



CITY PLANNING COMMISSION AGENDA

**THURSDAY, MARCH 20, 2014
8:30 A.M.**

**CITY HALL COUNCIL CHAMBERS
107 NORTH NEVADA AVENUE
COLORADO SPRINGS, CO 80903**

CITY PLANNING COMMISSION MEETING PROCEDURES

MEETING ORDER:

The City Planning Commission will hold its regular meeting on **Thursday, March 20, 2014 at 8:30 a.m.** in the City Hall Council Chambers at 107 North Nevada Avenue, Colorado Springs, Colorado.

The Consent Calendar will be acted upon as a whole unless a specific item is called up for discussion by a Planning Commissioner, a City staff member, or a citizen wishing to address the Planning Commission.

When an item is presented to the Planning Commission the following order shall be used:

- City staff presents the item with a recommendation;
- The applicant or the representative of the applicant makes a presentation;
- Supporters of the request are heard;
- Opponents of the item will be heard;
- The applicant has the right of rebuttal;
- Questions from the Commission may be directed at any time to the applicant, staff or public to clarify evidence presented in the hearing.

VIEW LIVE MEETINGS:

To inquire of current items being discussed during the meeting, please contact the Planning & Development Team at 719-385-5905, tune into local cable channel 18 or live video stream at www.springsgov.com.

CITY PLANNING COMMISSION COMPREHENSIVE PLAN AND REVIEW CRITERIA

COMPREHENSIVE PLAN:

The City Planning Commission uses the Comprehensive Plan as a guide in all land use matters. The Plan is available for review in the Land Use Review Office, located at 30 S. Nevada Avenue, Suite 105. The following lists the elements of the Comprehensive Plan:

- Introduction and Background
- Land Use
- Neighborhood
- Transportation
- Natural Environment
- Community Character and Appearance
- 2020 Land Use Map
- Implementation

The Comprehensive Plan contains a land use map known as the 2020 Land Use Map. This map represents a framework for future city growth through the year 2020, and is intended to be used with the Comprehensive Plan's goals, policies, objectives and strategies. It illustrates a desired pattern of growth in conformance with Comprehensive Plan policies, and should be used as a guide in city land use decisions. The Comprehensive Plan, including the Land Use Map, may be amended from time to time as an update to city policies.

APPLICATION REVIEW CRITERIA:

Each application that comes before the Planning Commission is reviewed using the applicable criteria located in the *Appendix* of the Planning Commission Agenda.

CITY PLANNING COMMISSION APPEAL INSTRUCTIONS

In accordance with Chapter 7, Article 5, Part 906 (B) (1) of the City Code, “Any person may appeal to the City Council any action of the Planning Commission or an FBZ Review Board or Historic Preservation Board in relation to this Zoning Code, where the action was adverse to the person by filing with the City Clerk a written notice of appeal. The notice of appeal shall be filed with the City Clerk no later than ten (10) days after the action from which appeal is taken, and shall briefly state the grounds upon which the appeal is based.”

Accordingly, any appeal relating to this Planning Commission meeting must be submitted to the City Clerk (located at 30 S. Nevada Avenue, Colorado Springs, CO 80903) by:

Monday, March 31, 2014

A **\$176** application fee and a justification letter specifying your specific grounds of appeal shall be required. The appeal letter should address specific City Code requirements that were not adequately addressed by the Planning Commission. City Council may elect to limit discussion at the appeal hearing to the matters set forth in your appeal letter.

CITY PLANNING COMMISSION MEETING AGENDA THURSDAY, MARCH 20, 2014

1. Approval of the Record of Decision (minutes) for the February 20, 2014 City Planning Commission Meeting
2. Communications
3. Consent Calendar (Items A-C) Page 9
4. Unfinished Business Calendar (Item 4)..... Page 69
 New Business Calendar (Items 5.A-7.C)..... Page 148
 Appendix – Review Criteria Page 217

CONSENT CALENDAR		
ITEM NO.	PROJECT DESCRIPTION	PAGE NO.
<p>ITEM: A.1 CPC PUZ 13-00136</p> <p>ITEM: A.2 CPC PUD 13-00137 (Quasi-Judicial)</p> <p>PARCEL NO.: 6209301007</p> <p>PLANNER: Meggan Herington</p>	<p>Request by NES, Inc. on behalf of Flying Horse Country Club, LLC for consideration of the following development applications:</p> <ol style="list-style-type: none"> 1. A rezone of 2.3 acres from PUD (Planned Unit Development - Commercial; 3.04 dwelling units per acre, 35 foot maximum building height) to PUD (Planned Unit Development - Short-term stay cottages, lodge suites and meeting space, 35-foot maximum building height). 2. Major amendment to the Flying Horse Casitas Development Plan that will allow up to 60 hospitality rooms with meeting space in lodge type structures along with two detached cottage units in one separate building. <p>The property is 2.3 acres and is addressed as 1823 Weiskopf Point and accessed through the gate to the Club at Flying Horse.</p>	9
<p>ITEM: B.1 CPC MPA 05-00230-A1MJ13 (Legislative)</p> <p>ITEM: B.2 CPC PUZ 13-00073</p> <p>ITEM: B.3 CPC PUD 13-00074 (Quasi-Judicial)</p> <p>PARCEL NOS.: 5306000027, 5306000029</p> <p>PLANNER: Larry Larsen</p>	<p>Request by YOW Architects on behalf of Cumbre Vista LLC for consideration of the following development applications:</p> <ol style="list-style-type: none"> 1. An amendment to the approved Powerwood No. 3-6 Master Plan to allow for an increase in residential density from 12 to 18 dwelling units per acre. 2. A change of zoning from A (Agricultural) to PUD (Planned Unit Development). 3. The Cumbre Vista Apartment PUD Development Plan to allow for the development of the Cumbre Vista Apartment project that includes 204 units, a clubhouse, outdoor recreation areas, private streets, and landscape tracts. <p>The proposed site is located southeast of the Tutt Boulevard and Sorpresa Lane intersection and consists of approximately 12 acres.</p>	26

<p>ITEM: C CPC UV 14-00023 (Quasi-Judicial)</p> <p>PARCEL NO.: 7435104034</p> <p>PLANNER: Mike Schultz</p>	<p>Request by John Dworak who is seeking approval of a use variance to allow two free-standing, single-family residences on one lot within the R-1 6000 zone district. The subject property is located at 1534 & 1536 W. Cheyenne Road, is zoned R-1 6000/HS (Single-family Residential with Hillside Overlay) and consists of 0.163 acres.</p>	<p>60</p>
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UNFINISHED BUSINESS CALENDAR

ITEM NO.	PROJECT DESCRIPTION	PAGE NO.
<p>ITEM NO.: 4 CPC DP 05-00092-A4MN13 (Quasi-Judicial)</p> <p>PARCEL NO.: 5306000007</p> <p>PLANNER: Larry Larsen</p>	<p style="text-align: center;"><i>(Postponed from the February 20th meeting)</i></p> <p>Appeal by Bill and Maureen Marchant and others regarding the administrative approval of an application requested by Nine Design, Ltd. on behalf of KF103-CV, LLC for a minor amendment to the approved Cumbre Vista Development Plan. This application would allow for a change in the phasing sequence, street and lot layout, an extension of the proposed City street, De Anza Peak Trail to Sorpresa Lane and a reduction in the number of lots. The property is located between Cowpoke Road and Sorpresa Lane, east of Tutt Boulevard and it consists of 113 acres.</p>	<p>69</p>

NEW BUSINESS CALENDAR

ITEM NO.	PROJECT DESCRIPTION	PAGE NO.
<p>ITEM NO.: 5.A CPC MP 84-361-A4MN13</p> <p>ITEM NO.: 5.B CPC CP 13-00143</p> <p>ITEM NO.: 5.C CPC ZC 13-00141</p> <p>ITEM NO.: 5.D CPC PUZ 13-00142</p> <p>ITEM NO.: 5.E CPC DP 13-00144 (Quasi-Judicial)</p> <p>PARCEL NO.: 5308400008</p> <p>PLANNER: Rick O'Connor</p>	<p>Request by NES, Inc. on behalf of Pulpit Rock Investments LLC for consideration of the following development applications:</p> <ul style="list-style-type: none"> A. An amendment to the Stetson Ridge Master Plan consisting of eliminating 7 acres of Community Commercial and eliminating 14 acres of residential 12-24.99 dwelling units per acre and replacing the 21 acres with residential 3.5-7.99 dwelling units per acre. B. The Renaissance at Indigo Ranch Commercial Concept Plan that covers 10 acres and illustrates 5 commercial/office pad sites with associated parking C. A rezone of 10 acres from A (Agricultural) to PBC (Planned Business Center). D. A rezone of 21.13 acres from A (Agricultural) to PUD (Planned Unit Development; single-family detached, 35-foot maximum height and 4.78 dwelling units per acre). E. The Renaissance at Indigo North Development Plan that will allow 101 single family lots on 21.13 acres (an overall density of 4.8 dwelling units per acre). <p>The property is located north of Dublin Boulevard and is between Mustang Rim Drive on the west and Issaquah Drive on the east.</p>	148
<p>ITEM NO.: 6.A CPC PUP 05-00264-A1MN12</p> <p>ITEM NO.: 6.B AR PUD 06-00336-A1MN12 (Quasi-Judicial)</p> <p>PARCEL NOS.: 5308000098, 5308000099</p> <p>PLANNER: Larry Larsen</p>	<p>Appeal of an administrative decision regarding the following development applications:</p> <ul style="list-style-type: none"> A. An amendment to the approved Quail Brush Creek Concept Plan that would allow for the reconfiguration of the lot pattern and to modify the phasing schedule. The overall development character remains unchanged – residential single family detached dwelling use. B. An amendment to the approved Quail Brush Creek Development Plan. <p>The property is located approximately north of Gold Drop Drive and adjacent to the east of Nebraska Lane and it consists of 11.1 acres.</p>	168

ITEM NO.	PROJECT DESCRIPTION	PAGE NO.
<p>ITEM: 7.A CPC A 13-00111</p> <p>ITEM: 7.B CPC MP 13-00131</p> <p>ITEM: 7.C CPC ZC 13-00130 (Legislative)</p> <p>PARCEL NO.: 5306000061</p> <p>PLANNER: Larry Larsen</p>	<p>Request by Rivers Development and M&S Consulting Engineers on behalf of Nextop Holdings, LLC, for consideration of the following development applications:</p> <ul style="list-style-type: none"> A. Annexation of the Saddle Tree Village property into the City of Colorado Springs. B. The Ridge at Cumbre Vista Master Plan that proposes single-family detached residential uses at the density of 3.5 to 7.99 dwelling units per acre. C. The establishment of the A/AO (Agricultural with Airport Overlay) zoning district for the Ridge at Cumbre Vista project. <p>The property is located south of Cowpoke Road, approximately ¼ mile west of the Cowpoke Road and Black Forest Road intersection and consists of approximately 13.70 acres.</p>	<p>189</p>

CITY PLANNING COMMISSION AGENDA

ITEM NOS: A.1, A.2

STAFF: MEGGAN HERINGTON

FILE NO(S):

- 1. - CPC PUZ 13-00136 – QUASI-JUDICIAL**
2. - CPC PUD 13-00137 – QUASI-JUDICIAL

PROJECT: THE LODGE AT FLYING HORSE

APPLICANT: NES, INC.

OWNER: FLYING HORSE COUNTRY CLUB, LLC



PROJECT SUMMARY:

1. Project Description: This project includes concurrent applications for a PUD zone change and development plan for a 2.3-acre parcel located in the Flying Horse community on Weiskopf Point through the gate to the Club at Flying Horse.

The rezone will change the 2.3 acres from PUD (Planned Unit Development) which allows casitas/rental cottages at 3.04 dwelling units per acre with a 35 foot height maximum to PUD (Planned Unit Development) allowing short-term stay cottages, lodge suites and meeting space at a 35 foot height maximum.

The PUD development plan shows two lodge-type structures and one casitas structure. The phase one lodge building accommodates 40 rooms along with office and meeting space. The casitas structure is a two unit/suite structure. Phase two is shown as a smaller lodge building accommodating 20 rooms. All rooms are designed for short term stay. There are no kitchen facilities in these suites. All food service will be provided by the Club at Flying Horse. Parking for the site has been planned within the main club parking area. **(FIGURE 1)**

2. Applicant's Project Statement: **(FIGURE 2)**
3. Planning and Development Department's Recommendation: Staff recommends approval of the applications.

BACKGROUND:

1. Site Address: The site is currently addressed as 1823 Weiskopf Point. The property is part of the Club at Flying Horse and is accessed only through the gate to the club.
2. Existing Zoning/Land Use: The 2.3 acres is vacant
3. Surrounding Zoning/Land Use:
North: A/Flying Horse Golf Course
South: A/Club at Flying Horse Fitness Center
East: A/ Flying Horse Golf Course
West: A/Club at Flying Horse
4. Comprehensive Plan/Designated 2020 Land Use: Existing Golf Course or Cemetery
5. Annexation: The property was annexed in January, 2004 as a part of the Flying Horse Ranch Addition.
6. Master Plan/Designated Master Plan Land Use: The current Flying Horse Master Plan designates the property as Private Club/Fitness Center.
7. Subdivision: The property is platted as Lot 1 Flying Horse No. 31A.
8. Zoning Enforcement Action: None
9. Physical Characteristics: The property is vacant with no significant physical features. It is fully surrounded by golf course and private club area.

STAKEHOLDER PROCESS AND INVOLVEMENT:

The public process included posting the site and sending postcards to 12 property owners within 1,000 feet. The Club at Flying Horse also sent a separate email notice to its members.

A neighborhood meeting was held on July 9, 2013. There were approximately 45 in attendance. No comments were received by staff following the meeting.

Staff also sent the plans to the standard internal and external review agencies for comments. All comments received from the review agencies have been addressed or are included as technical modifications to the plans. Commenting agencies included Colorado Springs Utilities, City Engineering, City Traffic, City Fire, School District 20, Police and E-911 and the US Air Force Academy.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Background

The Flying Horse Master Plan has always contemplated incorporation of a short-term stay component into the club facility. In 2007 this 2.3-acre lot and the lot on the south side of the club parking lot were rezoned from A (Agricultural) to PUD (Planned Unit Development) to allow the casitas. The casitas were planned as ten short-term stay rental cottages as part of the Flying Horse Golf Course private club and fitness center complex. They were intended as temporary lodging for golf course members and guests, with meals being provided from the club. However, with the change in the economy, those units were never built.

The club is now changing the plan for the casitas units by incorporating a lodge concept. The casitas plan for the south lot will move forward as approved. For this northern lot, the majority of the rooms will be in a larger lodge-type structure with only one casitas structure housing two units as shown on the original plan. Because of this change, the rezoning from PUD to PUD is required to accommodate a less residential-type use and density, moving towards a boutique hotel concept. The lots were platted in 2007; therefore, there is no subdivision plat under administrative review with the rezone and development plan.

2. Review Criteria / Design & Development Issues:

PUD (Planned Unit Development) Rezone

The proposal will rezone 2.3 acres from PUD (Planned Unit Development) allowing casitas/rental cottages at 3.04 dwelling units per acre at a 35-foot height maximum to PUD (Planned Unit Development) allowing short-term stay cottages, lodge suites and meeting space at a 35-foot height maximum. The PUD is a customized zone district that sets specific uses and building heights for the property. The specific ordinance language for this PUD is based on the PUD development plan and the short-term stay concept with additional meeting space and offices.

The rezone request is in conformance with the Master Plan and meets City Code standards and criteria for a PUD rezone.

PUD Development Plan

The proposed development plan amends the original 2006 concept from the casitas suite buildings and incorporates a larger lodge. The lodge building includes 40 rooms/suites with associated meeting and office space and is 31,800 square feet in size. The casitas unit, two rooms with common area, is 2,500 square feet. The provided building elevations show that the structures will incorporate similar design elements as the club and fitness center.

Parking is being provided in the main club lot, adjacent to this property. The parking lot was designed and sized with the units in mind, and therefore has the additional parking capacity needed to accommodate the lodge. Access to the site is through the gate to the club.

The phase 2 building is not being constructed at this time and is shown conceptually on the PUD development plan. The construction of that structure will require an administratively reviewed development plan amendment. A parking analysis will also occur at that time.

Staff does find that the plan meets the review criteria for PUD development plans as set forth in City Code Section 7.3.606 and the development plan review criteria as set forth in Section 7.5.502.E.

3. Conformance with the City Comprehensive Plan:

Comprehensive Plan 2020 Land Use Map: Existing Golf Course or Cemetery

Strategy N 203b: Achieve Balanced Mix of Land Uses.

Objective LU 3: Develop a Mix of Interdependent, Compatible, and Mutually Supportive Land Uses.

Policy LU 301: Promote a Mixed Land Use Pattern.

Strategy LU 301b: Develop Criteria for Integrating Mixed Uses in New and Established Development Areas

Policy N 302: Promote Development of Mixed-use Neighborhoods – Provide residents the choice of walking, bicycling or driving to parks, schools, work, shopping, places of worship and transit stops in their own and other neighborhoods.

Objective CCA 6: Fit New Development into the Character of the Surrounding Area.

It is the finding of the Land Use Review Division that The Lodge at Flying Horse will substantially conform to the City Comprehensive Plan 2020 Land Use Map and the Plan's goals and objectives.

1. Conformance with the Area's Master Plan:

This property is part of the Flying Horse Master Plan and is currently shown as Private Club/Fitness Center. The Master Plan idea for the club setting within Flying Horse has always included a guest stay component.

It is the finding of Staff that The Lodge at Flying Horse project is in compliance with the Flying Horse Master Plan.

STAFF RECOMMENDATION:

ITEM NO.: A.1 CPC PUZ 13-00136 – CHANGE OF ZONING TO PUD

Approve the zone change of 2.3 acres from PUD (Planned Unit Development: Commercial; 3.04 dwelling units per acre, 35-foot maximum building height) to PUD (Planned Unit Development: Short-term stay cottages, lodge suites and meeting space, 35-foot maximum building height), based upon the findings that the change of zoning request complies with the three (3) criteria for granting of zone changes as set forth in City Code Section 7.5.603 and the criteria for the establishment and development of a PUD zone as set forth in City Code Section 7.3.603.

ITEM NO.: A.2 CPC PUD 13-00137 – THE LODGE AT FLYING HORSE PUD DEVELOPMENT PLAN

Approve the Lodge at Flying Horse PUD Development Plan based upon the findings that the PUD development plan meets the review criteria for PUD development plans as set forth in City Code Section 7.3.606, and the development plan review criteria as set forth in Section 7.5.502.E.

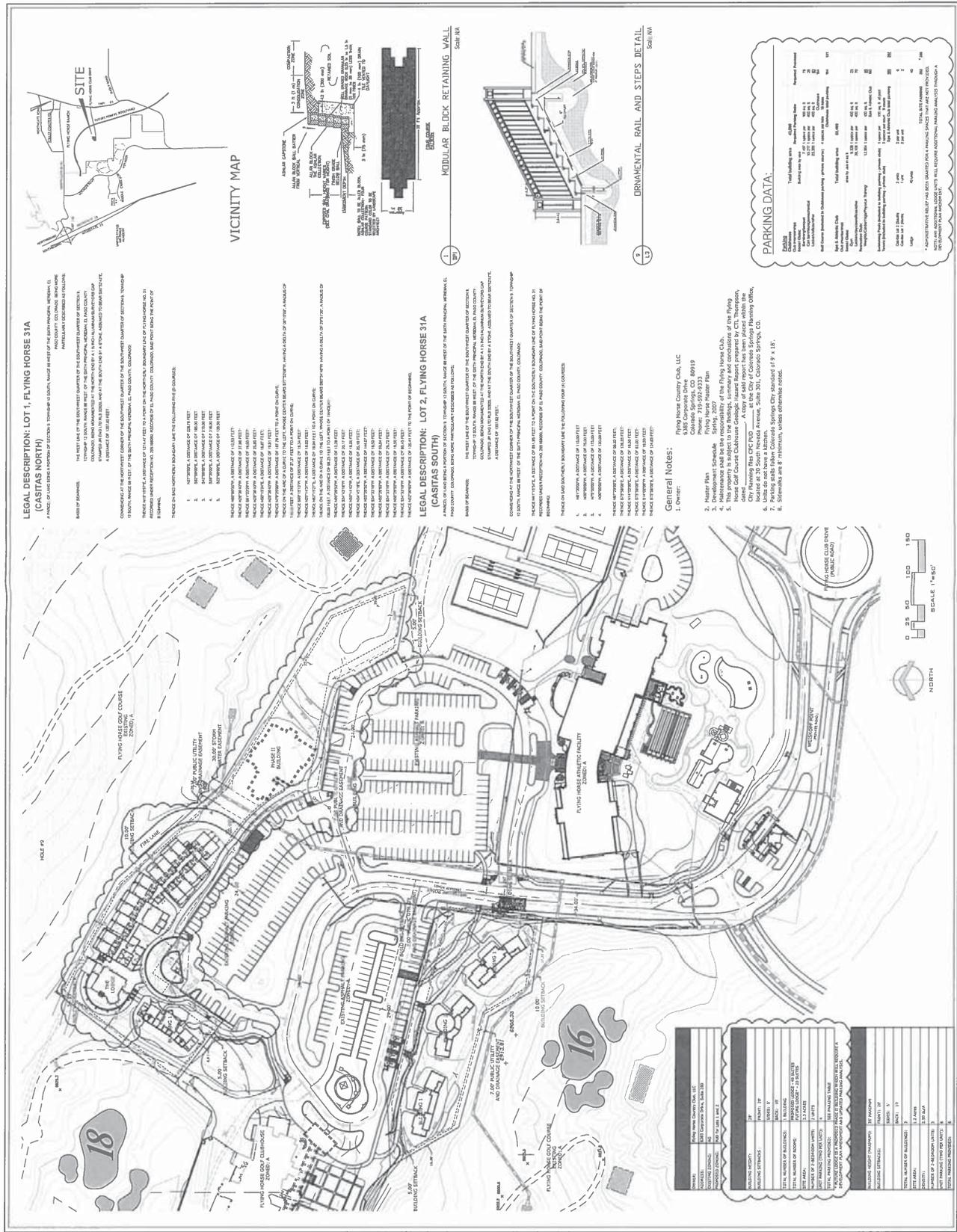


URBAN DESIGN
 LAND PLANNING
 & ARCHITECTURE

FLYING HORSE
 LODGE & GUESTROOMS

COLORADO SPRINGS, COLORADO

DATE: 02/11/14
 DRAWN BY: J. B. BROWN
 CHECKED BY: J. B. BROWN



LEGAL DESCRIPTION: LOT 1, FLYING HORSE 31A (CASTAS NORTH)

A PIECE OF LAND BEING PART OF SECTION 16, TOWNSHIP 33 SOUTH, RANGE 107 WEST OF THE SIXTH PRINCIPAL MERIDIAN IN SOUTHWEST CORNER OF THE COUNTY OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 33 SOUTH, RANGE 107 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN SOUTHWEST CORNER OF THE COUNTY OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A REMAINDER OF 100.00 ACRES

CONVEYED BY THE DEED OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 33 SOUTH, RANGE 107 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN SOUTHWEST CORNER OF THE COUNTY OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT 1/2 ACRES OF LAND BEING PART OF SECTION 16, TOWNSHIP 33 SOUTH, RANGE 107 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN SOUTHWEST CORNER OF THE COUNTY OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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LEGAL DESCRIPTION: LOT 2, FLYING HORSE 31A (CASTAS SOUTH)

A PIECE OF LAND BEING PART OF SECTION 16, TOWNSHIP 33 SOUTH, RANGE 107 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN SOUTHWEST CORNER OF THE COUNTY OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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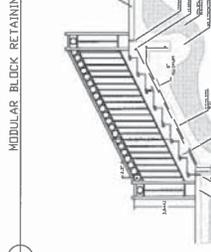
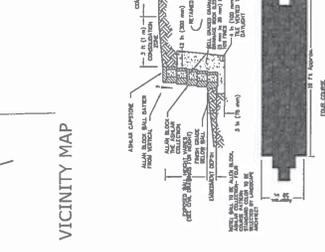
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5. BEING THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 33 SOUTH, RANGE 107 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN SOUTHWEST CORNER OF THE COUNTY OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

General Notes:

1. Owner: Flying Horse County Club, LLC
2. Developer: Flying Horse County Club, LLC
3. Development Schedule: Spring, 2017
4. This project is subject to the terms, conditions and covenants of the Flying Horse Lodge & Guestrooms, as shown on the attached site plan, and is subject to the terms, conditions and covenants of the Flying Horse Club House, as shown on the attached site plan.
5. This property is subject to the terms, conditions and covenants of the Flying Horse Club House, as shown on the attached site plan, and is subject to the terms, conditions and covenants of the Flying Horse Lodge & Guestrooms, as shown on the attached site plan.
6. Units do not have a kitchen.
7. Existing utility lines shown on this plan are for informational purposes only.
8. All utility lines are shown for informational purposes only.

VICINITY MAP



PARKING DATA:

Category	Area (sq ft)	Capacity
Total Building Area	42,000	
Building Area (Net)	38,000	
Building Area (Gross)	42,000	
Building Area (Net) x 0.15	5,700	
Building Area (Gross) x 0.15	6,300	
Building Area (Net) x 0.25	9,450	
Building Area (Gross) x 0.25	10,500	
Building Area (Net) x 0.35	13,275	
Building Area (Gross) x 0.35	14,700	
Building Area (Net) x 0.45	17,100	
Building Area (Gross) x 0.45	18,900	
Building Area (Net) x 0.55	20,850	
Building Area (Gross) x 0.55	23,100	
Building Area (Net) x 0.65	24,750	
Building Area (Gross) x 0.65	27,300	
Building Area (Net) x 0.75	28,350	
Building Area (Gross) x 0.75	31,500	
Building Area (Net) x 0.85	32,400	
Building Area (Gross) x 0.85	36,300	
Building Area (Net) x 0.95	36,000	
Building Area (Gross) x 0.95	40,500	
Building Area (Net) x 1.05	40,050	
Building Area (Gross) x 1.05	45,150	
Building Area (Net) x 1.15	43,650	
Building Area (Gross) x 1.15	49,350	
Building Area (Net) x 1.25	47,700	
Building Area (Gross) x 1.25	53,700	
Building Area (Net) x 1.35	51,150	
Building Area (Gross) x 1.35	57,150	
Building Area (Net) x 1.45	54,150	
Building Area (Gross) x 1.45	60,450	
Building Area (Net) x 1.55	56,700	
Building Area (Gross) x 1.55	62,700	
Building Area (Net) x 1.65	58,800	
Building Area (Gross) x 1.65	64,950	
Building Area (Net) x 1.75	60,450	
Building Area (Gross) x 1.75	67,125	
Building Area (Net) x 1.85	61,650	
Building Area (Gross) x 1.85	69,225	
Building Area (Net) x 1.95	62,400	
Building Area (Gross) x 1.95	71,250	
Building Area (Net) x 2.05	62,700	
Building Area (Gross) x 2.05	73,200	
Building Area (Net) x 2.15	62,550	
Building Area (Gross) x 2.15	75,075	
Building Area (Net) x 2.25	61,950	
Building Area (Gross) x 2.25	76,875	
Building Area (Net) x 2.35	60,900	
Building Area (Gross) x 2.35	78,600	
Building Area (Net) x 2.45	59,400	
Building Area (Gross) x 2.45	80,250	
Building Area (Net) x 2.55	57,450	
Building Area (Gross) x 2.55	81,825	
Building Area (Net) x 2.65	55,050	
Building Area (Gross) x 2.65	83,325	
Building Area (Net) x 2.75	52,200	
Building Area (Gross) x 2.75	84,750	
Building Area (Net) x 2.85	48,900	
Building Area (Gross) x 2.85	86,100	
Building Area (Net) x 2.95	45,150	
Building Area (Gross) x 2.95	87,375	
Building Area (Net) x 3.05	40,950	
Building Area (Gross) x 3.05	88,575	
Building Area (Net) x 3.15	36,300	
Building Area (Gross) x 3.15	89,700	
Building Area (Net) x 3.25	31,150	
Building Area (Gross) x 3.25	90,750	
Building Area (Net) x 3.35	25,500	
Building Area (Gross) x 3.35	91,725	
Building Area (Net) x 3.45	19,350	
Building Area (Gross) x 3.45	92,625	
Building Area (Net) x 3.55	12,700	
Building Area (Gross) x 3.55	93,450	
Building Area (Net) x 3.65	5,550	
Building Area (Gross) x 3.65	94,200	
Building Area (Net) x 3.75	0	
Building Area (Gross) x 3.75	94,875	
Building Area (Net) x 3.85	0	
Building Area (Gross) x 3.85	95,475	
Building Area (Net) x 3.95	0	
Building Area (Gross) x 3.95	96,000	
Building Area (Net) x 4.05	0	
Building Area (Gross) x 4.05	96,450	
Building Area (Net) x 4.15	0	
Building Area (Gross) x 4.15	96,825	
Building Area (Net) x 4.25	0	
Building Area (Gross) x 4.25	97,125	
Building Area (Net) x 4.35	0	
Building Area (Gross) x 4.35	97,350	
Building Area (Net) x 4.45	0	
Building Area (Gross) x 4.45	97,500	
Building Area (Net) x 4.55	0	
Building Area (Gross) x 4.55	97,575	
Building Area (Net) x 4.65	0	
Building Area (Gross) x 4.65	97,575	
Building Area (Net) x 4.75	0	
Building Area (Gross) x 4.75	97,500	
Building Area (Net) x 4.85	0	
Building Area (Gross) x 4.85	97,350	
Building Area (Net) x 4.95	0	
Building Area (Gross) x 4.95	97,050	
Building Area (Net) x 5.05	0	
Building Area (Gross) x 5.05	96,700	
Building Area (Net) x 5.15	0	
Building Area (Gross) x 5.15	96,300	
Building Area (Net) x 5.25	0	
Building Area (Gross) x 5.25	95,850	
Building Area (Net) x 5.35	0	
Building Area (Gross) x 5.35	95,350	
Building Area (Net) x 5.45	0	
Building Area (Gross) x 5.45	94,800	
Building Area (Net) x 5.55	0	
Building Area (Gross) x 5.55	94,200	
Building Area (Net) x 5.65	0	
Building Area (Gross) x 5.65	93,550	
Building Area (Net) x 5.75	0	
Building Area (Gross) x 5.75	92,850	
Building Area (Net) x 5.85	0	
Building Area (Gross) x 5.85	92,100	
Building Area (Net) x 5.95	0	
Building Area (Gross) x 5.95	91,300	
Building Area (Net) x 6.05	0	
Building Area (Gross) x 6.05	90,450	
Building Area (Net) x 6.15	0	
Building Area (Gross) x 6.15	89,550	
Building Area (Net) x 6.25	0	
Building Area (Gross) x 6.25	88,600	
Building Area (Net) x 6.35	0	
Building Area (Gross) x 6.35	87,600	
Building Area (Net) x 6.45	0	
Building Area (Gross) x 6.45	86,550	
Building Area (Net) x 6.55	0	
Building Area (Gross) x 6.55	85,450	
Building Area (Net) x 6.65	0	
Building Area (Gross) x 6.65	84,300	
Building Area (Net) x 6.75	0	
Building Area (Gross) x 6.75	83,100	
Building Area (Net) x 6.85	0	
Building Area (Gross) x 6.85	81,850	
Building Area (Net) x 6.95	0	
Building Area (Gross) x 6.95	80,550	
Building Area (Net) x 7.05	0	
Building Area (Gross) x 7.05	79,200	
Building Area (Net) x 7.15	0	
Building Area (Gross) x 7.15	77,800	
Building Area (Net) x 7.25	0	
Building Area (Gross) x 7.25	76,350	
Building Area (Net) x 7.35	0	
Building Area (Gross) x 7.35	74,850	
Building Area (Net) x 7.45	0	
Building Area (Gross) x 7.45	73,300	
Building Area (Net) x 7.55	0	
Building Area (Gross) x 7.55	71,700	
Building Area (Net) x 7.65	0	
Building Area (Gross) x 7.65	70,050	
Building Area (Net) x 7.75	0	
Building Area (Gross) x 7.75	68,350	
Building Area (Net) x 7.85	0	
Building Area (Gross) x 7.85	66,600	
Building Area (Net) x 7.95	0	
Building Area (Gross) x 7.95	64,800	
Building Area (Net) x 8.05	0	
Building Area (Gross) x 8.05	62,950	
Building Area (Net) x 8.15	0	
Building Area (Gross) x 8.15	61,050	
Building Area (Net) x 8.25	0	
Building Area (Gross) x 8.25	59,100	
Building Area (Net) x 8.35	0	
Building Area (Gross) x 8.35	57,100	
Building Area (Net) x 8.45	0	
Building Area (Gross) x 8.45	55,050	
Building Area (Net) x 8.55	0	
Building Area (Gross) x 8.55	52,950	
Building Area (Net) x 8.65	0	
Building Area (Gross) x 8.65	50,800	
Building Area (Net) x 8.75	0	
Building Area (Gross) x 8.75	48,600	
Building Area (Net) x 8.85	0	
Building Area (Gross) x 8.85	46,350	
Building Area (Net) x 8.95	0	
Building Area (Gross) x 8.95	44,050	
Building Area (Net) x 9.05	0	
Building Area (Gross) x 9.05	41,700	
Building Area (Net) x 9.15	0	
Building Area (Gross) x 9.15	39,300	
Building Area (Net) x 9.25	0	
Building Area (Gross) x 9.25	36,850	
Building Area (Net) x 9.35	0	
Building Area (Gross) x 9.35	34,350	
Building Area (Net) x 9.45	0	
Building Area (Gross) x 9.45	31,800	
Building Area (Net) x 9.55	0	
Building Area (Gross) x 9.55	29,200	
Building Area (Net) x 9.65	0	
Building Area (Gross) x 9.65	26,550	
Building Area (Net) x 9.75	0	
Building Area (Gross) x 9.75	23,850	
Building Area (Net) x 9.85	0	
Building Area (Gross) x 9.85	21,100	
Building Area (Net) x 9.95	0	
Building Area (Gross) x 9.95	18,300	
Building Area (Net) x 10.05	0	
Building Area (Gross) x 10.05	15,450	
Building Area (Net) x 10.15	0	
Building Area (Gross) x 10.15	12,550	
Building Area (Net) x 10.25	0	
Building Area (Gross) x 10.25	9,600	
Building Area (Net) x 10.35	0	
Building Area (Gross) x 10.35	6,600	
Building Area (Net) x 10.45	0	
Building Area (Gross) x 10.45	3,550	
Building Area (Net) x 10.55	0	
Building Area (Gross) x 10.55	500	
Building Area (Net) x 10.65	0	
Building Area (Gross) x 10.65	0	
Building Area (Net) x 10.75	0	
Building Area (Gross) x 10.75	0	
Building Area (Net) x 10.85	0	
Building Area (Gross) x 10.85	0	
Building Area (Net) x 10.95	0	
Building Area (Gross) x 10.95	0	
Building Area (Net) x 11.05	0	
Building Area (Gross) x 11.05	0	
Building Area (Net) x 11.15	0	
Building Area (Gross) x 11.15	0	
Building Area (Net) x 11.25	0	
Building Area (Gross) x 11.25	0	
Building Area (Net) x 11.35	0	
Building Area (Gross) x 11.35	0	
Building Area (Net) x 11.45	0	
Building Area (Gross) x 11.45	0	
Building Area (Net) x 11.55	0	
Building Area (Gross) x 11.55		

