

**COMMISSIONERS:**  
**MARK WALLER (CHAIR)**  
**LONGINOS GONZALEZ, JR. (VICE-CHAIR)**

**HOLLY WILLIAMS**  
**STAN VANDERWERF**  
**CAMI BREMER**

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
 CRAIG DOSSEY, EXECUTIVE DIRECTOR

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

**FROM: Gabe Sevigny, Planner II**  
**Gilbert LaForce, PE Engineer II**  
**Craig Dossey, Executive Director**

**RE: Project File #: MS-19-003**  
**Project Name: Poenitsch Minor Subdivision**  
**Parcel No.: 52080-00-041**

<b>OWNER:</b>	<b>REPRESENTATIVE:</b>
Tom Poenitsch & Christy Mullins PO Box 8202 Colorado Springs, CO 80933	Oliver E Watts Consulting Engineer, INC 614 Elkton Drive Colorado Springs, CO 80907

**Commissioner District: 1**

Planning Commission Hearing Date:	2/18/2020
Board of County Commissioners Hearing Date	3/10/2020

**EXECUTIVE SUMMARY**

A request by Tom Poenitsch and Christy Mullings, for approval of a minor subdivision for the Poenitsch subdivision to create and authorize the development of three (3) single-family lots. The 18.86 acre parcel is zoned RR-5 (Residential Rural) and is located at the northwest corner of the Herring Road and Shoup Road intersection and is within Section 8, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M. The subject property is located within the boundaries of the Black Forest Preservation Plan (1987) area.



The final plat application meets the submittal and review criteria for a final plat as well as the general development standards of Chapter 6, the final plat review criteria of Chapter 7, and the subdivision design requirements of Chapter 8 of the El Paso County Land Development Code (2019).

Individual wells and onsite wastewater treatment systems (OWTS) are proposed to serve the three (3) lots. A finding of water sufficiency is requested and recommended with this application.

#### **A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION**

**Request:** A request by Tom Poenitsch and Christy Mullins for approval of a minor subdivision to create three (3) single-family residential lots.

**Waiver(s)/Deviation(s):** No waivers are requested with this application.

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

#### **B. PLANNING COMMISSION SUMMARY**

**Request Heard:**

**Recommendation:**

**Waiver Recommendation:**

**Vote:**

**Vote Rationale:**

**Summary of Hearing:**

**Legal Notice:**

#### **C. APPROVAL CRITERIA**

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

- The subdivision is in conformance with the goals, objectives, and policies of the Master Plan;
- The subdivision is in substantial conformance with the approved preliminary plan;
- The subdivision is consistent with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analyses, studies, reports, plans, designs, documents, and other supporting materials;
- A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with

the standards set forth in the water supply standards [C.R.S. §30-28-133(6)(a)] and the requirements of Chapter 8 of this Code;

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

**D. LOCATION**

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

**E. BACKGROUND**

The subject property was zoned A-4 (Agricultural) on September 21, 1965, however, subsequent nomenclature changes have renamed the zoning district to the RR-5

(Residential Rural) zoning district. The current lot configuration was created by metes and bounds on April 20, 1966, which pre-dates the subdivision regulations adopted by El Paso County on July 17, 1972, thus making the current configuration of the

18.86 acre parcel a legal conforming lot.

The subject plat is proposing three (3) single-family lots, each consisting of a minimum of 5 acres. An additional twenty (20) feet of right-of-way along Shoup Road, and an additional fifteen (15) feet of right-of-way along Herring Road are proposed to be dedicated with this proposal. All three lots will access a shared driveway from Herring Road. A maintenance agreement covering the shared driveway has been prepared and will be recorded with the approved final plat. A note has been added to the final plat prohibiting direct from Shoup Road.

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

## **F. ANALYSIS**

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

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

### **2. Zoning Compliance**

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

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

The applicants are requesting approval of a minor subdivision to create and authorize development of three (3) single-family dwelling lots. The proposed lots will meet the dimensional standards of the RR-5 zoning district. Any future

applications for structures will be required to meet the setback requirements identified above or otherwise in place at the time of application submittal. Staff will have the opportunity to verify compliance with the setback requirements at the time that each future structure is permitted via the residential site plan process.

### **3. Policy Plan Analysis**

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

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

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

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

The subject property is zoned RR-5 (Residential Rural) and is surrounded by RR-5 zoned properties in every direction. The adjacent parcels located north and east of the subject parcel were at one time developed as single-family dwelling structures with a minimum of 5 acres; however, as a result of the Black Forest Fire, the structures have been removed and the parcels continue remain vacant. The parcel located to the south of the subject parcel is developed with a single-family dwelling. The lot directly adjacent to the west is a legally created 1.85 acre lot that is developed with a single-family dwelling. The proposed subdivision is compatible with the previously developed areas.

### **4. Small Area Plan Analysis**

The subject parcel is within the Black Forest Preservation Plan (1987), specifically Sub Area 1, the Timbered Area. The Plan encourages residential density of one dwelling unit per five acres, large lot cluster options, and protection and preservation of meadows and ponds. The applicants are proposing a three (3) lot minor subdivision with an average density of one dwelling unit per 5.99 acres.

The Black Forest Land Use Committee was sent a referral for this application and have no outstanding comments. Staff recommends that a finding of general consistency with the Plan can be made.

## **5. Water Master Plan Analysis**

The El Paso County Water Master Plan (2018) has three main purposes; better understand present conditions of water supply and demand; identify efficiencies that can be achieved; and encourage best practices for water demand management through the comprehensive planning and development review processes. Relevant policies are as follows:

***Goal 1.1** – Ensure an adequate water supply in terms of quantity, dependability and quality for existing and future development.*

***Goal 1.2** – Integrate water and land use planning.*

Water sufficiency has been analyzed with the review of the proposed minor subdivision. Please see the Water section below for a summary of the water findings and recommendations for the proposed minor subdivision. The State Engineer and the County Attorney’s Office have recommended that the proposed minor subdivision has an adequate water supply in terms of quantity and dependability.

Section 1.10.5 of the Land Development Code (2019) states the following:

“Any project or action for which a complete application was submitted to the County before the effective date of this Code or any subsequent amendment to this Code may, at the applicant's option, will be reviewed under the regulations or ordinances in effect at the time of application. If approved, the projects or actions may be carried out in accordance with said regulations or ordinances. Nothing in this subsection is intended to restrict otherwise applicable vested applicant rights.”

The Code in effect at the time of submittal of the minor subdivision application allowed an assumption of water quality for minor subdivisions.

## **6. Other Master Plan Elements**

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a low wildlife impact potential. Colorado Parks and Wildlife, Colorado State Forest Service, El Paso County Conservation District, and El Paso County

Community Services Department, Environmental Services Division, were each sent a referral and have no outstanding comments.

