which will be retained by the current owner. To create the smaller lot, a request to rezone the approximately five (5) acre portion of the Property to A-5 is necessary. Additionally, a request to approve a special use application for the 35-acre parcel which houses an existing outdoor amusement center/ go-kart racing track (“kart racing”) is required to bring the existing track into conformance with current county standards, as the parcel will be reduced in size from 40-acres to 35 acres. The three (3) applications are to be completed concurrently.

The SBR Motor Sports Final Plat contains two lots: Lot 1 will be the 35.01 acre parcel that will continue to be the location for the existing kart racing business. As will be explained in the Utilities section below, the Applicant requests approval of Lot 1 to exclude a requirement for a well or septic system for the business, which historically has been operated without a well or septic system. Lot 2 will be the 4.144 acre parcel that will continue to be used for residential purposes, which currently contains a well and septic system.

An outdoor amusement center is a principal permitted use in the A-35 zone, but subject to special use approval. The kart racing business originally began operations on the 40-acre parcel in the mid- to late-90’s with a different owner. It is believed the business ceased operations in 2010 after the owner had financial problems and filed for bankruptcy. The Property was purchased by the present owner in 2012. The owner has leased the property containing the kart racing business to the Applicant for the past 6 years.

Special Use Criteria

The kart racing business meets applicable criteria for special use under Section 5.3.2 (C) of the Land Development Code, including the following:

- **The special use is generally consistent with the applicable Master Plan;**

The property is within the Falcon-Peyton Small Area Plan. The application meets the following goals and policies of the small area plan:

Goal 3.1.1 : Provide a balance of land uses that respects existing and historical patterns while providing opportunities for future residents and businesses; and

Goal 3.1.3: Preserve the rural character of the area.

The current historical use of the property as a kart racing business and single family residence will not change with the subdivision of the property into two separate lots. The business has been a convenient and desired recreational feature in eastern El Paso County for many years. The property will not change from its current appearance; it will still remain rural in nature.

Goal 3.2.2: Advocate for quality of life amenities that will bring jobs and tax base to the area.

The kart racing is a recreational amenity provided to eastern El Paso County residents that keeps them from having to drive into the urban centers of the County in order to recreate and have fun.

Goal 3.3.1: Encourage diversity and variety in housing types, sizes, locations, and prices to meet the needs of existing and new residents.

Goal 3.3.4: Meet the housing needs of as many existing and new residents of differing ages, incomes and desired living accommodation.

The property is being platted from a 40-acre parcel with one residence into two lots, to include a single family residential lot that will be rezoned to A-5. The size of the residential lot will provide more affordable housing than what is typically found with the large-acreage parcels in the immediate area.

Goal 3.3.7: Provide recreational amenities for area residents.

The kart racing business has provided a needed recreational amenity to eastern El Paso County residents for the past 20 years.

Policy 4.5.6.4: Review and manage all land uses in a manner which reasonably reduces potential for acute or long term adverse water quality impacts to the aquifers.

Policy 4.5.6.6: Encourage and accommodate water conservation practices for existing and new developments.

Policy 4.5.6.15: Uses that cannot meet 300-years' worth of sustainability from ground water should not be allowed to use ground water.

The minor subdivision application that accompanies the special use request requires a decree adjudicating the ground water rights underlying the property. The final plat of the two-lot subdivision will not be approved without the Applicant providing proof that it can meet the County's 300-year water requirement. Before these applications were submitted by the applicant, no quantification or restriction on the use of groundwater under this property had

occurred. The adjudication of the water rights will allow for better overall management of the groundwater resources in this region of the County.

- **The special use will be in harmony with the character of the neighborhood, and will generally be compatible with the existing and allowable land uses in the surrounding area;**

The applicant anticipates no change in the use or appearance of the property upon approval of the special use, rezoning and subdivision applications. The current uses of the property have been longstanding and are compatible with the surrounding land uses.

- **The impact of the special use does not overburden or exceed the capacity of public facilities and services, or, in the alternative, the special use application demonstrates that it will provide adequate public facilities in a timely and efficient manner; and**
- **The special use will not create unmitigated traffic congestion or traffic hazards in the surrounding area, and has adequate, legal access;**

The applicant does not anticipate any increase in traffic or the use of public facilities and services in the area by approval of the special use application.

- **The special use will comply with all applicable local, state, and federal laws and regulations regarding air, water, light, or noise pollution;**
- **The special use will not otherwise be detrimental to the public health, safety and welfare of the present or future residents of El Paso County; and/or**
- **The special use conforms or will conform to all other applicable County rules, regulations or ordinances.**

The kart racing business will remain in compliance with all applicable federal, state and local laws, regulations and ordinances.

Rezone of Lot 2 to A-5 Criteria

For the rezoning application of the approximate 5-acre parcel that will be zoned A-5, Section 5.2.5 of the Land Development Code states that rezoning is justifiable under the following circumstances:

- **The application is in general conformance with the El Paso County Master Plan including applicable Small Area Plans or there has been a substantial change in the character of the neighborhood since the land was last zoned.**

As stated above , the property is within the Falcon-Peyton Small Area Plan. There will be no change to the character of the approximate 5-acre residential parcel upon the rezone from A-35 to A-5; it will still contain the existing house, well and septic system. The existing use meets the plan's Goal 3.1.1 and Goal 3.1.3 set forth above. And, for the same reasons set forth above, the water conservation policies stated in Policy numbers 4.5.6.4, 4.5.6.6 and 4.5.6.15 above also apply to the rezone request.

- **The rezoning is in compliance with all applicable statutory provisions, including but not limited to C.R.S. §30-28-111, §30-28-113, and §30-28-116.**

The rezone request complies with all applicable statutes, including C.R.S. §38-28-111 (compliance with County zoning plan), §30-28-113 (regulation of size and use of structures and land subject to zoning), and §30-28-116 (amendment of zone district).

- **The proposed land use or zone district is compatible with the existing and permitted land uses and zone districts in all directions.**

Lot 2 will remain as a residential property with no change in its existing use. Amerald Acres, a subdivision comprised of 5-acre lots, is located approximately one mile from the Property. Most of the other properties in the immediate area are rural and residential in character, similar to Lot 2.

- **The site is suitable for the intended use, including the ability to meet the standards as described in Chapter 5 of the Land Development Code, for the intended zone district.**

The rezone will not change the existing residential use of Lot 2, and it will meet all standards required for the A-5 zone district.

EXISTING/PROPOSED FACILITIES, STRUCTURES, ROADS, ETC.: Existing facilities located on the 35-acre parcel (Lot 1) include the SBR Motorsports Park, which utilizes one access off Spencer Road, parking area, a half mile go-kart racetrack, one framed structure used for the sales office and storage of go-karts, and 3 open air carports for shade and staging. Existing structures on the 5-acre parcel (Lot 2) includes a single-family residence, a well and septic, and a large shed structure used for storage. There are no proposed facilities, structures, roads, etc. for either parcel.

WAIVER REQUEST AND JUSTIFICATION: Applicant is requesting a waiver to allow approval of the final plat for the subdivision with approval of Lot 1 as a “dry lot” with no requirement of water for approval, consistent with Section 8.4.7(A)(3) of the Land Development Code. Presently, no water is used in the kart racing operation on Lot 1, and Applicant does not expect any need for a water source in the near future. The groundwater determination process through the Colorado Ground Water Commission, including approval of a replacement plan that was recently completed for the Property, provides evidence of a 300-year water supply on Lot 2 for continued in-house use of the existing well, without the requirement that a well be constructed on Lot 1. The replacement plan further provides that the owner of Lot 1 may, but is not required to, elect to drill a nontributary Arapahoe aquifer well for commercial uses thereon, which will then allow for expanded types of use from the existing Denver aquifer well on Lot 2 if and only if such Arapahoe well is drilled and utilized on Lot 1. In either scenario, a 300-year water supply will be evidenced as described in the approved replacement plan. Initially, and for the foreseeable future, Lot 1 may be a “dry lot”.

Modified soils and geology report. No site modification / improvements, earth disturbing activities, or construction operations are being conducted or planned.

PURPOSE AND NEED FOR THE CHANGE IN ZONE CLASSIFICATION: Current zoning is A-35 for the 40-acre parcel; the 35-acre lot will remain A-35. The approximate 5-acre subdivided parcel will require rezoning to A-5.

TOTAL NUMBER OF ACRES IN THE REQUESTED AREA: 40 acres

TOTAL NUMBER OF RESIDENTIAL UNITS AND DENSITIES FOR EACH DWELLING TYPE: The only residential portion is the approximate 5-acre parcel, which has one (1) existing dwelling unit.

NUMBER OF INDUSTRIAL OR COMMERCIAL SITES PROPOSED: N/A

APPROXIMATE FLOOR AREA RATIO OF INDUSTRIAL AND/OR COMMERCIAL USES: N/A

NUMBER OF MOBILE HOME UNITS AND DENSITIES: N/A

TYPICAL MIN. LOT SIZE: N/A

TYPE OF PROPOSED RECREATIONAL FACILITIES: N/A

CONSTRUCTION PHASES: N/A

ANTICIPATED SCHEDULE OF DEVELOPMENT: N/A

UTILITIES – WATER AND SEWER: Lot 2: water is provided via well Permit Number 115609 and sewer is on Septic.

Lot 1: SBR Motorsports Park has operated without well or septic for the existing outdoor amusement center/ go-kart racing track. Since it began operations, drinking water is provided via bottle and sewer is provided via Portable Restrooms. The water decree will quantify the amount of groundwater under Lot 1 and 2 . For purposes of approval of the minor subdivision, no well or septic for Lot 1 is needed.

PROPOSED USES, RELATIONSHIP BETWEEN USES AND DENSITIES: The 35-acre parcel zoned A-35 will have a Special Use Permit for the existing go-kart track. The approximate 5-acre parcel zoned A-5 will be used as Single Family Residence.

AREAS OF REQUIRED LANDSCAPING: N/A

APPROXIMATE ACRES AND PERCENT OF LAND TO BE SET ASIDE AS OPEN SPACE, NOT TO INCLUDE PARKING, DRIVE, AND ACCESS ROADS: N/A, no site

improvements are being made. This Letter of intent is to facilitate the land sale of 35 acres of a 40-acre parcel by subdividing out an approximate 5-acre parcel which needs to be rezoned to A-5. All land will stay as is with no earth disturbance or increase in residential density. The ownership of the 35-acre portion of the 40 acres of land containing the SBR Motorsports Park will change hands from the current land owner to the actual owner of the SBR Motorsports Park.

KNOW ALL MEN BY THESE PRESENTS:
THAT KERRY E. BURT BEING THE OWNER OF THE FOLLOWING DESCRIBED TRACT OF LAND, TO WIT:

LEGAL DESCRIPTION:
THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO.

BASIS OF BEARINGS: THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH, RANGE 63 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, ASSUMED TO BEAR N90°00'00"W, A DISTANCE OF 1324.90 FEET.