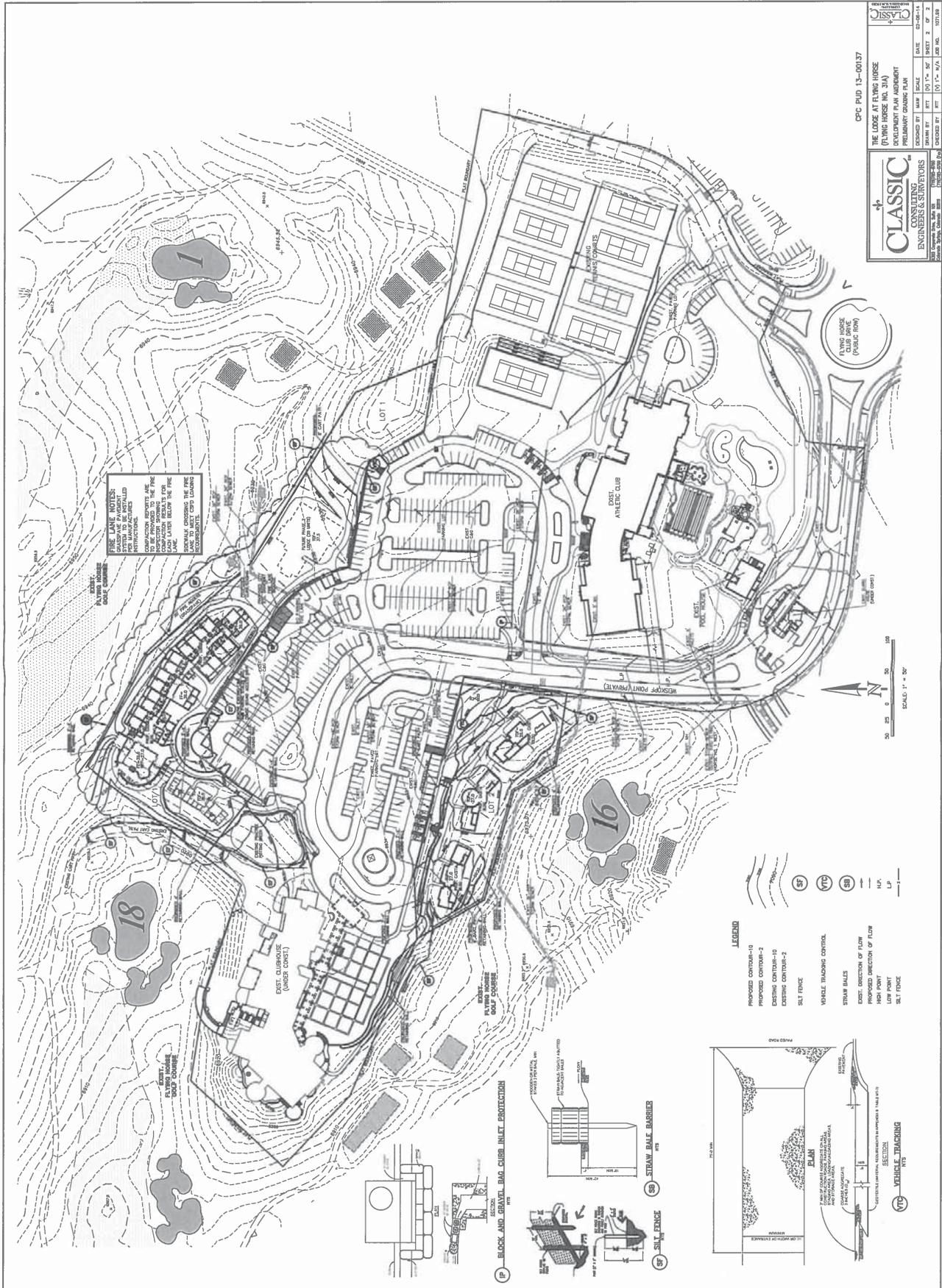
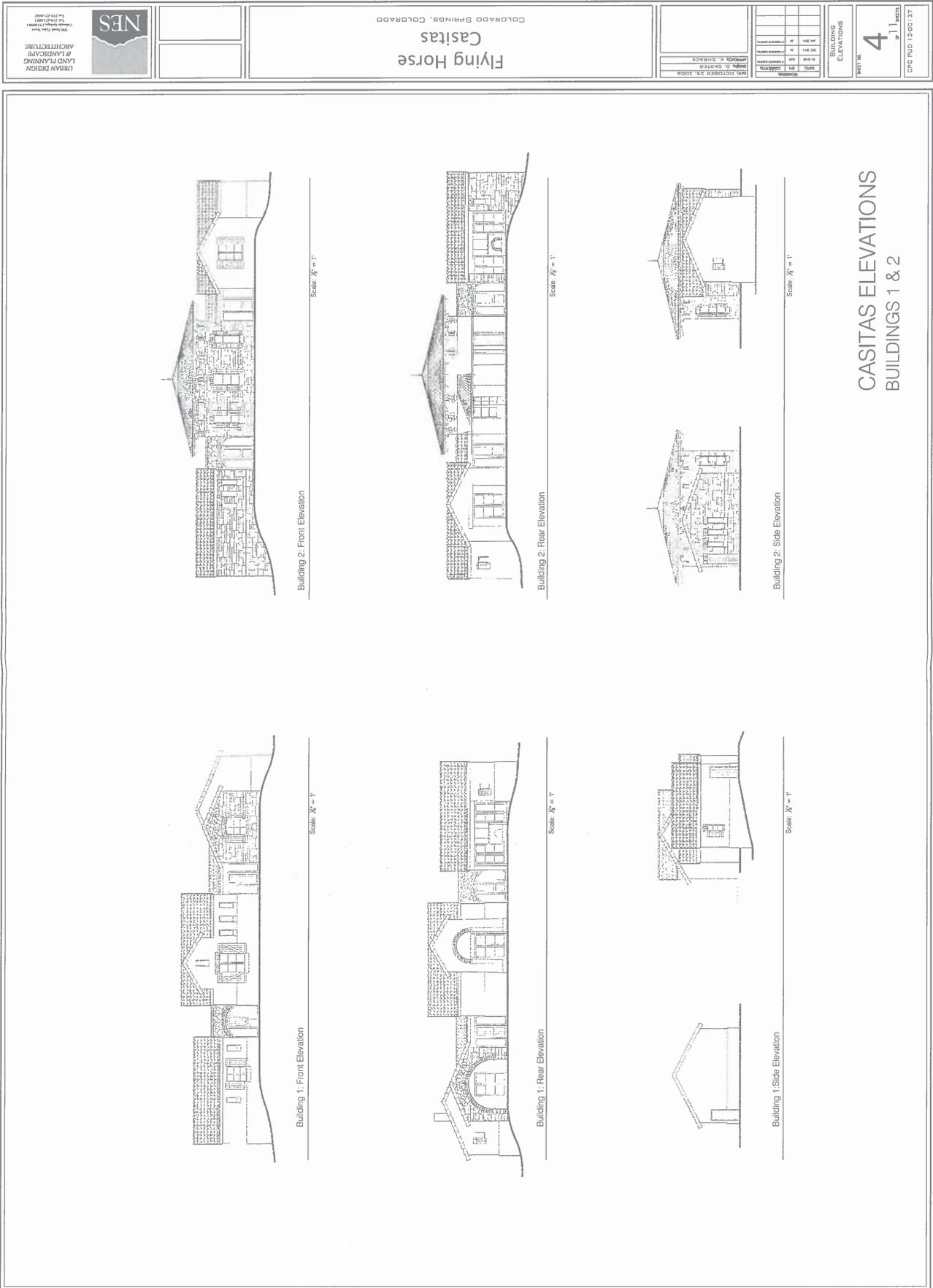


FIGURE 1



 NES NORTHERN ENGINEERING SERVICES ARCHITECTURE 1000 North 10th Street Suite 100 Colorado Springs, CO 80901 Tel: 719.575.1100 Fax: 719.575.1101	COLORADO SPRINGS, COLORADO Flying Horse Casitas	NORTHERN ENGINEERING SERVICES ARCHITECTS 1000 NORTH 10TH STREET SUITE 100 COLORADO SPRINGS, CO 80901 TEL: 719.575.1100 FAX: 719.575.1101	SHEET NO. 4 OF 11 SHEETS BUILDINGS ELEVATIONS CPC PUD 1300137
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FIGURE 1



Urban Design
 & Landscape
 Planning
 Architecture

FLYING HORSE
 CASTAS

ARCHITECTS
 JOHN D. GARDNER
 BRUCE G. GARDNER
 10000 E. HIGHWAY 103
 DENVER, CO 80231

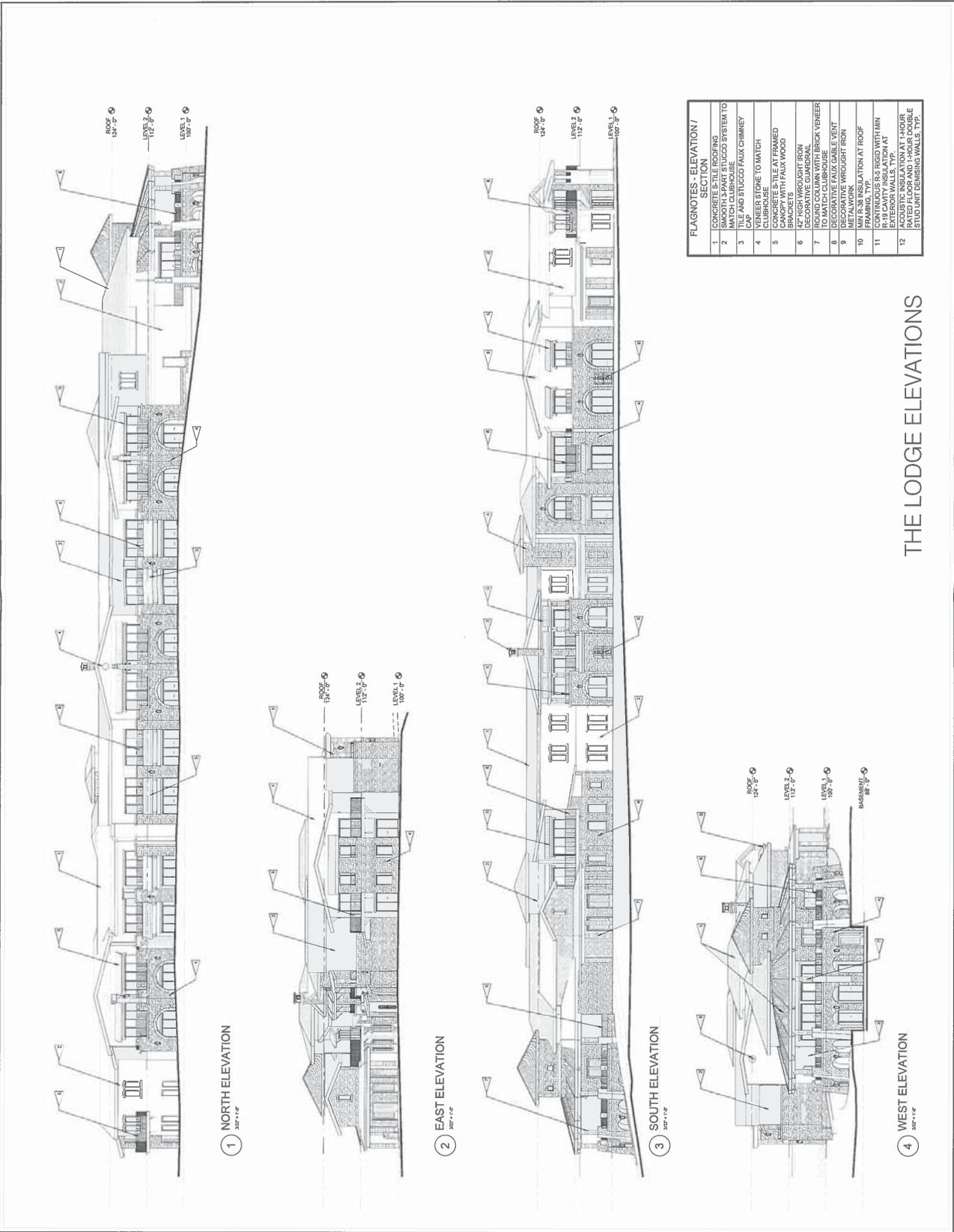
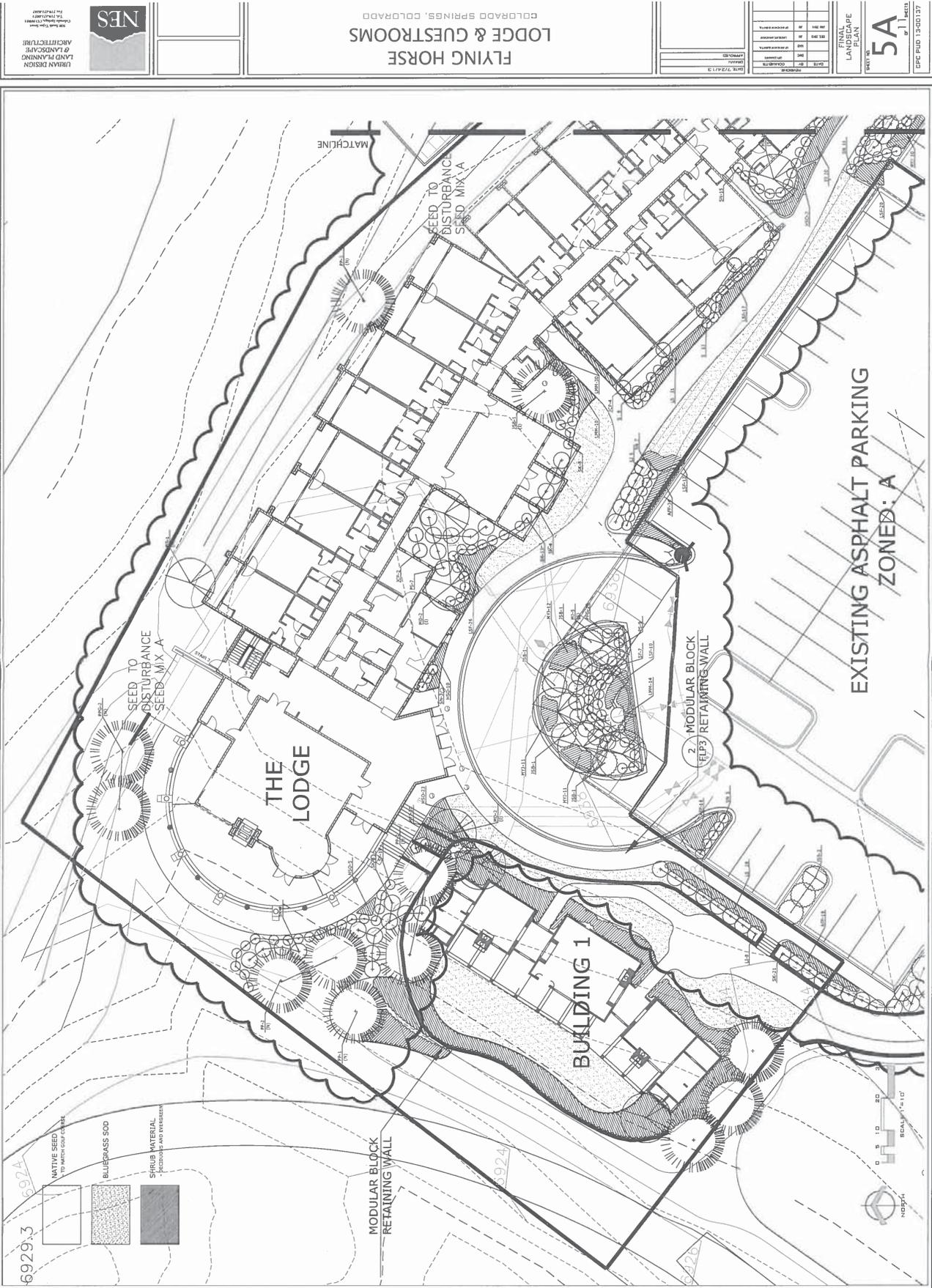


FIGURE 1



NBS
 National Business Systems
 1000 North 10th Street
 Suite 100
 Colorado Springs, CO 80902
 Phone: 719.575.1100
 Fax: 719.575.1101
 Email: info@nbs.com

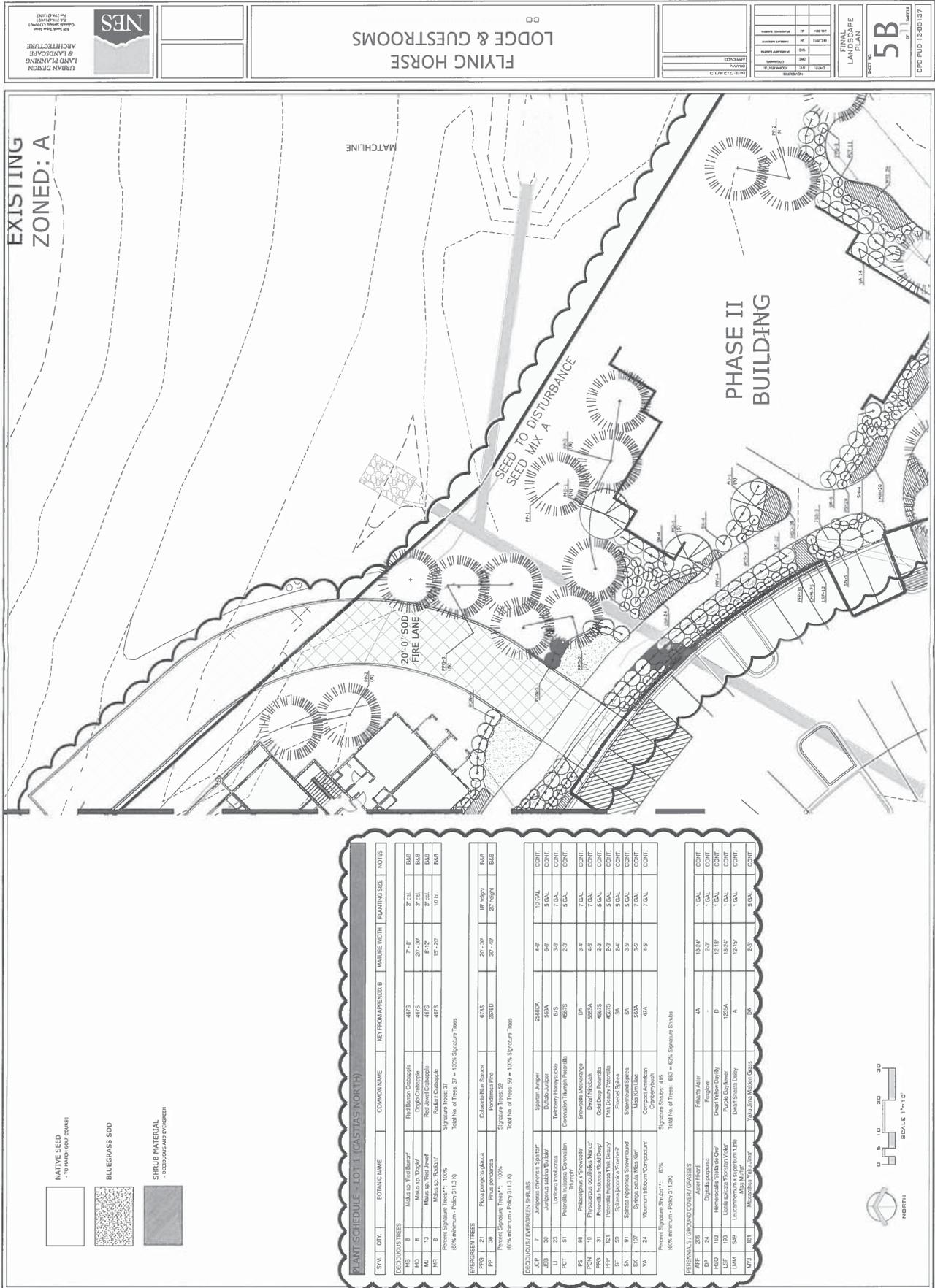


**FLYING HORSE
 LODGE & GUESTROOMS**
 COLORADO SPRINGS, COLORADO

NO.	DATE	DESCRIPTION
1	10/15/13	ISSUED FOR PERMITS
2	11/15/13	ISSUED FOR PERMITS
3	12/15/13	ISSUED FOR PERMITS
4	01/15/14	ISSUED FOR PERMITS
5	02/15/14	ISSUED FOR PERMITS
6	03/15/14	ISSUED FOR PERMITS
7	04/15/14	ISSUED FOR PERMITS
8	05/15/14	ISSUED FOR PERMITS
9	06/15/14	ISSUED FOR PERMITS
10	07/15/14	ISSUED FOR PERMITS
11	08/15/14	ISSUED FOR PERMITS
12	09/15/14	ISSUED FOR PERMITS
13	10/15/14	ISSUED FOR PERMITS
14	11/15/14	ISSUED FOR PERMITS
15	12/15/14	ISSUED FOR PERMITS
16	01/15/15	ISSUED FOR PERMITS
17	02/15/15	ISSUED FOR PERMITS
18	03/15/15	ISSUED FOR PERMITS
19	04/15/15	ISSUED FOR PERMITS
20	05/15/15	ISSUED FOR PERMITS
21	06/15/15	ISSUED FOR PERMITS
22	07/15/15	ISSUED FOR PERMITS
23	08/15/15	ISSUED FOR PERMITS
24	09/15/15	ISSUED FOR PERMITS
25	10/15/15	ISSUED FOR PERMITS
26	11/15/15	ISSUED FOR PERMITS
27	12/15/15	ISSUED FOR PERMITS
28	01/15/16	ISSUED FOR PERMITS
29	02/15/16	ISSUED FOR PERMITS
30	03/15/16	ISSUED FOR PERMITS
31	04/15/16	ISSUED FOR PERMITS
32	05/15/16	ISSUED FOR PERMITS
33	06/15/16	ISSUED FOR PERMITS
34	07/15/16	ISSUED FOR PERMITS
35	08/15/16	ISSUED FOR PERMITS
36	09/15/16	ISSUED FOR PERMITS
37	10/15/16	ISSUED FOR PERMITS
38	11/15/16	ISSUED FOR PERMITS
39	12/15/16	ISSUED FOR PERMITS
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41	02/15/17	ISSUED FOR PERMITS
42	03/15/17	ISSUED FOR PERMITS
43	04/15/17	ISSUED FOR PERMITS
44	05/15/17	ISSUED FOR PERMITS
45	06/15/17	ISSUED FOR PERMITS
46	07/15/17	ISSUED FOR PERMITS
47	08/15/17	ISSUED FOR PERMITS
48	09/15/17	ISSUED FOR PERMITS
49	10/15/17	ISSUED FOR PERMITS
50	11/15/17	ISSUED FOR PERMITS
51	12/15/17	ISSUED FOR PERMITS
52	01/15/18	ISSUED FOR PERMITS
53	02/15/18	ISSUED FOR PERMITS
54	03/15/18	ISSUED FOR PERMITS
55	04/15/18	ISSUED FOR PERMITS
56	05/15/18	ISSUED FOR PERMITS
57	06/15/18	ISSUED FOR PERMITS
58	07/15/18	ISSUED FOR PERMITS
59	08/15/18	ISSUED FOR PERMITS
60	09/15/18	ISSUED FOR PERMITS
61	10/15/18	ISSUED FOR PERMITS
62	11/15/18	ISSUED FOR PERMITS
63	12/15/18	ISSUED FOR PERMITS
64	01/15/19	ISSUED FOR PERMITS
65	02/15/19	ISSUED FOR PERMITS
66	03/15/19	ISSUED FOR PERMITS
67	04/15/19	ISSUED FOR PERMITS
68	05/15/19	ISSUED FOR PERMITS
69	06/15/19	ISSUED FOR PERMITS
70	07/15/19	ISSUED FOR PERMITS
71	08/15/19	ISSUED FOR PERMITS
72	09/15/19	ISSUED FOR PERMITS
73	10/15/19	ISSUED FOR PERMITS
74	11/15/19	ISSUED FOR PERMITS
75	12/15/19	ISSUED FOR PERMITS
76	01/15/20	ISSUED FOR PERMITS
77	02/15/20	ISSUED FOR PERMITS
78	03/15/20	ISSUED FOR PERMITS
79	04/15/20	ISSUED FOR PERMITS
80	05/15/20	ISSUED FOR PERMITS
81	06/15/20	ISSUED FOR PERMITS
82	07/15/20	ISSUED FOR PERMITS
83	08/15/20	ISSUED FOR PERMITS
84	09/15/20	ISSUED FOR PERMITS
85	10/15/20	ISSUED FOR PERMITS
86	11/15/20	ISSUED FOR PERMITS
87	12/15/20	ISSUED FOR PERMITS
88	01/15/21	ISSUED FOR PERMITS
89	02/15/21	ISSUED FOR PERMITS
90	03/15/21	ISSUED FOR PERMITS
91	04/15/21	ISSUED FOR PERMITS
92	05/15/21	ISSUED FOR PERMITS
93	06/15/21	ISSUED FOR PERMITS
94	07/15/21	ISSUED FOR PERMITS
95	08/15/21	ISSUED FOR PERMITS
96	09/15/21	ISSUED FOR PERMITS
97	10/15/21	ISSUED FOR PERMITS
98	11/15/21	ISSUED FOR PERMITS
99	12/15/21	ISSUED FOR PERMITS
100	01/15/22	ISSUED FOR PERMITS

PROJECT NO. **5A**
 FINAL LAYOUT PLAN
 SCALE: 1/4" = 1'-0"
 SHEET NO. 11 OF 17
 CPC PUB 1306137

FIGURE 1



URBAN DESIGN
 LAND PLANNING
 & ARCHITECTURE
 1000 West 12th Street
 Suite 1000
 Portland, OR 97204
 503.227.1111

NBS

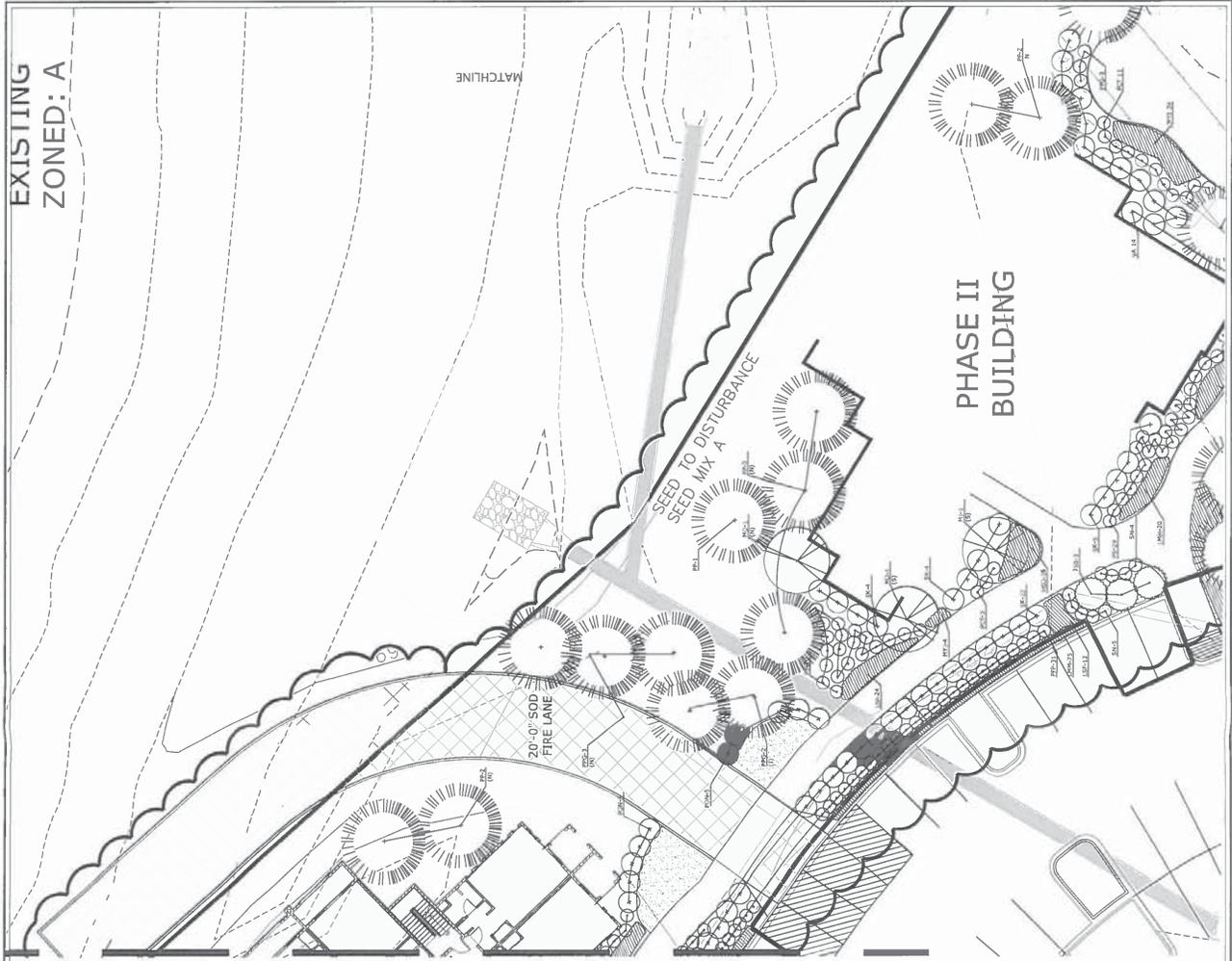
**FLYING HORSE
 LODGE & GUESTROOMS**

NO.	DATE	BY	DESCRIPTION
1	03/10/14	MM	ISSUED FOR PERMIT
2	03/10/14	MM	REVISED PER COMMENTS
3	03/10/14	MM	REVISED PER COMMENTS
4	03/10/14	MM	REVISED PER COMMENTS
5	03/10/14	MM	REVISED PER COMMENTS
6	03/10/14	MM	REVISED PER COMMENTS
7	03/10/14	MM	REVISED PER COMMENTS
8	03/10/14	MM	REVISED PER COMMENTS
9	03/10/14	MM	REVISED PER COMMENTS
10	03/10/14	MM	REVISED PER COMMENTS

FINAL
 LANDSCAPE
 PLAN

SHEET NO. **5B**

CPC PID 13-00137



PLANT SCHEDULE - LOT 1 (CASTAS NOR (H))

SYMB	QTY	BOTANIC NAME	COMMON NAME	KEY FROM APPENDIX B	LANDSCAPE ELEM.	PLANTING SIZE	NOTES
DECIDUOUS TREES							
WB	8	Mulberry	River Bluenut Hickory	46T5	7'-8"	9" cal	BBB
WD	8	Mulberry	Mulberry	46T5	20'-30'	9" cal	BBB
WR	8	Mulberry	Mulberry	46T5	15'-25'	10" cal	BBB
WS	8	Mulberry	Mulberry	46T5	15'-25'	10" cal	BBB
Percent Signature Trees: 100%							
80% minimum - Picky 211.2 (N)							
Total No. of Trees: 37 = 100% Signature Trees							
EVERGREEN TREES							
FP	36	Pinus ponderosa	Colorado Blue Spruce	61NS	20'-30'	18" Hg/9"1	BBB
FP	36	Pinus ponderosa	Ponderosa Pine	28TRD	30'-40'	20" Hg/9"1	BBB
Percent Signature Trees: 100%							
80% minimum - Picky 211.2 (N)							
Total No. of Trees: 39 = 100% Signature Trees							
DECIDUOUS / EMERGENCY SHRUBS							
JOP	7	Juncos chinensis 'Spartan'	Spartan Juniper	2980VA	4'-6"	10' GAL	CONIT
JOB	30	Juncos chinensis 'Spartan'	Spartan Juniper	91AA	6'-8"	5' GAL	CONIT
PC1	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	3'-6"	7' GAL	CONIT
PC2	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-0"	5' GAL	CONIT
PC3	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	3'-4"	7' GAL	CONIT
PC4	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-2"	5' GAL	CONIT
PC5	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC6	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC7	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC8	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC9	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC10	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC11	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC12	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC13	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC14	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC15	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC16	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC17	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC18	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC19	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC20	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC21	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC22	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC23	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC24	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC25	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC26	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC27	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC28	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC29	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC30	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC31	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC32	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC33	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC34	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC35	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC36	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC37	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC38	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC39	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC40	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC41	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC42	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC43	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC44	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC45	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC46	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC47	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC48	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC49	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
PC50	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT
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PC100	51	Prinos chinensis 'Spartan'	Spartan Juniper	46T5	2'-4"	5' GAL	CONIT

FIGURE 1

The Lodge at Flying Horse

Project Statement

December 2013

The Lodge at Flying Horse is a proposed hospitality function to be owned and operated as a part of the Club at Flying Horse. The site is between the 9th hole of the Golf Course and the parking lot for the Club. 40 rooms are proposed in the first phase, including a portion of the building that will house the office function and meeting rooms. A second phase 20 room building is shown conceptually on the revised Development Plan. By this proposal, 12 Casitas units would be removed and replaced with up to 60 hospitality rooms and meeting space. Two Casitas units in one building will remain on the Development Plan.