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

## **G. PHYSICAL SITE CHARACTERISTICS**

### **1. Hazards**

The soils and geology report prepared by Ground Water Investigations, LLC, indicates that there are no hazards present on the property that would preclude development within the proposed minor subdivision. The Colorado Geologic Survey (CGS) was sent a referral for the minor subdivision and had no objection.

### **2. Wildlife**

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

### **3. Floodplain**

The property is located within FEMA flood zone X, area of minimal flood hazard and determined to be outside the 500-year floodplain per FEMA's Flood Insurance Rate Map No. 08041C0320G, which has an effective date of December 7, 2018.

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

The property is located within the Kettle Creek drainage basin (FOMO3000) which is an unstudied basin and is included in the El Paso County drainage basin fee program. Drainage fees will be due at the time of final plat recordation

The site generally drains to the west. Surface runoff is conveyed via a natural channel flowing through the site. The channel is located within a drainage easement with a no build and no storage of materials restriction. The sole responsibility for maintenance will be vested with the individual property owner(s). Permanent water quality control measures are not required based on the exclusion identified in Engineering Criteria Manual (ECM) Appendix I Section I.7.1.B.5. The exclusion states water quality capture volume for single-family residential lots greater than or equal to 2.5 acres in size per dwelling unit and having a total lot impervious area of less than 10 percent are excluded from providing water quality. Flood control detention was not required since the

residential dwelling units generates a negligible increase to the stormwater runoff.

## **5. Transportation**

The subdivision is subject to the El Paso County road impact fee program (Resolution No. 19-471). The obligation to pay the fee is triggered with the final land use approval.

The 2016 Major Transportation Corridors Plan Update (MTCP) does not call for any improvement projects in the immediate vicinity of the site. The MTCP classifies Shoup Road as a rural minor arterial having an existing 60 feet right-of-way (100 feet required) and Herring Road as a rural major collector having an existing 60 feet right-of-way (90 feet required). The subdivision is dedicating 20 feet of right-of-way for Shoup Road and 15 feet of right-of-way for Herring Road.

Access to the three anticipated lots is proposed to be provided via a shared driveway from Herring Road. No private or public interior roadways are proposed with the subdivision.

## **H. SERVICES**

### **1. Water**

Sufficiency:

Quality: Presumed

Quantity: Sufficient

Dependability: Sufficient

Attorney's summary: The State Water Engineer's Office has made a finding of adequacy and has stated water can be provided without causing injury to decreed water rights. The County Attorney's Office recommended a finding of sufficiency with regard to water quantity and dependability.

### **2. Sanitation**

Individual onsite wastewater treatment systems (OWTS) are proposed to serve the development. El Paso County Public Health has made a favorable recommendation regarding wastewater disposal.

### **3. Emergency Services**

The requested minor subdivision is within the Black Forest Fire Protection District. The Fire District received a referral to review the application and did not respond with any objections. The Fire District has committed to serve the development.



**4. Utilities**

Mountain View Electric Association will provide electrical service and Black Hills Energy will provide natural gas service to the development. Public utility easements have been depicted on the final plat.

**5. Metropolitan Districts**

The property is not within a metropolitan district.

The property is not anticipated to be included in a public improvement district. Traffic impact fees shall be paid in accordance with Resolution 19-471.

**6. Parks/Trails**

Regional park fees (Region 2) of \$1,368.00 in lieu of land dedication shall be paid at the time of final plat recordation.

**7. Schools**

Fees in lieu of school land dedication in the amount of \$918.00 shall be paid to El Paso County for the benefit of Academy School District No. 20 at the time of plat recording.

**I. APPLICABLE RESOLUTIONS**

Approval                      Page 19  
Disapproval                  Page 20

**J. STATUS OF MAJOR ISSUES**

There are no major outstanding issues.

**K. RECOMMENDED CONDITIONS AND NOTATION**

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 notation:

**CONDITIONS**

1. All Deed of Trust holders shall ratify the plat. The applicants 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 Applicants 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. The Subdivider(s) agrees on behalf of him/herself and any developer or builder successors and assignees that Subdivider and/or said successors and assigns shall be required to pay traffic impact fees in accordance with the El Paso County Road Impact Fee Program Resolution (Resolution No. 19-471), or any amendments thereto, at or prior to the time of building permit submittals. The fee obligation, if not paid at final plat recording, shall be documented on all sales documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.
7. Park fees in lieu of land dedication for regional parks (Area 2) in the amount of \$1,368.00 shall be paid at the time of final plat recording.
8. Fees in lieu of school land dedication in the amount of \$918.00 shall be paid to El Paso County for the benefit of Academy School District No. 20 at the time of plat recording.
9. The County Attorney's Conditions of Compliance shall be adhered to at the appropriate time.
10. A drainage fee for the Kettle Creek Drainage Basin in the amount of \$7,060.16 shall be paid at the time of final plat recording.
11. No direct access to Shoup Road will be granted.

**NOTATION**

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 ten (10) adjoining property owners on January 29, 2020, for the Planning Commission hearing. 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 Public Health Recommendation Letter