OWNERS CERTIFICATE:

THE UNDERSIGNED, BEING THE OWNER OF THE LAND DESCRIBED HEREIN, LAID OUT, SUBDIVIDED, AND PLATTED SAID LANDS INTO LOTS AND EASEMENTS AS SHOWN HEREON UNDER THE NAME AND SUBDIVISION OF "SBR RACING MINOR SUBDIVISION". ALL PUBLIC IMPROVEMENTS SO PLATTED ARE HEREBY DEDICATED TO PUBLIC USE AND SAID OWNER DOES HEREBY COVENANT AND AGREE THAT THE PUBLIC IMPROVEMENTS WILL BE CONSTRUCTED TO EL PASO COUNTY STANDARDS AND THAT PROPER DRAINAGE AND EROSION CONTROL FOR SAME WILL BE PROVIDED AT SAID OWNER'S EXPENSE, ALL TO THE SATISFACTION OF THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO. UPON ACCEPTANCE BY RESOLUTION, ALL PUBLIC IMPROVEMENTS SO DEDICATED WILL BECOME MATTERS OF MAINTENANCE BY EL PASO COUNTY, COLORADO. THE UTILITY EASEMENTS SHOWN HEREON ARE HEREBY DEDICATED FOR PUBLIC UTILITIES 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.

BY: _____
OWNER (SIGNATURE) KERRY E. BURT

SECRETARY/TREASURER

STATE OF COLORADO }
ss
COUNTY OF EL PASO }

NOTARY:

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY
OF _____, 2019, A.D.

BY: _____

WITNESS MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES: _____
NOTARY PUBLIC

WASTEWATER:

SEWAGE TREATMENT IS THE RESPONSIBILITY OF EACH INDIVIDUAL PROPERTY OWNER. THE EL PASO COUNTY DEPARTMENT OF HEALTH AND ENVIRONMENT MUST APPROVE EACH SYSTEM AND, IN SOME CASES THE DEPARTMENT MAY REQUIRE AN ENGINEER DESIGNED SYSTEM PRIOR TO PERMIT APPROVAL. THESE SYSTEMS MAY COST MORE TO DESIGN, INSTALL, AND MAINTAIN. SOILS AND GEOLOGY CONDITIONS ON SITE REQUIRE THAT ALL ON-SITE WASTEWATER SYSTEMS SHALL BE LOCATED AND DESIGNED BY A PROFESSIONAL ENGINEER, CURRENTLY REGISTERED IN THE STATE OF COLORADO.

WATER SUPPLY:

INDIVIDUAL WELLS ARE THE RESPONSIBILITY OF EACH PROPERTY OWNER. PERMITS FOR INDIVIDUAL WELLS MUST BE OBTAINED FROM THE STATE ENGINEER WHO BY LAW HAS THE AUTHORITY TO SET CONDITIONS FOR THE ISSUANCE OF THESE PERMITS. WATER IN THE DENVER BASIN AQUIFERS IS ALLOCATED BASED ON A 100-YEAR AQUIFER LIFE; HOWEVER, FOR EL PASO COUNTY PLANNING PURPOSES, WATER IN THE DENVER BASIN AQUIFERS IS EVALUATED BASED ON A 300-YEAR AQUIFER LIFE. APPLICANTS AND ALL FUTURE OWNERS IN THE SUBDIVISION SHOULD BE AWARE THAT THE ECONOMIC LIFE OF A WATER SUPPLY BASED ON WELLS IN A GIVEN DENVER BASIN AQUIFER MAY BE LESS THAN EITHER THE 100 YEARS OR 300 YEARS INDICATED DUE TO ANTICIPATED WATER LEVEL DECLINES. FURTHERMORE, THE WATER SUPPLY PLAN SHOULD NOT RELY SOLELY UPON ON-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. ONE (1) EXISTING WELL PERMIT NO. 83709-F WILL SERVE ONE (1) SINGLE FAMILY DWELLING. WELL PERMIT NO. 83709-F WILL SERVE LOT 2 OF THE SBR RACING MINOR SUBDIVISION, AS CREATED HEREBY, WHICH LIMITS PRODUCTION TO THE DENVER AQUIFER. LOT 1 IS PLATTED AS A "DRY" LOT WITHOUT WATER SERVICE UNTIL AND UNLESS THE OWNER OF LOT 1 ELECTS TO CONSTRUCT A WELL TO THE NONTRIBUTARY ARAPAHOE AND/OR LARAMIE FOX HILLS AQUIFER, CONSISTENT WITH THE REPLACEMENT PLAN APPROVED BY THE COLORADO GROUND WATER COMMISSION ASSOCIATION WITH DETERMINATION NO. 3718-BD. OWNER, ITS SUCCESSORS AND ASSIGNS SHALL ADVISE ALL FUTURE OWNERS OF THESE LOTS OF ALL APPLICABLE REQUIREMENTS OF THE DETERMINATIONS OF WATER RIGHT AND REPLACEMENT PLAN APPROVED BY THE COLORADO GROUND WATER COMMISSION IN DETERMINATION # 3718-BD AND THEIR COSTS OF OPERATING THE REPLACEMENT PLAN AND RESPONSIBILITY FOR METERING AND COLLECTING DATA REGARDING WATER WITHDRAWALS FROM THE WELL. OWNER SHALL RESERVE IN ANY DEEDS OF THE PROPERTY 90 ACRE-FEET OF DENVER AQUIFER WATER AS DECREED IN DETERMINATION #3718-BD AND THE ASSOCIATED REPLACEMENT PLAN FOR USE BY THE OWNER OF LOT 2 IN THE REPLACEMENT PLAN. WATER WITHDRAWAL AND WELLS ARE SUBJECT TO THE TERMS OF THE WATER COURT APPROVED WATER AUGMENTATION PLAN.

GENERAL NOTES:

- FLOODPLAIN STATEMENT:
THIS SITE IS NOT WITHIN A DESIGNATED F.E.M.A. FLOODPLAIN AS DETERMINED BY THE FLOOD INSURANCE RATE MAP FOR EL PASO COUNTY, COLORADO, COMMUNITY PANEL NUMBER 08041C 0585 G, WITH A REVISED DATE OF DECEMBER 7, 2018.
- ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT OR LAND MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE 18-4-508, C.R.S.
- THE RIGHT-OF-WAY REFERENCED AS BK. A, PG. 78 IS HEREBY DEDICATED TO EL PASO COUNTY.
- THE FOLLOWING REPORTS HAVE BEEN SUBMITTED IN ASSOCIATION WITH THE PRELIMINARY PLAN OR FINAL PLAT FOR THIS SUBDIVISION AND ARE ON FILE AT THE PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT: WATER RESOURCES REPORT; WASTEWATER DISPOSAL REPORT; GEOLOGY AND SOILS REPORT; FIRE PROTECTION REPORT; WILDFIRE HAZARD REPORT; NATURAL FEATURES REPORT;

LEGEND

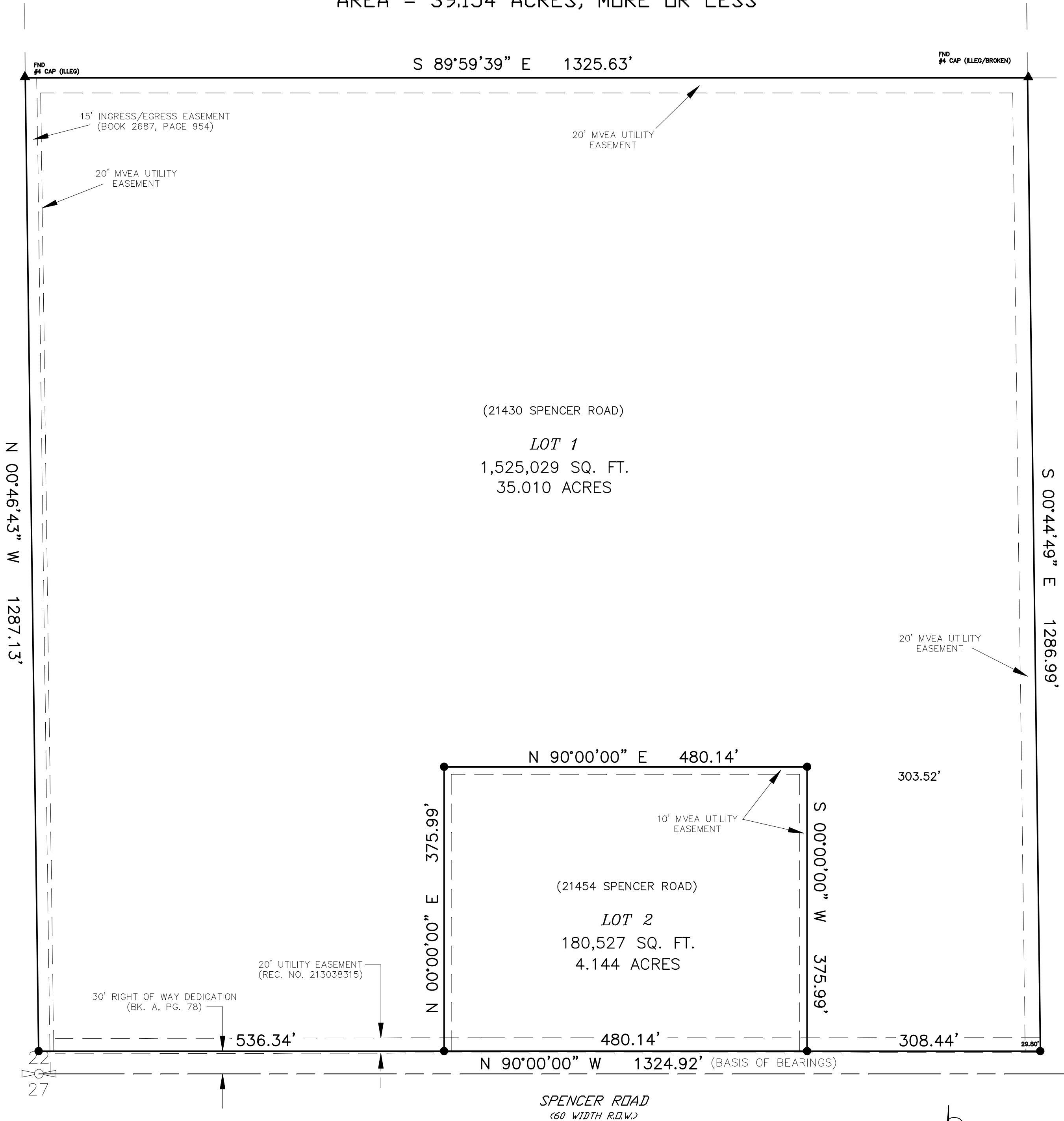
- SET NO. 5 REBAR WITH 1-1/2" ALUMINUM SURVEYORS CAP OR NAIL AND DISK STAMPED "37634"
- ▲ RECOVERED AS NOTED
- (ADDRESS) ADDRESS
- BOUNDARY LINE
- - - EASEMENT LINE
- 29 32 QUARTER SECTION CORNER
- SECTION LINE
- SF SQUARE FEET