There are two applications associated with this request: a zone change from PUD to PUD to permit the Lodge and meeting rooms and Amendment to the Casitas North Development Plan to show the proposed buildings.

Access to this site will be unchanged. It will be via Flying Horse Club Drive to Weiskopf Point through the gate to the Club. Parking has been calculated for the entire Club Complex, including the existing Golf and Recreational Club buildings, the proposed Casitas units (south), the one Casitas building to remain on the north, and the proposed Lodge facilities.

The parking analysis is shown on the Development Plan. It indicates compliance with City parking requirements through the first phase of the Lodge development program. Of note, in the history of the Club, only two events have triggered the need for additional parking. The additional need was satisfied on Parcel #18, located to the east of the recreation building, where additional parking space will always be available. Overflow parking on Parcel #18 satisfies the City parking requirements for the Second Phase of the Lodge development program. Prior to Phase Two construction, applicant agrees to provide an updated parking analysis.

Zone Change Review Criteria

1. The action will not be detrimental to the public interest, health, safety, convenience or general welfare. *This application is within a gated private club. There will be no impact to the general public.*
2. The proposal is consistent with the goals and policies of the Comprehensive Plan. *This application will permit Club members to house guests at their Club. There is no negative relationship to Comprehensive Goals and Policies.*
3. Where a master plan exists, the proposal is consistent with such plan or an approved amendment to such plan. Master plans that have been classified as implemented do not have

to be amended to be considered consistent with a zone change request. *The zone change is within the Flying Horse Master Plan. The Club and its functions is the central feature of the Master Plan, and are therefore consistent with it.*

CITY PLANNING COMMISSION AGENDA

ITEM NOS: B.1-B.3

STAFF: LARRY LARSEN

FILE NO: CPC MPA 05-00230-A1MJ13 - LEGISLATIVE

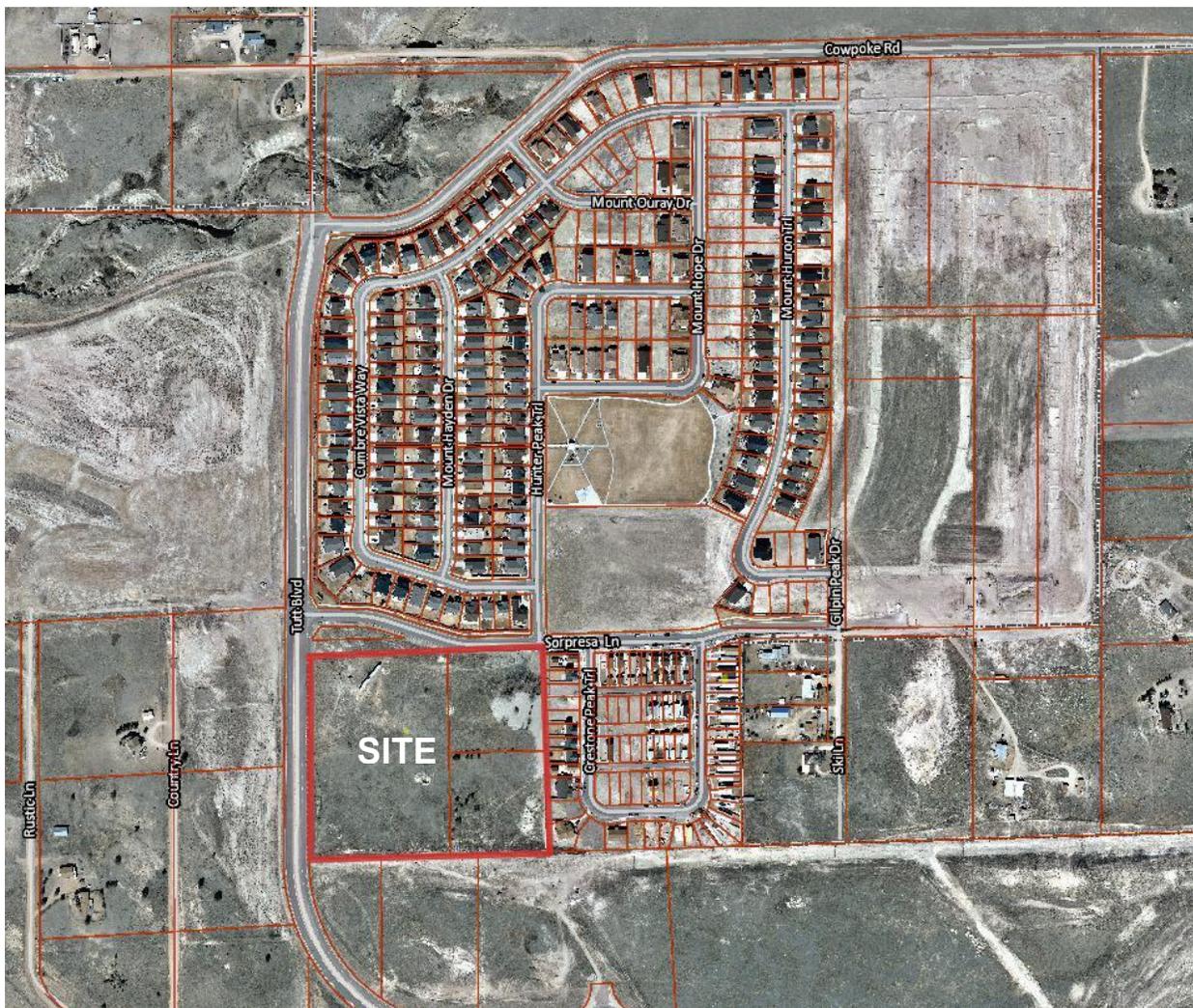
FILE NO: CPC PUZ 13-00073 - QUASI-JUDICIAL

FILE NO: CPC PUD 13-00074 - QUASI-JUDICIAL

PROJECT: CUMBRE VISTA APARTMENTS

APPLICANT: YOW ARCHITECTS

OWNER: CUMBRE VISTA, LLC



PROJECT SUMMARY:

1. Project Description: This project includes the following applications: 1.) the Powerwood 3-6 Master Plan Amendment (**FIGURE 1**), 2.) a change of zone district from A/AO (Agricultural with Airport Overlay) to PUD/AO (Planned Unit Development with Airport Overlay for multi-family residential use, 12 to 18 dwelling units per acre and maximum building height of 45 feet), and 3.) the Cumbre Vista PUD Development Plan; (**FIGURE 2 & 3**). The property is located southeast of the Tutt Boulevard and Sorpresa Lane intersection and consists of 12.99 acres.

The applications would allow for the development of the Cumbre Vista Apartment project. The project proposes 204 apartments units, ten buildings, a clubhouse and a private recreational area.

Note: This property was reviewed and approved for annexation, a master plan and zoning to A (Agricultural) in 2006. However, the annexation process was not completed and the annexation plat was not recorded. The City Council recently re-approved the annexation and authorized the City Council President to sign the annexation plat and annexation agreement. The proposed applications include changes to the previously approved master plan and zone district.

2. Applicant's Statement: (**FIGURE 4**)
3. Planning and Development Department's Recommendation: Approve the applications subject to conditions

BACKGROUND:

1. Site Address: Not applicable.
2. Existing Zoning/Land Use: A/AO (Agricultural with Airport Overlay) / vacant (**FIGURE 5**)
3. Surrounding Zoning/Land Use:
North: R-1-6000 (Single-Family Residential) / single-family residences (Cumbre Vista)
South: PUD (Planned Unit Development) & PF (Public Facilities) / vacant (planned multi-family residential apartments & City Utilities water tank storage facilities)
East: PUD (Planned Unit Development) / single family residences (Woodmen Vista)
West: A (Agricultural) & C-6 (General Business) / vacant (planned multi-family residential and commercial)
4. Comprehensive Plan/Designated 2020 Land Use: General Residential
5. Annexation: Powerwood No. 7 (2006)
6. Master Plan/Designated Master Plan Land Use: Powerwood 3-6 / residential (pending approval of the proposed amendment to increase the density to 12 to 17.99 dwelling units per acre)
7. Subdivision: Unplatted
8. Zoning Enforcement Action: None.
9. Physical Characteristics: The majority of the site slopes towards the northwest. The site has no significant vegetation (grasses and shrubs) or natural features.

STAKEHOLDER PROCESS AND INVOLVEMENT:

This project has been subject to intense neighborhood involvement, review, and constructive input. It has been the subject of four neighborhood meetings.

During the pre-application stage, the first neighborhood meeting was conducted on July 19, 2012 at the Cottonwood Creek YMCA Recreation Center, after the initial notification resulted in the neighborhood's desire to conduct the meeting. Approximately 80 persons attended the meeting. The proposal described at that time included 286 apartment units. Neighborhood concerns included: market demand for apartments, grading, quality, access to site, affordability, shared park use with the existing neighborhood, traffic generation and distribution, security and crime concerns, school impacts, applicant's willingness to negotiate with the neighborhood, and the project's participation in the Woodmen Heights Metro District (WHMD). Many e-mails and a petition in opposition to the project were received at that time.

The second pre-application neighborhood meeting was conducted on August 8, 2012 at the Stetson Hills Police Station. Approximately 75 persons attended the meeting. The meeting was conducted together with Councilperson Dougan, in order to explain the planning review process for this project to the neighborhood. Efforts to focus on process related issues and avoid discussing the project itself were somewhat successful.

The third pre-application neighborhood meeting was conducted on September 13, 2012 at the Stetson Hills Police Station. Approximately 35 persons attended the meeting. This meeting was conducted by the developer to explain three possible project alternative scenarios. Neighborhood concerns included: the City's pre-application review of the 286 unit project; wall enclosures, consideration of single-family dwellings, protecting the private access easement, the review process, grading and building elevations, traffic concerns, and WHMD participation. The developer asked the neighborhood to support Alternative #3, the 204 unit proposal.

The neighborhood organized themselves, evaluated the three alternatives, and together came to the conclusion to support Alternative #3, subject to conditions. A copy of the October 21, 2012 neighborhood meeting summary is attached. **(FIGURE 6)** On November 1, 2012 representatives of the neighborhood met with the developer and City staff to offer their support for Alternative #3 and their conditions. The developer agreed to the conditions. The six conditions are discussed in the Design and Development Issues section of this report.

The fourth pre-application neighborhood meeting was conducted on July 9, 2013 at the Woodmen Chapel Church. Approximately 20 persons attended the meeting. This meeting was to inform the neighborhood that the plans will address the conditions and that the submittal of the plans was forthcoming.

The standard City notification process for the internal review included posting the property with a notice poster and mailing postcards to approximately 250 property owners within 1,000 feet of the project area.

The same posting and notification process will be utilized prior to the CPC public hearing.

All applicable agencies and departments were asked to review and comment. No significant concerns were identified. All issues and concerns were incorporated into the development plan or provided as conditions of approval. Commenting agencies included Colorado Springs Utilities, City Engineering, City Traffic, City Fire, School District 20, Police and E-911 and the US Air Force Academy. Final compliance will be verified and confirmed prior to issuance of a building permit.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Design and Development Issues: Once the neighborhood decided to support the 204 unit apartment proposal, subject to the following conditions, the previous issues and concerns were addressed as part of the normal development review process and plan evaluation.

Architectural Design: The neighborhood requested that the structures' exterior finish match and compliment the aesthetics of their Cumbre Vista neighborhood, including tan and brown, earth toned stucco and stone. The developer agreed and the result is shown on the development plan's building elevation plan sheets.

Playground: The neighborhood requested that the project include on-site private recreational amenities similar to the existing Cumbre Vista neighborhood park, including playground equipment and a basketball court. The neighborhood also asked that the location of the facilities, shown on an early plan draft in the northeast corner, be moved to the northwest corner. The developer agreed and the result is shown on Sheet 1 of the development plan.

Median Landscaping: The neighborhood requested that the existing median located within Tutt Boulevard be landscaped and maintained by the developer. The developer agreed to the landscaping and the result is shown on Sheets 3, 4, 6, and 8 of the development plan's preliminary landscape plan. The Woodmen Heights Metro District has agreed to maintain the landscaping within the median and is stipulated as a modified plan note.

Perimeter Wall: The neighborhood requested that a perimeter wall be installed to match the existing Cumbre Vista wall. The developer agreed to install the wall on the west and north sides of the project only, since an existing fence was previously installed along the east side and is not necessary along the south side. The neighborhood representatives agreed. The wall is shown on Sheet 1 of the development plan.

Woodmen Heights Metro District: The neighborhood requested that the project and developer participate in, and not buy out, the Woodmen Heights Metro District. The developer agreed and this is shown as a plan note on the cover sheet of the development plan.

2. Conformance with the City Comprehensive Plan: This project will be consistent with the City Comprehensive Plan. The Plan's 2020 Land Use Map currently identifies this area as a "Potential Annexation Area" and will be re-designated as "General Residential" upon annexation and approval of the master plan amendment.

The following City Comprehensive Plan goals, objectives and policy statements apply to this project:

Policy LU 201: Promote a Focused, Consolidated Land Use Pattern: Locate new growth and development in well-defined contiguous areas in order to avoid leapfrog, scattered land use patterns that cannot be adequately provided with City services.

Strategy LU 302c: Promote Compatibility between Land Uses of Differing Intensities: Design and develop mixed land uses to ensure compatibility and appropriate transitions between land uses that vary in intensity and scale.

Objective LU 5: Develop Cohesive Residential Areas: Neighborhoods are the fundamental building block for developing and redeveloping residential areas of the city.

Likewise, residential areas provide a structure for bringing together individual neighborhoods to support and benefit from schools, community activity centers, commercial centers, community parks, recreation centers, employment centers, open space networks, and the city's transportation system. Residential areas also form the basis for broader residential land use designations on the citywide land use map. Those designations distinguish general types of residential areas by their average densities, environmental features, diversity of housing types, and mix of uses. Residential areas of the city should be developed, redeveloped and revitalized as cohesive sets of neighborhoods, sharing an interconnected network of streets, schools, parks, trails, open spaces, activity centers, and public facilities and services.

Policy LU 501: Plan Residential Areas to Integrate Neighborhoods into the Wider Subarea and Citywide Pattern: Plan, design, develop, and redevelop residential areas to integrate several neighborhoods into the citywide pattern of activity centers, street networks, environmental constraints, parks and open space, school locations and other public facilities and services.

Strategy LU 501a: Link Neighborhood Layout and Design to a Larger Residential Area: In master plans and in community planning areas, layout and design individual neighborhoods to form a coherent residential area.

Policy LU 601: Assure Provision of Housing Choices: Distribute housing throughout the City so as to provide households with a choice of densities, types, styles and costs within a neighborhood or residential area.

Objective N 1: Focus On Neighborhoods: Create functional neighborhoods when planning and developing residential areas. Regard neighborhoods as the central organizing element for planning residential areas. Rely on neighborhood-based organizations as a means of involving residents and property owners in the decision-making process.

Objective N 3: Vary Neighborhood Patterns: Integrate a variety of housing types and densities with amenities, services, and retail uses to generate opportunities and choices for households. When the character, context and scale of the surrounding neighborhood are taken into account, mixed-use developments can provide unique opportunities for employment, shopping, housing choice, and public gathering space, while having a positive impact on the neighborhood.

Objective CCA 6: Fit New Development into the Character of the Surrounding Area: Often the overall character of a new development is not realized until the project is completed. This can lead to unintended impacts and incompatible development. Applicants for new developments need to clearly identify how their projects will fit into the character of the surrounding area and the community as a whole with respect to height, scale, bulk, massing, roof forms, signage, overall site design, pedestrian and vehicular access, and relation to the public right-of-way.

Policy CCA 601: New Development Will be Compatible with the Surrounding Area: New developments will be compatible with the surrounding land uses and will complement the character and appearance of adjacent land uses.

It is the finding of the City Planning and Development Staff that the Cumbre Vista Apartments project will be consistent with the City's Comprehensive Plan 2020 Land Use Map and the Plan's goals, objectives and policies for General Residential use upon approval of the proposed master plan amendment.

3. Conformance with the Area's Master Plan: This site will be added and included as part of the Powerwood 3-6 Master Plan and be designated for residential use with a density of 12 to 18 dwelling units per acres upon approval of the proposed master plan amendment.

It is the finding of the City Planning and Development Staff that the Cumbre Vista Apartments project will be consistent with the Powerwood 3-6 Master Plan upon approval of the proposed master plan amendment.

STAFF RECOMMENDATIONS:

Item No: B.1 CPC MPA 05-00230-A1MJ13 – Master Plan

Approve the Amendment to the Powerwood 3-6 Master Plan, based upon the finding that the plan complies with the review criteria of City Code Section 7.5.408, subject to the following conditions:

1. Prior to scheduling the public hearing before the City Council for the master plan amendment, the zone change, and development plan applications, the annexation plat and agreement must be recorded.
2. Provide Engineering Development Review's approval of the Master Development Drainage Plan.

Item No: B.2 CPC PUZ 13-00073 – Change of Zone District

Approve the change of zone district of zone district from A/AO (Agricultural with Airport Overlay) to PUD/AO (Planned Unit Development with Airport Overlay for multi-family residential use, 12 to 18 dwelling units per acre and maximum building height of 45 feet), based upon the finding that it complies with the findings of City Code Section 7.5.603.B and the PUD establishment criteria found in City Code Section 7.3.603.

Item No: B.3 CPC PUD 13-00074 – Development Plan

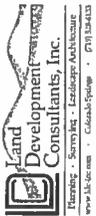
Approve the Cumbre Vista Apartment PUD Development Plan, based upon the finding that the plan complies with the PUD development plan review criteria in City Code Section 7.3.606, subject to compliance with the following technical and informational plan modifications:

Technical Modifications:

1. Provide Engineering Development Review's approval of the Final Drainage Report.
2. On the Cover Sheet, Site Data, add the final PUD zone change ordinance number & provisions under proposed zoning.
3. On the Cover Sheet, modify plan note #9 to read: "It shall be the responsibility of the developer to install all landscaping within the Tutt Boulevard median and the Woodmen Heights Metro District has agreed to maintain said landscaping".
4. On the Cover Sheet, remove plan note #10.
5. On the Cover Sheet, in plan note #14, add "sidewalks" to the first sentence and remove the last sentence.
6. On Sheet 1, clearly show the extension of the sidewalks within the Tutt and Sorpresa right-of-ways.
7. On Sheet 1, clearly show the 30-foot private access easement.
8. On Sheet 11, relocate the stormwater outlet out of the 30-foot private access easement.

Land Development Consultants, Inc.

2850 Serendipity Circle West, Colorado Springs, CO 80917
 (719) 528-6133 Fax (719) 528-6848



Project: POWERWOOD 3-6 MASTER PLAN (POWERWOOD NO. 7 AMENDMENT)

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 Colorado Springs, CO 80904

Index of Drawings

Sheet No.	Title
1	Master Plan Notes
2	Master Plan
3	Land Suitability Analysis
4	Preliminary Grading Plan Powerwood 7
5	Master Facilities Plan Powerwood 7

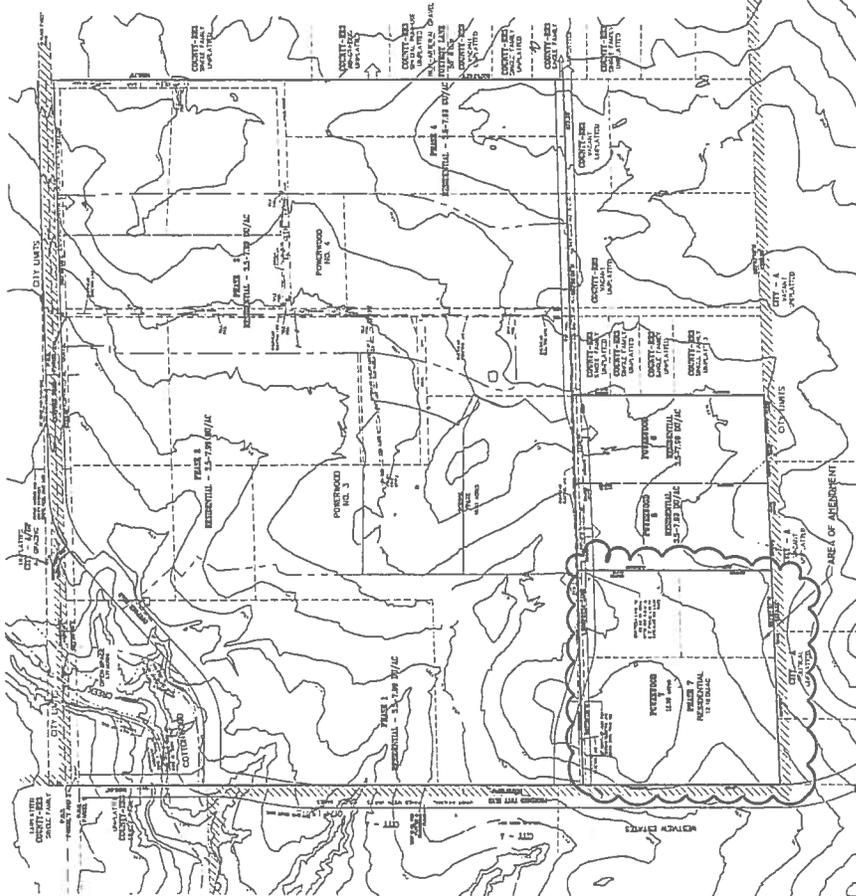
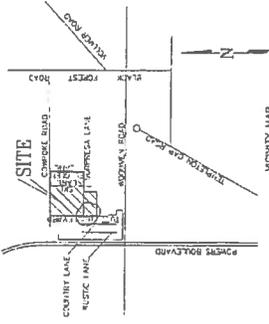
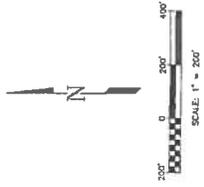


[Signature]
 2013 Minor Amendment
 Prepared November 2013

APPROVED CITY FILE NO.: CPC MP 05-00250-A/1/M/13
 LDC Project No: 05219

FIGURE 1

POWERWOOD 3-6 MASTER PLAN (POWERWOOD NO. 7 AMENDMENT)



2013 Minor Amendment
 residential to multi-family density revision
 Approved November 2013

APPROVED CITY FILE NO.: CPC MP 05-00230-A MMN13

PROJECT NO.	05019	DATE: 12/10/05	SHEET: 2 of 3
POWERWOOD 3-6 MASTER PLAN POWERWOOD NO. 7 AMENDMENT			

REVISIONS	
NO.	DESCRIPTION
1	CITY COMMENTS
2	CITY COMMENTS
3	CITY COMMENTS
4	CITY COMMENTS

Land Development Consultants, Inc.
 Planning, Surveying, Engineering, Architecture

BY:	DATE:
MM	1/7/08
JAC	02/28/07
MM	1/2/07

FIGURE 1

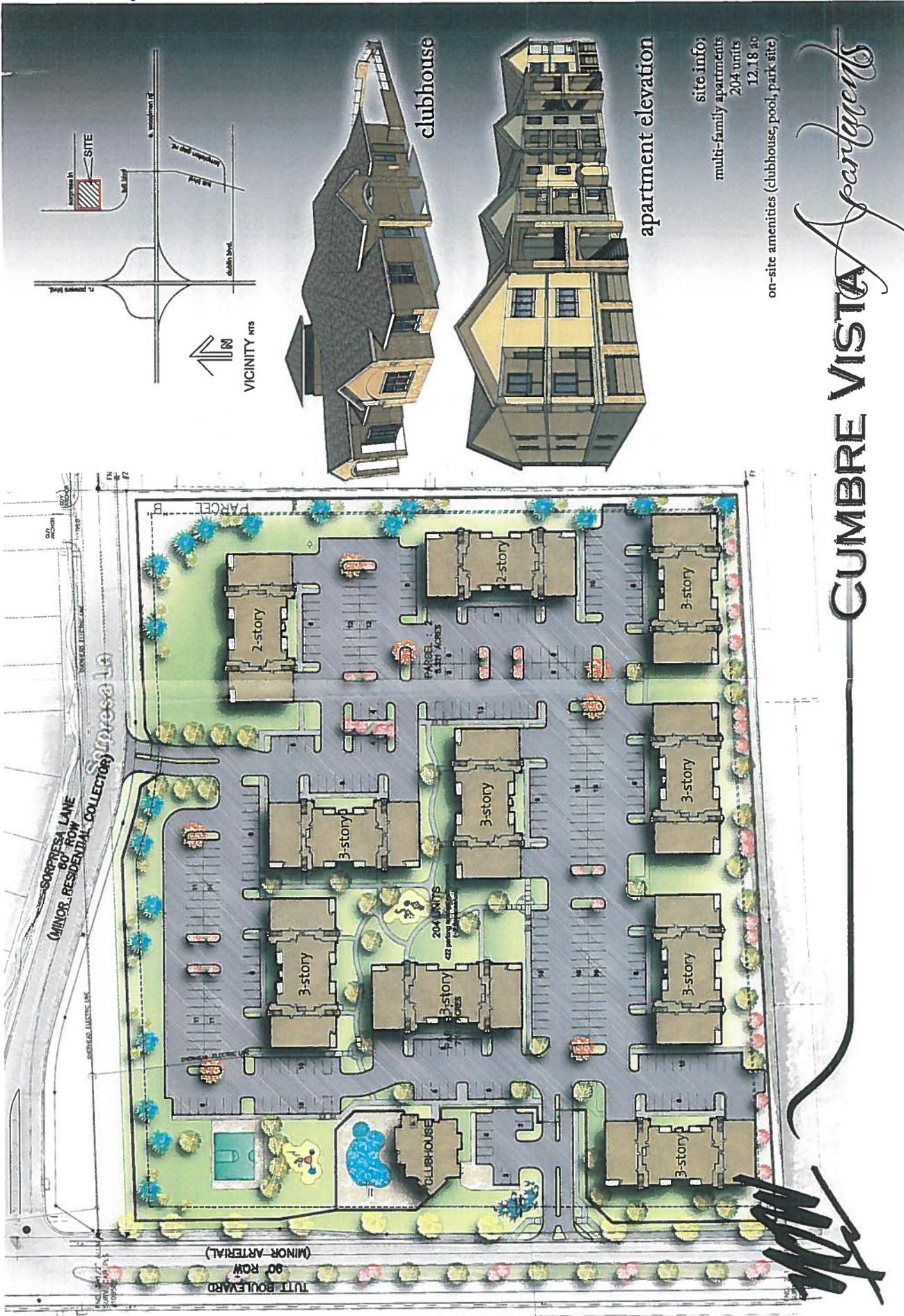
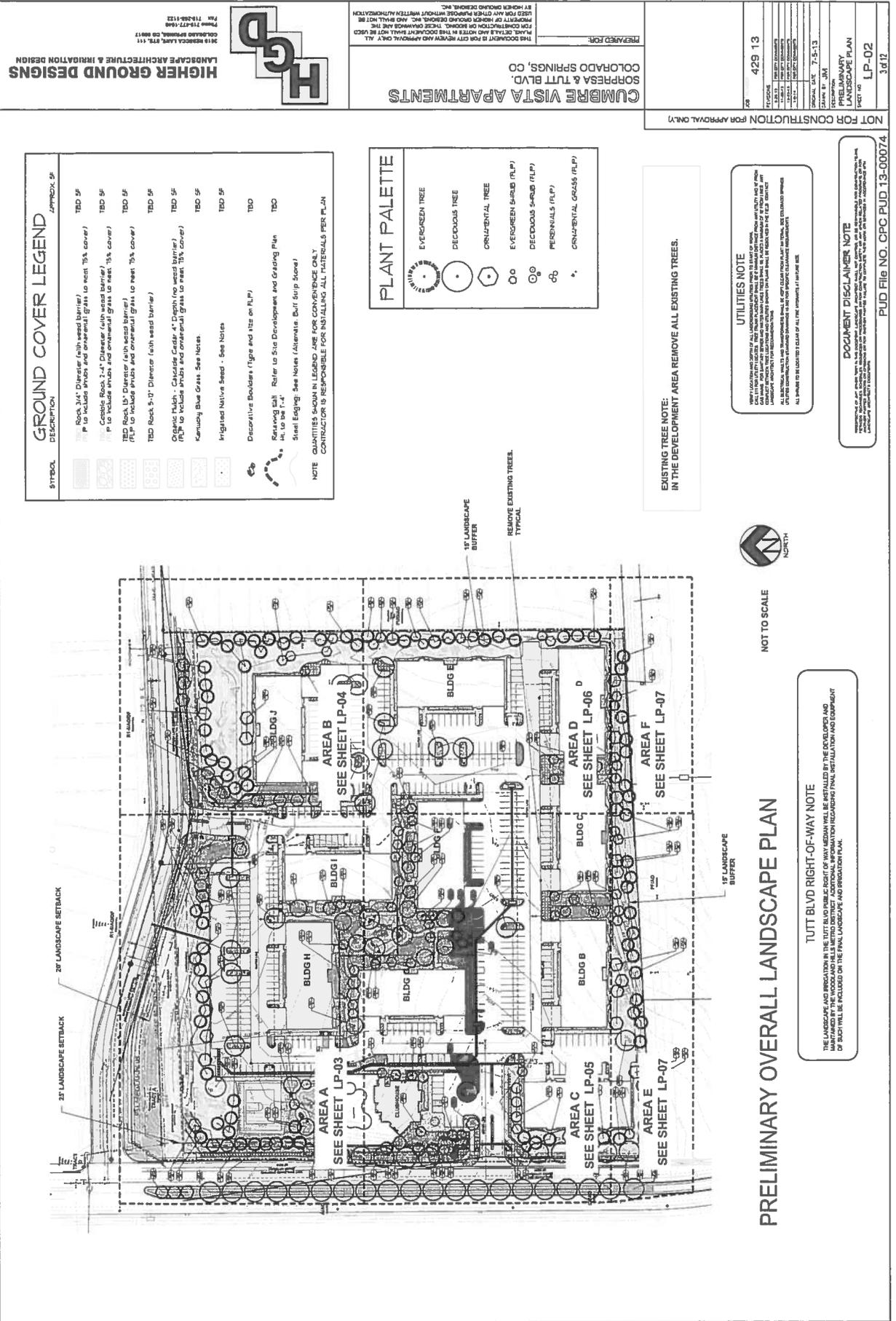


FIGURE 2

NEGOTIATING POINTS

- 1 - Stucco (Exterior finishing and color palette that matches and complements the aesthetics of Cumbre Vista(CV) - Stucco and stone siding consistent with community)
-Addressed as noted. (ref.: attached plans)
- 2 - Playground (equipment and basketball area essentially replicating playground equipment in the CV park)
-Noted. Equipment shown on provided plans.
- 3 - Landscaping median fronting complex property on Tutt
-Schematic landscaping shown. Final landscape plans addressing extent of landscape to be provided with DP submittal.
- 4 - Swap planned playground/green space area on NE corner with 2-story bldg on NW corner.
-Addressed as noted. ref.: attached plans
- 5 - Wall around project (match CV exterior wall along Tutt and Sorpresa, substantial fence/wall around remaining property border.
-Addressed as noted. Final detail addressing matched materials to be provided with DP submittal (ref.: attached plans)
- 6 - Join Woodmen Heights Metro District, rather than buy out.
-Noted and agreed upon. This process is subject to DP approvals.



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 LANDSCAPE ARCHITECTURE & IRRIGATION DESIGN
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CUMBRE VISTA APARTMENTS
 SOPRESA & TUTT BLDG.
 COLORADO SPRINGS, CO

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NOT FOR CONSTRUCTION (FOR APPROVAL ONLY)

DATE	4/29/13
BY	JAM
FOR	CONSTRUCTION
REVISIONS	
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GROUND COVER LEGEND

SYMBOL	DESCRIPTION	APPENDIX 5F
[Symbol]	Rock 3/4" Diameter (with weed barrier)	TBD 5F
[Symbol]	P to include finish and gravel (to meet 15% cover)	TBD 5F
[Symbol]	Gravel 3/4" Diameter (with weed barrier)	TBD 5F
[Symbol]	P to include finish and gravel (to meet 15% cover)	TBD 5F
[Symbol]	TBD Rock 1 1/2" Diameter (with weed barrier)	TBD 5F
[Symbol]	P to include finish and gravel (to meet 15% cover)	TBD 5F
[Symbol]	TBD Rock 2" Diameter (with weed barrier)	TBD 5F
[Symbol]	P to include finish and gravel (to meet 15% cover)	TBD 5F
[Symbol]	Organic Mulch - Cascade Cedar, 4" Depth (no weed barrier)	TBD 5F
[Symbol]	P to include finish and gravel (to meet 15% cover)	TBD 5F
[Symbol]	Kamuyuki Blue Grass - See Notes	TBD 5F
[Symbol]	Irrigated Native Seed - See Notes	TBD 5F
[Symbol]	Decorative Boulders (Type and size on R/I/P)	TBD
[Symbol]	Retaining Wall - Refer to Site Development and Grading Plan	TBD
[Symbol]	Steel Edging - See Notes (Alternate: Bull Strip Stone)	TBD

NOTE: QUANTITIES SHOWN IN LEGEND ARE FOR CONVENIENCE ONLY. CONTRACTOR IS RESPONSIBLE FOR INSTALLING ALL MATERIALS PER PLAN.