# El Paso County Parcel Information

File Name: MS-19-003

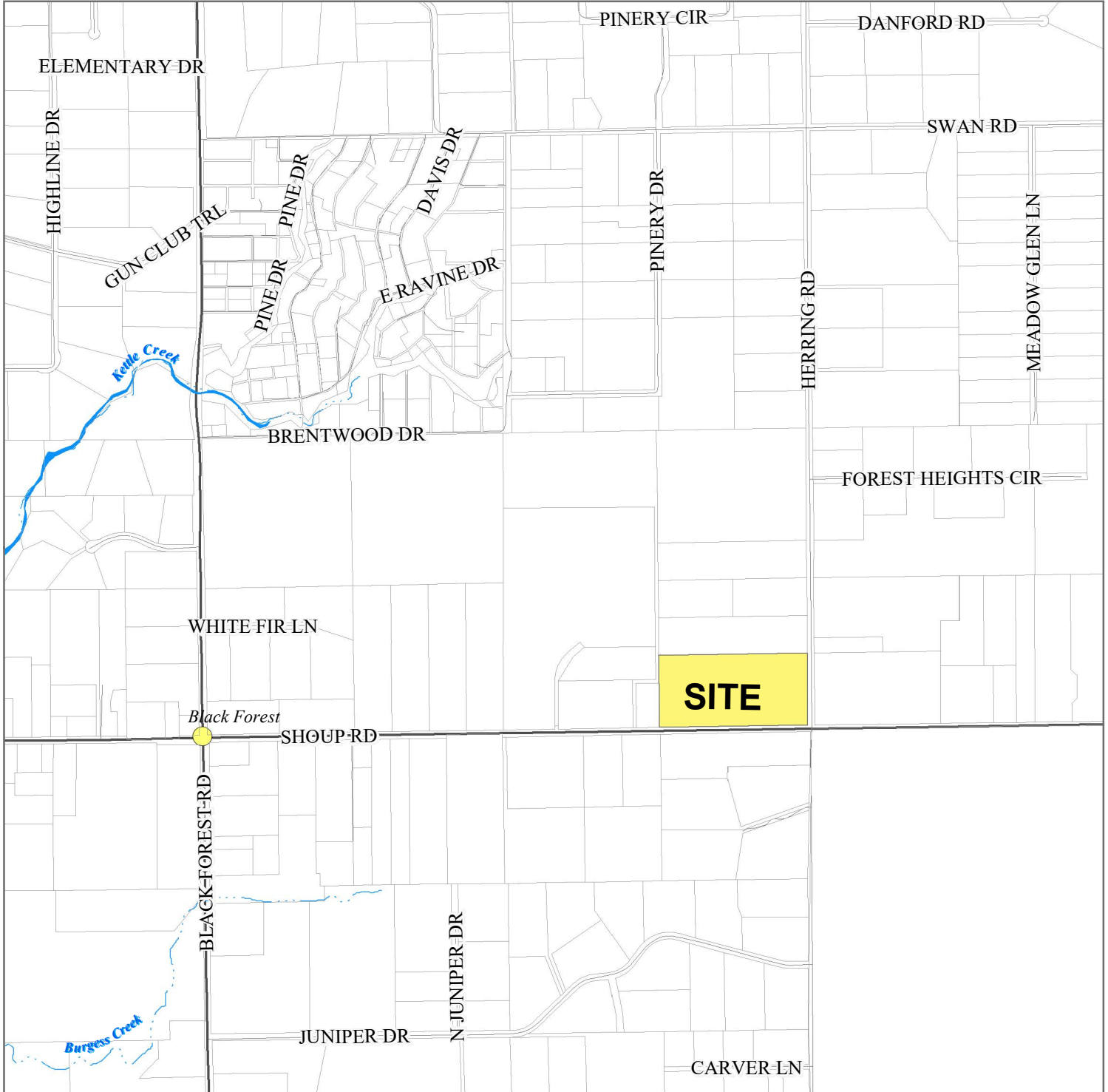
PARCEL	NAME
5208000041	MULLINS CHRISTY L

Zone Map No. --

ADDRESS	CITY	STATE
PO BOX 8202	COLORADO SPRINGS	CO

ZIP	ZIPLUS
80933	8202

Date: January 29, 2020



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



COPYRIGHT 2018 by the Board of County Commissioners, El Paso County, Colorado. All rights reserved. No part of this document or data contained hereon may be reproduced; used to prepare derivative products; or distributed without the specific written approval of the Board of County Commissioners, El Paso County, Colorado. This document was prepared from the best data available at the time of printing. El Paso County, Colorado, makes no claim as to the completeness or accuracy of the data contained hereon.

**OLIVER E. WATTS PE-LS**  
OLIVER E. WATTS, CONSULTING ENGINEER, INC.  
CIVIL ENGINEERING AND SURVEYING  
614 ELKTON DRIVE  
COLORADO SPRINGS, COLORADO 80907  
(719) 593-0173  
FAX (719) 265-9660  
CELL (719) 964-0733  
[olliewatts@aol.com](mailto:olliewatts@aol.com)

**Celebrating over 40 years in business**

September 26, 2019

El Paso County Development Services  
2880 International Circle  
suite 110  
Colorado Springs, CO 80910

ATTN: *Gabe Sevigny*

SUBJECT: Letter of Justification  
Poenitsch Subdivision  
PCD File No.: MS193

Mr. Sevigny,

We propose to subdivide the South half of the Southeast quarter of the Southeast quarter of Section 8, Township 12 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado into a 3-lot, residential subdivision, to be known as the Poenitsch Subdivision. This 18.86 acres site is located on the northwest corner of Shoup Road and Herring Road. The assessor's parcel number is 5208000041. The site is zoned RR 5. We have notified all adjacent property owners and received no comments.

We will subdivide the site into three, single family home lots: Lot 1 will be 7.97 acres, Lots 2 and 3 will be 5 acres each. Access for the site will be via a 50' Ingress and Egress Easement, on the north end of the site, onto Herring Road. We have dedicated 20' of additional right-of-way to Shoup Road and 15' of additional right-of-way for Herring Road with the plat.

Water is provided by an existing well, permit 1633813-A, for 1-acre foot a year for Lot 3. Lots 1 and 2 have Ground Water Rights, per Court Decree 18CW3054. Sewer disposal will be via on-site septic. An OWTS has been provided with this submission. Utility providers MVEA, and Black Hills Energy were contacted and have provided letters for service. The lots have 20' wide exterior lot / boundary line and 10' interior lot line for utility easements.

We ask that the County approve the Poenitsch Subdivision request. The subdivision will allow all three lots to be of legal size for the RR-5 zone; it will not adversely affect access, drainage, utility easements or rights-of-way serving the property; it will not result in nonconformity, not otherwise existing prior to the subdivision; the subdivision is necessary to achieve compliance with County Code; all separation distances for an OWTS can be met by the proposed lot layout; and, the extraction of areas designated as 100-year floodway on said plat (since it is not in a

designated FEMA floodplain), major drainageways and slopes in excess of 30% leaves a single, buildable area of at least 30% of each, proposed lot's total, net area.

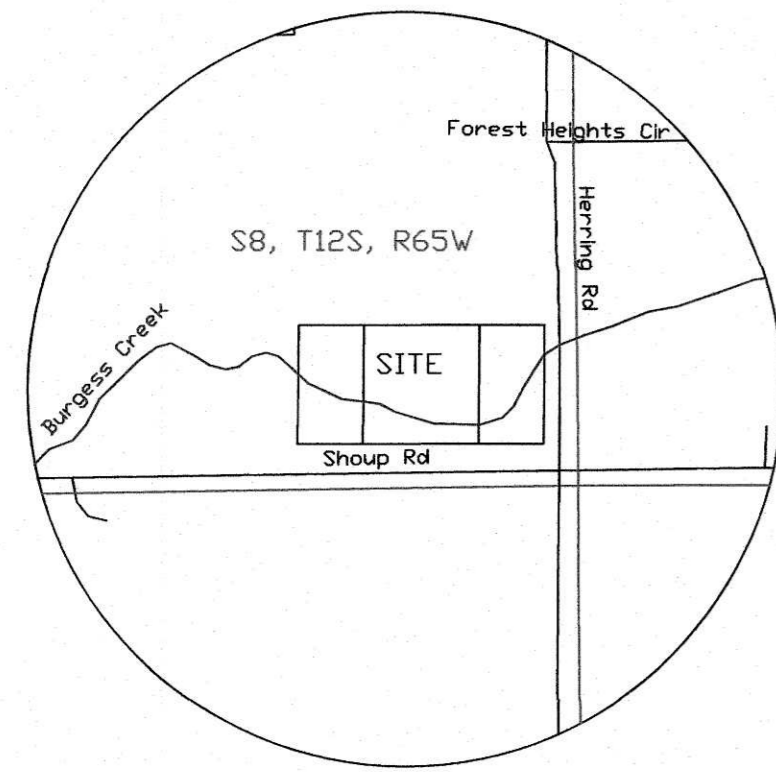
Please contact our office with any comments you may have regarding this action.