DATE OF PREPARATION: 10/16/2019
JOB NUMBER: 17089-01

SBR RACING MINOR SUBDIVISION

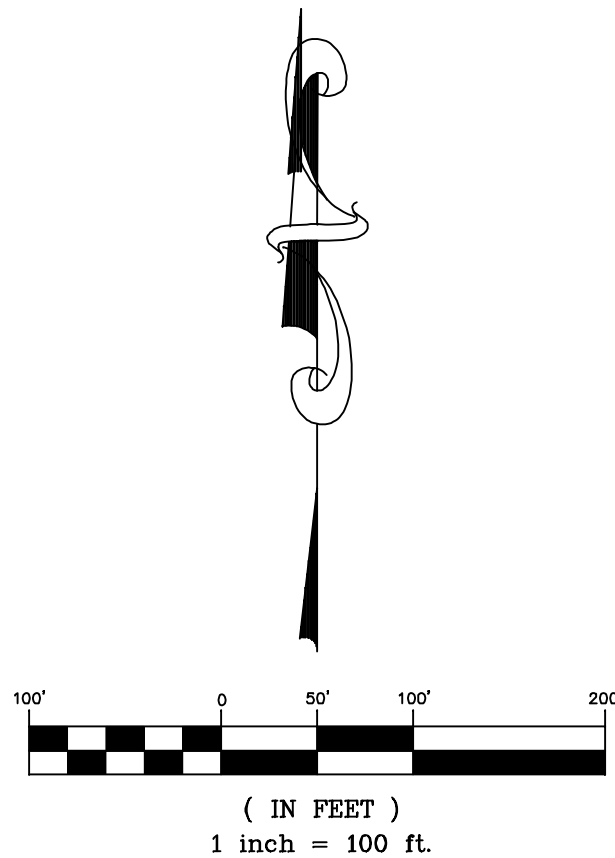
A SUBDIVISION OF A PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 22
TOWNSHIP 12 SOUTH, RANGE 63 WEST OF THE 6TH P.M.,

AREA = 39.154 ACRES, MORE OR LESS

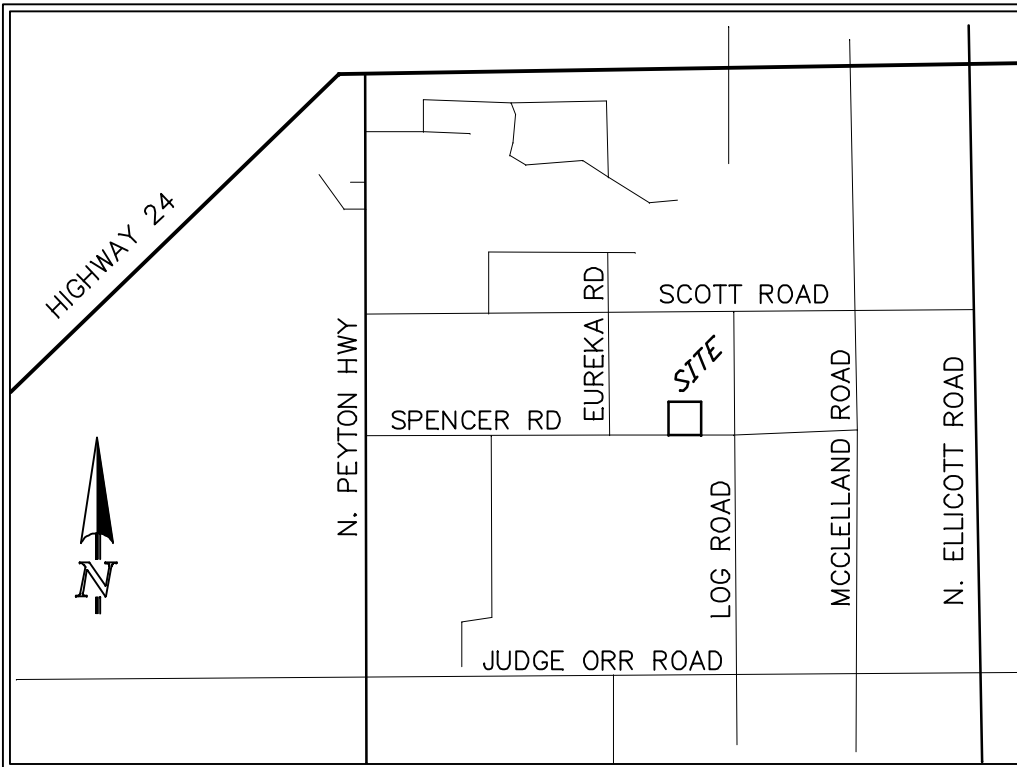


GENERAL NOTES (CONT.):

- ALL PROPERTY OWNERS ARE RESPONSIBLE FOR MAINTAINING PROPER STORM WATER DRAINAGE IN AND THROUGH THEIR PROPERTY. PUBLIC DRAINAGE EASEMENTS AS SPECIFICALLY NOTED ON THE PLAT SHALL BE MAINTAINED BY THE INDIVIDUAL LOT OWNERS UNLESS OTHERWISE INDICATED. STRUCTURES, FENCES, MATERIALS OR LANDSCAPING THAT COULD IMPEDE THE FLOW OF RUNOFF SHALL NOT BE PLACED IN DRAINAGE EASEMENTS.
- UNLESS OTHERWISE INDICATED, ALL SIDE, FRONT AND REAR LOT LINES ARE HEREBY PLATTED ON EITHER SIDE WITH A 10 FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT UNLESS OTHERWISE INDICATED. ALL EXTERIOR SUBDIVISION BOUNDARIES ARE HEREBY PLATTED WITH A 20 FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT. THE SOLE RESPONSIBILITY FOR MAINTENANCE OF THESE EASEMENTS IS HEREBY VESTED WITH THE INDIVIDUAL PROPERTY OWNERS.
- DEVELOPER SHALL COMPLY WITH FEDERAL AND STATE LAWS, REGULATIONS, ORDINANCES, REVIEW AND PERMIT REQUIREMENTS, AND OTHER AGENCY REQUIREMENTS, IF ANY, OF APPLICABLE AGENCIES INCLUDING, BUT NOT LIMITED TO, THE COLORADO DIVISION OF WILDLIFE, COLORADO DEPARTMENT OF TRANSPORTATION, U.S. ARMY CORPS OF ENGINEERS AND THE U.S. FISH AND WILDLIFE SERVICE REGARDING THE ENDANGERED SPECIES ACT, PARTICULARLY AS IT RELATES TO THE LISTED SPECIES (E.G., PREBLE'S MEADOW JUMPING MOUSE).
- THE ADDRESSES EXHIBITED ON THIS PLAT ARE FOR INFORMATIONAL PURPOSES ONLY. THEY ARE NOT THE LEGAL DESCRIPTION AND ARE SUBJECT TO CHANGE.
- NO DRIVEWAY SHALL BE ESTABLISHED UNLESS AN ACCESS PERMIT HAS BEEN GRANTED BY EL PASO COUNTY.
- MAILBOXES SHALL BE INSTALLED IN ACCORDANCE WITH ALL EL PASO COUNTY AND UNITED STATES POSTAL SERVICE REGULATIONS.
- LOT 1 IS INTENDED TO BE A DRY LOT, UNTIL AND UNLESS ANY UNDERLYING NONTRIBUTARY GROUNDWATER SUPPLIES AS DETERMINED BY THE COLORADO GROUND WATER COMMISSION IN DETERMINATION NOS. 3718-BD, AND AS FURTHER DESCRIBED IN REPLACEMENT PLAN FOR DETERMINATION 3718-BD, ARE ACCESSED FOR USE ON LOT 1. ANY OTHER WATER USAGE WILL REQUIRE APPROVAL OF AN AMENDED PLAT TO CHANGE THE WATER SUPPLY.



PCD FILE NO. MS-17-003



VICINITY MAP:

N.T.S.

SURVEYOR'S STATEMENT:

I, SHAWN RICHARDS, 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 DATE OF SURVEY, BY ME OR UNDER MY DIRECT SUPERVISION AND THAT ALL MONUMENTS EXIST AS SHOWN HEREON; THAT MATHEMATICAL CLOSURE ERRORS ARE LESS THAN 1:10,000; AND THAT SAID PLAT HAS BEEN PREPARED IN FULL COMPLIANCE WITH ALL APPLICABLE LAWS OF THE STATE OF COLORADO DEALING WITH MONUMENTS, SUBDIVISION, OR SURVEYING OF LAND AND ALL APPLICABLE PROVISIONS OF THE EL PASO COUNTY LAND DEVELOPMENT CODE.

I ATTEST THE ABOVE ON THIS _____ DAY OF _____, 20____.

SHAWN RICHARDS, PROFESSIONAL LAND SURVEYOR _____ DATE _____
COLORADO P.L.S. NO. 37634
FOR AND ON BEHALF OF EAGLE LAND SURVEYING, INC.

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

BOARD OF COUNTY COMMISSIONERS CERTIFICATE:

THIS "SBR RACING MINOR SUBDIVISION" WAS APPROVED FOR FILING BY THE EL PASO COUNTY, COLORADO BOARD OF COUNTY COMMISSIONERS ON THE _____ DAY OF _____, 2019, SUBJECT TO ANY NOTES SPECIFIED HEREON AND ANY CONDITIONS INCLUDED IN THE RESOLUTION OF APPROVAL. THE DEDICATIONS OF LAND TO THE PUBLIC STREETS & EASEMENTS ARE ACCEPTED, BUT PUBLIC IMPROVEMENTS THEREON WILL NOT BECOME THE MAINTENANCE RESPONSIBILITY OF EL PASO COUNTY UNTIL PRELIMINARY ACCEPTANCE OF THE PUBLIC IMPROVEMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF THE LAND DEVELOPMENT CODE AND ENGINEERING CRITERIA MANUAL, AND THE SUBDIVISION IMPROVEMENTS AGREEMENT.

CHAIR _____ DATE _____

EL PASO COUNTY APPROVAL:

THIS PLAT FOR "SBR RACING MINOR SUBDIVISION" WAS APPROVED FOR FILING BY THE EL PASO COUNTY, COLORADO PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT DIRECTOR ON THE _____ DAY OF _____, 20____, SUBJECT TO ANY NOTES OR CONDITIONS SPECIFIED HEREON.

PLANNING & COMMUNITY DEVELOPMENT DIRECTOR _____ DATE _____

CLERK AND RECORDER:

STATE OF COLORADO }
ss
COUNTY OF EL PASO }

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE AT O'CLOCK ____M. THIS _____ DAY OF _____, 20____, A.D., AND IS DULY RECORDED AT RECEPTION NO. _____ OF THE RECORDS OF EL PASO COUNTY, COLORADO.

CHUCK BROERMAN, RECORDER

BY: _____
DEPUTY
SURCHARGE: _____
SCHOOL FEE: _____
BRIDGE FEE: _____
PARK FEE: _____
DRAINAGE FEE: _____



EAGLE
LAND SURVEYING INC.
P.O. BOX 5365
COLORADO SPRINGS, CO
80931-5365
PHONE: (719) 382-4150
FAX: (719) 382-3290

A PORTION OF THE SE 1/4 OF SECTION 22,
TOWNSHIP 12 SOUTH, RANGE 63 WEST OF
THE SIXTH PRINCIPAL MERIDIAN



COLORADO

Division of Water Resources

Department of Natural Resources
1313 Street, Room 821
Denver, CO 80203

September 16, 2019

Nina Ruiz
El Paso County, Planning and Community Development
Transmitted via email:
ninaruiz@elpasoco.com

RE: SBR Racing Minor Subdivision
SW1/4 of SE1/4 of Sec. 22, T12S, R63W, 6th P.M.
Water Division 2, Water District 10
Upper Black Squirrel Creek Designated Basin

Dear Mr. Fitzpatrick:

We have received the additional information submittal by the Applicant on September 10, 2019 and September 12, 2019 concerning the above-referenced proposal to subdivide 39.154 acres into two lots, a Lot 1 of 35.01 acres and a Lot 2 of 4.144 acres. This letter replaces our previous letters dated December 6, 2017 and September 3, 2019.