PLANT PALETTE

[Symbol]	EVERGREEN TREE
[Symbol]	DECIDUOUS TREE
[Symbol]	ORIENTAL TREE
[Symbol]	EVERGREEN SHRUB (R/I/P)
[Symbol]	DECIDUOUS SHRUB (R/I/P)
[Symbol]	PERENNIALS (R/I/P)
[Symbol]	ORIENTAL GRASSES (R/I/P)

EXISTING TREE NOTE:
 IN THE DEVELOPMENT AREA REMOVE ALL EXISTING TREES.

UTILITIES NOTE:
 THIS PLAN IS FOR INFORMATION ONLY. ALL UTILITIES SHALL BE LOCATED AND DEPTH SHALL BE VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION. ALL UTILITIES SHALL BE DEPTH MARKED AND SHALL BE PROTECTED BY THE CONTRACTOR. ALL UTILITIES SHALL BE DEPTH MARKED AND SHALL BE PROTECTED BY THE CONTRACTOR. ALL UTILITIES SHALL BE DEPTH MARKED AND SHALL BE PROTECTED BY THE CONTRACTOR.

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PRELIMINARY OVERALL LANDSCAPE PLAN

TUTT BLVD RIGHT-OF-WAY NOTE
 THE LANDSCAPE AND IRRIGATION IN THE TUTT BLVD PUBLIC RIGHT-OF-WAY AREA WILL BE INSTALLED BY THE DEVELOPER AND SHALL BE INCLUDED IN THE FINAL LANDSCAPE AND IRRIGATION PLAN.

FIGURE 3

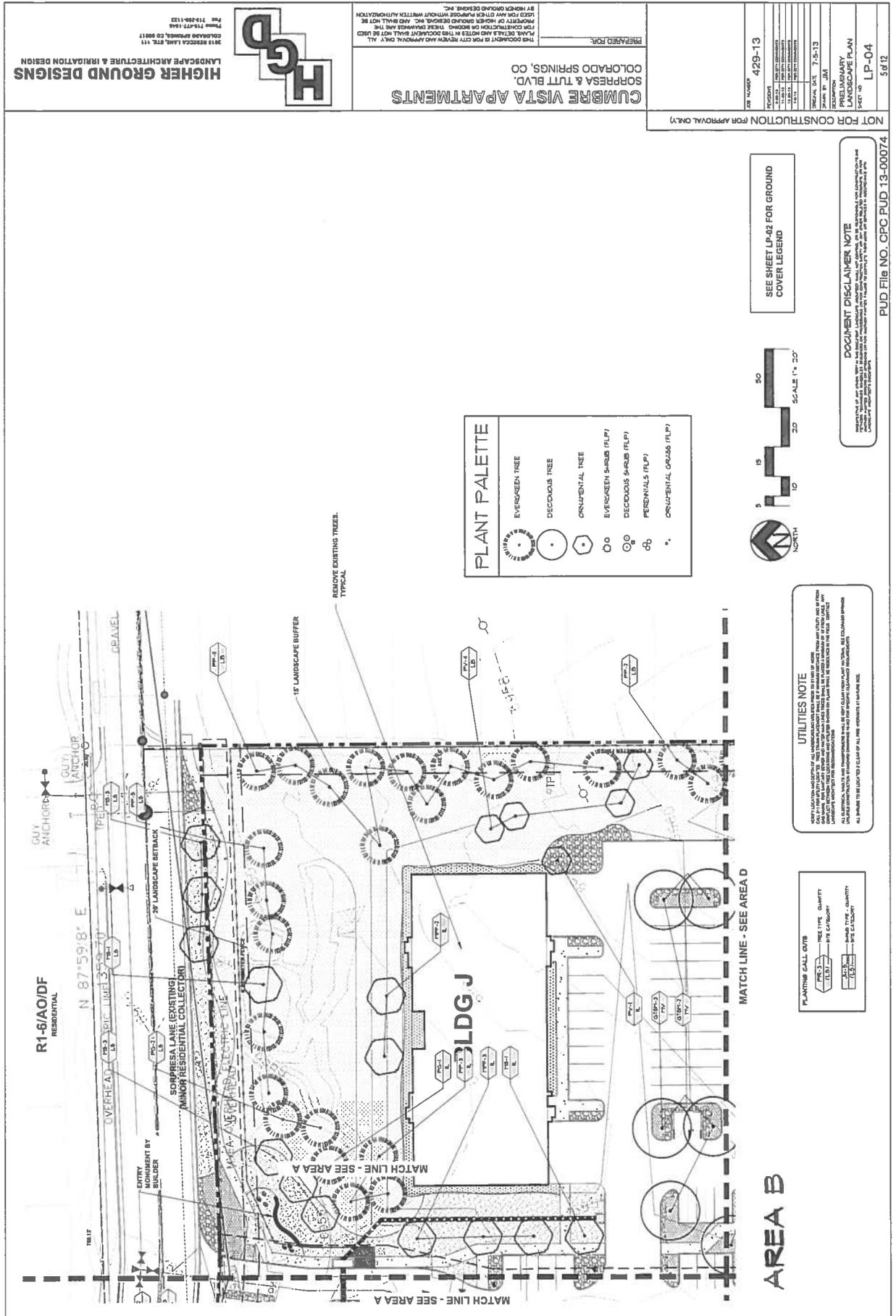


FIGURE 3

HIGHER GROUND DESIGNS
 LANDSCAPE ARCHITECTURE & IRRIGATION DESIGN
 2610 RESIDUAL LANE, STE. 111
 COLORADO SPRINGS, CO 80917
 PHONE 719-589-1123
 FAX 719-587-1448

CUMBRÉ VISTA APARTMENTS
 SORPRESA & TUTT BLVD.
 COLORADO SPRINGS, CO

PREPARED FOR:
 HIGHER GROUND DESIGN, INC.

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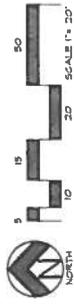
DATE: 04/23/13
 DRAWN BY: JAM
 CHECKED BY: JAM
 PROJECT NO.: 13-00074
 SHEET NO.: LP-04
 OF 04

NOT FOR CONSTRUCTION (FOR APPROVAL ONLY)

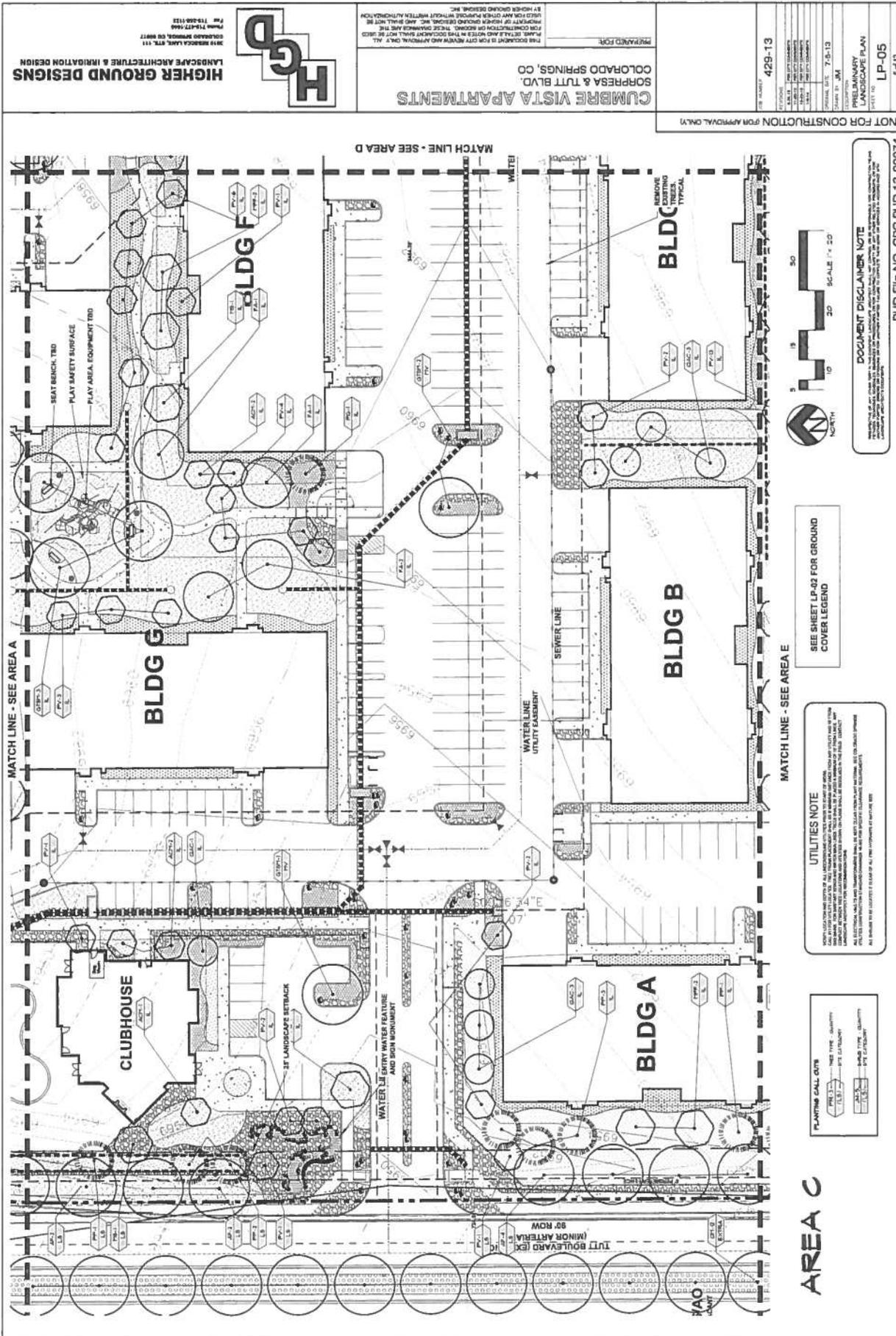
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SEE SHEET LP-02 FOR GROUND COVER LEGEND



PUD FILE NO. CPC PUD 13-00074



HGD
HIGHER GROUND DESIGNS
 LANDSCAPE ARCHITECTURE & IRRIGATION DESIGN
 2010 MONROE AVE., STE. 111
 COLORADO SPRINGS, CO 80917
 PHONE: 719.528.1122
 FAX: 719.528.1123
 EMAIL: INFO@HIGHERGROUNDDESIGNS.COM

PREPARED FOR:
SORPRESA & TUTT BLVD.
COLOrado SPRINGS, CO
CUMBRE VISTA APARTMENTS
 THIS DOCUMENT IS FOR CITY REVIEW AND APPROVAL ONLY. ALL DESIGN AND CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF COLORADO SPRINGS DESIGN AND CONSTRUCTION STANDARDS. THE CITY OF COLORADO SPRINGS DOES NOT WARRANT THE ACCURACY OF ANY INFORMATION CONTAINED HEREIN. THE CITY OF COLORADO SPRINGS SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS DOCUMENT. ALL INFORMATION CONTAINED HEREIN IS THE PROPERTY OF HIGHER GROUND DESIGNS, INC. AND SHALL NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF HIGHER GROUND DESIGNS, INC.

NOT FOR CONSTRUCTION (FROM APPROVAL ONLY)
 SHEET NO. 429-13
 DATE: 7-8-13
 PROJECT: SORPRESA & TUTT BLVD.
 DRAWN BY: JAM
 CHECKED BY: JAM
 PROJECT NO.: LP-05
 SHEET NO.: 6 of 12

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UTILITIES NOTE
 VERIFY LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. THE LOCATION AND DEPTH OF UTILITIES SHOWN ON THIS PLAN IS BASED ON RECORD DRAWINGS AND FIELD SURVEY. THE LOCATION AND DEPTH OF UTILITIES SHOWN ON THIS PLAN IS NOT TO BE CONSIDERED AS A GUARANTEE. THE LOCATION AND DEPTH OF UTILITIES SHOWN ON THIS PLAN IS NOT TO BE CONSIDERED AS A GUARANTEE. THE LOCATION AND DEPTH OF UTILITIES SHOWN ON THIS PLAN IS NOT TO BE CONSIDERED AS A GUARANTEE. THE LOCATION AND DEPTH OF UTILITIES SHOWN ON THIS PLAN IS NOT TO BE CONSIDERED AS A GUARANTEE.

PLANTING CALL OUTS
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SEE SHEET LP-02 FOR GROUND COVER LEGEND

FIGURE 3

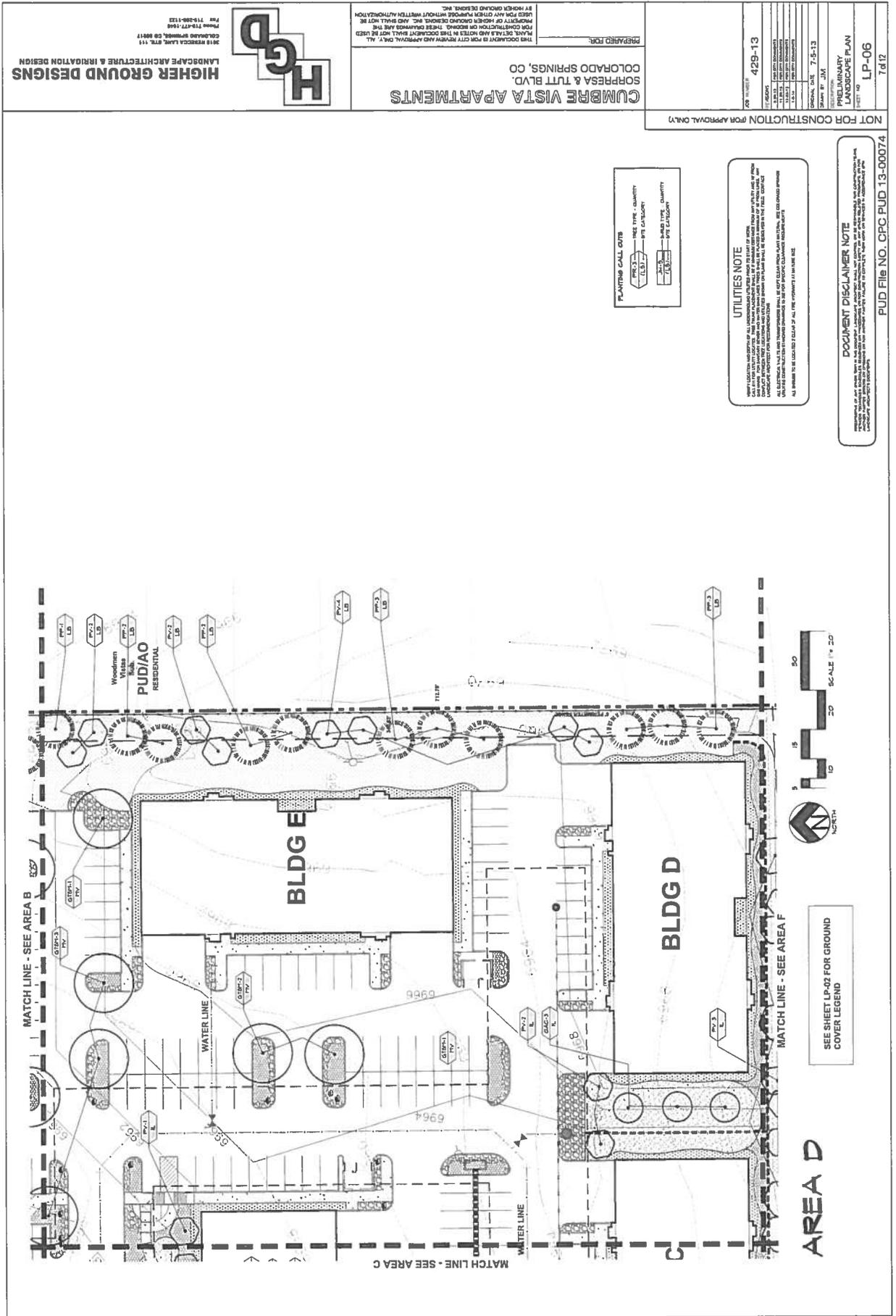
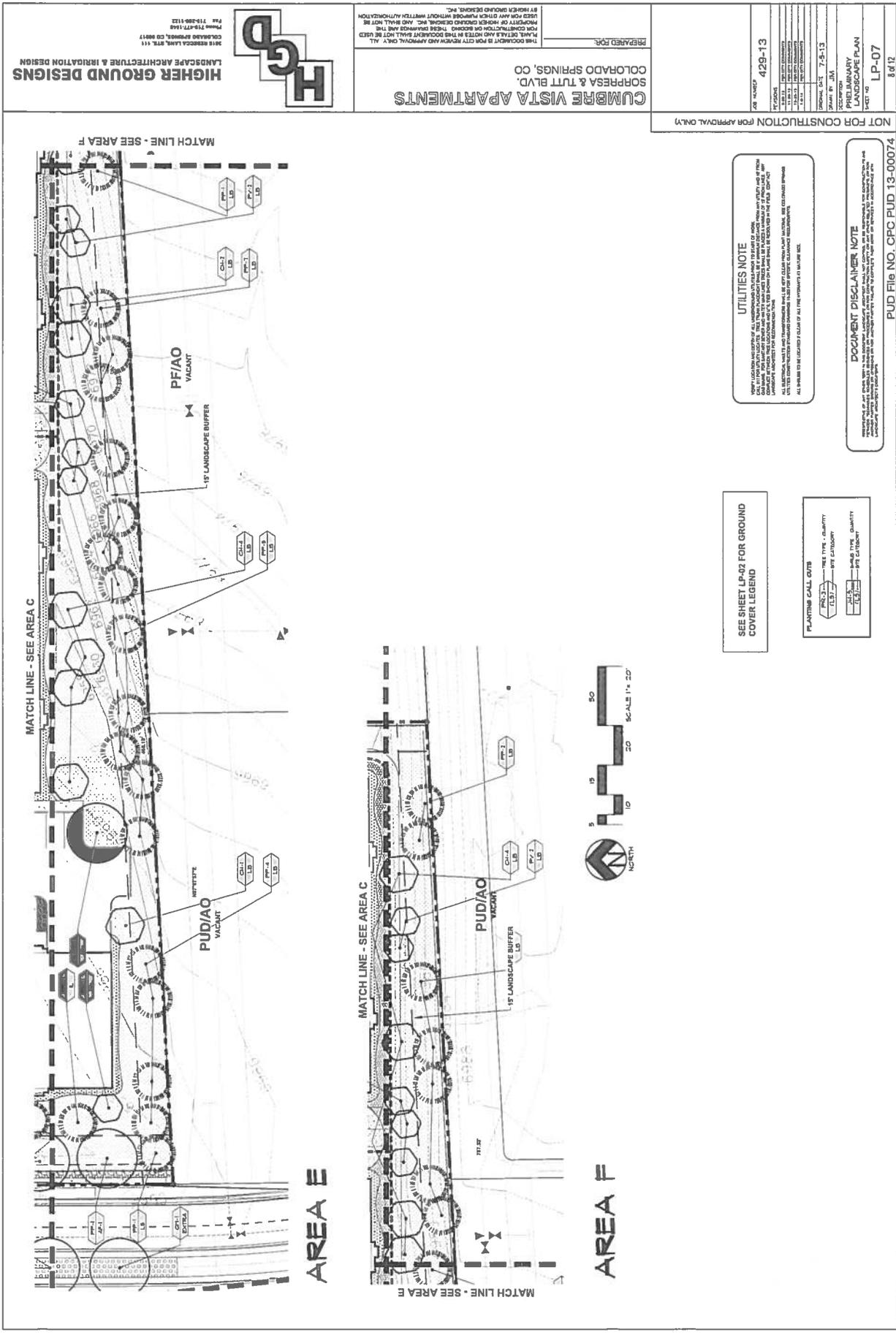


FIGURE 3



UTILITIES NOTE

VERIFY LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION OF THIS PLAN. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION.

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SEE SHEET LP-02 FOR GROUND COVER LEGEND

PLANTING CALL OUTS

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PL-2	PLANT TYPE	QUANTITY
PL-3	PLANT TYPE	QUANTITY
PL-4	PLANT TYPE	QUANTITY
PL-5	PLANT TYPE	QUANTITY

NOT FOR CONSTRUCTION (FOR APPROVAL ONLY)

HIGHER GROUND DESIGNS
 LANDSCAPE ARCHITECTURE & IRRIGATION DESIGN

HGD

2018 BERRICK LANE, SUITE 111
 DENVER, COLORADO 80202
 PHONE: 719-577-1148
 FAX: 719-588-1132

CUMBRE VISTA APARTMENTS
 SOPRESA & TUTT BLDG.
 COLORADO SPRINGS, CO

PREPARED FOR:
 HIGHER GROUND DESIGNS, INC.

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DATE	4/29/13
BY	JMA
REVISION	
PROJECT	CUMBRE VISTA APARTMENTS
SHEET NO.	LP-07
TOTAL SHEETS	8 of 12

FIGURE 3

CUMBRE VISTA APARTMENTS PRELIMINARY UTILITY AND PUBLIC FACILITY PLAN JANUARY 2014



VICINITY MAP
 N.T.S.

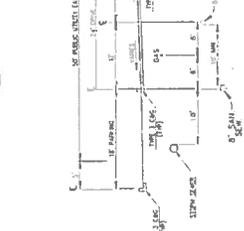
GENERAL NOTES FOR ALL PRELIMINARY UTILITY PLANS
 PROPERTY OWNER(S) ACKNOWLEDGE AND AGREE TO THE FOLLOWING APPROVAL OF PRELIMINARY UTILITY PLAN:

1. THIS DRAWING IS A PRELIMINARY UTILITY PLAN AND THEREFORE, COLORADO SPRINGS UTILITIES SHALL MAKE THE FINAL DETERMINATION AS TO WHETHER THE UTILITY PLAN IS ACCORDING TO THE CITY OF COLORADO SPRINGS UTILITIES STANDARDS.
2. PROPERTY OWNER(S) CERTAINLY ACKNOWLEDGE THAT THE CONNECTION AND/OR EXTENSION OF UTILITY SERVICES TO THE PROJECT IS SUBJECT TO THE CITY OF COLORADO SPRINGS UTILITIES STANDARDS AND REGULATIONS. PROPERTY OWNER(S) SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF COLORADO SPRINGS UTILITIES AND THE COLORADO SPRINGS UTILITIES DEPARTMENT CODES IN EFFECT AT THE TIME OF UTILITY SERVICE CONNECTION AND/OR EXTENSION.
3. OWNER(S) ACKNOWLEDGE RESPONSIBILITY FOR THE COSTS OF EXTENSION OF UTILITY SERVICES, INCLUDING THE EQUIPMENT OF AND/OR EXTENSION OF UTILITY SERVICE, THE PROPERTY AND SHALL OBTAIN THE NECESSARY PERMITS AND APPROVALS FROM THE CITY OF COLORADO SPRINGS UTILITIES AND THE COLORADO SPRINGS UTILITIES DEPARTMENT CODES IN EFFECT AT THE TIME OF UTILITY SERVICE CONNECTION AND/OR EXTENSION. ALL UTILITY SERVICE CONNECTIONS SHALL BE MADE IN ACCORDANCE WITH THE CITY OF COLORADO SPRINGS UTILITIES STANDARDS AND REGULATIONS. PROPERTY OWNER(S) SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF COLORADO SPRINGS UTILITIES AND THE COLORADO SPRINGS UTILITIES DEPARTMENT CODES IN EFFECT AT THE TIME OF UTILITY SERVICE CONNECTION AND/OR EXTENSION.
4. SPRINGS UTILITIES UTILITY SERVICES ARE AVAILABLE ON A FIRST-COME, FIRST-SERVED BASIS, AND EXTENSION TO THE PROJECT IS SUBJECT TO THE CITY OF COLORADO SPRINGS UTILITIES STANDARDS AND REGULATIONS. PROPERTY OWNER(S) SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF COLORADO SPRINGS UTILITIES AND THE COLORADO SPRINGS UTILITIES DEPARTMENT CODES IN EFFECT AT THE TIME OF UTILITY SERVICE CONNECTION AND/OR EXTENSION.
5. ONLY WITH THE PRIOR WRITTEN APPROVAL OF SPRINGS UTILITIES OWNER MAY CHANGE THE LOCATION OR ALTERNATION OF UTILITY SERVICE CONNECTIONS. ANY CHANGES TO THE UTILITY SERVICE CONNECTIONS SHALL BE MADE IN ACCORDANCE WITH THE CITY OF COLORADO SPRINGS UTILITIES STANDARDS AND REGULATIONS. PROPERTY OWNER(S) SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF COLORADO SPRINGS UTILITIES AND THE COLORADO SPRINGS UTILITIES DEPARTMENT CODES IN EFFECT AT THE TIME OF UTILITY SERVICE CONNECTION AND/OR EXTENSION.
6. SPRINGS UTILITIES UTILITY SERVICES ARE AVAILABLE ON A FIRST-COME, FIRST-SERVED BASIS, AND EXTENSION TO THE PROJECT IS SUBJECT TO THE CITY OF COLORADO SPRINGS UTILITIES STANDARDS AND REGULATIONS. PROPERTY OWNER(S) SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF COLORADO SPRINGS UTILITIES AND THE COLORADO SPRINGS UTILITIES DEPARTMENT CODES IN EFFECT AT THE TIME OF UTILITY SERVICE CONNECTION AND/OR EXTENSION.
7. SPRINGS UTILITIES UTILITY SERVICES ARE AVAILABLE ON A FIRST-COME, FIRST-SERVED BASIS, AND EXTENSION TO THE PROJECT IS SUBJECT TO THE CITY OF COLORADO SPRINGS UTILITIES STANDARDS AND REGULATIONS. PROPERTY OWNER(S) SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF COLORADO SPRINGS UTILITIES AND THE COLORADO SPRINGS UTILITIES DEPARTMENT CODES IN EFFECT AT THE TIME OF UTILITY SERVICE CONNECTION AND/OR EXTENSION.
8. SPRINGS UTILITIES UTILITY SERVICES ARE AVAILABLE ON A FIRST-COME, FIRST-SERVED BASIS, AND EXTENSION TO THE PROJECT IS SUBJECT TO THE CITY OF COLORADO SPRINGS UTILITIES STANDARDS AND REGULATIONS. PROPERTY OWNER(S) SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF COLORADO SPRINGS UTILITIES AND THE COLORADO SPRINGS UTILITIES DEPARTMENT CODES IN EFFECT AT THE TIME OF UTILITY SERVICE CONNECTION AND/OR EXTENSION.
9. SPRINGS UTILITIES UTILITY SERVICES ARE AVAILABLE ON A FIRST-COME, FIRST-SERVED BASIS, AND EXTENSION TO THE PROJECT IS SUBJECT TO THE CITY OF COLORADO SPRINGS UTILITIES STANDARDS AND REGULATIONS. PROPERTY OWNER(S) SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF COLORADO SPRINGS UTILITIES AND THE COLORADO SPRINGS UTILITIES DEPARTMENT CODES IN EFFECT AT THE TIME OF UTILITY SERVICE CONNECTION AND/OR EXTENSION.
10. SPRINGS UTILITIES UTILITY SERVICES ARE AVAILABLE ON A FIRST-COME, FIRST-SERVED BASIS, AND EXTENSION TO THE PROJECT IS SUBJECT TO THE CITY OF COLORADO SPRINGS UTILITIES STANDARDS AND REGULATIONS. PROPERTY OWNER(S) SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF COLORADO SPRINGS UTILITIES AND THE COLORADO SPRINGS UTILITIES DEPARTMENT CODES IN EFFECT AT THE TIME OF UTILITY SERVICE CONNECTION AND/OR EXTENSION.

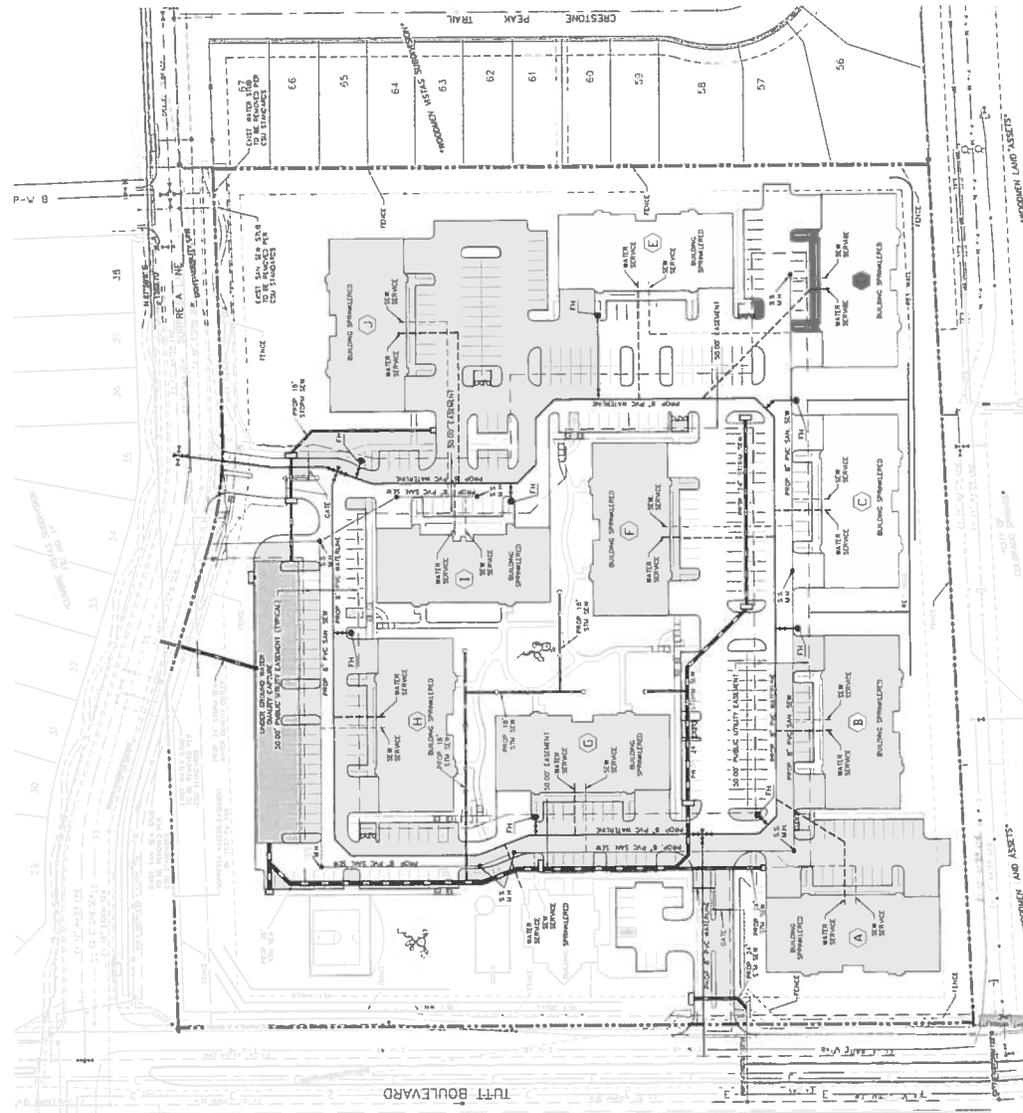


NOTE: THESE DIMENSIONS SHALL BE LOCATED WITHIN 15' OF ALL BUILDINGS ARE TO BE FULLY SPRINKLERED TO MEET FIRE CODE.

- LEGEND
- FOR LOT USE
 - LOT USE
 - SPRING SLEEP LINE
 - SPRING SLEEP MANHOLE
 - WATER LINE
 - FIRE HYDRANT
 - BUILDING LETTER



TYPICAL PRIVATE DRIVE / UTILITY SECTION
 N.T.S.



WOODMONT LAND ASSETS
 WOODMONT LAND ASSETS
 WOODMONT LAND ASSETS

CPC PUD 13-00074

CUMBRE VISTA APARTMENTS

PRELIMINARY UTILITY AND PUBLIC FACILITY PLAN

PROJECT NO. 09-020 FILE: VCSA09-020-Plan, Utility Plan.dwg
 DESIGNED BY: WAS SCALE: DATE: 1/7/2014
 DRAWN BY: BLD MORE: 1'-50'
 CHECKED BY: WAS VERT: N/A SHEET 11 OF 14 PUT

CIVIL CONSULTANTS, INC.