BY: \_\_\_\_\_  
Erik S. Watts, Authorized Representative



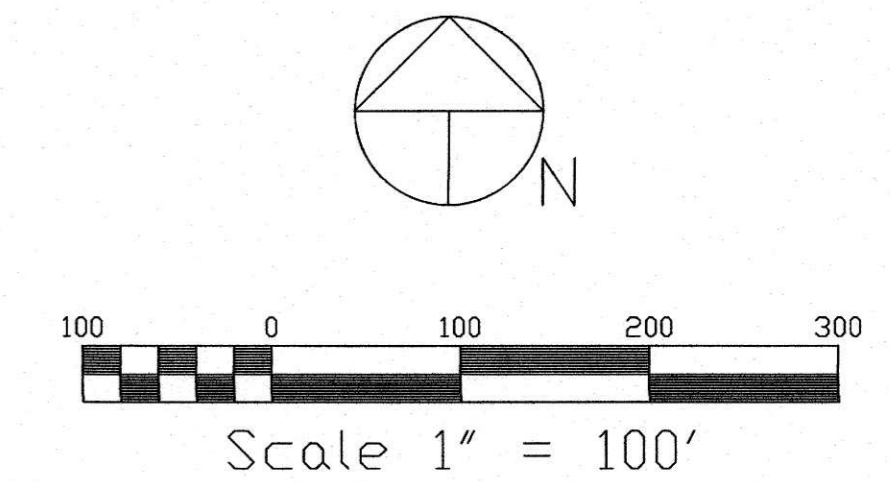
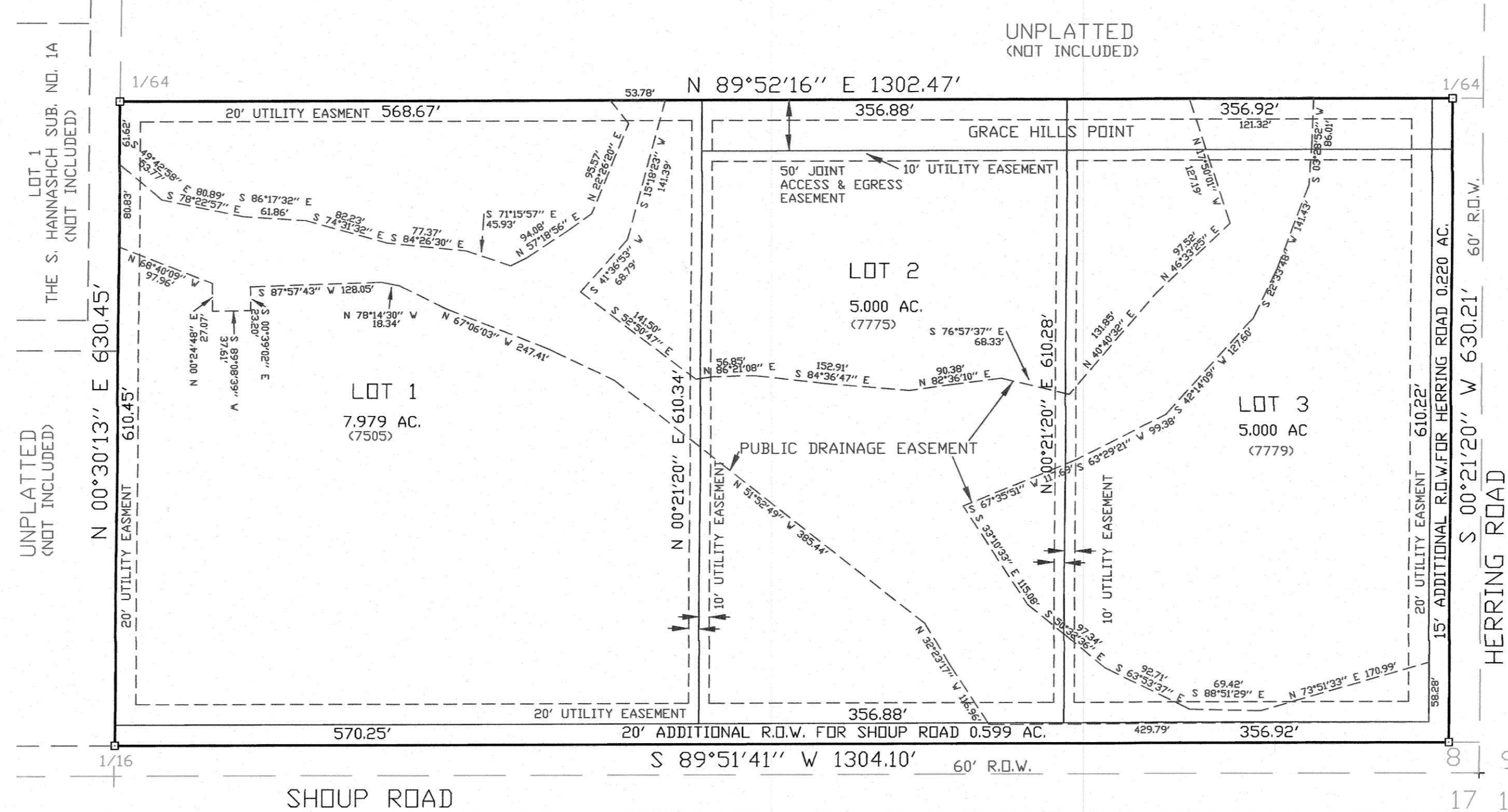
# POENITSCH SUBDIVISION

A SUBDIVISION OF THE S1/2, SE1/4, SE1/4 SECTION 8, T.12S., R.65W. OF THE 6TH P.M.  
EL PASO COUNTY, COLORADO



VICINITY MAP

1"=1000'



**LEGEND:**

- FOUND #33649 AL. CAP ON e#5 REBAR
- BOUNDARY LINE
- LOT LINE
- - - EASEMENT LINE
- PUBLIC DRAINAGE EASEMENT  
NO BUILD AND NO STORAGE  
OF MATERIALS.  
THE SOLE RESPONSIBILITY FOR  
MAINTENANCE IS VESTED WITH  
THE INDIVIDUAL PROPERTY OWNER
- ( ) ADDRESS

**Know all men by these presents**  
That, Christy L. Mullins and Thomas R. Poenitsch Jr. being the owner of the following described tract of land, to wit:  
The South half of the Southeast quarter of the Southeast quarter of Section 8, Township 12 South, Range 65 West of the 6th P.M.,  
County of El Paso, State of Colorado.  
And containing 18.86 acres

**Dedication**  
The undersigned, being all the owners, mortgagees, beneficiaries of deeds of trust and holders of other interests in the land described herein, have laid out, subdivided, and platted said lands into lots, tracts, streets, and easements (use which are applicable) as shown hereon under the name and subdivision of the "Poenitsch 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.