Water Supply Demand

The estimated water requirement for Lot 2, which would continue to be used for an existing single-family residence, is currently 0.3 acre-feet per year for in-house residential purposes, but may increase to 1.0 acre-foot for additional domestic uses. According to an email from the Applicant's attorney, Chris Cummins, dated September 12, 2019, the Applicant currently intends to continue to operate his business on Lot 1 as a "dry lot" (i.e. without a demand for water supplied by the lot owner), which could continue indefinitely. Applicant may, if economically feasible and sensible at some point in the future, construct a well(s) to the underlying nontributary Arapahoe and/or Laramie-Fox Hills aquifer to provide water to Lot 1. According to the Denver Basin Groundwater Assessment ("Assessment") by Julia M. Murphy dated March 27, 2018 the maximum water requirement for Lot 1 would be 9.7 acre-feet per year for the irrigation of 4 to 6 acres of irrigated grasses, commercial use in a services building, landscape irrigation and fire protection.

Source of Water Supply

According to the Water Resources and Water Quality Report for Seigel Boys Racing, LLC dated August 6, 2019 ("Water Supply Letter"), Lot 2 will be served by an existing Denver aquifer well that would operate pursuant to Determination of Water Right no. 3718-BD and any future water demands on Lot 1 will be served by a proposed Arapahoe and/or Laramie Fox Hills aquifer well that would operate pursuant to Determination of Water Right nos. 3717-BD and 3716-BD respectively.

Determination of Water Right nos. 3716-BD, 3717-BD and 3718-BD were issued by the Ground Water Commission ("Commission") on July 12, 2019, for the parcel that is the subject of this referral. The following amounts of water were determined to be available:



| Aquifer | Determination of Water Right Number | Annual amount available based on 100 yr. allocation approach (acre-feet/year) | Type |
|-------------------|-------------------------------------|---|-------------------------|
| Denver | 3718-BD | 13.21 | Not Nontributary-Actual |
| Arapahoe | 3717-BD | 14.3 | Nontributary |
| Laramie-Fox Hills | 3716-BD | 15.3 | Nontributary |

The proposed sources of water for this development are bedrock aquifers in the Denver Basin. The State Engineer's Office does not have evidence regarding the length of time for which these source will be a physically and economically viable source of water. According to 37-90-107(7)(a), C.R.S., "Permits issued pursuant to this subsection (7) shall allow withdrawals on the basis of an aquifer life of 100 years." Based on this allocation approach, the annual amounts of water determined in 3716-BD, 3717-BD and 3718-BD are equal to one percent of the total amount, as determined by Rule 5.3.2.1 of the Designated Basin Rules, 2 CCR 410-1. Therefore, the water may be withdrawn in those annual amounts for a maximum of 100 years.

Withdraw of the not-nontributary Denver Aquifer ground water that is the subject of Determination of Water Right no. 3718-BD requires Commission approval of a replacement plan. That replacement plan was approved by the Commission on July 12, 2019. The replacement plan allows withdrawal of 0.3 acre-feet annually from the Denver Aquifer for in-house use only in one single family dwelling until such time as the Applicant demonstrates replacement water is being delivered from Arapahoe or Laramie-Fox Hills aquifer sources so as to allow the well to pump a total of 1 acre-foot annually. The Denver aquifer water will be withdrawn through an existing well, currently operated under well permit no. 115609, for a period of 300 years. Once withdrawal from the Denver aquifer well increases to 1 acre-foot annually the use of the well will be limited to domestic use (in-house use in 1 single family dwelling, landscape and gardens, domestic animal watering).

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

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

The Applicant's replacement plan allows withdrawal of Denver aquifer water for 300 years, therefore withdrawals from the Denver aquifer under that plan for use on Lot 2 would meet the county's requirement of providing the average annual demand of the subdivision for a period of 300 years. At a maximum demand of 9.7 acre-feet per year for Lot 1, water would need to be withdrawn from both the Arapahoe aquifer and Laramie-Fox Hills aquifer to meet the county's 300 year water requirement. According to the Assessment Arapahoe aquifer wells may pump up to 9.7 acre-feet for 144 years, or lesser amounts for longer durations, and Laramie-Fox Hills wells may pump a maximum of 9.7 acre-feet for 156 years, or lesser amounts for a longer durations.

In accordance with condition no. 17 of Determination of Water Right no. 3718-BD and condition no. 25 of the Replacement Plan for Determination of Water Right no. 3718-BD existing well permit no. 115609 must be re-permitted to operate pursuant to the determination and replacement plan. A well permit application to re-permit the well has been submitted (receipt no. 3693764).

State Engineer's Office Opinion

Based upon the above and pursuant to Sections 30-28-136(1)(h)(I), C.R.S., it is our opinion that the proposed water supply for Lot 2 is adequate and can be provided without causing injury to water rights and the proposed water supply for Lot 1 that relies on Arapahoe aquifer and/or Laramie-Fox Hills aquifer wells is adequate and can be provided without causing injury to water rights. To the extent that Lot 1 is proposed to permanently be a "dry lot" with no proposed water source our office has no comments on the adequacy of the water supply for Lot 1 since none is proposed.

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

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

Our opinion is qualified by the following:

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

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

Sincerely,



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

cc: Division 2 Division Engineer
District 10 Water Commissioner
Upper Black Squirrel Creek Ground Water Management District
Well Permit no. 115609
Subdivision File 24122

jmw: SBR_Sep2019_2.doc

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

Diana K. May, County Attorney

Assistant County Attorneys

M. Cole Emmons
Lori L. Seago
Lisa A. Kirkman
Steven A. Klaffky
Peter A. Lichtman
Mary Ritchie
Bryan E. Schmid

November 1, 2019

MS-17-003 SBR Racing Minor Subdivision

Reviewed by: M. Cole Emmons, Senior Assistant County Attorney *M.C.E.*
Edi Anderson, Paralegal

FINDINGS AND CONCLUSIONS:

1. This is a minor subdivision proposal by Kerry Burt ("Applicant") to subdivide a 40 acre parcel with the address known as 21430 Spencer Road, Calhan, Colorado ("subject property") into 2 lots. Lot 1 will consist of 35.01 +/- acres which contains a current commercial go-kart racing business; and Lot 2 will consist of 4.144 acres which contains a current existing residence and existing well to be retained by the property owner. There is a concurrent rezoning action pending and the Applicant proposes that Lot 2 (the 4.144 acre parcel) will be rezoned to an A-5 ("Agricultural") zoning district. Lot 1 will remain zoned A-35 ("Agricultural") and there is a concurrent special use application pending for Lot 1 to bring the current property use into conformance with the El Paso County Land Development Code.

2. As noted in the *Water Resources and Water Quality Report for Seigel Boys Racing, LLC Minor Subdivision* dated August 6, 2019, prepared by Monson, Cummins & Shohet, LLC ("Water Resources Report"), the Applicant is proposing to retain the current dry lot status for Lot 1 (the 35.01 acre commercial lot). The Applicant has provided for the source of water for Lot 2 (the 4.144 acre residential parcel) to derive from an individual on-lot well existing on the subject property, withdrawing from the not nontributary Denver aquifer, identified as Well Permit No. 115609, subsequently re-permitted as Well Permit No. 83709-F, as required by the Replacement Plan—Determination of Water Right No. 3718-BD by the Colorado Ground Water Commission ("Replacement Plan"). The Applicant provided a Water Supply Information Summary setting forth their water demand for Lot 2 at 0.3 acre-feet per year for a period of 300 years. Applicant must be able to provide a supply of 90 acre-feet of water (0.3 acre-feet/year x 300 years) to meet the County's 300 year water supply requirement.



The following table is derived from tables and information in both the Water Resources Report and the State Engineer's letter, and summarizes the Denver Basin water supply available underlying the Applicant's property as follows:

| Aquifer | Determination of Water Right | Total Water Adjudicated (Acre-Feet) | Total amount of acre-feet per year (100 years) | Total amount of acre-feet per year (300 years) |
|------------------------|------------------------------|-------------------------------------|--|--|
| Denver (NNT) | 3718-BD | 1,360 | 13.21 ¹ | 4.40 |
| Arapahoe (NT) | 3717-BD | 1,430 | 14.3 | 4.76 |
| Laramie-Fox Hills (NT) | 3716-BD | 1,530 | 15.3 | 5.1 |

3. In a letter dated September 16, 2019, the State Engineer reviewed the submittal to subdivide approximately 40 acres into 2 lots, 1 lot of 35.01 acres and a second lot of 4.144 acres. The State Engineer notes that the estimated water requirement for Lot 2 is "0.3 acre-feet per year for in-house residential purposes, but may increase to 1.0 acre-foot for additional domestic uses." The source of water for Lot 2 is Determination of Water Right and Replacement Plan No. 3718-BD. The engineer states that the "replacement plan allows withdrawal of 0.3 acre-feet annually from the Denver Aquifer for in-house use only in one single family dwelling until such time as the Applicant demonstrates replacement water is being delivered from Arapahoe or Laramie-Fox Hills aquifer sources so as to allow the well to pump a total of 1 acre-foot annually. The Denver aquifer water will be withdrawn through an existing well, currently operated under well permit no. 115609, for a period of 300 years. Once withdrawal from the Denver aquifer well increases to 1 acre-foot annually the use of the well will be limited to domestic use (in-house use in 1 single family dwelling, landscape and gardens, domestic animal watering)." The State Engineer referenced communication with Applicant's attorney, and as also cited in the Water Resources Report, that the "Applicant currently intends to continue to operate his business on Lot 1 as a 'dry lot' (i.e. without a demand for water supplied by the lot owner), which could continue indefinitely." The State Engineer further states that the "Applicant may, if economically feasible and sensible at some point in the future, construct a well(s) to the underlying nontributary Arapahoe and/or Laramie-Fox Hills aquifer to provide water to Lot 1."

The State Engineer's Office previously issued Well Permit No. 115609 to the Applicant. The Engineer states that pursuant to Water Right No. 3718-BD and the Replacement Plan, the existing well permit "no. 115609 must be re-permitted to operate

¹ Determination of Water Right No. 3718-BD adjudicates a total of 1,360 acre-feet to the Subject Property (or 13.6 acre-feet per year for a total of 100 years); however, the amount of withdrawal is reduced to 1,321 acre-feet (or 13.21 acre feet per year for 100 years) to account for the water historically withdrawn by the existing exempt well from beneath the overlying land. See Determination of Water Right No. 3718-BD, page 2, paragraph 8. Therefore, the annual withdrawal from the Denver aquifer for 300 years is 4.4 acre-feet. The amount of 1,321 acre-feet will be referenced in the remainder of this review.

pursuant to the determination and replacement plan.” The Applicant recently submitted an application to re-permit the well which was approved by the State Engineer’s Office on October 10, 2019. The new Well Permit No. is 83709-F.

Finally, the State Engineer stated that “pursuant to Sections 30-28-136(1)(h)(I), C.R.S., it is our opinion that the proposed water supply for Lot 2 is adequate and can be provided without causing injury to water rights and the proposed water supply for Lot 1 that relies on Arapahoe aquifer and/or Laramie-Fox Hills aquifer wells is adequate and can be provided without causing injury to water rights. To the extent that Lot 1 is proposed to permanently be a ‘dry lot’ with no proposed water source our office has no comments on the adequacy of the water supply for Lot 1 since none is proposed.” (Emphasis added).