CUMBRE VISTA APARTMENTS
 PRELIMINARY UTILITY PLAN
 DATE: 1/7/2014
 DATE REVISED: JAN. 7, 2013

FIGURE 3

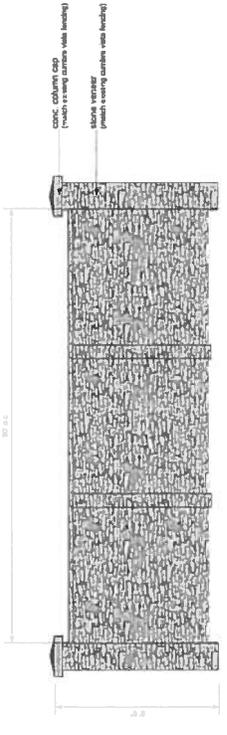


YOW ARCHITECTS PC
 A PROFESSIONAL CORPORATION ARCHITECTURE & PLANNING
 115 S. Weber Colorado Springs, Colorado 475-8133

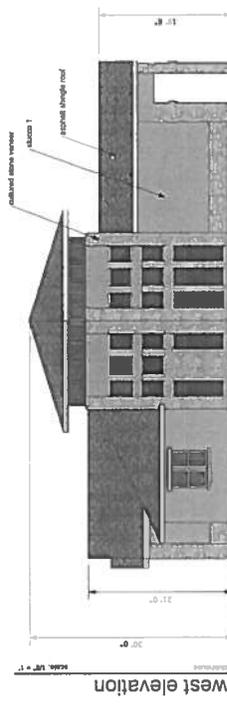
Structural
 Electrical
 Mechanical
 Plumbing

Cumbre Vista Apartments
 Apartment Elevators
 Sorpresa & Tut
 Colorado Springs, Colorado 80924

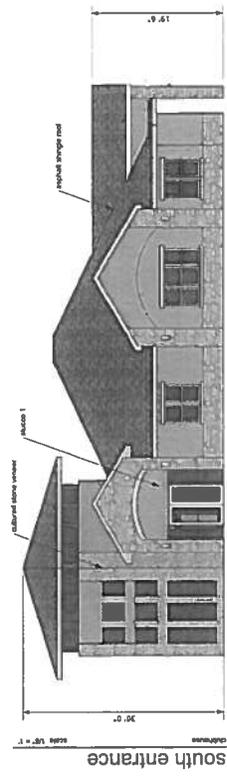
Project Name Project No. Date Scale	12 Elevations
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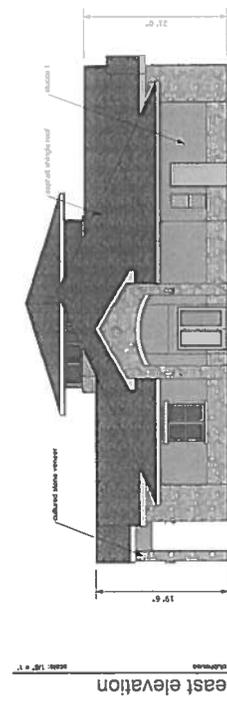
perimeter fence detail
 detail only dimensions



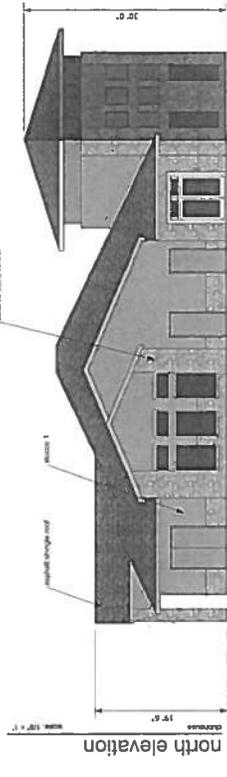
west elevation
 detail only dimensions



south entrance
 detail only dimensions



east elevation
 detail only dimensions



north elevation
 detail only dimensions

OWNER INFO

company: Blaw Holdings
 name:
 address: 13300 Northgate Estates Dr, Site 203
 city/state: Colorado Springs, CO 80921
 phone no:
 project no:
 approved city file no: CPC PUD 13-00074

FIGURE 3



YOW ARCHITECTS PC
 A PROFESSIONAL CORPORATION ARCHITECTURE & PLANNING
 115 S. Weber Colorado Springs, Colorado 475-8133

Structural: _____
 Electrical: _____
 Mechanical: _____
 Plumbing: _____
 Colorado Springs, Colorado 80924

Sheet No. 13
 Division



FIGURE 3



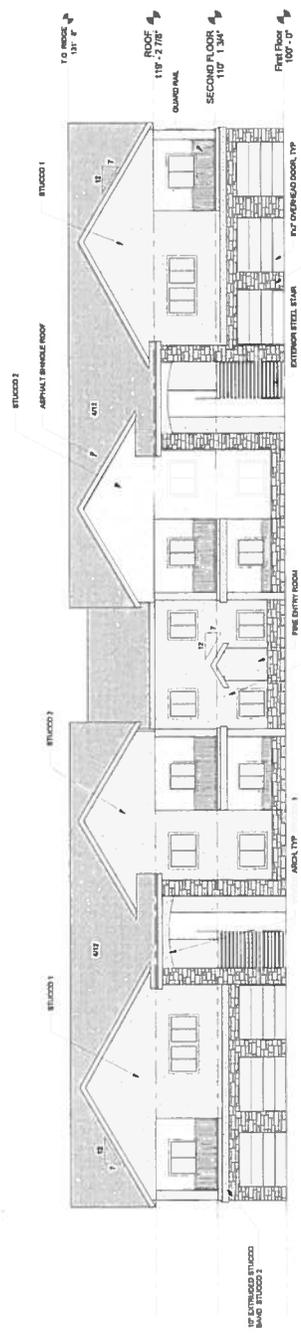
YOW ARCHITECTS PC
 A PROFESSIONAL CORPORATION ARCHITECTURE & PLANNING
 115 S. Weber Colorado Springs, Colorado 475-8133

Structural: _____
 Electrical: _____
 Mechanical: _____
 Plumbing: _____

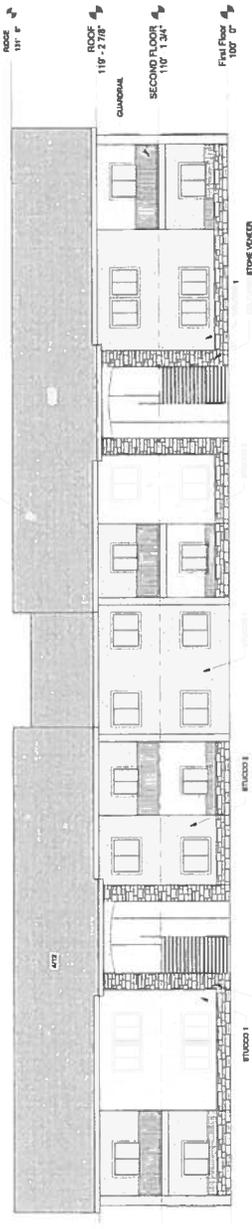
Cumbre Vista Apartments
 Apartment Elevators
 Sorpresa & Tuttle
 Colorado Springs, Colorado 80924

Sheet No. 14
 Elevation

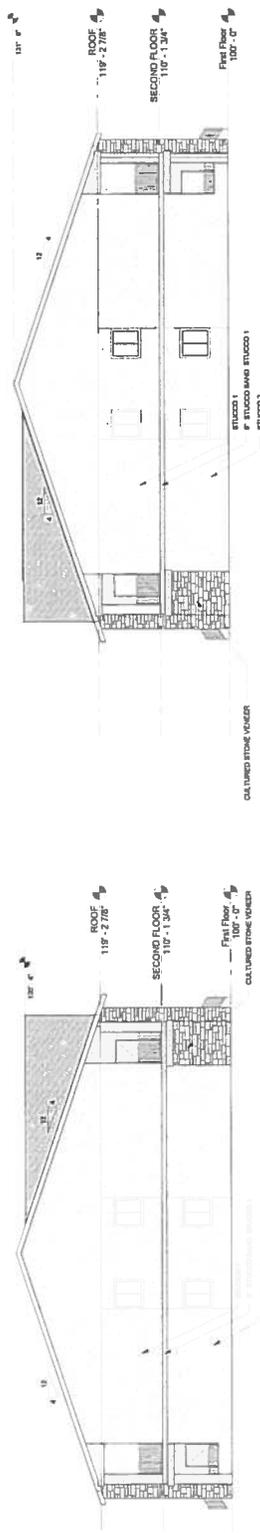
Approved by: _____
 Date: _____



1 FRONT ELEVATION
 1/8" = 1'-0"



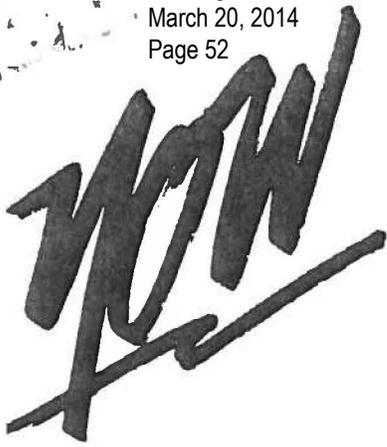
3 REAR ELEVATION STOR
 1/8" = 1'-0"



4 SIDE ELEVATION STOR
 1/8" = 1'-0"

OWNER INFO
 company / name: Bahi Holdings
 address: 13330 Northgate Estates Dr., Ste 200
 city/state: Colorado Springs, CO 80921
 phone no: _____
 approval city file no: CPC PUD 13-00074
 approved city file no: _____

FIGURE 3



YOW ARCHITECTS PC

115 SOUTH WEBER STREET SUITE 200 COLORADO SPRINGS, COLORADO 80903
(719)475-8133 www.yowarch.com

July 10, 2013

Larry Larsen
Senior Planner
Land Use Review
30 S. Nevada Avenue, Ste 105
Colorado Springs, CO 80901

RE: Cumbre Vista Apartments (TSN: 530000567)
Minor Amendment to Master Plan
Zone Change
Development Plan

DESCRIPTION:

This submittal is for approval of multiple applications which are to include, an amendment to a Master Plan, a Development Plan and associated Zone Change. The 12.15 acre site, currently vacant, is located at the southeast corner of the Tutt Blvd and Sorpresa Lane Intersection. The included parcels are currently County zoned RR-5. The proposals for the Zone Change and Development Plan are to address a consistent use and zoning for a proposed multi-family project. Additionally the proposed changes address needed updates to the Master Plan which are intended to coordinate this new use and density.

With the Master Plan Amendment no major changes or proposals are being requested which modify the current plan significantly. The amendment aims solely to update the proposed use and associated density.

With the Development Plan and Zone Change further definition is given to the above mentioned development proposal for a multi-family project. Prior to submittal of the attached applications and plans, multiple neighborhood meetings were conducted and input regarding layout, density, and overall impacts to the area were discussed and accommodated to much of the neighbors satisfaction. From these meetings and plan reviews, a common goal and plan for the multi-family project was put into to place.

Ultimately a plan reducing the number of buildings, revised amenities and location of such was presented to the neighborhood group and reflected in the attached plans. These plans aimed at addressing concerns in regards to views, amenities and presence fitting of the Overall Cumbre Vista development. The following items were considered and addressed per the neighborhood meetings.

- Buildings located near the single family subdivision were setback at an increased distance from the single family homes across Sorpresa for increased privacy and view consideration.

- Two story buildings were located at these locations near the single family in lieu of three story.

- Adequate on site amenities were provided to deter the future residents from adding traffic to the nearby park.

D. Gene Yergensen, Architect
Director of Operations

Steven L. Obering, Architect
Director of Planning

Lawrence Whittaker, Architect
Director of Architecture

Jonathan Romero, Planner
Associate Director of Planning

Tom Martin, AIA Architect
Project Architect

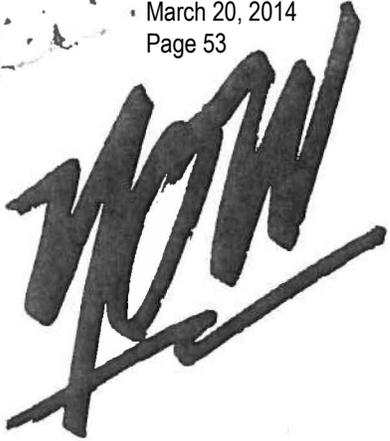
Jerry H. White, Architect
Project Architect

Brad McFarland, Architect
Project Architect

Jonathan Whittaker, Architect
Project Architect

Debra Obering, Office Manager
Bev Whittaker, Finance Officer

FIGURE 4



Letter of Intent, Cumbre Vista Apartments
Wednesday, July 10, 2013
Page #2

- Treatments of the clubhouse and apartments overall design aesthetic were addressed to compliment the Cumbre Vista design aesthetic.

Proposal for the multi-family development is seen as being consistent with the intent and purpose of the Zoning Code for approval. The accompanying zone change addresses the recently annexed sites zoning to meet the needs of the use and compliments the surrounding uses in a compatible manner furthering consistency with the Powerwood Master Plan. In addition impacts to the surrounding areas, as noted above, have been considered and implemented into the design and layout of the proposed development. These considerations aim at complimenting the surrounding neighborhood and minimizing impacts and unnecessary burdens to current and future development.

Should you require any additional information, please contact me at 719.475.8133.

Respectfully yours,



Jon Romero, Planner
YOW Architects pc

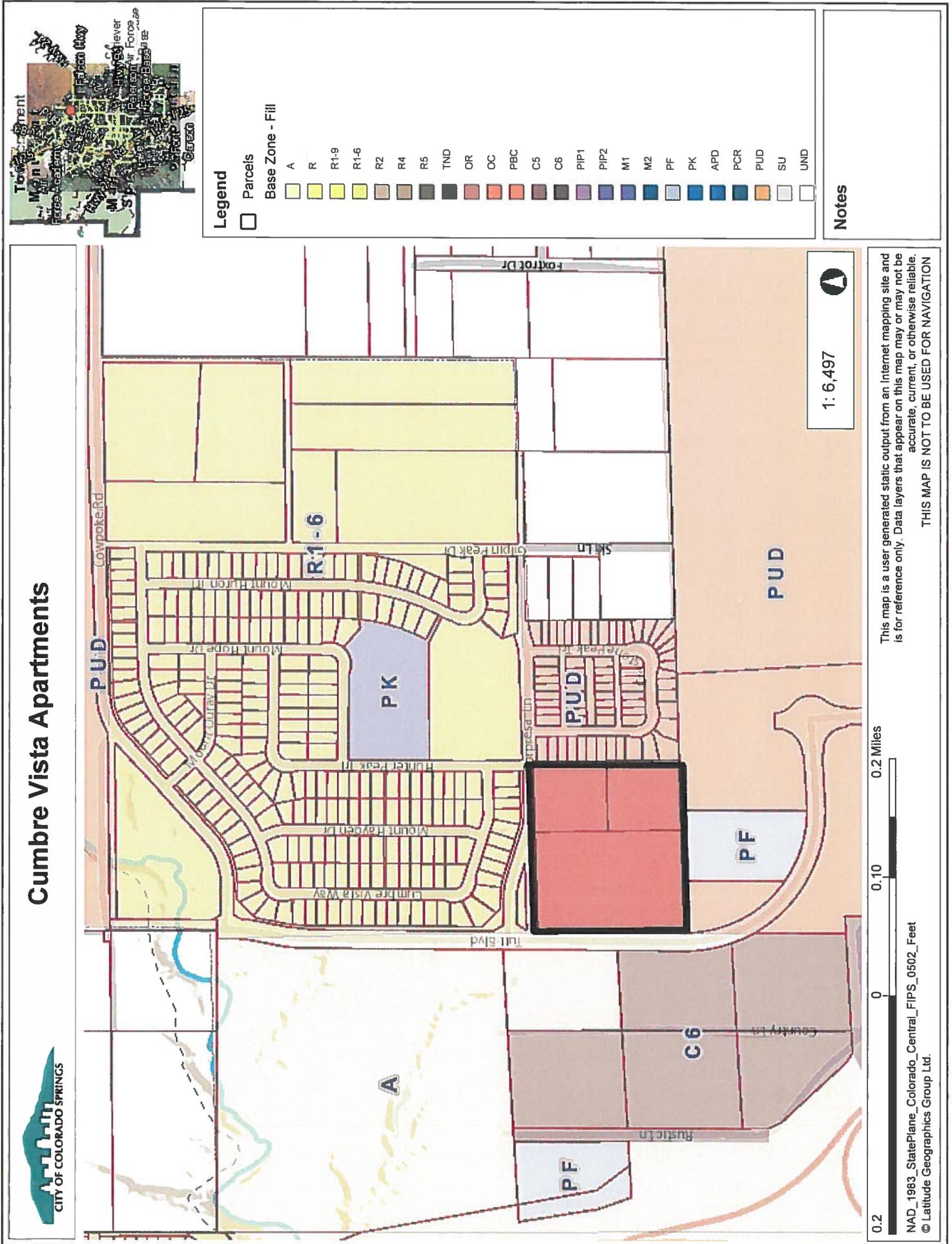


FIGURE 5

Cumbre Vista Community Meeting, October 21st

Overview

- ▣ **Background on the situation**
- ▣ **Review recent actions**
- ▣ **Discuss this evening's tasks**

Background

- ▣ **Mr. Bahr asked for a community position regarding a new concept—scoped down from his original 286 unit concept**
 - **New concept is 204 unit, class A apartment complex on 12.18 acre parcel**
 - **Current density requirement is 8-12 units per acre—146 units maximum**
 - **Mr. Bahr does not want to begin proceed with this, if it faces community opposition**
- ▣ **His other two business options are:**
 - **19 duplex and 24 four-plex rental properties**
 - **Low income apartments, section 8 housing**

Recent Actions

- ▣ **Small committee met twice to organize actions for response to Mr. Bahr**
- ▣ **First meeting planned:**
 - **HOA mailing that requested votes on the three options**
 - **And submission of desired community minimum requirements this 204-unit complex should adhere to (concessions from Mr. Bahr/negotiating points for the community)**
- ▣ **Second meeting reviewed results of responses to above requests**

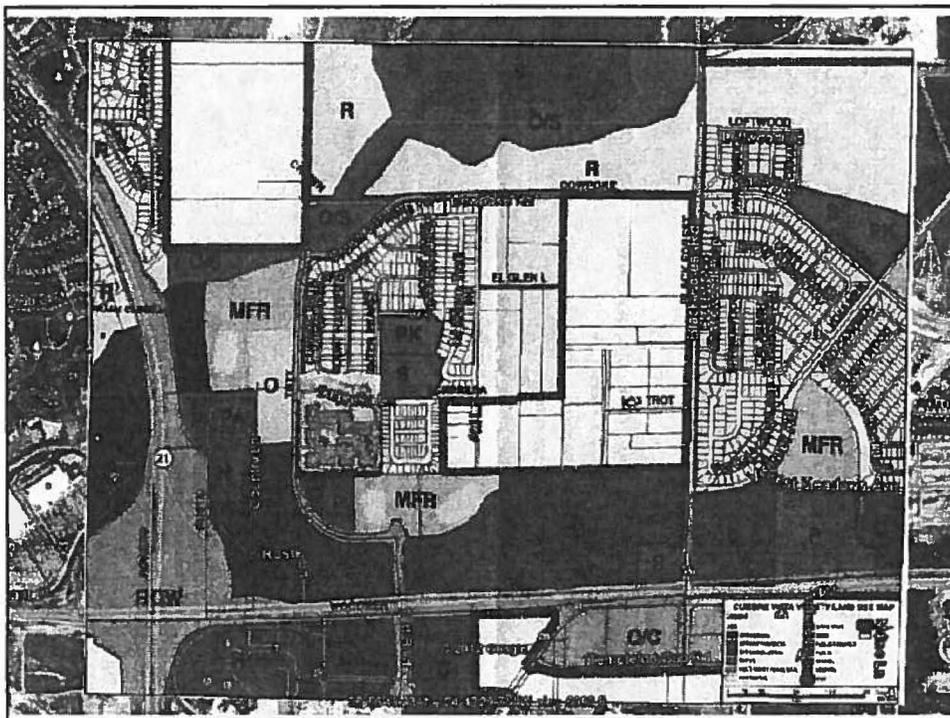
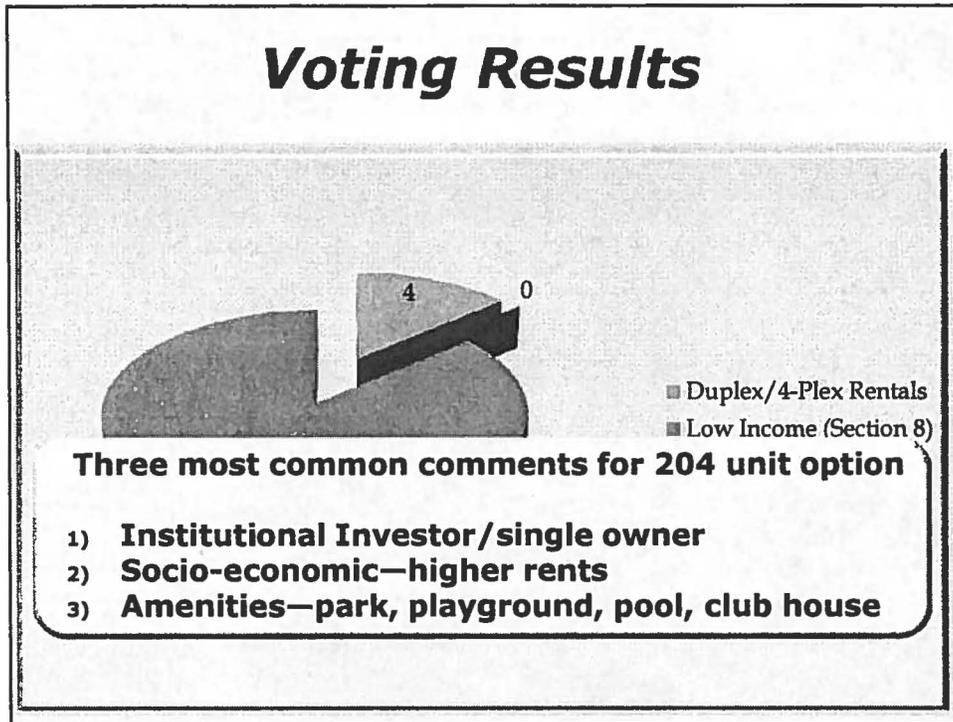


FIGURE 6

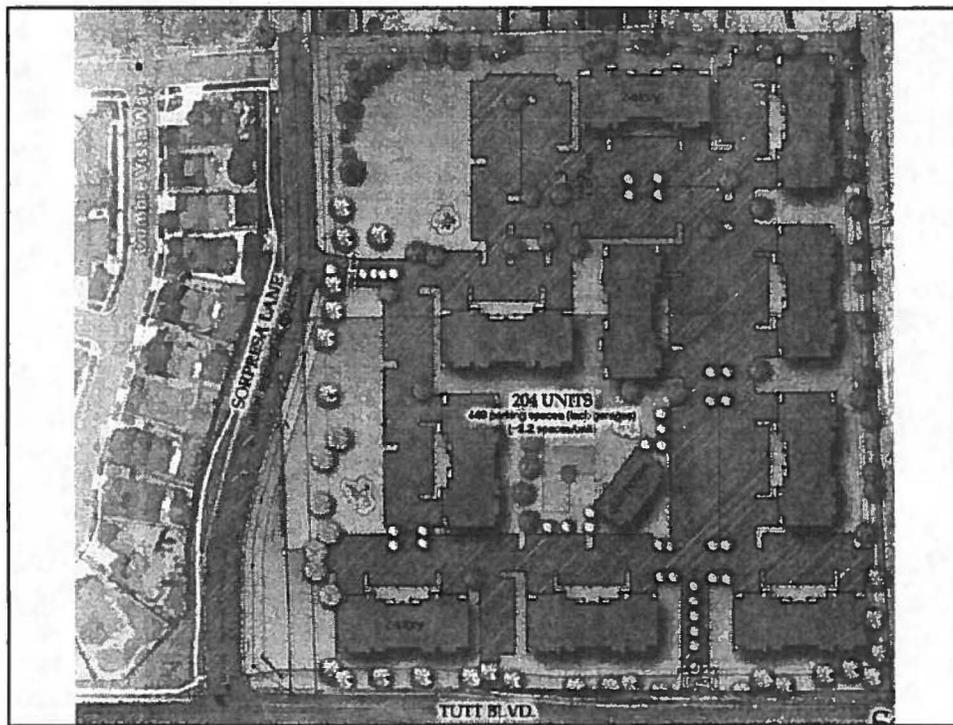
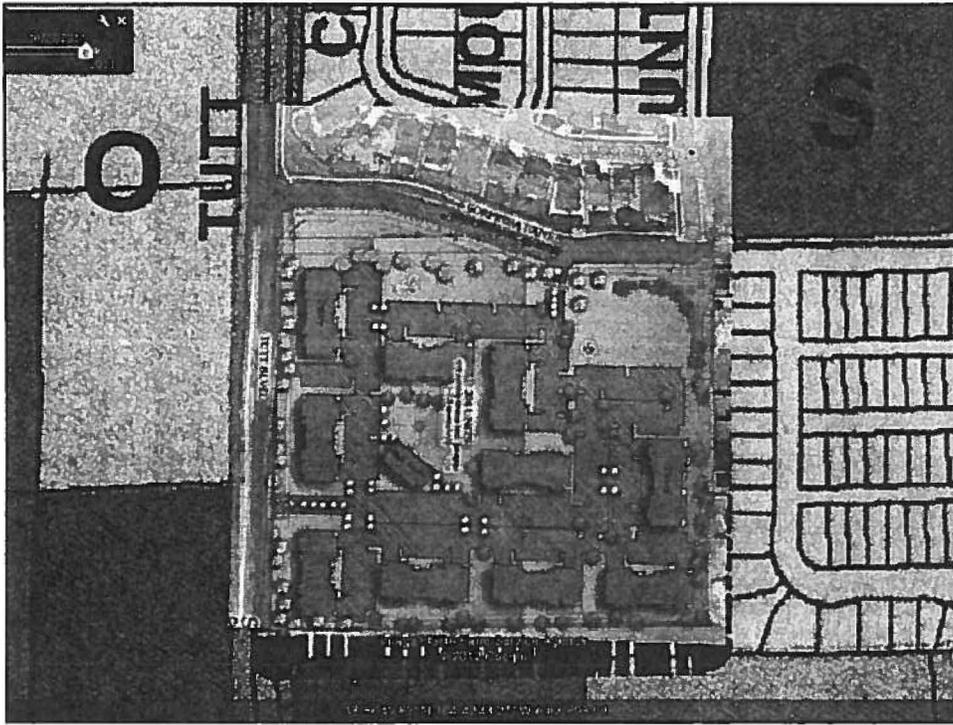


FIGURE 6 4

Top Negotiating Points

Priority	Item
1	Stucco (exterior finishing and color palette that matches and compliments the ascetics of Cumbre Vista (CV) – stucco, stone and siding consistent with the community)
2	Playground (equipment and basketball area essentially replicating the playground equipment in the CV park)
3	Landscaping median fronting complex property on Tutt
4	Swap planned playground/green space area on NE corner with 2-Story building on NW corner
5	Wall around project (match CV exterior wall along Tutt and Sorpresa, substantial fence/wall around remaining property border)
6	Join Woodman Heights Metro District, rather than buy out of



Way Ahead

- ▣ **Conclusions from today presented to HOA meeting, 24 October**
 - **100% Voted in Support of Proposal**
- ▣ **Meet with Mr. Bahr**
- ▣ **Mr. Bahr proceeds with agreed to project**
- ▣ **Monitor project as it moves through city planning commission and execution**

CITY PLANNING COMMISSION AGENDA

ITEM NO: C

STAFF: MICHAEL SCHULTZ

FILE NO:
CPC UV 14-00023 – QUASI-JUDICIAL

PROJECT: 1534 & 1536 W. CHEYENNE ROAD

APPLICANT: JOHN DWORAK

OWNER: ESTATES OF ELAINE DWORAK



PROJECT SUMMARY:

1. Project Description: This is a request by John Dworak for a use variance to allow two (2) existing detached single-family homes on a single parcel. The property is zoned R-1 6000 (Single-family Residential), consists of 0.163 acres (7,498 square feet) and is located at 1534 and 1536 W. Cheyenne Road.
2. Applicant's Project Statement: **(FIGURE 1)**.
3. Planning and Development Department's Recommendation: Approve the use variance and development plan **(FIGURE 2)** to allow two (2) single-family homes on a single parcel within an R-1 6000 zone district subject to the technical modifications as outlined below.

BACKGROUND:

1. Site Address: 1534 & 1536 W. Cheyenne Road
2. Existing Zoning/Land Use: R-1 6000/HS (Single-family Residential with Hillside Overlay) / Two single-family homes on one parcel.
3. Surrounding Zoning/Land Use:
North: R-1 6000 / Single-family Residential
South: R-1 6000 / Single-family Residential
East: R-1 6000 / Single-family
(Across Cheyenne Rd.: R-2 / Single-family and Duplexes)
West: R-1 6000 / Duplex
4. Comprehensive Plan/Designated 2020 Land Use: General Residential.
5. Annexation: Reannexation of the Southwest Annexation Area, 1980.
6. Master Plan/Designated Master Plan Land Use: None.
7. Subdivision: Not platted.
8. Zoning Enforcement Action: None.
9. Physical Characteristics: The property is an unplatted flag-lot off of W. Cheyenne Road with a narrow driveway access with the grade rising up from the road; the property sits slightly above the adjacent property to the southeast. The property is heavily wooded as is the surrounding properties located between Cheyenne Road and Cheyenne Boulevard.

STAKEHOLDER PROCESS AND INVOLVEMENT:

The standard City notification and posting process was used with 34 property owners within 500 feet of the subject property notified at the time of submittal. Staff received one e-mail in opposition to the proposed request **(FIGURE 3)**. Prior to the City Planning Commission hearing, the site will be posted and postcards mailed once again.

All applicable agencies and departments were asked to review and comment on the use variance; no significant concerns were identified.

ANALYSIS OF REVIEW CRITERIA / MAJOR ISSUES / COMPREHENSIVE PLAN AND MASTER PLAN CONFORMANCE:

1. Review Criteria / Design and Development Issues:

The two residential structures located on the subject property were both constructed in 1900 (according to the El Paso County Assessor's records). The area was annexed and zoned in 1980 as part of the Southwest Annexation (and later Reannexation). Staff at the time likely determined that the predominate land use in the area was single-family residential, thus establishing the R-1 6000 zone. It appears that these two structures have continuously existed as two separate dwellings.

The applicant points out that the City, during its review in determining the appropriate zone district, gave no regard to the existing use of the property. The applicant further points out that there are at least six (6) other properties on the block that have two dwelling units, either as a single duplex structure or two free standing residential structures (**FIGURE 4**).

The City Code (Section 7.5.1201) prohibits legal non-conforming uses to "be added to, enlarged, or structurally altered for the nonconforming use", and if the structures are damaged beyond a value of 50% of the replacement costs, the "nonconforming use shall no longer be permitted."

Pursuant to City Code Section 7.5.803.B, the following criteria must be found in the affirmative in order to approve a use variance:

a) That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to the property or class of uses in the same zone so that a denial of the petition would result in undue property loss; and

b) That such variance is necessary for the preservation and enjoyment of a property right of the petitioner; and also

c) That such variance will not be detrimental to the public welfare or convenience nor injurious to the property or improvements of other owners of property.

Staff finds that the proposed use variance meets the review criteria as outlined in Section 7.5.803.B of the City Code.

2. Conformance with the City Comprehensive Plan:

Policy N 201: Protect Established and Stable Neighborhoods

Protect the character of established and stable neighborhoods through neighborhood planning, assistance to neighborhood organizations, and supportive regulatory actions.

Strategy N 201a: Preserve and Enhance the Physical Elements that Define a Neighborhood's Character

In considering development proposals, preserve the physical elements that contribute to a neighborhood's identity and character, such as natural features, buildings and development patterns, historic and cultural features, parks, open space and schools. Where appropriate, utilize historic preservation districts and conservation districts as tools to achieve preservation and enhancement of historic and cultural resources.

Objective LU 4: Encourage Infill and Redevelopment

Encourage infill and redevelopment projects that are in character and context with existing, surrounding development. Infill and redevelopment projects in existing neighborhoods make good use of the City's infrastructure. If properly designed, these projects can serve an important role in achieving quality, mixed-use neighborhoods. In some instances, sensitively designed, high quality infill and redevelopment projects can help stabilize and revitalize existing older neighborhoods.

Strategy LUM 202b: General Residential Primary Uses

Identify primary uses as all types of residential development at average gross densities greater than three dwelling units per acre. Cluster higher density developments along collector and major roads and as a transition to nonresidential uses.

Staff finds that the proposed use variance meets the Comprehensive Plan's goals and objectives.

3. Conformance with the Area's Master Plan:

There is no master plan associated with this property.

STAFF RECOMMENDATION:

Item No.: C CPC UV 14-00023 – Use Variance

Approve the use variance at 1534 and 1536 W. Cheyenne Road to allow two (2) single-family homes within a R-1 6000/HS (Single-family Residential with Hillside Overlay) zone district based upon the finding that the use and plan comply with the criteria for granting a use variance and a development plan as set forth in City Code Sections 7.5.803.B and 7.5.502.E, and is subject to the following technical modification to the development plan:

Technical Modification

Place the City file number, CPC UV 14-00023, in the lower right hand corner of the plan page.

February 3, 2014

Mr. Mike Schultz, AICP

Community Development Department

Land Use Review Division

30 S Nevada Avenue, Suite 105

Colorado Springs, Colorado 80901-1575

Dear Mr. Schultz:

I am enclosing the attached request for a use variance for the property located at 1534 – 1536 W Cheyenne Road in Cheyenne Canyon that is owned by the Estate of Elaine S Dworak.

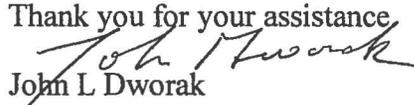
The property is a flag lot with an assessor parcel number of 74351-04-034 that is improved with two single family cottages that were built in 1900. When the property was annexed into the City of Colorado Springs, it was zoned R-1 6000 without regard to its existing use as a duplex.

Since my mother's passing in 2013, we are having to liquidate the real property for estate purposes. This request for a use variance for the property is the result of the requirement by lenders that the property can be rebuilt in case of a catastrophic loss. Without the use variance as a duplex, financing is not available, and the property's value is severely impaired.

This request is submitted with the specific understanding that, if granted, any replacement structure would conform to required side and front setbacks.

The property has been in continuous as a duplex for over 100 years without disturbing the neighbors, and is an extremely non homogeneous neighborhood in the Canyon. There are six other properties in the same block that have similar duplex use at 1501 Cheyenne Blvd, 1503 Cheyenne Blvd, 1517 Cheyenne Blvd, 1523 Cheyenne Blvd, 1504 W Cheyenne Road, and the property that the subject backs to at 1532 Cheyenne Blvd. All but one of these duplex uses has two detached single family dwelling units and all have the same R-1 6000 zoning like the subject.

Thank you for your assistance.


John L Dworak

Personal Representative

RECEIVED

FEB 07 2014

Colorado Springs
Land Use Review

Schultz, Michael

From: KBRANDNER@broadmoor.com
Sent: Thursday, February 27, 2014 1:06 PM
To: Schultz, Michael
Cc: kbbrandner@msn.com
Subject: File # CPC UV 14-000023 Use Variance

Hi Mike,

I received the post card regarding this Use Variance at 1534 & 1536 Cheyenne Road. This property abuts the rear of my property at 1531 Cheyenne Blvd. I understand that this request has been made to allow, when needed, for the reconstruction of two separate dwellings on this property.