**In witness whereof:**  
The aforesaid owners have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, A.D.

Christy L. Mullins \_\_\_\_\_

Thomas R. Poenitsch Jr. \_\_\_\_\_

State of Colorado )  
County of El Paso ) ss

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, A.D.  
By Christy L. Mullins and Thomas R. Poenitsch Jr.

My commission expires: April 9, 2022

Oliver E. Watts, Notary public \_\_\_\_\_

**Certification**

I, Oliver E. Watts, 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 May 25, 2018, 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\_\_\_\_.

Oliver E. Watts, Colorado PE-LS No. 9853  
For and On Behalf of: Oliver E. Watts, Consulting Engineer, Inc.

**Bearings are based** on the record bearing of, S89°51'41" W, for the south line of the site, being the north right-of-way line for Shoup Road, using a GPS 1-step monumented on each end by a 1 1/2" aluminum cap, LS # 33649, on a # 5 rebar, as shown on the plat.

**Units of measurement:** US Survey Feet

**Title information was provided by the client as follows:**

Title Company: Unified Title Company, LLC  
File No: 579601/C Amendment No: 2  
Effective date: May 07, 2018 at 7:30 am  
This survey does not constitute a title search or opinion.

**Notice:** according to Colorado law, you must commence any legal action based upon any defect in the 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.

**Notes:**

1. Floodplain statement:  
This site is not within the limits of the 100-year floodplain per FEMA map panel no. 08041C0320 G, dated December 7, 2018. Historic drainageways are shown on the plat. No structures, or storage or materials are permitted within the drainageways.
2. 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.
3. Water in the Denver Basin aquifers is allocated based upon 100-year aquifer life; however, for El Paso County planning purposes, water in the Denver Basin aquifers is evaluated 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 upon wells in a given Denver Basin aquifer may be less than either the 100-years or 300-years indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers. Alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply.
4. Easements statement:  
Unless otherwise indicated, side lot lines are hereby platted on either side with a ten foot public utility easement. All exterior subdivision boundaries shall have a twenty foot public utility easement. A fifty foot Joint Access and Egress Easement, as shown on the plat is hereby dedicated for joint access and egress purposes for the exclusive use of the lots being served by the easements, with the sole responsibility for construction and maintenance being vested with the owners of the lots being served. All easements that are dedicated hereon for public utility purposes shall be subject to those terms and conditions as specified in the instrument recorded at Reception Number 212112548 of the records of El Paso County, Colorado. The sole responsibility for maintenance of these easements is hereby vested with the individual property owners.
5. All structural foundations shall be located and designed by a Professional Engineer, currently registered in the State of Colorado.
6. All property within this subdivision is subject to a declaration of covenants as recorded at reception no. \_\_\_\_\_ of the records of the El Paso County Clerk and Recorder.
7. The addresses exhibited on this plan for Grace Hills Point are for informational purposes only. They are not a legal description and subject to change.
8. Prior to the establishment of any driveway onto a county road, an access permit must be granted by the El Paso County Planning and Community Development.
9. A twenty-five foot (25') by twenty-five foot (25') slight triangle no-build area exists for all lot corners. No obstructions greater than eighteen inches (18") is allowed in this area.
10. Mailboxes shall be installed in accordance with all El Paso County Department of Transportation and United States Postal Service regulations.
11. There shall be no direct lot access to Shoup Road. Access shall be onto Herring Road per the private driveway, 50' Access and Egress Easement shown on the plat, to be known as Grace Hills Point. NOTE: 911 requested the none, but that it is still a driveway and not a public or private road.
12. All property within this subdivision is subject to a Private Driveway Maintenance Agreement as recorded at Reception No. \_\_\_\_\_ of the records of the El Paso County Clerk and Recorder.
13. Individual lot purchasers are responsible for constructing driveways, including necessary drainage culverts from Herring Road per Land Development Code Section 6.3.3.C.2 and 6.3.3.C.3. Due to the length, the shared driveway will need to be specifically approved by the Black Forest Fire Protection District.
14. For driveways proposed to cross the No-Build drainage easement, the applicant shall specify on the site plan the installation of the required culvert size identified in the approved drainage report. Prior to certificate of occupancy for the structure, PCD shall complete an inspection to verify the culvert was installed correctly.
15. Individual wells are the responsibility of each property owner. Permits for individual domestic wells must be obtained from the State Engineer, who by law has the authority to set conditions for the issuance of these permits. All wells shall be more than one hundred feet (100') from all lot lines.
16. Sewage treatment is the responsibility of each individual property owner. The El Paso County Health Department must approve each system and, in some cases, the department may require a special designed system prior to permit approval. All individual systems shall be designed by a Professional Engineer.
17. The following reports have been submitted and are on file with El Paso County Planning and Community Development: soils and geologic report, maintenance agreement, water supply information study, drainage letter / report, fire protection report, onsite wastewater treatment system report.
18. Owners, successors and assigns of the property owners association of this subdivisions lots shall be advised of all applicable requirements of decree entered in Case no. \_\_\_\_\_ division \_\_\_\_\_ and their costs of operating the plan for augmentation and responsibility for metering and collecting data regarding water withdrawals from wells.
19. Due to wildfire concerns, the applicants and subsequent homeowners are encouraged to incorporate wildfire fuel break provisions as recommended by the Colorado State Forest Service and illustrated through publications available through said office.
20. The Subdivider(s) agree(s) on behalf of himself/herself and any developer or builder successor and assigns that Subdivider and/or said successor 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.
21. Environmental:  
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).

**Board of County Commissioners Certificate**

This plat for Poenitsch Subdivision was approved for filing by the El Paso County, Colorado Board of County Commissioners on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, subject to any notes specified hereon and any conditions included in the resolution of approval. The dedications of land to the public streets, and 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, Board of County Commissioners \_\_\_\_\_ Date \_\_\_\_\_

Executive Director \_\_\_\_\_ Date \_\_\_\_\_

El Paso County Planning and Community Development

State of Colorado )  
County of El Paso ) ss

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 under Reception Number \_\_\_\_\_ of the records of El Paso County, Colorado.  
Chuck Broerman, Recorder

By: \_\_\_\_\_ Deputy

Fee: \_\_\_\_\_  
Surcharge: \_\_\_\_\_

School Fees: \_\_\_\_\_ Park Fees: \_\_\_\_\_  
Drainage Fees: \_\_\_\_\_ Bridge Fees: \_\_\_\_\_

PREPARED BY THE OFFICE OF:  
OLIVER E. WATTS PE-LS  
CONSULTING ENGINEER  
614 ELKTON DRIVE  
COLORADO SPRINGS, CO 80907  
(719) 593-0173  
oliewatts@aol.com  
Celebrating over 40 years in business



April 3, 2019

El Paso County Development Services Department  
2880 International Circle, Suite 110  
Colorado Springs, CO 80910

RE: Mullins Minor Subdivision (aka Poenitsch Subdivision)  
SE1/4 of Sec. 8, Twp. 12S, Rng. 65W, 6<sup>th</sup> P.M.  
Water Division 2, Water District 10  
CDWR Assigned Subdivision No. 26204

To Whom It May Concern,

We have received the submittal concerning the above referenced proposal to subdivide a 18.66± acre tract of land into three new lots. The first lot will be 7.9± acres, the second lot will be 5.0± acres and the third lot will be 5.0± acres in size. The proposed supply of water to the subdivision will be three individual on-lot wells operating pursuant to a court decreed plan for augmentation, with wastewater being disposed of through four on-site septic disposal system.