4. Determination 3718-BD. This Determination adjudicates water in the not nontributary Denver aquifer underlying the 40 acres of this subdivision located within the Upper Black Squirrel Creek Designated Ground Water Basin. The Determination noted an existing small-capacity well, Permit No. 115609, located on the property and is permitted to withdraw 0.3 acre-feet per year. Well Permit No. 115609 was required to be cancelled and a new well permit issued, and that has been completed pursuant to the Replacement Plan. Determination 3718-BD adjudicates an allowed average annual amount of withdrawal of 13.21 acre-feet based on a 100 year aquifer life (4.40 acre-feet per year for 300 years). The Determination limits beneficial uses to the following: domestic (in home, irrigation of lawns and gardens, domestic animals), commercial, irrigation, replacement, and fire protection.

5. Replacement Plan-- Determination 3718-BD. The Replacement Plan states the Denver aquifer water will be withdrawn through the existing well on Lot 2 utilizing Well Permit No. 115609 which has been re-permitted to Well Permit No. 83709-F. The use of the well will be limited to “in-house use in one single family dwelling.” The allowed annual amount of ground water to be withdrawn from the aquifer by the well operating under the plan shall “not exceed 0.3 acre-feet until the Applicant has demonstrated in accordance with the terms of this replacement plan that adequate return flows and/or recharge exists to replace depletions from the withdrawal of the additional 0.7 acre-foot annually, for a total withdrawal of 1 acre-foot annually.” The Replacement Plan requires that replacement of depletions must be provided as described in Exhibits A-1 and A-2 as referenced in the Replacement Plan, which is attached hereto at Exhibit 1. Exhibit A-1 shall be utilized while the pumping of the well is 0.3 acre-feet annually. At such time as the pumping rate is increased to a total of 1.0 acre-feet annually, the depletions described in Exhibit A-2 shall be used. Further, in the event the withdrawal is increased to 1 acre-foot annually, “the use of the well will be limited to domestic use (in-house use, irrigation, landscape and gardens, domestic animal watering).” The Replacement Plan indicates that return flows from in-house use shall come through individual on-lot non-evaporative septic systems located on the property, and specifically states: “[t]o assure adequate return flows from the Denver aquifer well for replacement of the depletions resulting from

in-house use, the well must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system.” The Property is located within the Upper Black Squirrel Creek Ground Water Management District, and the District did not submit either recommendations or objections to the Ground Water Commission for any of the Determinations. The Ground Water Commission found that the Replacement Plan “would not cause unreasonable impairment of water quality of the alluvial aquifer.” Finally, the Plan includes typical metering, monitoring, and reporting requirements.

6. Determinations 3716-BD & 3717-BD. Applicant also adjudicated water rights under the subject property in the nontributary Arapahoe aquifer in Determination No. 3717-BD and in the nontributary Laramie-Fox Hills aquifer in Determination No. 3716-BD. 3717-BD adjudicated 1,430 acre-feet of Arapahoe aquifer water or 14.3 acre-feet per year based on 100 years, which would be reduced to 4.77 acre-feet per year for 300 years. 3716-BD adjudicated 1,530 acre-feet of Laramie-Fox Hills aquifer water or 15.3 acre-feet per year based on 100 years, which would be reduced to 5.1 acre-feet per year for 300 years.

7. NOTES: It is important to clarify what is and is not covered in this water review, to emphasize and distinguish some aspects of the Replacement Plan, and to provide information that can be used to guide future changes of use and withdrawals. This water review only covers the proposed water supply for Lot 2 based on the proposed use and the Well Permit No. 83709-F, which allows for an annual withdrawal of 0.3 acre-feet from the not nontributary Denver aquifer. While this review provides information regarding potential future changes of use and withdrawal of water which would affect both Lots 1 and 2, it does not make any findings or recommendations as to sufficiency of water for Lot 1, which is proposed as a “dry lot” with no requirement for water or sewer service other than as historically been provided, i.e., bottled water and portable toilets. This review also does not make any findings or recommendations as to the speculative future increase in withdrawal from the Denver aquifer for up to 1.0 acre-feet per year, which is addressed in the Replacement Plan.

Applicant’s water attorney, Chris Cummins, by e-mail dated October 30, 2019, confirmed Applicant’s intent that Lot 1 is a dry lot and Lot 2 is “limited to only 0.3 annual acre-feet of pumping for in-house use, consistent with the approved replacement plan assuming no nontributary wells are drilled.” He also clarified that any future nontributary wells in the Arapahoe or Laramie-Fox Hills aquifers would be on Lot 1. Finally, he indicated the Applicant understands the need to return to the County in the future if there is a desire to use this nontributary water on Lot 1, which would allow for increased withdrawal and additional uses for the Denver aquifer well on Lot 2.

As indicated above, the use of 0.3 acre-feet per year of not nontributary Denver aquifer water on Lot 2 is limited to only in-house use. No irrigation or stock watering is allowed as indicated in both the Replacement Plan and Well Permit No. 83709-F. Pursuant to the

Replacement Plan, in the future, in order to increase withdrawal of this Denver aquifer water up to 1.0 acre-feet per year, a well or wells would have to be drilled into the Arapahoe and/or Laramie-Fox Hills aquifer(s) on Lot 1 in order to generate return flows from indoor commercial drinking and sanitary uses, irrigation, and domestic animal watering uses. This then would allow the uses of the water on Lot 2 to change to domestic use, which would continue to be in-house use, but would also include irrigation, landscape and gardens, and domestic animal watering. In order to drill the Arapahoe and/or Laramie-Fox Hills aquifer well(s) on Lot 1 and thereby be able to increase both the use and amount of withdrawal of the Denver aquifer well on Lot 2, Applicant, its successors and assigns, will have to apply for a change in water supply from El Paso County Planning and Community Development Department and have that proposed water supply reviewed by the State Engineer's Office, the Health Department (as to quality for commercial uses on Lot 1), and the County Attorney's Office, and approved by the Board of County Commissioners (or other approval as may otherwise be allowed at that time). Applicant, its successors and assigns, likely also will have to submit additional evidence to the Colorado Ground Water Commission staff and the State Engineer's Office, and Well Permit No. 83709-F likely will have to be amended.

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

9. Waiver. Applicant has requested a waiver of the requirement of a finding of water sufficiency as to Lot 1, specifically, to approve Lot 1 as a "dry lot" pursuant to Section 8.4.7(A)(3), LDC. That provision allows exceptions to the requirements of Section 8.4.7, LDC, Water Supply Standards, for the following:

"A proposed subdivision which, by reason of the nature, type and extent of the proposed development, will not require a water supply as prescribed herein. Subdivisions meeting this requirement are not designed or developed for permanent occupation or habitation."

The determination of the waiver is made on a case-by case basis by the BoCC upon recommendations by the County Attorney's Office, PCD Director, and Planning Commission, based on a specific request by Applicant with supporting evidence.

Applicant asserts that the go-kart operation on Lot 1 has operated historically as a "dry lot" with bottled drinking water sold to patrons and sewer services provided by portable restrooms. The County Attorney's Office believes the Applicant's historic use and stated intent is to continue to use the Lot 1 as a "dry lot" without a requirement for running water and sewer service, and therefore recommends approval of the waiver request.

10. Analysis. As described above, pursuant to Determination Nos. 3718-BD, 3717-BD, and 3716-BD, the Applicant has 3 sources of water to serve the subject

property. Determination No. 3718-BD adjudicated a total of 1,321 acre-feet of water from the Denver aquifer water supply underlying the subject property, which equates to 4.40 acre-feet/year based on El Paso County's 300 year water supply requirement. The Replacement Plan allows withdrawal of 0.3 acre-foot/year of Denver aquifer water for 300 years. Based on an annual withdrawal of 0.3 acre-foot/year, the water demand for the subdivision requires a total of 90 acre-feet for 300 years. Pursuant to the Replacement Plan, the Applicant may withdraw 90 acre-feet from the Denver aquifer adjudicated by Determination No. 3718-BD. As described in the Water Resources Report, the SBR Racing Minor Subdivision "will require an average of 0.30 annual acre-feet of water supply." Therefore, **if the waiver request as to Lot 1 is approved by the Planning Commission and the Board of County Commissioners**, then based upon the following: a) the withdrawal demand of 0.3 acre-feet per year and an annual available supply of 4.40 acre-feet per year for 300 years; b) the finding of sufficiency and no injury by the State Engineer and the Colorado Ground Water Commission Determination of Water Right and Replacement Plan No. 3718-BD; c) the State Engineer's requirement that Well Permit No. 115609 be re-permitted, which has already been completed; d) the assurances by Applicant's water attorney that Lot 1 will be a "dry lot" and Lot 2 will limit use to in-house use and will limit withdrawals to 0.3 acre-feet per year pursuant to the Replacement Plan; and, e) based on the Requirements below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. There is a presumption of sufficient water quality as to the residential use of water on Lot 2.

REQUIREMENTS:

A. Applicant, its successors and assigns, shall comply with all requirements of Determination of Water Right No. 3718-BD and the Replacement Plan, and as and when applicable, Determination of Water Right No. 3717-BD, and Determination of Water Right No. 3716-BD.

B. Applicant shall comply with the requirements of the State Engineer's Office Well Permit No. 83709-F, specifically, that the use allowed for Lot 2 is only for in-house use and the amount of withdrawal is limited to 0.3 acre-feet per year.

C. If Applicants, their successors and assigns, convey Lot 2, then at the time of lot sale, they shall convey by warranty deed to successor lot owner(s) sufficient water rights in the Denver aquifer as follows:

90 acre-feet of not nontributary Denver aquifer water pursuant to Determination No. 3718-BD and the Replacement Plan underlying the subject property to satisfy El Paso County's 300 year water supply requirement. Denver aquifer requirements for the single-family lot are a total of 90 acre-feet based on annual

withdrawal of 0.3 acre-foot/year x 300 years).² Said conveyance instrument shall recite that the annual withdrawal is limited to 0.3 acre-feet per year, from which the lot owner is responsible for meeting the annual replacement required by the Replacement Plan from return flows through a non-evaporative septic system.

Any and all conveyance instruments shall recite as follows:

For the water rights conveyed for the primary supply (Denver aquifer): "These water rights conveyed are intended to provide a 300-year supply for Lot 2 of the SBR Racing Minor Subdivision and 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."

Address return flows required from use of Denver aquifer water. Covenants shall ensure that return flows by the use of non-evaporative septic systems are made to address the replacement requirements. 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."

Applicant shall provide a form warranty deed(s) as to Lot 2 for review and approval to the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. In order to ensure that the water supply is appropriately retained and provided for Lot 2, Applicant shall provide a draft deed for the conveyance of Lot 1 for review and approval by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat.