I am opposed to this variance for the following reasons:

- The density of dwellings is already too great in this part of the Canon. With the real threat of fire in our area, I have serious concerns about the existence of two dwellings being located behind yet another property (on Cheyenne Road) with very limited egress.
- This property is heavily treed. In the event of a fire, I believe it would be a serious hazard for residents to evacuate safely.
- Lastly, with the density of residents and dogs located on this small lot, I have concerns about the potential noise inflicted on neighbors.

I am a good neighbor and wish to foster a positive environment in the Canon for its owners, renters and animals. I have no issues with Mr. Dworak and do not want to create any hardships for him. However, I do want him to be aware of the high risks that such a variance could bring.

Thank you for your consideration.

Sincerely,

Karen Brandner
1531 Cheyenne Blvd.
Colorado Springs, CO 80906
(719) 337-8173
kbbrandner@msn.com

Applicant Cited Properties

Address	Status	Yr Constructed*	Yr Constructed*
1501 Cheyenne Blvd	Duplex	1964	
1503 Cheyenne Blvd	Duplex	1914	
1517 Cheyenne Blvd	2 residential structures	1900	1910
1523 Cheyenne Blvd	2 residential structures	1922	1954
1532 Cheyenne Blvd	2 residential structures	1922 (duplex)	1910 (SF)
1504 Cheyenne Road	2 residential structures	1900	1915

*Information based on El Paso Co Assessor

FIGURE 4

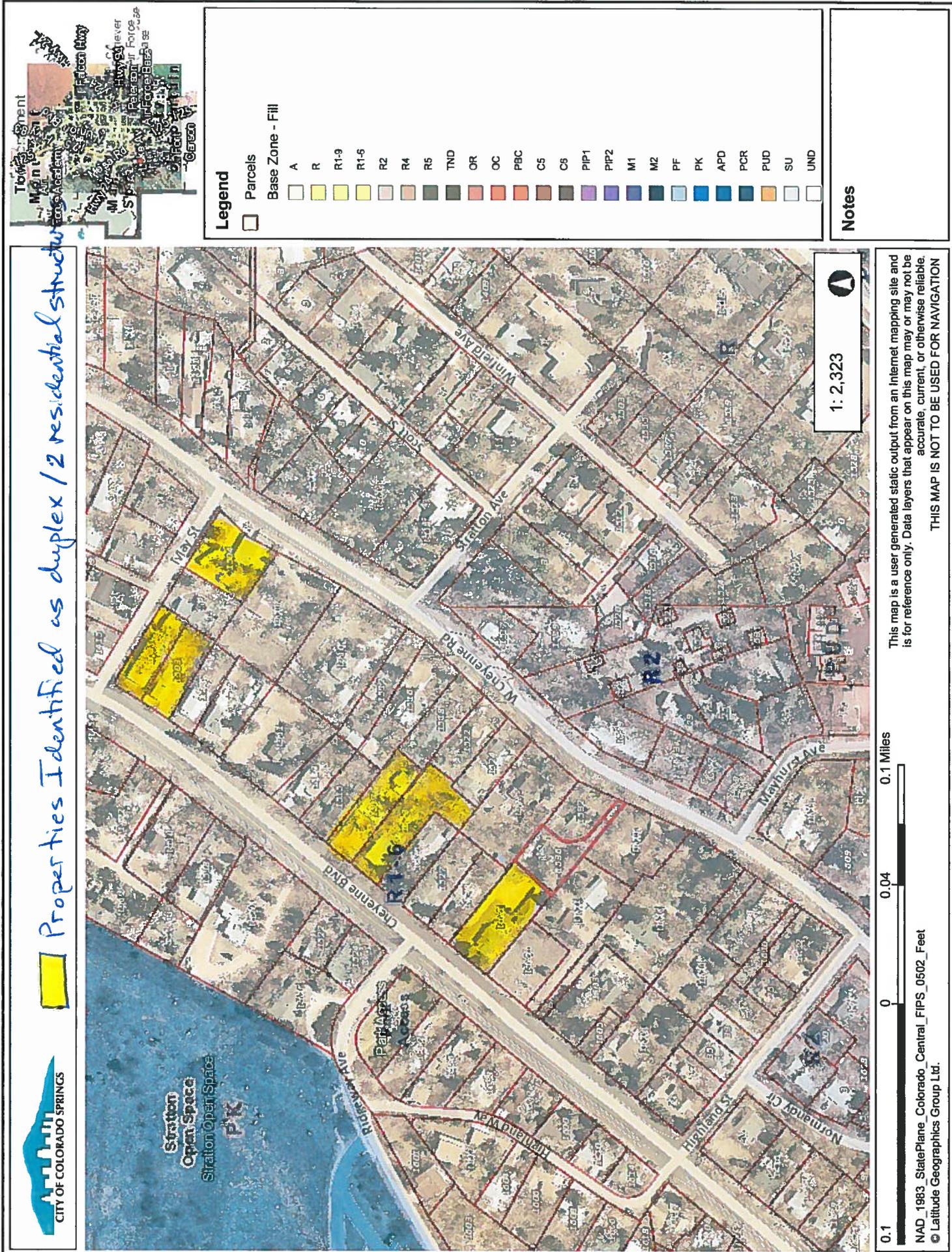


FIGURE 4

UNFINISHED BUSINESS CALENDAR

ITEM NO: 4

STAFF: LARRY LARSEN

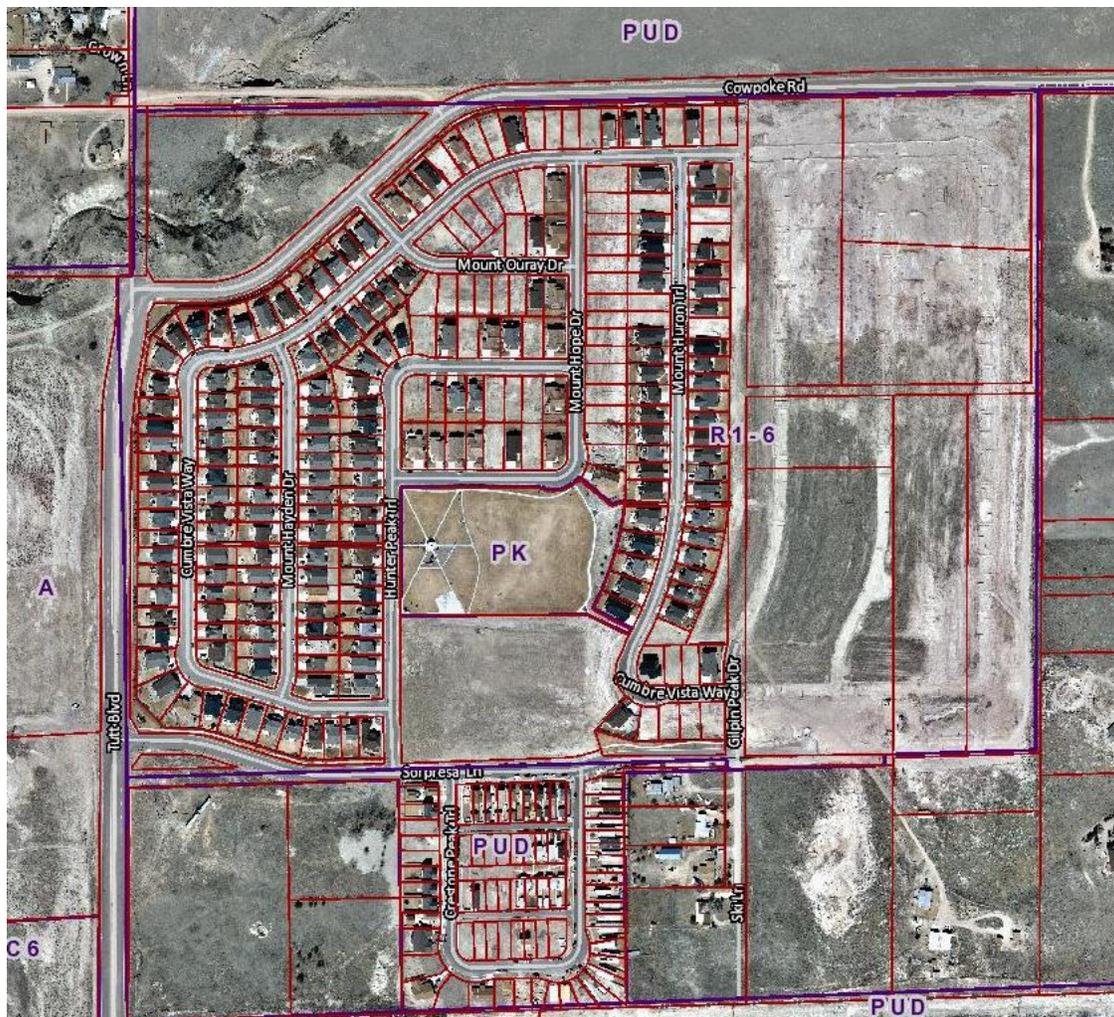
FILE NO: CPC DP 05-00092-A4MN13 - QUASI-JUDICIAL

PROJECT: CUMBRE VISTA DEVELOPMENT PLAN AMENDMENT

APPELLANT: BILL AND MAUREEN MARCHANT AND OTHERS

APPLICANT: NINE DESIGN, LTD

OWNER: KF103-CV, LLC



PROJECT SUMMARY:

1. Project Description: An appeal by Bill and Maureen Marchant and others regarding the administrative approval of a minor amendment to the approved Cumbre Vista Development Plan. This project allows for a change in the phasing sequence, street and lot layout, an extension of the proposed City street De Anza Peak Trail to Sorpresa Lane, and a reduction in the number of lots. The property is located between Cowpoke Road and Sorpresa Lane, east of Tutt Boulevard and it consists of 113 acres. **(REVISED FIGURE 1)**
2. Appellant's Statement **(FIGURE 2)**
3. Applicant's Rebuttal Statement: **(FIGURE 3)**
4. Planning and Development Department's Recommendation: Deny the appeal, affirming the administrative approval of the application.

BACKGROUND:

1. Site Address: The property is located between Cowpoke Road and Sorpresa Lane, east of Tutt Boulevard.
2. Existing Zoning/Land Use: R-1-6000 / DF & AO (Single-Family Residential with Design Flexibility and Airport Overlays) / Single-Family Residences and Vacant **(FIGURE 4)**
3. Surrounding Zoning/Land Use:
North: PUD (Planned Unit Development) / Vacant (Planned: Residential – Wolfe Ranch)
South: PUD (Planned Unit Development & County RR-5 (Rural Residential) / Single-Family Residences & Vacant
East: County RR-5 (Rural Residential) / Single-Family Residences
West: A (Agricultural) / Vacant (Planned Commercial & Multi-Family Residential)
4. Comprehensive Plan/Designated 2020 Land Use: General Residential
5. Annexation: Powerwood 3-6 (2005)
6. Master Plan/Designated Master Plan Land Use: Powerwood 3-6 Master Plan / Residential
7. Subdivision: Dublin North filings & unplatted (subdivision platting pending)
8. Zoning Enforcement Action: None.
9. Physical Characteristics: The site slopes towards the northwest. The site has no significant vegetation (grasses and shrubs) or natural features.

STAKEHOLDER PROCESS AND INVOLVEMENT: The standard City notification process for the internal review included posting the property with a notice poster and mailing postcards to approximately 94 property owners within 500 feet of the project area.

The same posting and notification process will be utilized prior to the CPC public hearing.

All applicable agencies and departments were asked to review and comment. No significant concerns were identified. All issues and concerns were incorporated into the development plan or provided as conditions of approval. Final compliance will be verified and confirmed prior to issuance of a building permit.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Background:
 - a. Cumbre Vista, a single-family detached residential neighborhood, was annexed into the City in 2005, as part of four annexations, Powerwood No. 3 through Powerwood No. 4.

- b. Cumbre Vista is part of the Powerwood 3-6 Master Plan, that designates this area for residential use at the density of 3.5 to 7.99 dwelling units per acre, approved in 2005.
- c. Cumbre Vista was zoned R-1-6000/DF/AO (Single-Family Residential District with Design Flexibility and Airport Overlays) in 2005.
- d. The initial Cumbre Vista Development Plan was approved in 2005 and has been subsequently amended four times, including this most recent amendment.
- e. Cumbre Vista has been platted into five filings, beginning in 2006. A new plat is currently pending.
- f. Upon City approvals of street, utility and grading improvement plans, construction of the project began in 2006.
- g. The project has been and will continue to be developed in phases.
- h. In 2007, the construction of Sorpresa Lane near the intersection of the private shared access way, Ski Lane, which is located in the County and not a County maintained road, commenced.
- i. Shortly thereafter, the City was notified by the neighbors that the Sorpresa Lane construction grading resulted in a grade separation at Ski Lane of nearly 12 feet. This was deemed unacceptable. The neighbors also claimed that the project also destroyed a long standing private access easement.
- j. Efforts failed to resolve this issue between the neighbors and the developer that would have provided for an intersection design, when cooperation was not achieved between the neighbors and the developer.
- k. In 2008, the City approved the interim design and amended street plan for this intersection.
- l. During the time period of 2008-2010, a right-of-way plat for Sorpresa Lane was submitted, reviewed, approved, appealed, and withdrawn, which resulted in further failures to resolve the intersection and access easement issues.
- m. In 2008, the developer, together with the Woodmen Heights Metro District (District), initiated litigation and sued the neighbors to seek quiet title to the access easement and the Court's declaratory judgment to relocate the private access easement.
- n. In 2010, the Court ruled that the developer and District failed to in their burden of proof to quiet title and ruled against the claim for declaratory judgment. **(FIGURE 5)**
- o. In 2012, litigation continued, with a second trial, in which the Court re-affirmed its earlier findings and ordered restoration of the private easement. **(FIGURE 6)**
- p. However, in 2013, the Court issued post trial rulings, which now grants approval to vacate and relocate the private easement and accepts the interim intersection design. This ruling is currently under appeal. **(FIGURE 7)**
- q. In October of 2013, the City accepted the submittal of the application for the Amendment to the Approved Cumbre Vista Development Plan.
- r. After project review and considering public comments, including the neighbor's comments, and after consulting with the City Attorney's Office regarding plan notes and provisions to protect the City, as well as honoring the Court's decision, and the rights and concerns of both the developer and the neighbors, the City Planning and Development Staff approved the application subject to technical modification and conditions on December 27, 2013.
- s. The appellants filed their application for appeal within the ten-day appeal period on January 6, 2014.
- t. The City Planning Commission is now scheduled to hear this appeal at their regular meeting of February 20, 2014, per City Code requirements and provisions.

2. Appeal Issues:

1) 7.5.502: A primary purpose of a development plan is to minimize objectionable and adverse impacts. This has been done. The appellant states that approval of the amendment will allow the developer to permanently establish the elevation of the land underlying the private easement. Building homes will further set this elevation and make it impossible for the Court to order restoration. City Staff exercised diligence in reviewing the concerns of the appellants and believes that the plan notes and provisions minimize the impact to the private easement. The Court has issued its final decision and is now subject to a pending appeal.

The Staff decision was correct. Similar to all applications submitted and reviewed by Staff, this application was processed in accordance with City Code provisions and policy. Applicable submittal and checklist requirements were adhered to. Review criteria were appropriately evaluated. Public comment was also considered. As previously stated after consulting with the City Attorney's Office Staff regarding plan notes and provisions to protect the City, as well as honoring the Court's decision, and the rights and concerns of both the developer and the neighbors, the City Planning and Development Staff, approved the application subject to technical modification and conditions on December 27, 2013.

The appellant has indicated that if the administrative decision stands then further litigation involving the neighbors and the City will probably occur. This may be beyond the control of the City at this time. Again, the City has honored the Court's final decision and respects the appellant's decision to seek further relief and appeals.

The appellant states that waiting for the appeal to be decided is fair and just to all parties. Staff has been advised that the appeal process may be lengthy and may not alter the Court's final decision. Waiting for the appeal process to conclude would burden the developer, and the City has provided plan notes and provisions to address the protection of the private easement.

2) 7.7.705: Right of Way Dedication and Street Improvements. The appellant states that Plan Note #3 on the amended development plan unfairly transfers the financial obligation to construct Sorpresa Lane away from the developer and imposes onto the southerly landowners who are not a party to the development of Cumbre Vista.

This plan note will be addressed as one of the conditions of approval. This note will clearly assign the obligation, ownership and maintenance responsibilities to either the developer or District for portions of Sorpresa Lane located only within the Cumbre Vista project. The amended development plan notes and provisions will not require the developer to extend the Sorpresa Lane improvements onto properties beyond his ownership and control.

The City has always insisted that the improvements to the Sorpresa Lane and Ski Lane intersection were interim in design and construction. Further, that future development to the lands south and east of the intersection, upon properties located within the County and subject to the possible annexation into the City, would require modifying the interim design and reconstructing the intersection to City standards and requirements. This will be further evaluated only at the time of annexation and proposed development and may or may not require full reconstruction. It is not the current responsibility of the County landowners, many of whom are also the appellants of this appeal, to be financially obligated or to construct this improvement at this time. This is City policy and practice.

- 3) 7.7.909: Cooperation with Subdividers through eminent domain. The appellant states that this Code section requires the City to exercise eminent domain powers to obtain rights of way for drainage facilities. City Planning and Development Staff is not aware of any plans being reviewed or proposed by City Engineering for drainage facilities and infrastructure that would require the use of eminent domain. We believe that this concern is not relevant. As previously stated, City Staff exercised diligence in reviewing the concerns of the appellants and believes that the plan notes and provisions minimize the impact to the private easement.
 - 4) 7.7.1103: Obligation of Landowner. The appellant states that this Code section requires the landowners to construct all public improvements and utilities as set forth in the City Code; he further states that this obligation runs with the land. The City agrees with this statement. This developer and any future owner will be required to complete all public improvements and utilities in accordance with this amendment to the approved development plan and all other City approved plans and requirements. Again, the City believes this concern is not relevant to this application. Unfortunately, abandoned projects are beyond the City's control.
3. Conformance with the City Comprehensive Plan: The amendment and use is consistent with the City Comprehensive Plan. The Plan's 2020 Land Use Map identifies this area as a "General Residential".

The following City Comprehensive Plan goals, objectives and policy statements apply to this project:

Policy LU 201: Promote a Focused, Consolidated Land Use Pattern: Locate new growth and development in well-defined contiguous areas in order to avoid leapfrog, scattered land use patterns that cannot be adequately provided with City services.

Strategy LU 302c: Promote Compatibility between Land Uses of Differing Intensities: Design and develop mixed land uses to ensure compatibility and appropriate transitions between land uses that vary in intensity and scale.

Objective LU 4: Encourage Infill and Redevelopment: Encourage infill and redevelopment projects that are in character and context with existing, surrounding development. Infill and redevelopment projects in existing neighborhoods make good use of the City's infrastructure. If properly designed, these projects can serve an important role in achieving quality, mixed-use neighborhoods. In some instances, sensitively designed, high quality infill and redevelopment projects can help stabilize and revitalize existing older neighborhoods.

Policy LU 401: Encourage Appropriate Uses and Designs for Redevelopment and Infill Projects: Work with property owners in neighborhoods, the downtown, and other existing activity centers and corridors to determine appropriate uses and criteria for redevelopment and infill projects to ensure compatibility with the surrounding area.

Objective LU 5: Develop Cohesive Residential Areas: Neighborhoods are the fundamental building block for developing and redeveloping residential areas of the city. Likewise, residential areas provide a structure for bringing together individual neighborhoods to support and benefit from schools, community activity centers, commercial centers, community parks, recreation centers, employment centers, open space networks, and the city's transportation system. Residential areas also form the

basis for broader residential land use designations on the citywide land use map. Those designations distinguish general types of residential areas by their average densities, environmental features, diversity of housing types, and mix of uses. Residential areas of the city should be developed, redeveloped and revitalized as cohesive sets of neighborhoods, sharing an interconnected network of streets, schools, parks, trails, open spaces, activity centers, and public facilities and services.

Policy LU 501: Plan Residential Areas to Integrate Neighborhoods into the Wider Subarea and Citywide Pattern: Plan, design, develop, and redevelop residential areas to integrate several neighborhoods into the citywide pattern of activity centers, street networks, environmental constraints, parks and open space, school locations and other public facilities and services.

Strategy LU 501a: Link Neighborhood Layout and Design to a Larger Residential Area: In master plans and in community planning areas, layout and design individual neighborhoods to form a coherent residential area.

Policy LU 601: Assure Provision of Housing Choices: Distribute housing throughout the City so as to provide households with a choice of densities, types, styles and costs within a neighborhood or residential area.

Objective N 1: Focus On Neighborhoods: Create functional neighborhoods when planning and developing residential areas. Regard neighborhoods as the central organizing element for planning residential areas. Rely on neighborhood-based organizations as a means of involving residents and property owners in the decision-making process.

Objective N 3: Vary Neighborhood Patterns: Integrate a variety of housing types and densities with amenities, services, and retail uses to generate opportunities and choices for households. When the character, context and scale of the surrounding neighborhood are taken into account, mixed-use developments can provide unique opportunities for employment, shopping, housing choice, and public gathering space, while having a positive impact on the neighborhood.

Objective CCA 6: Fit New Development into the Character of the Surrounding Area: Often the overall character of a new development is not realized until the project is completed. This can lead to unintended impacts and incompatible development. Applicants for new developments need to clearly identify how their projects will fit into the character of the surrounding area and the community as a whole with respect to height, scale, bulk, massing, roof forms, signage, overall site design, pedestrian and vehicular access, and relation to the public right-of-way.

Policy CCA 601: New Development Will be Compatible with the Surrounding Area: New developments will be compatible with the surrounding land uses and will complement the character and appearance of adjacent land uses.

It is the finding of the City Planning and Development Staff that the Cumbre Vista Development Plan Amendment is consistent with the City's Comprehensive Plan 2020 Land Use Map and the Plan's goals, objectives and policies for General Residential use.

4. Conformance with the Area's Master Plan: This project is located within the Powerwood 3-6 Master Plan area is designated for residential use.

It is the finding of the City Planning and Development Staff that the Cumbre Vista Development Plan Amendment is consistent with the Powerwood 3-6 Master Plan.

5. Development Plan Amendment: The Cumbre Vista Development Plan Amendment is consistent with the previously approved Cumbre Vista Development Plan.

Development plans are reviewed based upon the development plan review criteria found in City Code Section 7.5.502.E.

It is the finding of the City Planning and Development Staff that the Cumbre Vista Development Plan Amendment meets the development plan review criteria found in City Code Section 7.5.502.E.

6. Appeal Review Criteria: An appeal must substantiate the criteria for review of an appeal of an administrative decision found in City Code Section 7.5.906.A.4.

It is the finding of the City Planning and Development Staff that the appeal fails to substantiate the criteria for review of an appeal of an administrative decision found in City Code Section 7.5.906.A.4.

STAFF RECOMMENDATION:

Item No: 4 CPC DP 05-00092-A4MN13 – Development Plan Amendment

Deny the appeal and affirm the administrative approval of the amendment to the previously approved Cumbre Vista Development Plan, based upon the finding that the amendment complies with the development plan review criteria found in City Code Section 7.5.502.E and the appeal fails to substantiate the criteria for review of an appeal of an administrative decision found in City Code Section 7.5.906.A.4.

<p>NOT FOR CONSTRUCTION</p> <p>FOR ILLUSTRATION, REVIEW AND CITY/COUNTY RECORDS AND FOR CONSTRUCTION OF LAND.</p>	<p>MOORE DESIGN</p> <p>Landscapes Architects & Planners</p> <p>719.582.9373</p> <p>mooredesign.com</p>	<p>REVISIONS</p> <table border="1"> <tr><td> </td><td> </td></tr> </table>																					<p>CUMBRE VISTA</p> <p>SUBDIVISION</p> <p>DEVELOPMENT PLAN AMENDMENT 2013</p>	<p>PROJECT NO. 13011</p> <p>DATE: 09-30-13</p> <p>SCALE:</p>	<p>SHEET</p> <p>2 of 25</p>

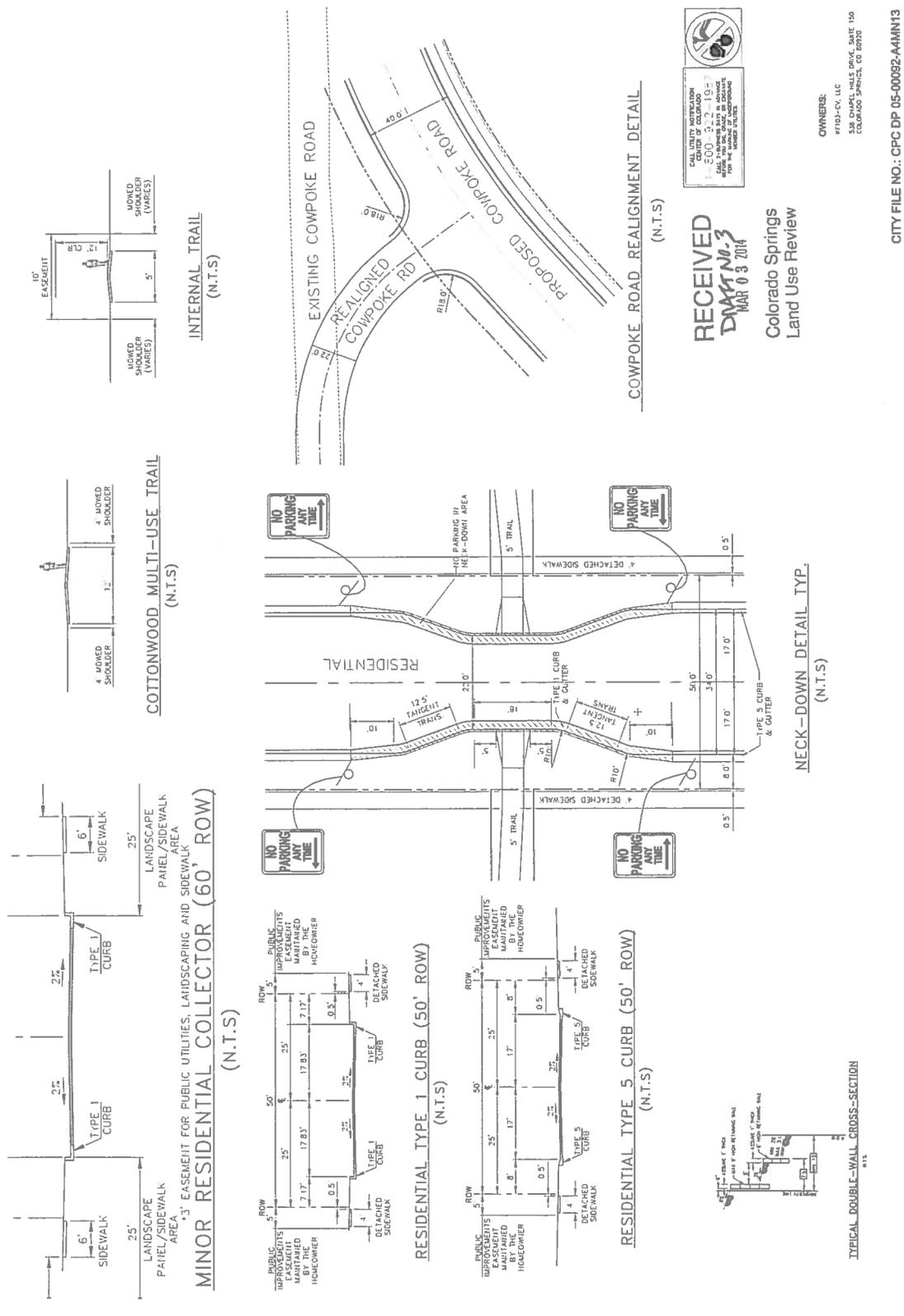
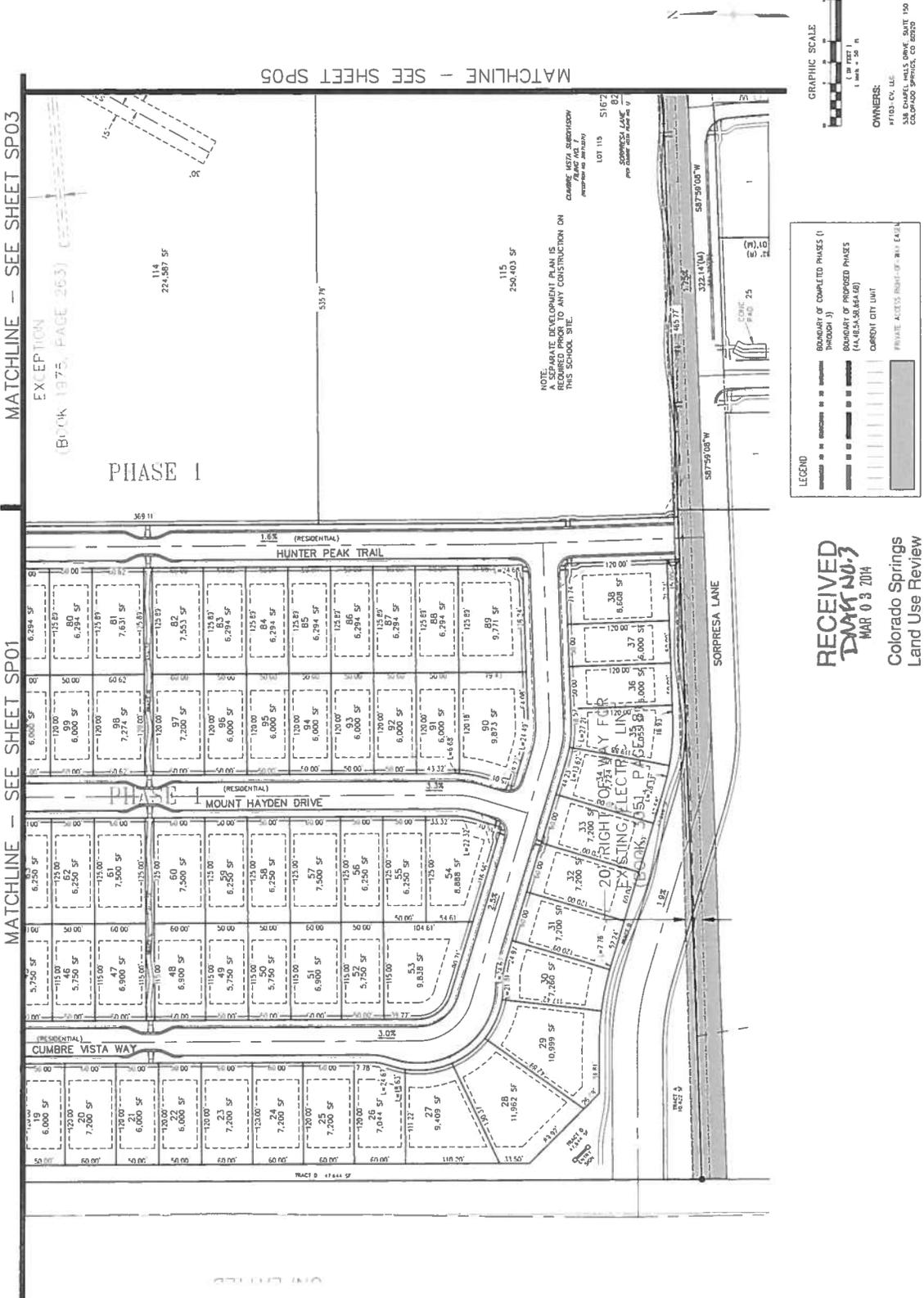


FIGURE 1

NOT FOR CONSTRUCTION THESE PLANS ARE PREPARED FOR THE ARCHITECT'S USE AND SHALL NOT BE USED FOR CONSTRUCTION OR LAUNCH	LANDSCAPE ARCHITECTS & PLANNERS M&P DESIGN LTD. 4001 E. 19th Ave, Suite 100 Aurora, CO 80012 303.733.7037 www.mandesign.com	REVISIONS	CUMBRE VISTA SUBDIVISION DEVELOPMENT PLAN AMENDMENT 2013	PROJECT NO. 13011 DATE 12-10-13 SCALE	SHEET 4 of 25 SP02
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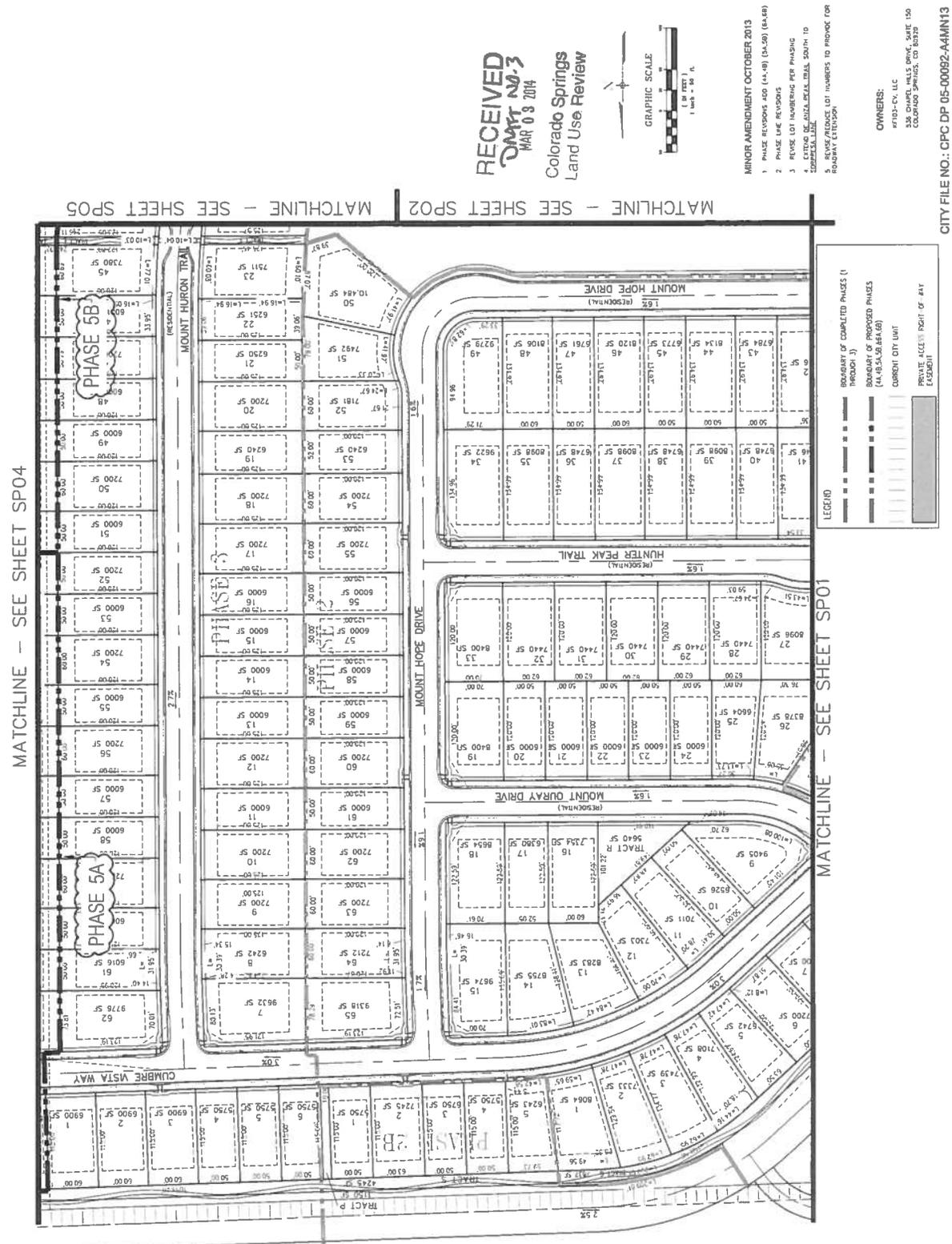