### **Water Supply Demand**

According to the Water Supply Information Summary received in the submittal, the estimated water demand for the development is 1.0 acre-feet/year for each residence. This amounts to a total of 3.0 acre-feet/year. Based on the Division 2 Water Court case no. 2018CW3054 this amount breaks down 1.0 acre-feet/year for each of the three lots. The decree notes that the 1.0 acre-foot can be used for a combination of household use, irrigation of lawn and garden, structure and equipment washing, and the watering of chickens and horse or other equivalent livestock.

It should be noted that standard water use rates, as found in the *Guide to Colorado Well Permits, Water Rights, and Water Administration*, are 0.3 acre-foot per year for each ordinary household, 0.05 acre-foot per year for four large domestic animals, and 0.05 acre-foot per year for each 1,000 square feet of lawn and garden irrigation.

### **Source of Water Supply**

The anticipated source of water is to be provided by three on-lot wells producing from the Dawson aquifer that will operate pursuant to the augmentation plan decreed by the Division 2 Water Court in case no. 2018CW3054. This case adjudicated water in the Dawson, Denver,



Arapahoe and Laramie-Fox Hills aquifers underlying the 18.66± acres of land which makes up the entire proposed Mullins Minor Subdivision.

According to the decrees entered by the Division 2 Water Court in case no. 2018CW3054, the following amounts of water shown in Table 1, below, were determined to be available underlying the 18.66± acre property.

Table 1 - Denver Basin Ground Water Rights

Aquifer	Tributary Status	Volume (AF)	Annual Allocation 100 Year (AF/Year)	Annual Allocation 300 Year (AF/Year)
Dawson	NNT	1,280	12.8	4.27
Denver	NNT	1,170	11.7	*
Arapahoe	NT	809	8.09	*
Laramie-Fox	NT	532	5.32	*

\*Value was omitted from the table in decree 18CW3054

The plan for augmentation decreed in Division 2 Water Court case no. 2018CW3054 allows for diversion of 3.0 acre-feet annually from Dawson aquifer for a maximum of 300 years.

Permit No.163813-A was issued pursuant to CRS 37-92-602 for ordinary household purposes inside one (1) single family dwelling, and the watering of domestic animals, and the irrigation of not more than 10,890 square-feet of home gardens and lawns. This well permit is located in the SE ¼ of the SE1/4 of Section 8, Twp 12S, Rng 65W, 6<sup>th</sup> P.M. It appears that this well is located on the property and the applicant has proposed to continue to utilize the existing well pursuant to the decreed plan for augmentation. **This will require that the applicant apply for, and obtain a new well permit issued pursuant to Section 37-90-137(4) C.R.S., or plug and abandon this well.**

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

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

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

The State Engineer’s Office does not have evidence regarding the length of time for which this source will “meet the average annual demand of the proposed subdivision.” However, treating El Paso County’s requirement as an **allocation** approach based on three hundred years, the annual estimated demand, for the entire subdivision, is 3.0 acre-feet as allowed by the augmentation plan. As a result, the water may be withdrawn in that annual amount for a maximum of 300 years.

## State Engineer's Office Opinion

Based on the above, it is our opinion, pursuant to CRS 30-28-136(1)(h)(l), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(2) and the plan for augmentation noted herein, for all wells in the subdivision and operates the wells in accordance with the terms and conditions of any future well permits.

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

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

Our opinion is qualified by the following:

The Division 2 Water Court has retained jurisdiction over the final amount of water available pursuant to the above-referenced decrees, pending actual geophysical data from the aquifer.

**The amounts of water in the Denver Basin aquifers, and identified in Division 2 Water Court case no. 18CW3054, was 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 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. Furthermore, that applicant will need to apply for, and obtain a new well permits issued pursuant to Section 37-90-137(2) C.R.S.**

Should you or the applicant have questions regarding any of the above, please contact me at this office.

Sincerely,



Ivan Franco, P.E.  
Water Resource Engineer

cc: Bill Tyner, Division 2 Engineer  
Doug Hollister, District 10 Water Commissioner  
Permit File: 163813-A

# 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

December 27, 2019

MS-19-003      Poenitsch Minor Subdivision (May also have been known as Mullins Minor Subdivision)

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

### FINDINGS AND CONCLUSIONS:

1. This is a minor subdivision proposal by Christy Mullins and Thomas Poenitsch ("Applicant") to subdivide an 18.66 +/- acre<sup>1</sup> parcel ("subject property") into 3 lots. The first lot will be 7.9 acres, and the second and third lots will be 5.0 acres each. The property is zoned RR-5 (Residential Rural).

2. The Applicant has provided for the source of water for the 3-lot subdivision to derive from individual on-lot wells, withdrawing from the not nontributary Dawson aquifer, as adjudicated by the Findings of Fact, Conclusions of Law, Ruling and Decree of Water Court, Division 2, Case No. 18CW3054 ("Decree" or "Case No. 18CW3054"), which includes the "Augmentation Plan". The Applicant provided a Water Supply Information Summary setting forth the water demand at 1.0 acre-feet per year for each lot (3.0 acre-feet/subdivision) for a period of 300 years. Applicant must be able to provide a supply of 900 acre-feet of water (3.0 acre-feet/year x 300 years) to meet the County's 300 year water supply requirement. The Applicant notes that there is an existing well on the subject property which is identified as Well Permit No. 163813-A.

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

<sup>1</sup> There is inconsistency in the acreage amount noted in the submittal documents. Some documents refer to 18.66 acres and some documents refer to 18.86 acres. This review will reference the acreage amount of 18.66.