D. Because the water supply for this 2-lot subdivision is complex, including the future uses of water addressed in the Replacement Plan whereby future increased withdrawals for Denver aquifer water on Lot 2 will depend on return flows generated from nontributary Arapahoe and/or Laramie-Fox Hills wells drilled and used on Lot 1, which Lot 1 likely will be owned by a different person than the owner of Lot 2, thus a water supply potentially deriving from three sources over the 300 year period, Applicant, their successors and assigns, shall create restrictive covenants (Declaration of Covenants, Conditions, and Restrictions), upon and running with the property which shall advise and obligate future lot owner(s) of this subdivision, their successors and assigns, regarding

² Determination of Water Right Nos. 3718-BD, 3717-BD, and 3716-BD base the water commitments on a 100-year aquifer life. Due to El Paso County's 300-year rule, the acre-feet of water per year to be supplied to the single-family lot is computed to reflect El Paso County's 300-year requirement.

all applicable requirements of Colorado Ground Water Commission Determination of Water Right No. 3718-BD and Replacement Plan, and Determination of Water Right Nos. 3717-BD and 3716-BD, as and when applicable, and Well Permit No. 83709-F. The covenants shall address the following:

- 1) Identify the water rights associated with the property. Regarding Lot 2, the Covenants shall reserve 90 acre-feet of not nontributary Denver aquifer water pursuant to Determination No. 3718-BD and the Replacement Plan to satisfy El Paso County's 300 year water supply requirement. To the extent Applicant intends to increase withdrawal and use of Denver aquifer in the future to 1.0 acre-feet per year for domestic uses, which will require return flows from future commercial use of water from nontributary Arapahoe and/or Laramie-Fox Hills wells drilled on Lot 1, Applicant may need to consider specifically reserving the right to those necessary return flows in any deeds conveying Lot 1 and water associated with Lot 1, but shall also address this contingency in the covenants. In the event Applicant intends to use that replacement water derived from the Arapahoe and/or Laramie-Fox Hills aquifer on Lot 1, any such amounts should be identified and reserved in the covenants, with appropriate restrictions, pursuant to the Replacement Plan. The following or similar language shall be included as to the applicable future return flows from Lot 1: "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."
- 2) The following or similar language shall be included to address conveyances of Lot 2 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 the Determination and the water rights 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."
- 3) The Covenants shall advise future lot owners of this subdivision, their successors and assigns, of their responsibility for any metering and data collecting that may be required regarding water withdrawals from the existing Denver aquifer well and future wells which may be constructed in the Arapahoe and/or Laramie-Fox Hills aquifers.

- 4) 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 Lot 2 of SBR Racing Minor Subdivision, provided by the Colorado Ground Water Commission Determination of Water Right No. 3718-BD and Replacement Plan, and if and when applicable, Determination of Water Right Nos. 3717-BD and 3716-BD, and Well Permit No. 83709-F. Further, written approval of the proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioners, after review by the County Attorney’s Office. Any amendments must be pursuant to a Determination from the Colorado Ground Water Commission approving such amendment, with notice to El Paso County Planning and Community Development for an opportunity for the County to participate in any such adjudication.”

- 5) The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of the Colorado Ground Water Commission Determination of Water Right No. 3718-BD and Replacement Plan, and if and when applicable, Determination of Water Right Nos. 3717-BD and 3716-BD, and Well Permit No. 83709-F, are also terminated by order of the Colorado Ground Water Commission, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

E. Because Lot 1 will be a dry lot, there shall be a plat note specifically stating that Lot 1 shall be used only as a “dry lot” without running water or sewer service, and that if Applicant, its successors and assigns, desire to use water in the future, this shall constitute a substantial change in the water use, which will require an application to be submitted to the El Paso County Planning and Community Development Department and appropriately reviewed and approved by the County. This shall also be addressed in the Covenants.

F. Because the Replacement Plan provides for potential future increased uses and withdrawal of not nontributary Denver aquifer water on Lot 2, there shall be a plat note specifically stating that should Applicant, its successors and assigns, desire to increase the use and withdrawal of water in the future, this shall constitute a substantial

change in the water use, which will require an application to be submitted to the El Paso County Planning and Community Development Department and appropriately reviewed and approved by the County. This shall also be addressed in the Covenants.

G. Applicant shall submit the Declaration of Covenants, Conditions, and Restrictions and any plat notes and deeds 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 Covenants shall cross-reference the Determinations and shall recite the obligations of the individual lot owners under the same.

H. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to Determination of Water Right No. 3718-BD and Replacement Plan, Determination of Water Right Nos. 3717-BD and 3716-BD, Well Permit No. 83709-F, 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 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, Planner III

Attachments: Exhibit1, Replacement Plan—Determination of Water Right No. 3718-BD

**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR REPLACEMENT PLAN TO ALLOW THE WITHDRAWAL OF GROUND WATER FROM THE DENVER AQUIFER IN THE UPPER BLACK SQUIRREL CREEK DESIGNATED GROUND WATER BASIN.

REPLACEMENT PLAN - DETERMINATION OF WATER RIGHT NO. 3718-BD

AQUIFER: DENVER

APPLICANT: KERRY E. BURT

In compliance with Section 37-90-107.5, CRS, and the Designated Basin Rules, 2 CCR 410-1 ("Rules" or "Rule"), Kerry E. Burt ("Applicant") submitted an application for a replacement plan to allow the withdrawal of ground water from the Denver Aquifer in accordance with Determination of Water Right No. 3718-BD.

FINDINGS

1. Pursuant to Section 37-90-107(7), CRS, in a Findings and Order dated July 12, 2019, the Ground Water Commission ("Commission") approved a Determination of Water Right, no. 3718-BD, for the Denver Aquifer ("Aquifer"), summarized as follows.
 - a. The determination quantified an amount of water from beneath 40 acres of overlying land described as the SW1/4 of the SE1/4 of Section 22, Township 12 South, Range 63 West of the 6th P.M., in El Paso County ("Overlying Land").
 - b. The total volume of underlying ground water that may be withdrawn from the Aquifer shall not exceed 1,321 acre-feet and the allowed average annual amount of ground water that may be withdrawn from the Aquifer shall not exceed 13.21 acre-feet.
 - c. The use of the allowed amount of underlying ground water shall be limited to the following beneficial uses: domestic (in home, irrigation of lawn and gardens, domestic animals), commercial, irrigation, replacement, and fire protection.
 - d. In accordance with Rule 5.3.6 the withdrawal of the subject ground water will, within one hundred years, deplete the flow of a natural stream or its alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal, the ground water is considered to be not-nontributary, and Commission approval of a replacement plan providing for actual depletion of affected alluvial aquifers and adequate to prevent any material injury to existing water rights in such alluvial aquifers is required prior to approval of well permits for wells to withdraw the subject ground water.
2. The subject water is Designated Ground water located within the boundaries of the Upper Black Squirrel Creek Designated Ground Water Basin and within the Upper Black Squirrel Creek Ground Water Management District. The Commission has jurisdiction.
3. Withdrawal of the subject ground water would deplete the alluvial aquifer of the Upper Big Sandy Designated Ground Water Basin and the alluvial aquifer of the Upper Black Squirrel Creek Designated Ground Water Basin, both of which, according to Rules 5.2.7.2 and 5.2.6.2, respectively, have been determined to be over appropriated. Such depletion would unreasonably impair existing alluvial rights withdrawing water from those alluvial aquifers.

EXHIBIT

4. Pursuant to Rule 5.6.1 this plan must be adequate to prevent any material injury to water rights of other appropriators, which for purposes of this plan means large capacity wells withdrawing water from the alluvial aquifer of the Upper Big Sandy Designated Ground Water Basin and the alluvial aquifer of the Upper Black Squirrel Creek Designated Ground Water Basin.
5. Pursuant to Rule 5.3.6.2(C) the amount of replacement water shall provide for the depletion of alluvial water for the first 100 years due to all previous pumping and if pumping continues beyond 100 years, shall replace actual impact until pumping ceases.
6. The subject application for the replacement plan was received by the Commission on August 9, 2018.
7. The Applicant proposes to divert 0.3 acre-feet annually from the Denver Aquifer for in-house use only in one single family dwelling until such time as the Applicant demonstrates replacement water is being delivered from Arapahoe or Laramie-Fox Hills aquifer sources as described in paragraph 11 so as to allow the well to pump a total of 1 acre-foot annually. The Denver aquifer water will be withdrawn through an existing well ("Denver aquifer well"), currently operated under well permit no. 115609, which will be re-permitted to operate under this replacement plan for a period of 300 years. Once withdrawal from the well increases to 1 acre-foot annually the use of the well will be limited to domestic use (in-house use, landscape and gardens, domestic animal watering).
8. At a continuous withdrawal of 0.3 acre-feet annually for 300 years, total depletions to the alluvial aquifer systems of the Upper Big Sandy Designated Ground Water Basin and Upper Black Squirrel Creek Designated Ground Water Basin would steadily increase to 0.27 acre-feet per year in the 300th year, as shown in Exhibit A-1.
9. At a continuous withdrawal of 0.7 acre-feet annually for 300 years, total depletions to the alluvial aquifer systems of the Upper Big Sandy Designated Ground Water Basin and Upper Black Squirrel Creek Designated Ground Water Basin would steadily increase to 0.63 acre-feet per year in the 300th year, as shown in Exhibit A-2.
10. While the well is diverting 0.3 acre-feet annually from the Denver Aquifer for in-house use only the Applicant proposes to provide 0.27 acre-feet per year of replacement water to the alluvial aquifer system of the Upper Black Squirrel Creek Designated Ground Water Basin to replace depletions resulting from such pumping. The proposed source of replacement water is septic and leaching field return flows from the in-house use of the ground water to be pumped under the plan. The Applicant estimates that return flows will consist of 90% of the water used for in-house purposes. Assuming a total annual withdrawal amount for in-house use of 0.30 acre-feet, the return flow from the well would be 0.27 acre-feet annually.
11. The additional proposed sources of replacement water that would allow the well to increase its diversions from 0.3 acre-foot annually to 1 acre-foot annually from the Denver Aquifer are return flows from in-door commercial drinking and sanitary use and irrigation use of the nontributary Laramie-Fox Hills and/or Arapahoe aquifer ground water pumped pursuant to Determination of Water Rights Nos. 3716-BD and 3717-BD ("Laramie-Fox Hills and Arapahoe ground water"), respectively; and/or direct delivery of said Laramie-Fox Hills and Arapahoe ground water recharged through a below ground infiltration structure, like a leach field, approved by the Commission, as further described below.

- a. A new Arapahoe aquifer well may be constructed pursuant to Determination of Water Rights No. 3717-BD. Pursuant to Section 37-90-107(7), CRS, in a Findings and Order dated July 1, 2019, the Ground Water Commission ("Commission") approved a Determination of Water Right, no. 3717-BD, for the Arapahoe Aquifer, summarized as follows.
 - i. The determination quantified an amount of water underlying the Overlying Land.
 - ii. The total volume of underlying ground water that may be withdrawn from the Aquifer shall not exceed 1,430 acre-feet and the allowed average annual amount of ground water that may be withdrawn from the Aquifer shall not exceed 14.3 acre-feet.
 - iii. The use of the allowed amount of underlying ground water shall be limited to the following beneficial uses: domestic (in home, irrigation of lawn and gardens, domestic animals), commercial, irrigation, replacement, and fire protection.
 - iv. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of ground water from the Aquifer underlying the land claimed by the Applicant will not, within one hundred years, deplete the flow of a natural stream or its alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the Underlying Ground Water is nontributary ground water as defined in Rule 4.2.19 of the Designated Basin Rules. Pursuant to the Rules, no more than 98% of the amount of the Underlying Ground Water withdrawn annually shall be consumed.

The 1,430 acre-feet of water that may be withdrawn under Determination of Water Right no. 3717-BD may be withdrawn at a rate of up to 4.77 acre-feet annually for 300 years, or at a higher withdrawal rate over a shorter period of time as long as the water is withdrawn in accordance with Determination of Water Right no. 3717-BD.