CITY FILE NO.: CPC DP 05-00092-AAMN13

RECEIVED
 DRAFT NO. 3
 MAR 03 2014
 Colorado Springs
 Land Use Review

FIGURE 1

DEL PER CONSTRUCTION THESE PLANS ARE PREPARED AND REVIEWED BY CLIENT AND CONTRACTOR IN ACCORDANCE WITH THE CITY OF COLORADO CONSTRUCTION DEPARTMENT	LANDSCAPE ARCHITECTS & PLANNERS 4000 S. UNIVERSITY BLVD. SUITE 100 DENVER, CO 80202 303.733.8888 www.mnpdesign.com	REVISIONS 1. City Comments 2.	SUBDIVISION CUMBRE VISTA DEVELOPMENT PLAN AMENDMENT 2013	PRODUCT NO. 13001 DATE 09-30-13 SCALE	SHEET 5 of 25 SPO3
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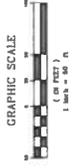


CITY FILE NO.: CPC DP 05-00092-AMM13

FIGURE 1

<p>LAND FOR CONSTRUCTION THE SITE PLAN AND ACCESS APPROVAL BY CLIENT AND CIVIL ENGINEER AND SHALL BE IN ACCORDANCE WITH THE CITY OF DENVER CONSTRUCTION OF LAYOUT</p>	<p>www.mrdesign-co.com mrdesignco@gmail.com 719.587.0171 Colorado Springs, CO 80918 M&R DESIGN LLC Landscape Architects & Planners</p>	<p>REVISIONS</p> <table border="1"> <tr> <td>1</td> <td>City Comments</td> <td>12-18-13</td> </tr> </table>	1	City Comments	12-18-13	<p>CUMBRE VISTA SUBDIVISION DEVELOPMENT PLAN AMENDMENT 2013</p>	<p>PROJECT NO.: 13011 DATE: 09-30-13 SCALE:</p>	<p>SHEET 6 of 25 SPO4</p>
1	City Comments	12-18-13						

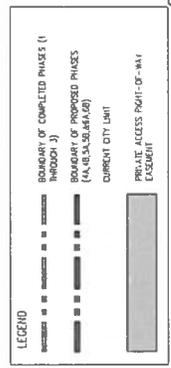
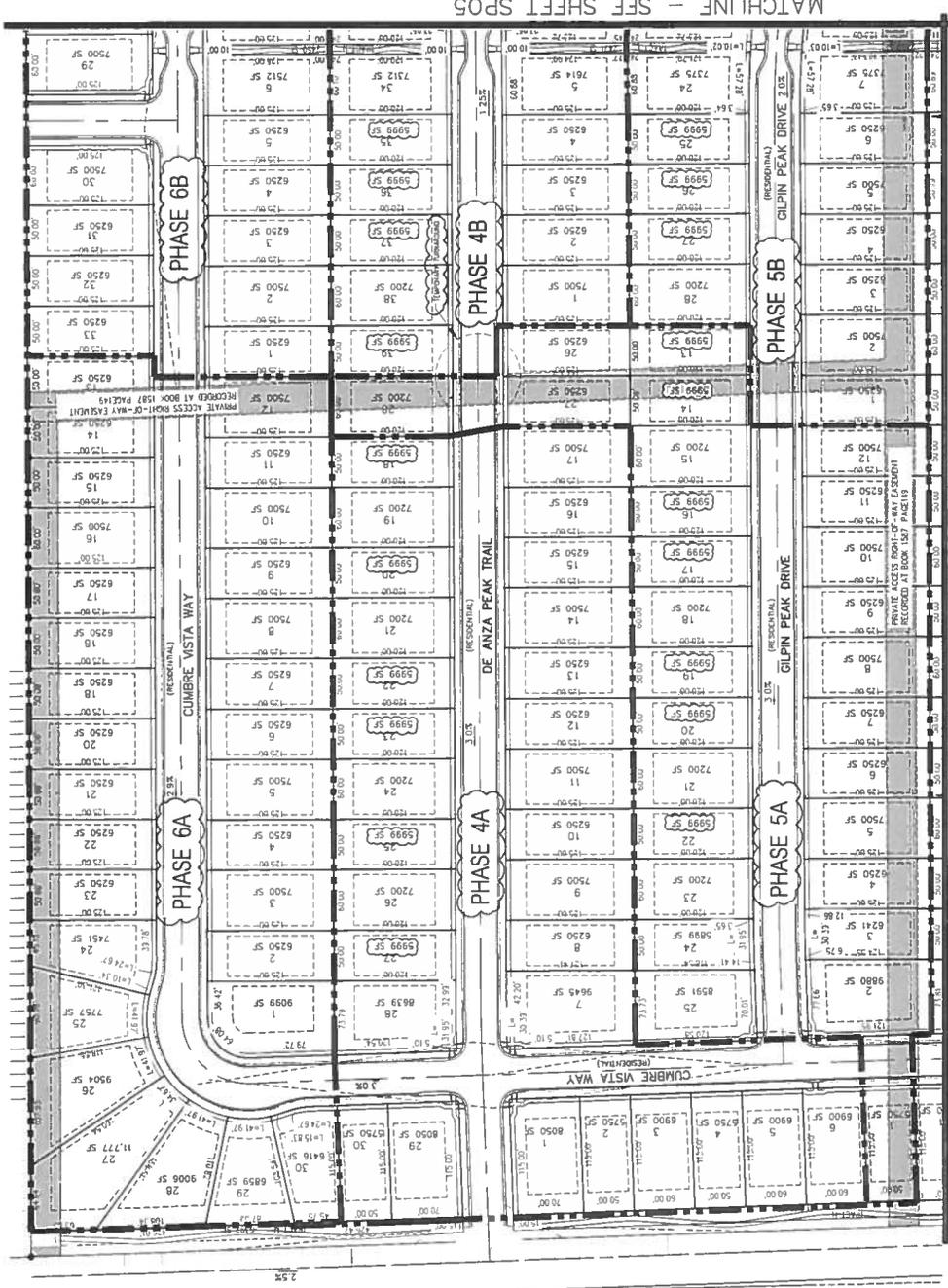
RECEIVED
 DRAFT N. 3
 MAR 03 2014
 Colorado Springs
 Land Use Review



- MINOR AMENDMENT OCTOBER 2013
1. PHASE REVISIONS ADD (14,49) (24,59) (14,68)
 2. PHASE LINE REVISIONS
 3. REVISION NUMBERING FOR PHASING
 4. TRACT D, PRIVATE ACCESS-WAY
 5. REUSE/REMOVE LOT NUMBERS TO PROVIDE FOR HIGHWAY DIVISION

OWNERS:
 #702574, LLC
 10000 S. WOODRIDGE BLVD, SUITE 100
 COLORADO SPRINGS, CO 80902

CITY FILE NO.: CPC DP 05-00092-AAMN13



MATCHLINE - SEE SHEET SPO3

FIGURE 1

<p>FOR THESE PLANS AND INTERESTS IN THE SUBDIVISION, THE CITY ENGINEER HAS REVIEWED THE PLANS AND APPROVED THEM FOR CONSTRUCTION.</p>	<p>FOR THESE PLANS AND INTERESTS IN THE SUBDIVISION, THE CITY ENGINEER HAS REVIEWED THE PLANS AND APPROVED THEM FOR CONSTRUCTION.</p>	<p>FOR THESE PLANS AND INTERESTS IN THE SUBDIVISION, THE CITY ENGINEER HAS REVIEWED THE PLANS AND APPROVED THEM FOR CONSTRUCTION.</p>	<p>FOR THESE PLANS AND INTERESTS IN THE SUBDIVISION, THE CITY ENGINEER HAS REVIEWED THE PLANS AND APPROVED THEM FOR CONSTRUCTION.</p>	<p>FOR THESE PLANS AND INTERESTS IN THE SUBDIVISION, THE CITY ENGINEER HAS REVIEWED THE PLANS AND APPROVED THEM FOR CONSTRUCTION.</p>	<p>FOR THESE PLANS AND INTERESTS IN THE SUBDIVISION, THE CITY ENGINEER HAS REVIEWED THE PLANS AND APPROVED THEM FOR CONSTRUCTION.</p>	<p>FOR THESE PLANS AND INTERESTS IN THE SUBDIVISION, THE CITY ENGINEER HAS REVIEWED THE PLANS AND APPROVED THEM FOR CONSTRUCTION.</p>
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FIGURE 1

**APPEAL OF ADMINISTRATIVE DECISION
To
City of Colorado Springs Planning Commission**

January 6, 2014

Planning Commission
City of Colorado Springs
C/O Mr. Larry Larsen
Senior Planner
City of Colorado Springs
Planning and Community Development Land Use Review
30 S. Nevada Avenue Suite 301
Colorado Springs, Colorado 80903

Regarding: Appeal of Administrative Decision to Approve
CPC DP 05-00092-A4MN13 - Amendment to Approved Cumbre Vista
Development Plan
AR FP 13-00533 - Cumbre Vista Filing No. 4A Final Subdivision Plat
City Land Use Review Approval Date on or about December 27, 2013

Dear Mr. Larsen,

The following interested parties file this NOTICE OF APPEAL in accordance with The City of Colorado Springs Municipal Code §7.5.906.

Bill and Maureen Marchant, 7830 Ski Lane, Colorado Springs, CO, 80924

William Howell, Trustee of the Marilyn J. Howell Trust, 7700 Ski Lane, Colorado Springs, CO 80924, represented by David H. Krall, Esq., 501 North Nevada Avenue, Colorado Springs, CO 80903.

Mrs. Arlene C. Nance – owner of adjacent property located at the east end of Sorpresa Lane, represented by David H. Krall, Esq., 501 North Nevada Avenue, Colorado Springs, CO 80903.

Darrell H. Oliver, Sr., 7860 Ski Lane, Colorado Springs, CO 80924

William M. Peck – owner of adjacent property located at 6355 Sorpresa Lane, Colorado Springs, CO, mailing address: 13505 Palomino Creek Drive, Corona, CA 92883

CPC Appeal of Administrative Approval of:
CPC DP 05-00092-A4MN13 and AR FP 13-00533
January 6, 2014
Page 2

The above named parties (collectively the “Neighbors”) respectfully request that final approvals of the 2013 Amendment to the Approved Development Plan, and Cumbre Vista Filing 4A Final Subdivision Plat be DENIED for one or more of the following reasons:

A brief history of this case:

Beginning in 2004, KF 103-CV, LLC’s predecessors in interest purchased numerous land parcels located north of Sorpresa Lane, west of Black Forest Road, and south of Cowpoke Road. The Cumbre Vista property was annexed into the City of Colorado Springs subject to the Powerwood 3 and Powerwood 4 Annexation Agreements. KF 103-CV, LLC reshaped the land area they had purchased and in the process destroyed a deeded roadway and utility easement (Ski Lane, El Glen Lane, and Sopresa Lane) owned by neighboring property owners to the south of the development. To create a number of premium walk-out basement lots, KF 103-CV, LLC created a substantial elevation change at the southern border of their property which is also the northern border of the private property owned by the Neighbors resulting in an approximate twelve (12) feet tall cliff at the intersection of Sorpresa Lane and Ski Lane.

The deeded roadway and utility easement recorded in 1956 granted and conveyed to all adjacent property owners a location specific, 30-foot wide strip of land for use as a roadway and for utility lines and underground pipes and specifically states that this conveyance is permanent, forever and irrevocable. The metes and bounds legal description of the deeded roadway and utility easement is specifically included as an additional parcel in some of the Neighbors’ home property deeds.

In September 2008, KF 103-CV, LLC and the Woodmen Heights Metropolitan District (“WHMD”) initiated litigation as plaintiffs and sued the defendant Neighbors to Quiet Title to the deeded roadway property and for Declaratory Action seeking court permission to vacate or otherwise relocate the easements in accordance with *Roaring Fork Club, L.P. v. Saint Jude’s Company*, 36 P.3d 1229 (Colo. 2001). Following a week-long trial in October 2010, the trial court ruled the Plaintiff’s failed in the burden of proof to quiet title and left open the question of ownership in fee of the land underlying the deeded roadway and utility easement. The trial court also ruled against the plaintiffs’ claims for declaratory judgment and issued a preliminary order for the plaintiffs to restore the deeded roadway and utility easements to their original location and elevation. The City of Colorado Springs was joined in the litigation by KF103 and by Mr. Peck prior to the second trial. After the second trial in October 2012, the trial court affirmed its earlier findings of fact and ordered partial restoration of the deeded roadway and utility easements.

After repeatedly ruling that the Neighbors’ easement rights still exist and the developers have no legal right to take, alter, or relocate the easements, the trial court has now ignored three years of rulings and granted himself “equitable power” to take the Neighbors’ easements because otherwise the developer will lose anticipated profits. The trial court’s post-trial ruling is an affront to Colorado law and endangers the rights of all Colorado property owners. If the State of Colorado now authorizes private land developers to take private property easements rights in direct contradiction of statutory law and established case law and without compensation to the

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CPC DP 05-00092-A4MN13 and AR FP 13-00533
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easement owners then all property owners need to have that clearly stated by the appeals court and by the Colorado Supreme Court. The trial court's post-trial rulings are being appealed to the State Appellate Court in Denver.

Reasons why the Planning Commission should DENY final approval of this decision are as follows:

- 1) **§7.5.502:** A primary purpose of development plan is to minimize objectionable and adverse effects and to eliminate potential hazards of the proposed land use by proposing specific site design solutions. At the time the original development plan was approved, the disastrous effects of the proposed changes to the historic deeded roadway and utility easement were hidden from the City and not shown on the development plans. Final resolution of the Neighbors' property easement rights and probable restoration of these easements is now pending appellate court decisions. The City is now fully aware of the immense negative impact that may potentially result if the City allows utility or roadway construction on or near the historic easements and then the appellate courts rules in favor of the Neighbors and orders restoration of Ski Lane and/or El Glen. We believe that by allowing this amendment to the Development Plan to go forward and approval of Filing 4A Final Plat to proceed, it will allow the homebuilder and developer to permanently establish the elevation of the land underlying the easement owned by the Neighbors. The fact that no lots will encroach on the easement is not relevant. Building homes adjacent to the easement will forevermore set the elevation of the easement and may make it impossible for the court to order restoration. We believe restoration is the only just resolution to the litigation initiated by KF103.
 - a. **Administrative decision is incorrect** because the amendment to the Development Plan and approval of Filing 4A Final Plat do not comply with the intent of §7.5.502 and fail to minimize objectionable and adverse effects of new construction that is not compatible with the deeded roadway and utility easement that is the subject of the protracted litigation initiated by KF103. The degree and extent of the incompatibility is not known and cannot be known until such time as the appeal phase of the litigation is complete.
 - b. **Adverse Impacts of allowing administrative approval to stand:** Allowing administrative approval of Cumbre Vista Filing 4A and the Amendment to the Development Plan to proceed at this time, in all probability, will result in new and additional litigation between the new innocent homebuyers and the City. Furthermore, if restoration of the easements cannot be ordered by the appellate courts due to actions by the City to approve construction during the litigation appeal phase, the Neighbors will file an inverse condemnation action against the City for the unlawful taking of our easement rights.
 - c. **Benefits of denying administrative approval:** KF103 initiated the litigation against the Neighbors and in doing so placed the legal status of the roadway easements in the jurisdiction of the courts. The City is a party to the litigation. It is fair and just that KF103, the City, the Neighbors, and all other parties in the litigation must now wait

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CPC DP 05-00092-A4MN13 and AR FP 13-00533
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for completion of the litigation process before any construction may proceed which can alter the status quo of the deeded roadway and utility easements.

- 2) **§7.7.705 Right of Way Dedication and Street Improvements:** Plan/Plat Note 3 on the amended Development Plan as proposed by City Engineering appears to unfairly transfer the financial obligation to construct Sorpresa Lane away from KF103 and imposes that financial burden onto the southerly landowners who are not a party to the development of Cumbre Vista. The Powerwood 3 and Powerwood 4 Annexation Agreements require KF103 as the landowner to construct that portion of Sorpresa Lane that lies within their property boundary. Plan/Plat Note 3 appears to relieve KF103 of the financial burden to construct Sorpresa Lane and transfers KF103 financial burden to the southerly land owner, namely the Howell Trust.
 - a. **Administrative decision is incorrect** because the decision to transfer the financial burden to construct City streets required as part of the Cumbre Vista development onto adjacent landowners who have no financial interest in Cumbre Vista is clearly unreasonable, unfair, and contrary to law.
 - b. **Adverse Impacts of allowing administrative approval to stand:** will undoubtedly result in additional litigation against the City. The proposed actions by City Engineering to force a non-party land owner to be financially liable for the construction of the portion of Sorpresa Lane that lies within the Cumbre Vista property is without legal justification. Clearly City Engineering made a mistake when Mr. Dave Lethbridge entered into a binding agreement with WHMD that waived the requirement for financial surety bonds for the construction of Sorpresa Lane, Cowpoke Road, and Tutt Blvd. It is inconceivable for the City to now impose the financial burden for 100% of the construction of Sorpresa Lane onto the Neighbors.
- 3) **§7.7.909 Cooperation with Subdividers through eminent domain:** requires the City to exercise eminent domain powers to obtain rights of way for drainage facilities. As specified above, if the appellate court issues a ruling favorable to the Neighbor's and orders restoration of the deeded roadway and utility easements owned by the Neighbors after the City approves Filing 4A and allows construction to begin on the storm sewer system, the City will have taken intentional action that has the natural consequence of taking the Neighbors' private property easement rights. This appeal should be granted and the amendment denied until the easement issue is resolved, once and for all, by the Court system.
 - a. **Administrative decision is incorrect** because it is clearly contrary to law. The use of eminent domain powers by the City of Colorado Springs to advance the private party interests of KF103 and Keller Homes, Inc. to construct single family homes for private ownership and occupancy is strictly prohibited by the Constitution of the State of Colorado Article II, Section 14, which states: "**Private property shall not be taken for private use unless by consent of the owner**" subject to limited exceptions none of which involve building single family residences for private ownership in order to maximize profits for the land developer.

CPC Appeal of Administrative Approval of:
CPC DP 05-00092-A4MN13 and AR FP 13-00533
January 6, 2014
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- b. **Adverse Impacts of allowing administrative approval to stand:** The City may be putting itself in a position of an “illegal taking” of interest in real property and will be subject to legal consequences for such taking.
- 4) **§7.7.1103 Obligations of Landowner:** requires the landowner to construct all public improvements and utilities as set forth in the City Code. This obligation runs with the land and therefore becomes the financial obligation of the future landowner if KF103 and Keller Homes abandons the Cumbre Vista project. The attached sworn affidavit by Mr. David Keller dated April 18, 2013 states that if houses cannot be constructed on the El Glen easement, then completion of the Cumbre Vista Subdivision may not be viable. KF103’s lawyer argued that unless the easements are vacated, KF103 may no longer be interested in finishing the development. Therefore, there is a high probability that KF 103-CV, LLC and Keller Homes, Inc. will abandon the project if the appellate court issues a ruling favorable to the Neighbors. Construction of Filing 4A will then leave the City with the blight of another partially built project similar to the Dublin Terrace Townhomes fiasco. If the City waits until the litigation is resolved before granting approvals on the Cumbre Vista property east of Ski Lane then when Keller abandons the project, the property can still be developed in a manner beneficial not only to the City but also to the existing Cumbre Vista residents and respects the Neighbors’ easement rights.
- a. **Administrative decision is incorrect** because it is unreasonable in light of Keller Homes and KF103’s clear intention to abandon the project if the appellate court issues a ruling favorable to the Neighbors.
- b. **Adverse Impacts of allowing administrative approval to stand:** If this appeal is denied, and Keller Homes is allowed to build adjacent to our easement, AND the Neighbors prevail in the appellate court, then Keller may deem the rest of the project to be impractical. Mr. David Keller of Keller Homes stated in Court that if this project becomes no longer feasible that he will walk away from it. The City would then have another Dublin Townhomes fiasco on their hands.

WHEREFORE: The Neighbors pray for the Planning Commission to **reverse administrative approval** of the Amendment to the Development Plan and reverse administrative approval of Cumbre Vista Filing 4A Final Plat and **DENY** final approval of same until such time as the appeals process is complete for the associated litigation regarding the deeded roadway and utility easement that was initiated by KF103 and WHMD.

Sincerely,


William M. Peck

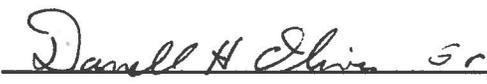
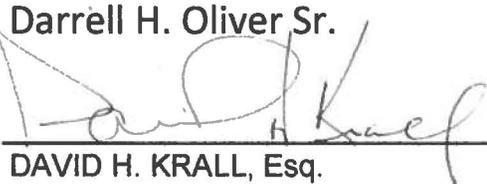
CPC Appeal of Administrative Approval of:
CPC DP 05-00092-A4MN13 and AR FP 13-00533
January 6, 2014
Page 6

SIGNATURE SHEET

William Peck  _____
Bill Marchant _____
Maureen Marchant _____
William Howell _____
Darrell Oliver _____
Arlene Nance _____

Appeal of Administrative Decision to Approve
CPC DP 05-00092-A4MN13
Cumbre Vista No. 4 Development Plan Amendment

Signature Sheet

1.  Date 1/5/14
Bill Marchant
2.  Date 01/05/2014
Maureen Marchant
3.  Date 1/5/14
Darrell H. Oliver Sr.
4.  Date 1-6-14
DAVID H. KRALL, Esq.

<p>DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 270 South Tejon Street Colorado Springs, CO 80903 Phone Number: (719) 452-5000</p>	
<p>Plaintiff(s): WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 1, a Title 32 Metropolitan District, <i>et al.</i></p> <p>v.</p> <p>Defendant(s): PRAIRIE VISTA, LLC, a Colorado limited liability company, <i>et al.</i></p> <p>Third-Party Plaintiff(s): KF 103-CV, LLC, a Colorado limited liability company, <i>et al.</i></p> <p>v.</p> <p>Third-Party Defendant(s): RS HOLDING COMPANY, LLC, f/k/a INFINITY HOLDING COMPANY, LLC, a Colorado limited liability company, <i>et al.</i></p> <p>Third-Party Plaintiff(s): RS HOLDING COMPANY, LLC, f/k/a INFINITY HOLDING COMPANY, LLC, a Colorado limited liability company, <i>et al.</i></p> <p>v.</p> <p>Third-Party Defendant(s): STEVEN K. MULLIKEN, <i>et al.</i></p> <hr/> <p><u>Attorneys for Plaintiff/Third-Party Plaintiff KF 103-CV, LLC:</u></p> <p>John W. Cook, #9670 Joseph L. Lambert, #38071 HOGAN LOVELLS US LLP Two North Cascade Avenue, Suite 1300 Colorado Springs, CO 80903 Phone Number: (719) 448-5900 Fax Number: (719) 448-5922 E-mail: john.cook@hoganlovells.com joseph.lambert@hoganlovells.com</p>	
<p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No.: 08-CV-4553 Division: 5</p> <p>AFFIDAVIT OF DAVID A. KELLER</p>	



STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

I, David A. Keller, being first duly sworn, state as follows:

1. I am a manager of Plaintiff/Third-Party Plaintiff KF 103-CV, LLC ("KF 103") and President and CEO of Third-Party Defendant Keller Homes, Inc. ("Keller Homes"). I have personal knowledge of the facts set forth in this Affidavit. I am over the age of 21, I am not under any disability, and, if called to testify, I could competently testify concerning the statements set forth in this Affidavit.

2. Following the second trial in October/November 2012, the Court stated in its November 2012 Order Re: Equitable Remedies and Judgment ("November 2012 Order") that:

Ski Lane shall be reopened in its original dimensions within 30 days of this order and shall connect with Cowpoke Road. Considering the equities of this situation, a new access road may be substituted for Ski Lane when it is completed. The Neighbors shall have the same legal 30' right of way interest in the new road as they did in Ski Lane. The right of way interest in their portion of Sorpresa Lane shall conform to its new 20' dimensions. A permanent intersection shall be installed to connect the restored Sorpresa either with Ski Lane or the new connecting road in accordance with Mr. Slatter's proposal.

KF 103, Keller Homes, and the other parties held responsible for the Court's restoration order understood the Court's references to a "new access road" in the November 2012 Order were to DeAnza Peak Trail, which Mr. Gerrit L. Slatter, PE, had described during his testimony at the second trial. KF 103 and Keller Homes thus believed that the Court had approved of Mr. Slatter's proposal to substitute DeAnza Peak Trail for Ski Lane/El Glen as part of the overall partial restoration plan ordered by the Court in the November 2012 Order.

3. Following the issuance of the November 2012 Order, KF 103 and Keller Homes promptly proceeded to ensure that DeAnza Peak Trail would be constructed and opened for the Neighbors' use "within 30 days" of the November 2012 Order as ordered by the Court. DeAnza Peak Trail is a completely safe and fully drivable dirt road, very similar to the roads existing throughout the Cumbre Vista Subdivision ("Subdivision") prior to the development of the Subdivision.

KF 103 had to sacrifice two lots for Sorpresa Lane to connect directly with Cowpoke Road via DeAnza Peak Trail. The combined fair market value of these two lots is approximately \$120,000.

4. Based on the construction of DeAnza Peak Trail as a direct road from Sorpresa Lane to Cowpoke Road and the future development of Gilpin Peak Drive (the "new" Ski Lane), the Neighbors now have two direct access roads from their properties to Cowpoke Road. There is simply no good reason to have a "third access road" from Sorpresa Lane to Cowpoke Road. DeAnza Peak Trail will eventually be a fully paved, dedicated, and maintained City-street.

5. The Subdivision has already been designed – and millions of dollars in development costs have already been incurred by KF 103 – based on the assumption that El Glen would no longer exist. If the Court mandates that El Glen remain open as an access easement, KF 103 would be forced to incur an estimated \$800,000 in additional development costs to redesign Filings 4, 5, and 6 of the Subdivision in order to accommodate El Glen. Furthermore, if El Glen must remain, KF 103 will lose at least twenty (20) buildable lots, which would otherwise be situated where El Glen presently is located. These undeveloped lots have an approximate value of \$600,000. In addition, the loss of these lots would cost Keller Homes approximately \$800,000 in lost profits.

6. If KF 103 and Keller Homes are forced to bear these losses, the viability of the Subdivision to both KF 103 and Keller Homes will become highly questionable.

FURTHER AFFIANT SAYETH NOT.



David A. Keller

Subscribed and sworn to before me this 18th day of April, 2013, by David A. Keller.

Witness my hand and official seal.





Notary Public

My commission expires: 3/19/15

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February 4, 2014

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Colorado Springs
Land Use Review

Via E-mail to: LLarsen@springsgov.com

Mr. Larry Larsen, AICP
Senior Planner
City of Colorado Springs
Planning and Community Development Land Use Review
30 South Nevada Avenue, Suite 301
Colorado Springs, CO 80903

Re: Response to Application Form For Appeal Of Administrative Decision; City File Numbers:
CPC DP 05-00092-A4MN13 Cumbre Vista Development Plan Amendment and AR FP 13-
00533 Cumbre Vista Subdivision Filing No. 4 Final Subdivision Plat (the "Development Plan
Amendment and Plat").

Dear Mr. Larsen:

We are writing on behalf of KF103-CV, LLC, a Colorado limited liability company ("KF103") in response to the January 6, 2014 appeal filed by William Peck, Bill Marchant, Maureen Marchant, William Howell, Darrell Oliver and Arlene Nance (collectively, the "Neighbors"), appealing the City's Administrative Decision to Approve the above-referenced Development Plan Amendment and Plat (the "Appeal"). While we believe we have more than adequately addressed all of the Neighbors' comments in our prior correspondence, we are providing this brief written statement to address the Neighbors' specific comments set forth in their Appeal.

The Appeal stems solely from the Neighbors' disappointment with Judge Schwartz's final judgment (the "Judgment") in the District Court of El Paso County, Colorado (the "Court") Case No. 2008-CV-4553 (the "Lawsuit"). The Neighbors now request that the City overturn its prior Administrative Approval of the Development Plan and Plat and prohibit any further development on the Cumbre Vista project pending conclusion of the appellate process, all in reliance upon the presumption that the Judgment can somehow be overturned. As the City is aware being one of the parties to the Lawsuit, the Court issued its final Judgment following several years of discovery, depositions, testimony, interrogatories and numerous motions from all sides, and following two trials spanning in excess of three (3) weeks. During that process, Judge Schwartz heard testimony from virtually every person and entity involved in the matter (including the City and each of the Neighbors) and reviewed virtually all of the evidence submitted by all sides of the dispute. Following this lengthy and detailed process, Judge Schwartz issued a ruling vacating the easements which are the subject of the Neighbors' comments (the "Easements"). The Neighbors would now like to essentially re-try the case before the Planning Commission and City Council and delay any further development

pending completion of their appeal of the Judgment. Based upon the extreme diligence exhibited by the Court and the lengthy and comprehensive litigation process associated with the Lawsuit, the Neighbors' chances of meeting their burden of proof and prevailing in their appeal are extremely remote. As a result, the City should not, and moreover is not entitled to, further delay completion of the Cumbre Vista development pending resolution of the Neighbors' unwarranted and ill-advised venture into the appellate process.

With respect to the Neighbors' specific points in their Appeal, they first contend in Item (1) that allowing the Development Plan Amendment and Plat to go forward will permanently establish elevations for the land underlying the Easements and make it impossible for the court to order restoration. Again, the Easements have been vacated by the Court and no longer exist and the Neighbors' position once again relies upon the extremely remote chance of success on appeal. Moreover, their argument is simply not correct. The overwhelming majority of the Cumbre Vista development lying north of Sorpresa Lane is relatively flat and will not require any material changes in elevation for either roadways or utilities. Additionally, the intersection at Sorpresa Lane and Ski Lane, which was the subject of nearly all of the primary issues addressed in the Lawsuit, was constructed and completed at its final elevation many years ago, including all of the planned utilities. Lastly, Cumbre Vista Filing No. 4A (the approved plat) is located at the extreme north end of the development on essentially flat terrain near Cowpoke Road, and the utilities and primary access to that phase of the Cumbre Vista development will come from Cowpoke Road to the north, not the intersection at Sorpresa Lane and Ski Lane to the south. Therefore, the proposed Development Plan Amendment and Plat do not propose to change the existing Sorpresa Lane and Ski Lane intersection elevations, nor do they have any material effect upon the existing elevations of the land underlying the balance of the Easements.

In Item (1) of the Appeal, the Neighbors' also threaten the City with litigation, contending that by allowing the Development Plan Amendment and Plat to go forward, the City will somehow be participating in an inverse condemnation action and an unlawful taking of the Neighbors' Easement rights. Again, the Easements have been vacated and no longer exist, and there can be no taking of rights that no longer exist. Moreover, the Court further ruled in its Judgment that "...[the Neighbors] shall not be entitled to any compensation for said vacation." Thus, in addition to ruling that the Easements were vacated, the Court further found that the Easements had no value. This determination was based upon the fact that the streets adjacent to and within the Cumbre Vista development provide the Neighbors with access rights far superior to the dirt trails comprising the vacated Easements. In fact, the Neighbors now have much better access in virtually every direction than ever existed in the past. The City's approval of the Development Plan Amendment and Plat cannot be argued to constitute a taking of rights that no longer exists, and according to the Court's final Judgment, compensation for the Easements would not be appropriate in any case.

In Item (2) of the Appeal, in addition to further threatening the City with litigation, the Neighbors complain that certain southern adjacent property owners may have to pay for the final extension of Sorpresa Lane eastward from its terminus near Ski Lane. Aside from the fact that the Neighbors' properties are not located within the City of Colorado Springs, the City has already determined the public streets which KF103 is required to construct in connection with this development, and KF103 has to date met all of those obligations. Should the Neighbors' property ever be annexed into the City of Colorado Springs, then upon such annexation and at the time of future development of that property, the City will no doubt determine who best to properly pay for any requisite street improvements necessary to accommodate that development. There is certainly

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nothing unusual about a developing property owner having to construct public streets adjacent to and within its development, and KF103 has fulfilled all of its obligations to construct public improvements associated with its development, including construction of the overwhelming majority of Sorpresa Lane which the Neighbors now use on a daily basis and benefit from at virtually no cost to them.