200 S. CASCADE AVENUE  
OFFICE: (719) 520-6485



COLORADO SPRINGS, CO 80903  
FAX: (719) 520-6487

Aquifer	Total Water Appropriation (Acre-Feet)	Annual Appropriation (Acre-Feet) 100 years	Annual Appropriation (Acre-Feet) 300 years
Dawson (NNT)	1,280.0	12.8	4.27
Denver (NNT)	1,170.0	11.7	
Arapahoe (NT)	809.0	8.09	
Laramie-Fox Hills (NT)	532.0	5.32	

3. In a letter dated April 3, 2019, and as confirmed on October 22, 2019, the State Engineer reviewed the proposal to subdivide approximately 18.66 +/- acres into 3 lots: 1 lot of 7.9 acres and the 2<sup>nd</sup> and 3<sup>rd</sup> lots of 5.0 acres each. The State Engineer notes that the estimated water source derives from the Dawson aquifer operating pursuant to Water Court Case No. 2018CW3054 and Augmentation Plan. The State Engineer further states that the water requirement is "1.0 acre-feet/year for each residence. This amounts to a total of 3.0 acre-feet/year." Further, the State Engineer notes that the Decree provides that "1.0 acre-foot can be used for a combination of household use, irrigation of lawn and garden, structure and equipment washing, and the watering of chickens and horse[s] or other equivalent livestock."

The State Engineer's Office previously issued Well Permit No. 163813-A to Paul O. Pease, Jr. and Virginia B. Pease in 1994, and the State Engineer notes that the well is located on Applicant's property. The State Engineer states that if the Applicant wishes to utilize the existing well pursuant to the Augmentation Plan, it will require that the applicant "apply for, and obtain a new well permit issued pursuant to Section 37-90-137(4) C.R.S., or plug and abandon this well."

Finally, the State Engineer stated that "pursuant to CRS 30-28-136(1)(h)(I), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(2) and the plan for augmentation noted herein, for all wells in the subdivision and operate the wells in accordance with the terms and conditions of any future well permits."

4. Decree and Augmentation Plan, Division 2 Water Court Case No. 18CW3054. This Decree adjudicates water in the Denver Basin aquifers underlying the 18.66 acres of this subdivision, to include 1,280 total acre-feet in the not-nontributary Dawson aquifer, as well as water adjudicated in the Denver, Arapahoe, and Laramie-Fox Hills aquifers in the amounts noted in the table in paragraph 2. The Decree identified an existing well, Permit No. 163813-A (Mullins Well No. 1), located on the property which is permitted to withdraw 1.0 acre-feet per year. The Decree notes that a complete well permit application will need to be filed for the existing well, as well as for the new wells to be constructed on the remaining lots, and new permits need to be issued. The Decree adjudicates an allowed average annual amount of withdrawal of 4.27 acre-feet from the Dawson aquifer

based on a 300 year aquifer life. The Decree holds that approval of the Application for water rights will not result in any material injury to senior vested water rights. The Decree advises that water from the not-nontributary Denver aquifer cannot be used except in accordance with an approved augmentation plan.

The Augmentation Plan states that the allowed annual amount that may be withdrawn from each of the Mullins Wells Nos. 1, 2, & 3 in the Dawson aquifer is 1.0 acre-feet per year "within single family dwellings on up to three lots, for a maximum total of 3.0 acre feet being withdrawn from the Dawson aquifer annually .... Such use shall be a combination of household use, irrigation of lawn and garden, structure and equipment washing, and the watering of chickens and horses or other equivalent livestock." Withdrawals are anticipated to be as follows: 0.26 acre-feet per lot for residential or household use and 0.05 acre-feet per lot for landscape irrigation per 1,000 square feet.

Replacement of Depletions During Pumping. The Augmentation Plan provides for a pumping period of a minimum of 300 years. For any wells constructed into the not-nontributary Dawson aquifer, the Applicant is required to replace actual stream depletions on an annual basis during the 300 years of pumping by residential use return flows from non-evaporative septic systems. While depletions will occur to both the South Platte River and Arkansas River systems, the plan requires Applicant to replace depletions only to the Arkansas River system. The Decree indicates the consumptive use for non-evaporative septic systems is 10% per year per residence; therefore, at a household use rate of 0.26 acre-feet per lot per year, 0.234 acre-feet per lot is returned to the stream system per year, for a total of 0.702 acre-feet replaced from the 3 lots annually. The Decree states that based on the Division Engineer's Consultation Report, the maximum annual stream depletions over the 300-year pumping period will be approximately 23.2% of pumping; thus, the Decree concludes that the 0.702 acre-feet of annual replacement "... is sufficient to meet the maximum depletion amount occurring in year 300 of 0.702 acre-feet." Therefore, Applicants, their successors and assigns, must use nonevaporative septic systems and leach fields for each single-family dwelling.

Replacement of Post-Pumping Depletions. The Augmentation Plan requires the Applicant to replace any injurious post-pumping depletions by reserving up to a total of 814 acre-feet of water from the nontributary Laramie-Fox Hills and Arapahoe aquifers, and constructing wells into the Laramie-Fox Hills and Arapahoe aquifers to replace post-pumping depletions. The Augmentation Plan states "Applicant will reserve up to a total of 814 acre-feet of water, with 532 acre-feet of water from the nontributary Laramie-Fox Hills aquifer being supplemented by 282 acre-feet from the Arapahoe aquifer in order to cover post pumping depletions of 797 acre-feet ...which will be sufficient to cover maximum post pumping depletions." The Decree requires that these reserved waters may not be severed from ownership of the overlying property.

5. 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.

6. Analysis. As described above, pursuant to the Division 2 Water Court Case No. 18CW3054 and Augmentation Plan, the Decree adjudicated a total of 1,280 acre-feet of water from the Dawson aquifer water supply underlying the subject property, which equates to 4.27 acre-feet/year based on El Paso County's 300 year water supply requirement. The Augmentation Plan allows withdrawal of 1.0 acre-feet/year per lot (3.0 acre-feet total) of Dawson aquifer water for 300 years (900 acre-feet total supply). Based on the Water Supply Information Summary, the subdivision requires an annual withdrawal or demand of 3.0 acre-foot/year for a total of 900 acre-feet for 300 years. Therefore, the 900 acre-feet of Dawson aquifer water for 300 years adjudicated in the Decree should meet the 900 acre-feet total demand for 300 years. Pursuant to the Decree and Augmentation Plan and based on the finding of sufficiency and no injury by the State Engineer and based on the Requirements below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. There is a presumption of sufficient water quality as to the subdivision.

#### **REQUIREMENTS:**

A. Applicant, its successors and assigns, shall comply with all requirements of Division 2 Water Court Case No. 18CW3054 Decree and Augmentation Plan.

B. The County prefers that when there is a plan for augmentation, that Applicant, its successors and assigns, create a homeowners' association ("HOA"); however, alternatively to establishing an HOA, especially for minor subdivisions such as this, Applicant, its successors and assigns, shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision, their successors and assigns, regarding all applicable requirements of District Court Water Division 2, Case No. 18CW3054, as well as their obligations to comply with the plan for augmentation, including, but not limited to, ensuring that return flows by the use of non-evaporative septic systems are made to the stream systems, and that such return flows shall only be used to replace depletions and shall not be sold, traded, or assigned in whole or in part for any other purpose. The Covenants more specifically shall require the Dawson aquifer wells to serve on each lot an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the wells. In addition, the Covenants shall advise future lot owners of this subdivision, their successors and assigns, of their obligations regarding costs of operating the plan for augmentation, which will include pumping of the Dawson wells in a manner to replace depletions during pumping and the cost of drilling both a Laramie-Fox Hills aquifer well and an Arapahoe aquifer well in the future to replace post-pumping depletions. Such Covenants shall also address responsibility for any metering

and data collecting that may be required regarding water withdrawals from wells pursuant to the plan for augmentation, and shall protect the viability of the water supply by placing limitations in the Covenants as to amendments and termination as applied to said water supply.