- b. In addition to, or as an alternative to the Arapahoe aquifer well, the Applicant may construct a new Laramie-Fox Hills aquifer well pursuant to Determination of Water Rights No. 3716-BD. Pursuant to Section 37-90-107(7), CRS, in a Findings and Order dated July 1, 2019, the Ground Water Commission ("Commission") approved a Determination of Water Right, no. 3716-BD, for the Laramie-Fox Hills Aquifer, summarized as follows.
 - i. The determination quantified an amount of water underlying the Overlying Land.
 - ii. The total volume of underlying ground water that may be withdrawn from the Aquifer shall not exceed 1,530 acre-feet and the allowed average annual amount of ground water that may be withdrawn from the Aquifer shall not exceed 15.3 acre-feet.
 - iii. The use of the allowed amount of underlying ground water shall be limited to the following beneficial uses: domestic (in home, irrigation of lawn and gardens, domestic animals), commercial, irrigation, replacement, and fire protection.
 - iv. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of ground water from the Aquifer underlying the land claimed by the Applicant will not, within one hundred years, deplete the

flow of a natural stream or its alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the Underlying Ground Water is nontributary ground water as defined in Rule 4.2.19 of the Designated Basin Rules. Pursuant to the Rules, no more than 98% of the amount of the Underlying Ground Water withdrawn annually shall be consumed.

The 1,530 acre-feet of water that may be withdrawn under Determination of Water Right no. 3716-BD may be withdrawn at a rate of up to 5.10 acre-feet annually for 300 years, or at a higher withdrawal rate over a shorter period of time as long as the water is withdrawn in accordance with Determination of Water Right no. 3716-BD.

- c. The Applicant proposes to use the Laramie-Fox Hills and Arapahoe ground water for the irrigation of 4 to 6 acres of irrigated grasses; the irrigation of grass and shrubs; fire protection; and for use in a services building that will provide a cooking/food service area, restrooms and showers ("commercial drinking and sanitary use"). The Applicant claims that irrigation water will be applied by sprinkler or similar non-drip irrigation system. The Applicant estimates that return flows will consist of 90% of the water used for in-building commercial drinking and sanitary purposes as will 15% of the water used for irrigation. Assuming a total annual withdrawal amount for in-building commercial drinking and sanitary use of 0.50 acre-feet (resulting in return flows of 0.45 acre-feet annually) and a total annual withdrawal amount of 9.2 acre-feet for irrigation (resulting in return flows of 1.38 acre-feet annually), the return flow from the well(s) would be 1.83 acre-feet annually. In the alternative, assuming a total annual withdrawal amount of 4.7 acre-feet for irrigation, with no other uses, the return flow from the well(s) would be 0.71 acre-feet annually.
12. The subject property is located within the drainage of Black Squirrel Creek, and the return flows will flow to the alluvial aquifer of the Upper Black Squirrel Creek Designated Ground Water Basin. The Applicant proposes to aggregate all replacements to the drainage in which the well or wells will operate, in accordance with Guideline 2007-1.
13. So long as the septic and leaching treatment systems for the in-house use and in-building commercial drinking and sanitary use of the water are constructed and operated in compliance with state and county health department standards the plan would not cause unreasonable impairment of water quality of the alluvial aquifer.
14. Records in this office indicate that the Applicant controls the water rights to be used as the source of replacement water, consisting of Determination of Water Right Nos. 3716-BD, 3717-BD and 3718-BD.
15. In accordance with Rule 5.6.2 the application was referred to the Upper Black Squirrel Creek Ground Water Management District on April 30, 2019. No written recommendations from the district were received.
16. In accordance with Sections 37-90-107.5 and 37-90-112, CRS, the application was published in the Ranchland News newspaper on May 2, 2019 and May 9, 2019. No objections to the application were received within the time limit set by statute.
17. The Commission Staff has evaluated the application pursuant to Section 37-90-107.5, CRS, and the requirements of Rule 5.3.6.2(C) and Rule 5.6.

18. According to Rule 5.6.2 of the Designated Basin Rules:

- a. The Applicant has the burden of proving the adequacy of the plan in all respects.
- b. The Commission Staff shall propose any additional terms and conditions or limitations which are necessary to prevent material injury and to ensure that the plan is administrable and enforceable.

19. Based on the above, no material injury will occur to the water rights of large capacity wells producing from the alluvial aquifer of the Upper Big Sandy Designated Ground Water Basin and the alluvial aquifer of the Upper Black Squirrel Creek Designated Ground Water Basin, due to diversions from the Denver Aquifer, if operated under this replacement plan, subject to the conditions given below.

ORDER

In accordance with Section 37-90-107.5, CRS, and the Designated Basin Rules, the Colorado Ground Water Commission orders that the application for a replacement plan to allow the withdrawal of ground water from the Denver Aquifer underlying 40 acres that are the subject of Determination of Water Right no. 3718-BD is approved subject to the following conditions:

20. The Denver aquifer water will be withdrawn through the existing well, currently operated under well permit no. 115609, which will be re-permitted to operate pursuant to this replacement plan. The use of the well will be limited to in-house use in one single family dwelling until the Applicant has demonstrated in accordance with the terms of this replacement plan that adequate return flows exist to replace depletions from the withdrawal of 1 acre-foot annually from the Denver Aquifer. Once the withdrawal from the well increases to 1 acre-foot annually the use of the well will be limited to domestic use (in-house use, irrigation of landscape and gardens, domestic animal watering).
21. The allowed annual amount of ground water to be withdrawn from the aquifer by the well operating under this plan shall not exceed 0.3 acre-feet until the Applicant has demonstrated in accordance with the terms of this replacement plan that adequate return flows and/or recharge exists to replace depletions from the withdrawal of the additional 0.7 acre-foot of water annually, for a total withdrawal of 1 acre-foot annually.
22. Prior to increasing pumping from the existing well to 1 acre-foot annually the Applicant must demonstrate to the satisfaction of the Commission that adequate return flows exist to replace depletions that result from all withdrawals through the Denver aquifer well. At a minimum the following information must be provided to the Commission:
 - a. Confirmation that the Denver aquifer well is serving an occupied single family dwelling and return flows from the dwelling are being returned through a non-evaporative septic system.
 - b. Evidence that a well has been constructed, and a pump has been installed in, a Laramie-Fox Hills aquifer well that was permitted pursuant to Determination of Water Right, no. 3716-BD; or an Arapahoe aquifer well that was permitted pursuant to Determination of Water Right, no. 3717-BD.

- c. If the Applicant will be claiming return flows from the use of the Laramie-Fox Hills aquifer and/or Arapahoe aquifer water described above as a replacement source the following must be provided to the Commission staff:
 - i. Evidence that a meter has been installed to separately measure the amount of water that will be delivered to in-door commercial drinking and sanitary uses, if such return flows are being claimed.
 - ii. Evidence that the water used for in-door commercial drinking and sanitary use is being returned through a non-evaporative septic system, if such return flows are being claimed.
 - iii. Evidence that a meter has been installed to separately measure the amount of water that will be delivered to irrigation, if such return flows are being claimed.
 - iv. Evidence that the irrigation system is a sprinkler irrigation system, or some other non-drip irrigation system, that will return at least 15% of the amount of water diverted for irrigation use to the alluvial aquifer.
 - v. Evidence that adequate water is being pumped for in-door commercial drinking and sanitary uses and/or irrigation use to replace the depletions that result from the additional 0.7 acre-feet of pumping, based on the assumed return flows of 90% for in-door commercial drinking and sanitary use and 15% for irrigation use.
- d. If the Applicant will be claiming recharge credits for direct delivery into the alluvial aquifer of water pumped from the Laramie-Fox Hills aquifer and/or Arapahoe aquifers described above as a replacement source the following must be provided to the Commission staff:
 - i. Evidence that a below ground infiltration structure has been constructed, and is operational, that is adequate to recharge the amount of water that the Applicant claims will be delivered to the structure on an annual basis.
 - ii. Evidence that a meter has been installed that separately measures the amount of water that will be delivered to recharge.
 - iii. The total quantity of water that the Applicant claims will be delivered to the recharge structure on an annual basis.
 - iv. The location on the Overlying Land where the recharge structure was constructed.
 - v. Evidence that the recharge project will prevent the unreasonable impairment of water quality.
 - vi. Evidence that the recharge structure is constructed in a manner to prevent evapotranspiration losses from occurring as a result of operation of the infiltration gallery.
- e. Proposed accounting in a spreadsheet, or other approved digital format.

23. A totalizing flow meter shall be installed on the wells. The well owners shall maintain the meters in good working order.
24. Permanent records of all withdrawals of ground water from the wells shall be recorded at least annually by the well owners, permanently maintained, and provided to the Commission and the Upper Black Squirrel Creek Ground Water Management District upon request.
25. Existing well permit no. 115609 must be re-permitted to operate pursuant to this plan.
26. Pumping under this plan is limited to a period of 300 years. The year of first use of this replacement plan shall be the year 2019.
27. Return flows from in-house use and in-door commercial use of ground water shall occur through individual on-lot non-evaporative septic systems located within the 40 acres of overlying land that are the subject of Determination of Water Right Nos. 3716-BD, 3717-BD and 3718-BD.
28. The septic systems must be constructed and operated to state and county health department standards.
29. Replacement of depletions must be provided annually in the acre-feet amounts shown in Exhibits A-1 and A-2. Exhibit A-1 only shall be used until such time as the allowed pumping of the well is increased to 1 acre-foot annually. Once the allowed pumping rate of the well is increased to 1 acre-foot annually the depletions shall be determined as the replacement requirement for the withdrawal of the 0.3 acre-feet for in-house use, based on the number of years since the year of first use of this replacement plan (2019), plus the replacement requirement as shown in Exhibit A-2 for the withdrawal of the additional 0.7 acre-feet annually, based on the number of years since the allowed pumping was increased. Annual replacement requirements may be computed by pro-rating between the values given on Exhibits A-1 and A-2, or for simplicity may be taken as the amount shown in the next succeeding 5 year increment.
30. The Applicant or their successor(s) are responsible for ensuring that replacement water is provided to the alluvial aquifer as required by this plan, and that the replacement prevents any material injury to the water rights of other appropriators. The annual replacement requirement and the annual amount of replacement water provided shall be calculated and reported on a form acceptable to the Commission. The annual amount of replacement water provided must be no less than the annual replacement requirement on a yearly basis. No credit shall be claimed by the Applicant for an oversupply of replacement water provided to the alluvium during previous years.
31. The Applicant must provide the required annual amount of replacement water for the first 100 years, or for as long as a Denver aquifer well is operated pursuant to this plan, whichever is longer.
32. To assure adequate return flows from the Denver aquifer well for replacement of the depletions resulting from in-house use, the well must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system.

33. So long as the Denver aquifer well continues to pump and supply an occupied dwelling while the well is used for in-house use only, the plan's required replacement obligations, shown in Exhibit A-1 will be met.
34. Should the Denver aquifer well cease pumping within the first 100 years an amended or alternate replacement plan must be obtained that will make the required replacement deliveries, unless return flows or recharge from the use of the Laramie-Fox Hills aquifer and Arapahoe aquifer ground water, as described above, are adequate to replace all depletions from the Denver well.
35. At any time while the Denver aquifer well is pumping should it be determined that return flows or credits from direct delivery are not providing all replacements required under this replacement plan an amended or alternate replacement plan must be obtained that will make the required replacement deliveries.
36. The Applicant or their successor(s) must gather, record and maintain permanent records of all information pertaining to operation of this plan, which shall include, but is not be limited to, those items identified below. The Applicant must submit records to the Commission and the Upper Black Squirrel Creek Ground Water Management District on forms acceptable to the Commission, on an annual basis for the previous calendar year, by February 15th of the following year.
 - a. Accounting that must be provided if the Denver aquifer well is used for in-house use only:
 - i. Identification of the Denver aquifer well permit issued pursuant to this plan.
 - ii. The amount of water diverted by the Denver aquifer well, both annually and cumulatively since operation of the plan began.
 - iii. The number of occupied single family dwellings served by the Denver aquifer well.
 - iv. The return flows occurring from use of the Denver aquifer well operating under the plan, assuming 0.27 acre-feet per year occupied single family dwelling (90% of the water used for in-house purposes) enters the alluvial aquifer as replacement water.
 - v. Any other information the Commission deems relevant and necessary to operation, monitoring, accounting, or administration of the plan.
 - b. Accounting that must be provided if the Denver aquifer well is expanded to allow for domestic use (in-house use, irrigation of landscape and gardens, domestic animal watering) and the withdrawal of 1 acre-foot annually:
 - i. Identification of the Denver aquifer well permit issued pursuant to this plan.
 - ii. Identification of the Laramie-Fox Hills and Arapahoe aquifer well permits used as part of this replacement plan, either through return flow or recharge.
 - iii. The amount of water diverted by each well, both annually and cumulatively since operation of the plan began.
 - iv. The number of occupied single family dwellings served by the Denver aquifer well.
 - v. Metered quantity of water pumped from the Laramie-Fox Hills and/or Arapahoe aquifer for in-door commercial drinking and sanitary use.