The covenants shall address the following:

- 1) Identify the water rights associated with the property. The Covenants shall reserve 900 acre-feet of not nontributary Dawson aquifer water pursuant to the plan for augmentation in District Court Water Division 2, Case No. 18CW3054 to satisfy El Paso County's 300 year water supply requirement for the 3 lots of the Poenitsch Minor Subdivision.
- 2) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace depletions during pumping, shall reserve said return flows to replace depletions during pumping, and shall state that said return flows shall not be sold, traded or used for any other purpose. The Covenants more specifically shall require the Dawson aquifer well on each lot to be serving an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. 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."
- 3) The following or similar language shall be included in the Covenants to address future conveyances of the lots subsequent to the initial conveyance made by Applicant/Declarant: "The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not the plan for augmentation in District Court Water Division 2, Case No. 18CW3054 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."

4) 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 Dawson aquifer well and future wells which will be constructed in the Laramie-Fox Hills and Arapahoe aquifers.

5) 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 the Poenitsch Minor Subdivision pursuant to the plan for augmentation in District Court Water Division 2, Case No. 18CW3054. 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 Division 2 Water Court approving such amendment, with prior notice to El Paso County Planning and Community Development for an opportunity for the County to participate in any such adjudication.”

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

“These Covenants shall not terminate unless the requirements of the plan for augmentation in District Court Water Division 2, Case No. 18CW3054 are also terminated by order of the Division 2 Water Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

C. Applicant, its successors and assigns, shall reserve in the Covenants and in any deeds of the Property the decreed amount of at least 1.0 acre-feet per lot annually and shall reserve a total decreed amount of at least 3.0 acre-feet of Dawson aquifer water annually for the 3 lots in the subdivision for 300 years for a total of 900 acre-feet for the 3 lot subdivision for 300 years. Said reservation shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for primary and replacement supply. Applicant shall convey by recorded warranty deed these reserved Dawson aquifer water rights to the individual lot owners. Applicant, its successors and assigns, at the time of lot sales, shall convey by warranty deed to individual lot owner(s) sufficient water rights in the Dawson aquifer, pursuant to District Court Water Division 2, Case No. 18CW3054, underlying the respective lots to satisfy El Paso County’s 300 year water supply requirement. Dawson aquifer requirements for each lot are as follows: 300 acre-feet for each lot (1.0 acre-feet/year x 300 yrs.). Said



conveyance instruments shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for the primary supply and replacement during pumping for the respective lots. Applicant shall provide said Covenants or other such reservation instrument and form deeds for such conveyances that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording of the minor subdivision plat.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson aquifer): "These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, and replacement during pumping, for each of the 3 lots of the Poenitsch Minor Subdivision. The water rights so conveyed, and the return flows therefrom, shall be appurtenant to each of the respective lots with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."

D. Applicant shall reserve in the Covenants and/or in any deeds of the Property all 532 acre-feet of water in the Laramie-Fox Hills aquifer plus at least 282 acre-feet of water in the Arapahoe aquifer for a total of 814 acre-feet for use in the augmentation plan to replace post-pumping depletions. Pursuant to the Decree and plan for augmentation, Applicant shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for augmentation supply. Applicant shall convey by recorded warranty deed these reserved Laramie-Fox Hills aquifer and Arapahoe aquifer water rights to the HOA or to the individual lot owners (with appropriate deed restrictions) for use in the augmentation plan. Applicant shall provide copies of such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.

E. Applicant, its successors and assigns, shall submit Declaration of Covenants, Conditions, and Restrictions and any plat notes required herein to the Planning and Community Development Department and the County Attorney's Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. Said Declaration shall cross-reference District Court Water Division 2, Case No. 18CW3054 (including plan for augmentation) and shall identify the obligations of the individual lot owners thereunder.

F. Applicant, its successors and assigns, shall record all applicable

documents, including, but not limited to, the Decree in District Court Water Division 2, Case No. 18CW3054 (including plan for augmentation) and 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.

G. Applicant shall comply with the requirements of the State Engineer's Office regarding Well Permit No. 163813-A, specifically, that if the Applicant continues to utilize the existing well, the applicant must apply for and obtain a new well permit pursuant to C.R.S. § 37-90-137(4), or alternatively, the Applicant must plug and abandon the well. All additional wells must be obtained pursuant to C.R.S. 37-90-137(2).

**H. Prior to recording the minor subdivision plat, Applicant shall provide proof acceptable to both the Planning and Community Development Department and the County Attorney's Office that it has complied with the State Engineer's requirement that if Applicant intends to permit the existing well pursuant to the plan for augmentation, that it has obtained a new well permit issued pursuant to C.R.S. § 37-90-137(4) or that it has plugged and abandoned that well.**

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 Homeowners 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: Gabe Sevigny, Planner II

### **Poenitsh Minor Subdivision, MS-19-003 (Updated)**

Please accept the following comments from El Paso County Public Health regarding the project referenced above:

- The proposed 3-lot residential development 18.86-acre site will be served water by an individual private wells and wastewater through onsite wastewater treatment systems (OWTS's).
- A finding for sufficiency in terms of water quality is not required for minor subdivision approval.
- The 16Jan2019, Onsite Wastewater Treatment System Report prepared by Oliver E. Watts, Consulting Engineer, Inc., the 19Jun2018, OWTS Report prepared by Parr Engineering and Consulting, Inc., and the 26July2019, GWI Professional Geologists Soils and Geology Report, were reviewed for site suitability for the use of onsite wastewater treatment systems for wastewater service. Based on the findings of the soil reports, the use of onsite wastewater treatment systems are acceptable.
  - The proposed development requires full compliance with the El Paso County Board of Health Regulations, Chapter 8, Onsite Wastewater Treatment Systems.
  - Each lot will require site-specific soil tests in the location of each of the OWTS soil treatment areas.
  - In some cases, the soil conditions may require a professional engineer design.
  - The soil treatment areas (STA) on each of the 3-lots must be protected from all construction and site development activities. Compaction of the STA by such activities may cause the area to be unsuitable for use. Recommend fencing the area during construction to minimize the potential for soil compaction.
  - Adjacent property well locations were not shown on the reports; therefore, be aware of the specific 100'+ setback requirements.

Mike McCarthy  
El Paso County Public Health  
Environmental Health Division  
719.575.8602  
[mikemccarthy@elpasoco.com](mailto:mikemccarthy@elpasoco.com)