- vi. The return flows occurring from in-door commercial drinking and sanitary use assuming 90% of the water used for in-door commercial drinking and sanitary use enters the alluvial aquifer as replacement water.
 - vii. Metered quantity of water pumped from the Laramie-Fox Hills and/or Arapahoe aquifer for irrigation use.
 - viii. The type of irrigations system(s) used to irrigate with the Laramie-Fox Hills and/or Arapahoe aquifer water, and the return flows occurring from irrigation use assuming 15% of the water used for irrigation use enters the alluvial aquifer as replacement water.
 - ix. Metered quantity of water pumped from the Laramie-Fox Hills and/or Arapahoe aquifer that is delivered to direct recharge into the alluvial aquifer.
37. The Applicant or their successor(s) are fully responsible for the operation, monitoring, and accounting of the replacement plan. In the event a lot with a well permitted or operating pursuant to this plan is sold, evidence of the sale and notification to the new owner of their responsibility under the replacement plan shall accompany that year's accounting.
38. Any covenants adopted for a subdivision should contain a description of the replacement plan, including the limitations on water use on the lot, metering of well pumping, and how the plan is to be administered.
39. In the event the permitted well is not operated in accordance with the conditions of this replacement plan, it shall be subject to administration, including orders to cease diverting ground water.
40. All terms and conditions of Determination of Water Right No. 3716-BD, 3717-BD and 3718-BD must be met.
41. A copy of this Findings and Order shall be recorded by the Applicant in the real property records of El Paso County, so that a title examination of the above described property, or any part thereof, shall reveal to all future purchasers the existence of this replacement plan. The terms and conditions of this replacement plan shall be considered to be a covenant on and running with the subject property.

Dated this Dated this 12th day of July, 2019.



Kevin G. Rein, P.E.
Executive Director
Colorado Ground Water Commission

By: 

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

Exhibit A-1
Replacement Plan - Determination No.: 3718-BD
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| Designated Basin Summary Table for Kerry E. Burt | | | | | | | |
|--|------------------------|---------------------------------|--------------------------------------|------|------------------------|---------------------------------|--------------------------------------|
| Pumping Rate of 0.3 acre-feet per year for 300 Years from the Denver aquifer | | | | | | | |
| Section(s): Section 22, Township 12 South, Range 63 West, 6th P.M. | | | | | | | |
| Year | Pumping (Q) (AF/YR) | Annual Depletion (q) (AF/YR) | Depletion as a % of Pumping (q/Q) | Year | Pumping (Q) (AF/YR) | Annual Depletion (q) (AF/YR) | Depletion as a % of Pumping (q/Q) |
| 5 | 0.3 | 0.038 | 12.6 | 155 | 0.3 | 0.259 | 86.2 |
| 10 | 0.3 | 0.070 | 23.3 | 160 | 0.3 | 0.259 | 86.5 |
| 15 | 0.3 | 0.097 | 32.3 | 165 | 0.3 | 0.260 | 86.7 |
| 20 | 0.3 | 0.120 | 40.0 | 170 | 0.3 | 0.261 | 86.9 |
| 25 | 0.3 | 0.139 | 46.4 | 175 | 0.3 | 0.261 | 87.2 |
| 30 | 0.3 | 0.156 | 51.9 | 180 | 0.3 | 0.262 | 87.3 |
| 35 | 0.3 | 0.170 | 56.5 | 185 | 0.3 | 0.263 | 87.5 |
| 40 | 0.3 | 0.182 | 60.5 | 190 | 0.3 | 0.263 | 87.7 |
| 45 | 0.3 | 0.192 | 63.9 | 195 | 0.3 | 0.264 | 87.9 |
| 50 | 0.3 | 0.200 | 66.8 | 200 | 0.3 | 0.264 | 88.0 |
| 55 | 0.3 | 0.208 | 69.3 | 205 | 0.3 | 0.264 | 88.2 |
| 60 | 0.3 | 0.214 | 71.5 | 210 | 0.3 | 0.265 | 88.3 |
| 65 | 0.3 | 0.220 | 73.4 | 215 | 0.3 | 0.265 | 88.5 |
| 70 | 0.3 | 0.225 | 75.0 | 220 | 0.3 | 0.266 | 88.6 |
| 75 | 0.3 | 0.229 | 76.4 | 225 | 0.3 | 0.266 | 88.7 |
| 80 | 0.3 | 0.233 | 77.7 | 230 | 0.3 | 0.266 | 88.8 |
| 85 | 0.3 | 0.236 | 78.7 | 235 | 0.3 | 0.267 | 88.9 |
| 90 | 0.3 | 0.239 | 79.7 | 240 | 0.3 | 0.267 | 89.1 |
| 95 | 0.3 | 0.242 | 80.6 | 245 | 0.3 | 0.267 | 89.2 |
| 100 | 0.3 | 0.244 | 81.3 | 250 | 0.3 | 0.268 | 89.3 |
| 105 | 0.3 | 0.246 | 82.0 | 255 | 0.3 | 0.268 | 89.3 |
| 110 | 0.3 | 0.248 | 82.6 | 260 | 0.3 | 0.268 | 89.4 |
| 115 | 0.3 | 0.250 | 83.2 | 265 | 0.3 | 0.269 | 89.5 |
| 120 | 0.3 | 0.251 | 83.7 | 270 | 0.3 | 0.269 | 89.6 |
| 125 | 0.3 | 0.252 | 84.2 | 275 | 0.3 | 0.269 | 89.7 |
| 130 | 0.3 | 0.254 | 84.6 | 280 | 0.3 | 0.269 | 89.8 |
| 135 | 0.3 | 0.255 | 85.0 | 285 | 0.3 | 0.269 | 89.9 |
| 140 | 0.3 | 0.256 | 85.3 | 290 | 0.3 | 0.270 | 89.9 |
| 145 | 0.3 | 0.257 | 85.6 | 295 | 0.3 | 0.270 | 90.0 |
| 150 | 0.3 | 0.258 | 85.9 | 300 | 0.3 | 0.270 | 90.1 |

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Values for 'Depletion as a % of Pumping' (q/Q) are not calculated when the pumping rate (Q) is changed to anything but zero

Exhibit A-2
Replacement Plan - Determination No.: 3718-BD
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| <p style="text-align: center;">Designated Basin Summary Table for Kerry E. Burt Pumping Rate of 0.7 acre-feet per year for 300 Years from the Denver aquifer Section(s): Section 22, Township 12 South, Range 63 West, 6th P.M.</p> | | | | | | | |
|--|------------------------|---------------------------------|--------------------------------------|------|------------------------|---------------------------------|--------------------------------------|
| Year | Pumping (Q) (AF/YR) | Annual Depletion (q) (AF/YR) | Depletion as a % of Pumping (q/Q) | Year | Pumping (Q) (AF/YR) | Annual Depletion (q) (AF/YR) | Depletion as a % of Pumping (q/Q) |
| 5 | 0.7 | 0.088 | 12.6 | 155 | 0.7 | 0.603 | 86.2 |
| 10 | 0.7 | 0.163 | 23.3 | 160 | 0.7 | 0.605 | 86.5 |
| 15 | 0.7 | 0.226 | 32.3 | 165 | 0.7 | 0.607 | 86.7 |
| 20 | 0.7 | 0.280 | 39.9 | 170 | 0.7 | 0.608 | 86.9 |
| 25 | 0.7 | 0.325 | 46.4 | 175 | 0.7 | 0.610 | 87.1 |
| 30 | 0.7 | 0.363 | 51.9 | 180 | 0.7 | 0.611 | 87.3 |
| 35 | 0.7 | 0.396 | 56.6 | 185 | 0.7 | 0.613 | 87.5 |
| 40 | 0.7 | 0.424 | 60.5 | 190 | 0.7 | 0.614 | 87.7 |
| 45 | 0.7 | 0.447 | 63.9 | 195 | 0.7 | 0.615 | 87.9 |
| 50 | 0.7 | 0.468 | 66.8 | 200 | 0.7 | 0.616 | 88.0 |
| 55 | 0.7 | 0.485 | 69.3 | 205 | 0.7 | 0.617 | 88.2 |
| 60 | 0.7 | 0.500 | 71.5 | 210 | 0.7 | 0.618 | 88.3 |
| 65 | 0.7 | 0.513 | 73.4 | 215 | 0.7 | 0.619 | 88.5 |
| 70 | 0.7 | 0.525 | 75.0 | 220 | 0.7 | 0.620 | 88.6 |
| 75 | 0.7 | 0.535 | 76.4 | 225 | 0.7 | 0.621 | 88.7 |
| 80 | 0.7 | 0.543 | 77.7 | 230 | 0.7 | 0.622 | 88.8 |
| 85 | 0.7 | 0.551 | 78.7 | 235 | 0.7 | 0.622 | 88.9 |
| 90 | 0.7 | 0.558 | 79.7 | 240 | 0.7 | 0.623 | 89.0 |
| 95 | 0.7 | 0.564 | 80.6 | 245 | 0.7 | 0.624 | 89.2 |
| 100 | 0.7 | 0.569 | 81.3 | 250 | 0.7 | 0.625 | 89.3 |
| 105 | 0.7 | 0.574 | 82.0 | 255 | 0.7 | 0.625 | 89.4 |
| 110 | 0.7 | 0.578 | 82.6 | 260 | 0.7 | 0.626 | 89.4 |
| 115 | 0.7 | 0.582 | 83.2 | 265 | 0.7 | 0.627 | 89.5 |
| 120 | 0.7 | 0.586 | 83.7 | 270 | 0.7 | 0.627 | 89.6 |
| 125 | 0.7 | 0.589 | 84.2 | 275 | 0.7 | 0.628 | 89.7 |
| 130 | 0.7 | 0.592 | 84.6 | 280 | 0.7 | 0.628 | 89.8 |
| 135 | 0.7 | 0.595 | 85.0 | 285 | 0.7 | 0.629 | 89.9 |
| 140 | 0.7 | 0.597 | 85.3 | 290 | 0.7 | 0.629 | 89.9 |
| 145 | 0.7 | 0.599 | 85.6 | 295 | 0.7 | 0.630 | 90.0 |
| 150 | 0.7 | 0.601 | 85.9 | 300 | 0.7 | 0.630 | 90.1 |

Created by Ground Water Commission Staff: jmw on March 28, 2019

Values for 'Depletion as a % of Pumping' (q/Q) are not calculated when the pumping rate (Q) is changed to anything but zero