In Item (3) of the Appeal, the Neighbors again rely upon the unlikely success of appealing the Judgment, and again threaten the City with litigation for taking private property Easement rights without compensation. Again, the Easements have been vacated by the Court and no longer exist, and the City cannot be found to have taken private property rights that no longer exist. The City is entitled to rely upon the Court's final Judgment formally vacating the Easements and City should not be required to, and moreover is not entitled to, hold up approval of the Development Plan Amendment and Plat pending an appeal of the Judgment. As pointed out in our earlier correspondence, the Neighbors' are essentially asking the City to do what the Court refused to do, which is to provide injunctive relief, without requiring the posting of a bond, and preclude further development of Cumbre Vista pending resolution of their appeal. The Court refused to issue this relief, and the City should not now entertain the Neighbors' request for the same relief in direct contravention of the Court's Judgment.

Item (4) suggests, as with prior letters to the City, that KF103 somehow intends to abandon the project. As stated in our earlier correspondence, the City can rest assured that KF103 remains committed to proceeding with completion of the project as shown in the Development Plan Amendment and Plat.

As the City is aware, in response to the Neighbors' concerns and as an accommodation, KF103 has agreed to restrict the lots subject to the vacated Easements by way of a "Note" in the Development Plan Amendment, which "Note" provides that those lots will not be improved until such time as the Neighbors' appeal is denied. Once the appeal of the Judgment is denied, KF103 will proceed with building upon those restricted lots. If the Neighbors' appeal is somehow miraculously successful, which it won't be, KF103 will continue to leave the lots within the Easement areas unimproved and passable as required by that "Note," and the Neighbors will once again have the right, should they so choose, to drive over dirt paths rather than using the newly paved streets within the Cumbre Vista development. It is clear, however, that the Neighbors' desire to drive on dirt paths rather than on newly paved roads is not the motivating factor behind their actions. Rather, the Neighbors' intent has been and to date remains solely to delay completion of the Cumbre Vista development until such time as KF103 or some other entity is forced to pay them a sufficient amount of money. In fact, in the Court's most recent order regarding the payment of costs in the Lawsuit, the Court paraphrases a statement by Mr. Peck expressing his belief that "the developers would be forced to buy him out." Judge Schwartz further noted in his order that "Forcing the developers to pay inflated prices for the Neighbors' properties has been a consistent theme throughout this case." Thus, the Neighbors' intent through this entire process has been made patently clear, and that intent has precious little to do with preserving their rights under the vacated Easements.

Mr. Larry Larsen

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We are hopeful this letter adequately addresses the Neighbors' points in their Appeal, and we would be happy to speak with you further regarding any of the issues addressed herein.

Sincerely,



David W. Isbell

cc: Dave Keller (*via e-mail*)
Dave Mersman (*via e-mail*)
Thomas J. Florczak, Esq. (*via e-mail*)
Shane White, Esq. (*via e-mail*)

*Summary of Findings and Order
 of Oct 13, 2010*

El Paso County Colorado Combined Courts P.O. Box 2980 270 S. Tejon Colorado Springs, CO 80901-2980 Phone Number: (719) 448-7650		EFILED Document El Paso County District Court 4th JD Filing Date: Jan 28 2011 4:07PM MST Filing ID: 35653993 Review Clerk: Sarah Vallejo
WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 1, et al. Plaintiffs, v. WILLIAM M. PECK, et al. Defendants.		
Attorney or Parties without Attorney Present at this Hearing Flynn Wright & Fredman, LLC Eric Bentley, Esq. Attorneys for Plaintiffs William M. Peck, Darrell Oliver, Susan Hanson Defendants, <i>pro se</i>		Case Number: 2008CV4553 Division 5 Courtroom S501
TRANSCRIPTIONIST'S TRANSCRIPT		

The following hearing was held on October 13, 2010 before The Honorable Larry Schwartz, District Court Judge for the El Paso County Combined Courts.

This transcript is the Ruling following the Court Trial as requested by The Honorable Larry Schwartz.

B&M Legal Transcription, LLP
 P.O. Box 373
 Colorado Springs, CO 80901

THIS TRANSCRIPT IS THE WORK PRODUCT OF B&M LEGAL TRANSCRIPTION AND MAY NOT BE REPRODUCED, BY ANY MEANS, WITHOUT PRIOR WRITTEN CONSENT PURSUANT TO C.R.S. 13-5-128 AND IN COMPLIANCE WITH COLORADO CJD 05-03

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THE COURT'S RULING

1 THE COURT: Well I've given considerable attention to the evidence
2 that has been presented. Ah, the site visit was extremely helpful to
3 me in terms of making a decision in this case. Um, I've reviewed at
4 great length a number of times the *Roaring Fork* decision as well as as
5 much Colorado Law as I can regarding, ah, the rights of various
6 easement owners in dominant versus servient estates, and think from the
7 review of all those matters together with the evidence and testimony
8 that's been presented here today I have a basis upon which to render a
9 fair Ruling. I would much rather do this in writing, ah, but am afraid
10 because of my trial schedule that it could be weeks before I could get
11 back to this case, um, and so rather than do that will take the less,
12 ah, preferable route and announce my decision orally here.

13 First of all, as a Finding of Fact I conclude that the Parties have
14 adequately set forth the ownership of the various properties in this
15 case. I would note that the Plaintiff, ah, has shown by various maps
16 and charts the property that as zoned by it, Plaintiff does not dispute
17 that all of the individual named Defendants here today have at one time
18 or another, ah, been sold property, ah, which has accompanied—which is
19 accompanied with a legal description of an access and egress agreement
20 or right-of-way over property that is currently owned by, um, the
21 Plaintiff. There is apparently some doubt as to whether the Plaintiff
22 owns each and every square inch of, ah, in common with the Defendants
23 all of the roads that were previously used for access to the, um,
24 properties, but even so it doesn't make any difference in the Court's
25 determination, because even if they are merely co-owners, each co-owner

1 owns-owed to the other co-owner of an access easement or right-of-
2 way easement, um, equal obligations to one another. So I will conclude
3 that, um, the, ah, right-of-way easement that adheres to each one of
4 the Defendants' properties has been adequately described, ah, not only
5 in legal-legal descriptions, but likewise in the, ah, charts that have
6 been included by Plaintiff as 101, 102, um, and so forth.

7 I would further note that it appears that in addition to those shown
8 in the red hatching that the Defendants each appeared to have access
9 agreements that immediately front their properties as well, ah, and
10 that may or may not be on property owned by the, ah, Plaintiff, but it
11 doesn't make any difference because the Plaintiff hasn't directly
12 affected that property which is south of Sorpresa Road. Ah, it is
13 merely the severed extension of Ski Road. Um, I would note that, ah,
14 or find that the Plaintiff during 2005 or predecessors to the
15 Plaintiff, began assembling the properties which are the subject matter
16 of this overall action, ah, that during the time that they were being
17 assembled that they concluded that they needed to re-route, um, the
18 roads that serviced their proposed development, and that impacted, ah,
19 the Defendants in this case, and I would note that other than giving
20 some notice, um, to the Defendants, that I find that the Plaintiffs did
21 not include any of or the, excuse me, predecessors to the Plaintiffs
22 did not include the Defendants in any of the negotiations and the
23 plannings of those roads, and, essentially unilaterally, ah, redesigned
24 their own development, ah, which is shown as Cumbre Vista Subdivision
25 filings Number One and Number Two, apparently Three and Four as well,

1 and, ah, in their plannings essentially relocated, ah, to a certain
2 degree the Sorpresa Lane, um, excuse me, not Sorpresa but Ski Lane, and
3 then changed the configuration of, um, Sorpresa to a certain extent.
4 Now they've since that time built the, ah, the substantial portion of
5 Subdivision Filing Number One, have had ultimately the City approve
6 their various road configurations, ah, and have provided to, ah, the
7 benefit not only of their Subdivision, but to the Defendants, the
8 change to Sorpresa Road, ah, and that is changed to the point of now
9 accessing Tutt Boulevard, which goes north and south, and have paved
10 Cowpoke as well as Tutt, so to that extent they have greatly and
11 substantially benefited the Defendants. Ultimately it will become a
12 question of whether or not as a matter of law those benefits to the
13 Defendants can effectively be traded out for lot and block descriptions
14 for easements that were provided to the Defendants some fifty plus, or
15 their predecessors, some fifty plus years ago.

16 Um, as I said I, ah, performed the site visit. Ah, it was very
17 informational to me. Ah, the development has been very well
18 constructed. The roads have been very well constructed. Ah, the, ah,
19 it's a nice-looking Subdivision from a lay person's standpoint, and I
20 have no position other than being a lay person. The internal roads
21 work well for the internal use of the Subdivision, um, and so do the
22 external roads of Cowpoke and Tutt, so I conclude that the developer
23 has done a, ah, significantly credible and, ah, credible job of
24 creating a Subdivision and building it out to the extent that it has,
25 but that's not the issue before the Court. The Court—the Court has to
26

1 struggle with the much more significant question of if Defendants
2 have as benefits that run with the land lot and block descriptions of,
3 ah, access easements that are not only described in lot and block, but
4 length, depth and width of description, whether the, ah, the Plaintiffs
5 can unilaterally take those and change them, ah, to the extent that,
6 um, they may or may not substantially change the use of those.
7 Certainly they've changed the location of those, and so effectively
8 they have taken away what has been legally described by lot and block
9 and other description than otherwise not only described easement, but
10 recorded easement that generally is run with the land.

11 Now in terms of historical context, so the appellate record is
12 clear, um, Peck Exhibits "N" demonstrate what Ski Lane looked like
13 prior to the construction, um, and other Exhibits show what Sorpresa
14 Lane looked like prior to the des-ah, the construction, and it's clear
15 to the Court both from my trip there as well as these pictures that
16 there has been substantial change, and nobody argues that, um, to
17 location and the manner in which the intersection of Ski Lane and
18 Sorpresa can be used. Um, I would note that it is of considerable
19 import to me that as late as, um, June of 2008 that there had not been--
20 there had been significant grading, but the road, Sorpresa Lane, old
21 Sorpresa Lane was still some thirty foot in width, which was not, ah,
22 changed until negotiations fell apart. Um, that in July of 2006, ah,
23 Ski Lane was still the same level as Sorpresa, and then, um, that
24 ultimately changed as part of the construction.

25 It is of some significance to the Court that in it's application for

1 plat changes and changes of road that were done unilaterally by the
2 developer in this case, that the City was certainly aware of the fact
3 that, ah, it would have impact, that being the construction, on the,
4 um, the intersection, and certainly the City was aware of a certain
5 level of that impact, but I also find believable and significant that
6 Mr. Larsen indicated that when they approved the road there were lines
7 on the road that showed some change in elevation, but did not—or some
8 elevation, but did not specifically set out the exact location or
9 elevation heights. A layman could not understand what they mean. I
10 would expect that the City would have experts that could tell something
11 from that, but Mr. Larsen said a couple of things of significance.
12 One, that the exact layout of the intersection change was not known to
13 the City, or if it was it wasn't noticed, and secondly that the City
14 did not know that it was a proven that road configuration that would
15 result in a twelve-foot elevation change between that intersection and
16 the height owned by the owners. And furthermore, and I find it
17 significant, um, to some extent, um, Mr. Larsen indicated they, the
18 City, would never have approved, ah, the elevation and cut plan that
19 was submitted by the developer if they had known that that's what the
20 developer's plan was. Or, frankly, although that is somewhat
21 surprising to me in the sense that it shows what the City would not
22 have done, and had the, the, ah, developer followed the **Roaring Fork**
23 case and come to me first, it might have had an impact on my decision
24 at that time. At this point it doesn't make much difference, because I
25 conclude that the City doesn't have any more right to take property

1 owned by the Defendants than the developer does to the extent that
2 they have a legal interest in that property unless they do so by
3 condemnation. No condemnation procedures occurred in this case, so the
4 fact that the City does or does not approve an intersection, that has
5 no impact on the legal right of the Defendants to insist upon their
6 rights of easement. So it is significant to me in the sense of
7 retrospect, it's significant to me to know to a certain extent that the
8 City would never have approved this intersection, but in terms of the
9 partially of legal interest between the developer-owner and the
10 Defendants, ah, particularly when one looks at it retrospectively it
11 does not have as much relevance as one may think.

12 Now, in terms of the law that applies to easements, I would first,
13 ah, look at the **Roaring Fork** case the Plaintiffs cited as the basis for
14 their being able to unilaterally change, um, the access routes both in
15 location and in elevation, ah, based on, um, their reading of the case,
16 and, frankly, I disagree as wholeheartedly as I could with that
17 reading; that interpretation of the case. Um, the case clearly sets
18 forth in unequivocal language, um, dealing with the rights of, um,
19 water use, and I would note that these are ditch rights, and they are
20 not access roads, so, um, there are distinct differences between access
21 roads and ditch rights. Unfortunately what we do not know from the
22 **Roaring Fork** case is whether or not the dominant estate in that case,
23 or the owner of the dominant right to use the, ah, ditch rights, ah,
24 had been described in meets and bound (sounds like) descriptions, or
25 whether it had just been generally described by certain width and depth

1 without it being meets and bounds. We don't know that from the
2 facts demonstrated, so there's a significant piece unfortunately that
3 is missing. Nonetheless, the language of the Opinion is clear and it
4 indicates that we hold that the owner of property burdened by a ditch
5 easement, ah, or otherwise a burdened estate may not move or alter the
6 easement unless the owner has the consent of the owner of the easement
7 hereinafter referred to as the benefit of the estate or unless the
8 owner first obtains a declaratory determination from the Court that the
9 proposed changes will not significantly lessen the utility of the
10 easement, increase the burdens on the owner of the easement, or
11 frustrate the purpose for which the easement was created. So even
12 though Plaintiff is relying on, um, the *Roaring Fork* case, ah, they're
13 relying on a case that condemns the procedure used by the developer in
14 this case, which is absolute unilateral action in dealing with both the
15 planning and the construction of the roads in this case.

16 I would further note that the *Roaring Fork* case relied upon by the
17 Plaintiff does not overturn specifically any of the traditional
18 easement cases that have been relied on leading up to, um, the
19 initiation of the *Roaring Fork* case, in fact, they would cite with
20 approval some of the language contained in other road easement cases,
21 um, noting that, um, they refer to the fact that in a majority of other
22 jurisdictions neither the owner of the dominant estate nor the owner of
23 the servient estate may unilaterally relocate an easement once it has
24 been fixed as a general rule in absence of contrary statutes the
25 location of an easement when once established cannot be changed by the

1 party without the other party's consent, ah, they rely upon that
2 and cite it with approval. Ah, they further rely on other cases, *Lazy*
3 *Dog Ranch vs. Telluray Ranch*. In that case, ah, the owner of the
4 servient estate merely attempted to put in fencing and gates for the
5 purpose of, ah, containing cattle, and, ah, they approved of the Trial
6 Court's imposition of a compromise between two landowners subject to
7 the same easement, ah, because they both shared a road that ran along
8 the same property lines, um, and they only approved of it to the extent
9 that the cattle guards which were imposed by the Court rather than the
10 gates would not unreasonably interfere with the right-of-way. I would
11 further find language in other cases that support this view, the same
12 view. One is *Pickens v. Kemper*, which is a 1993 case, a Court of
13 Appeals case, and it was a similar situation in which one property
14 owner attempted, ah, to change the use of a road easement that had been
15 specifically deeded, ah, by imposition of fencing and change of access
16 and egress for the purpose of containing livestock, and in that case
17 there had been previously an express grant or description of the
18 easement which included width, length and location of the easement for
19 ingress and egress. This is the distinction that Mr. Krall wishes me
20 to rely upon in viewing the *Village vs. Cunningham* case, because in the
21 *Pickens* case, which is like our case here today, width, length, and
22 location of the easement had been specifically deeded, where in this
23 case it had been likewise deeded. They found it to be dispositive in a
24 number of respects. They found that the grants did not merely convey a
25 right-of-way over a particular area, strip or parcel, but plainly and

1 unambiguously created easements of exact dimensions, which is like
2 our case. That Court, that being the *Pickens* Court, found that all
3 rights expressly granted to the use of an easement pass with it, and
4 the owner of the easement has the right to use that easement unhampered
5 in any way by obstructions. Um, the Court further found that the
6 grants do not merely convey a right to travel some where over an area,
7 which is what our Defendants would be left with under the Plaintiffs'
8 view of the case, and thus in that case the Trial Court properly
9 determined that the Defendants had no right to place any form of
10 obstruction in the described easement area. I would likewise point out
11 a similar case which was cited with approval by the *Roaring Fork* case,
12 that is *Hornsilver v. Trope*. In the *Trope* case, ah, the dominant
13 estate had a right to access for parking easements, and, um, in that
14 case the Defendant had merely attempted to construct a piece of
15 property wherein there would be an overhang over that easement, um, and
16 again that was the subservient property doing it to the dominant
17 estate. The Court likewise in that case had ordered that the
18 subservient estate, or excuse me, the dominant estate restore the
19 subservient estate, likewise relying on cases similar to *Defense*.
20 So I conclude, um, that, ah, the *Roaring Fork* did not substantially
21 change easement law, but merely attempted in certain circumstances to
22 clarify those relationships that one party may have to another as Mr.
23 Mulliken indicated by adopting argumentatively the Restatement language
24 dealing with changes made by one party over another, but still holding
25 that unilateral action was condemned and the Court, if it was done in

1 advance, could merely consider the various issues including the
2 Accommodation Doctrine in determining whether or not, ah, changes in
3 the dominant estate could be forced upon it over its objections. I
4 would note the Accommodation Doctrine stands for the proposition that
5 where possible uses must be exercised consummately with one another.
6 Each owner must have due regard for the rights of the other in making
7 use of its respective estate. There must be a balancing of the
8 interest and the interest of both parties must be balanced in order to
9 achieve the reasonable enjoyment of both the easement in the dominant
10 and subservient estate. And it's against the backdrop and the backdrop
11 of the other case law, which goes back to the turn of the nineteenth
12 century in terms of dealing with easements and property rights that the
13 *Roaring Fork* case has to be viewed.
14 Um, I would note that the Restatement, if the developer had brought
15 me this information in advance in application, would have required that
16 the developer would show that the proposed changes in the easements,
17 first of all would not significantly lessen the utility of the
18 easement. Secondly that the increase of the burden is on the owner of
19 the easement in its use or enjoyment, or last, would not frustrate the
20 purpose for which the easement was created. The Court has to consider
21 the relative expense or inconvenience which would be occasions to the
22 parties. In other words balance the injury. It should refuse to grant
23 the injunction whenever it would operate inequitably or oppressively,
24 and that's assuming in this case that the Defendants would have brought
25 the, ah, the injunctive-request for injunctive relief rather than the

1 reverse. And so against the backdrop of the prior case law and the
2 case law contained in *Roaring Fork*, um, the Court concluded under the
3 unusual circumstances in *Roaring Fork*, that is that a ditch easement
4 which changed in location which did not substantially change the use,
5 ah, or increase the burden on the owner, in other words it had very
6 insignificant impact on the owner of the, ah, estate, that the Court
7 could approve it noting that there could still be found trespassing.
8 In this case, having both viewed the site in question as well as
9 heard all of the testimony, I find that the Plaintiff has not met any
10 of the burdens that would be required by, um, the *Roaring Fork*
11 decision. First of all, when you drive to the site, it's clear to me
12 you can define both from the pictures that have been submitted here
13 today and just my view of the site, where the easement is that was
14 granted to all of the Defendants in this case. It's a thirty-foot
15 easement. There is no, ah, there are no limitations on the easement.
16 There are--there is no right to lower the easement, and it is clear from
17 the, ah, pictures leading up to July of 2006 that this was just a
18 standard dirt road that provided easy accommodation to the, ah, all of
19 the Defendants in this case, and provided easy access to them to their
20 various properties, that that easement then went north and provided
21 access to Cowpoke Road, that it was all done, um, at a generally
22 singular height with the exception of what's been described as the
23 knoll located at the intersection, ah, and since that time this
24 easement has been substantially changed. Substantially changed in the
25 sense that their thirty-foot access easement has now been turned into,

1 um, egress into their property that in some locations is merely ten
2 feet wide. No reasonable person could indicate that that has not
3 substantially changed the use of that easement. You can't have cars
4 pass by it. You can't have a large truck turn around within the
5 easement. Um, parties can't back into it. The road erodes, ah, as a
6 collateral that doesn't make much difference it's ugly. Um, it is
7 inconvenient in the extreme. It contains a, ah, a guardrail around
8 which there is considerable erosion. There is a picture that has been
9 presented by the Plaintiff that shows somebody attempting to drive in
10 there apparently drove off the edge of it, so it's potentially
11 dangerous. It may make fire access more difficult. Ah, it has
12 substantially, significantly changed in its dimension from what was
13 granted. Now I would note that if this were merely an access agreement
14 that provided for a general access to the property and provided the
15 right to the developer to move the access at some point in the future
16 as long as, ah, substantially the same sort of access had been
17 provided, then I might be convinced that, ah, the developer has
18 provided substantially the same. In this case that's not it. In this
19 case there is a legal description where it is clearly described what
20 each one of the Defendants are entitled to, ah, both in terms of
21 immediately in front of their house, ah, and to access to Cowpoke Road
22 on the north. That has been substantially taken away. Ah, so we have
23 another dilemma here which is we have deeded property that can be, even
24 though it's a right-of-way, it is merely an easement, um, we have what
25 is contained in the deed that has now been taken away in its entirety.

1 So if the Defendants in this case were to convey this property, and
2 I think that is what the case is getting at that has been provided by
3 Mr. Krall from another state, ah, they are no longer able to convey,
4 um, the same thing that they owned leading up to this. That is they
5 have legal description to a right-of-way that is now cut in half or is
6 completely gone by the new road. Um, so, I will find that they have
7 not met, they the Plaintiffs, have not met the burden that's
8 established by the Restatement. Even if the Restatement applies to a
9 situation such as this, ah, wherein there has been a legal description
10 provided for this, um, this right-of-way, a brief—I don't know that our
11 Supreme Court would deal with it in the same way. I'm merely guessing.
12 Other Supreme Courts have rejected arguments similar to that made by
13 the Plaintiff, but I can't assume that Colorado would do the same. I
14 will just merely find that even if **Roaring Fork** would allow the
15 relocation of an access easement that has been previously described and
16 recorded and, um, a provides a cognizable interest in real estate, even
17 if that were the case and that the Restatement applied, and I'm not
18 completely sure that it does, the Plaintiff has not demonstrated, um,
19 what would have to be demonstrated, and that is a non-substantial harm
20 or injury to the Defendants, so I find that there is substantial harm
21 and injury.

22 The next question that has to be shown by the Plaintiff is whether
23 or not they reached this agreement with the Defendants in advance.
24 Clearly they did not. I don't think anybody substantially objects to
25 that finding or proposition, so then the only question becomes whether

1 we have a settlement that can be imposed upon the Defendant or any
2 of the Defendants. Even if I assume that there was a settlement in
3 this case with the Pecks, the Marchants, um, and Ms. Howell, that does
4 not in any way, ah, affect Mr. Oliver's rights, or does it affect Ms.
5 Hanson's rights. They were not parties to it. They had a deeded
6 interest in the rights-of-way, so anything that applies to them, um,
7 they have a right to assert on their own. They have a right to the
8 easement as it was shown in the hatched red as well as does anybody
9 else, but having said that, I find that there isn't--there has been no
10 agreement reached amongst any of the Parties for the following reasons.
11 Ah, first of all, no settlement agreement was ever executed. Um, there
12 has to be a meeting of the mind as to all material items before I can
13 conclude as a matter of law that there was a settlement agreement.
14 First of all, settlement was denied by all of the Defendants.
15 Surprisingly Mr. Peck was the closest to saying that he had a
16 settlement agreement arranged, but he still wanted some, ah, things
17 given to him which were not provided by the Plaintiff. Clearly from
18 the testimony of Mr. Marchant and Mrs. Marchant, um, one of their deal
19 breakers was, ah, the, ah, the access going north, and, um, El Glen was
20 never agreed to, and so they withdrew. They denied that there was any
21 settlement agreement. Mr. Oliver, of course, indicated that he was
22 never involved in a settlement. I would note from a letter by Mr.
23 Francis, which as been admitted as Y9 (sounds like) that he wrote to
24 his clients at the time and said there wasn't an agreement as to
25 anything. We haven't heard anything different from Mr. Francis. I

1 would think if he were a person who would indicate that there was a
2 settlement that he would have been called as a witness in this case.
3 He was not, so I just have to assume that he would say what he said in
4 the letter which is the Parties hadn't agreed to anything, and this was
5 in September of 2008. So I find that the Plaintiff has failed to meet
6 the burden of either demonstrating a request of the Court,
7 demonstrating that there was an earlier agreement of the Parties, or
8 demonstrating that the Parties had reached a settlement that would
9 constitute an agreement, an enforceable settlement. Last, that even if
10 there was a settlement it would not apply to the two Parties that were
11 not involved in the settlement, in fact, that was obviously clear to
12 Mr. Mulliken because at late stages of the settlement he was attempting
13 to get Ms. Hanson involved as part of the settlement agreement, and I
14 agree with him. You can't have a settlement with one Party and not
15 include everybody when they are, um, owners of right-of-way easement.
16 Now, I would note some other things that are of interest but really
17 don't drive the final decision in this case, and that is the City
18 didn't know until after construction had already begun, the utilities
19 had been moved to a substantial degree, and grading—a substantial
20 amount of the grading had been done that there was a, um, plan to
21 significantly change elevation. I would note the City said they would
22 have never approved that change of elevation. Ah, even that being the
23 case, um, the City attempted obviously through Mr. Larsen to effectuate
24 a settlement amongst the Parties that would resolve the problem. It is
25 clear from Mr. Larsen's September letter that he attempted to do so.

1 As part of that negotiation, um, he attempted to resolve the
2 concerns of the Defendants and get their agreement to some things. He
3 attempted to get the developer to consider moving the road to the
4 north, um, such that it would go around the intersection and satisfy
5 the Parties. All Parties at that point made the decisions that they
6 were entitled to, which is they said no, um, to all of the various
7 attempts he made. The developer made a business decision that he did
8 not want to impact any further his proposed lots by running Sorpresa
9 Lane north, which apparently would have been satisfactory. The owners
10 decided, ah, well they didn't decide because they didn't know what the
11 various grading easements or slope easements would have looked like.
12 They decided or declined to go forward with an agreement at the time.
13 Everybody had the right to make that decision, but I would note that
14 the developer as early as 2005 and 2006 by deciding to unilaterally go
15 forward with this development without getting the consent of owners of
16 recorded easements across his property did so at its own risk, and did
17 so frankly in violation of Colorado Common Law as it relates to
18 easements. So doing so subjected them to the possibility of
19 significant financial impact even though they probably didn't know it.
20 They had no, um, bad state of mind if you will or bad will whatsoever.
21 I'm sure they were doing the business they do best, which is planning
22 for them for the most financially feasible and appropriate use of their
23 property, and unfortunately by doing so they significantly interfered
24 with the rights of easement owners. Now I considered as options in
25 this case merely ordering the developer to return the Sorpresa Road

1 property to its former state. It is--had it been--it contains a
2 well-described and clear access agreement of crossing. I considered
3 finding that, um, that the developer had given an alternative access
4 through Tutt and the pavement of Cowpoke Road such that the, ah, owners
5 had essentially the same thing as they did before they cut the road in
6 and ultimately cut off Cowpoke, but frankly I don't think that's what
7 the **Roaring Fork** decision says, nor do I think that that's what the
8 case law indicates. I further find that my jurisdiction is limited
9 even in a, um, case in which I'm being asked to invoke equity
10 jurisdiction, which is what I'm doing in this case.

11 Um, it is most moving to me, and I rely most upon the fact that each
12 one of these homeowners owns not only, ah, a deed to their property,
13 but they own the right-of-way to that land that has been described in
14 their access agreements, and I conclude that it was likely that the
15 Appellate Courts in our state would find that to be different than the
16 situation where it is an undescribed access agreement. Further I would
17 find that, ah, and I am now speculating, that the Defendants have
18 demonstrated that there has been some change to that recorded easement
19 by it being closed off, and that merely providing Tutt as an alternate,
20 that does not give them the same access that runs with their land, and
21 I don't think **Roaring Fork** goes so far to say that when they have the
22 type of legal description that is contained in each one of the
23 Defendants' deed that that gives a co-owner of that easement or a
24 burdened estate the right to unilaterally move that road to another
25 location, so the fact that it does anything which it does in this case,

1 it has precluded currently access to Cowpoke Road. It has
2 precluded some, um, access by the Fire Department and safety, although
3 I find that somewhat less significant than the fact that the, ah,
4 Defendants in this case have a recorded, um, legal description to an
5 easement. I find that more important, and the fact that the developer
6 has taken that away I find to be significant and a trespass. Likewise
7 I find that there has been a trespass on the easement on Sorpresa. So
8 the only Order the Court can enter based on *Roaring Fork* and the prior
9 case law of the, um, that relates to easements, and I started this case
10 thinking I would come out a hundred and eighty degrees different from
11 this, is that the developer will have to restore, ah, the access
12 easements to the location, to the, ah, position they were in at the
13 time that it first unilaterally cut into them, um, unless they reach
14 some other accommodation with all of the owners that are affected.
15 That's as simple as I can make the Order. Any questions?

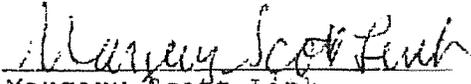
16 UNIDENTIFIED SPEAKER: No Sir, Your Honor.

17 THE COURT: I'll require that the developer give me a proposal for
18 timing on doing so within the next thirty days subject to objection
19 from the Defendants. If they don't reach an accommodation, then I will
20 expect a plan from the developers how that will be restored and on what
21 time frame that will occur. That takes care of the business of the
22 Court. The Court is in recess.

TRANSCRIPTIONIST'S CERTIFICATE

The above and foregoing is a true transcript of the requested portion of the hearing in proceedings taken in the above-entitled case, which was recorded in the El Paso County Combined Court at the time and place set forth above, which was listened to and transcribed to the best of my ability.

Done this 2nd day of January 2011.


Margery Scott Link
Transcriptionist


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<p>El Paso County, CO DISTRICT COURT Court address: 270 South Tejon St. Colorado Springs, CO 80903 Phone Number: (719) 448-7632</p>	<p>EFILED Document CO El Paso County District Court 4th JD Filing Date: Nov 26 2012 10:32AM MST Filing ID: 47929648 Review Clerk: Sarah Vallejo</p>
<p>WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 1, ET. AL. Plaintiff, v. WILLIAM MARCHANT, ET. AL. Defendants, v. KF 103-CV, LLC Third Party Plaintiff v. RS HOLDING COMPANY, LLC, ET. AL. Third Party Defendants</p>	<p>Court Use Only</p>
	<p>Case Number: 08 CV 4553 Division 5 Courtroom 501</p>
<p>Order Re: EQUITABLE REMEDIES AND JUDGMENT</p>	

This case came before the court for trial of remedies to be afforded to certain of the defendants in this case. Those defendants, hereinafter referred to as "the neighbors" include Mr. Peck, the Marchants, the Olivers, Susan Hanson, Marilyn J. Howell as Trustee of the Marilyn Howell Trust and Ms. Nance. KF 103 and the Woodmen Heights Metropolitan District ("the District") brought a quiet title and declaratory judgment action against the Neighbors in September 2008. In that suit KF103 and the Woodman Heights Metropolitan District (WHMD or the District) asserted that the District owned fee title to a 30' easement over Sorpresa and Ski Lane that has been the subject of this dispute. They further asserted that KF 103 was an adjoining landowner and developer of a subdivision adjoining the development, with an obligation to install part of a "substituted easement".

The plaintiffs KF 103 and the District acknowledged in the suit that a Right of Way deed had been recorded by the Cantrell's in 1956 that created a "non-exclusive easement" over the 30' easement. In fact, a copy of the grant was attached to the complaint. But the two plaintiffs claimed the right to move the easement to other locations pursuant to *Roaring Fork Club, L.P. v. St. Jude's Co.*, 36 P.3d 1229 (Colo. 2001). By this action the plaintiffs were seeking to vacate or alter the Neighbor's easement rights and declare that they had to use other roads for access.

By the time the matter went to trial in 2010, the residential development created by KF 103 had been substantially completed, Ski Lane was blocked and

Sorpresa Lane had been cut in half in close proximity to the neighbors. The "new Sorpresa" was graded approximately 10' below Sorpresa's original location and the Neighbor's access to what was left of the Sorpresa portion of the easement had been turned into a 180 degree u-turn. Where there used to be a minimum width of 20' on Sorpresa for the neighbors to have access to their homes, there was, and is now, a 10' wide road adjacent to a 10' drop in the road.

At the conclusion of the trial I concluded that the neighbors had right of way easements over specific land that had been conveyed by metes and bounds description. (See Peck ex. B). I further concluded that the property interest conveyed by that grant ran with the land and could not be altered or disturbed without the consent of each party who benefited from the grant. I further concluded that the plaintiffs had trespassed upon the neighbors easements and had not satisfied the limited situation wherein easements could be moved after the *Roaring Fork* decision. I ordered the plaintiffs to "restore" the easements to their pre-destruction condition.

The plaintiffs thereafter filed a Motion for Post-trial relief. They asserted that I had bifurcated Mr. Peck's recently-filed counterclaims and thus had exceeded the parameters of the trial. Even though Ms. Hanson had demanded restoration in a counter-claim and Mr. Krall had indicated in opening statements that his clients also sought restoration, I granted the request to set over the Issue of remedies in a clarifying order issued December 23, 2010. In that order I gave the neighbors an opportunity to clarify or file new counterclaims and to continue to seek restoration and damages and to add other parties if they deemed it appropriate.

Since that time several other parties have been added, either by the neighbors or by KF 103. I continued the second portion of the trial again in order to add all parties that might have an interest in the outcome of the litigation, either directly or in an indemnifying capacity. The City was added by KF 103, arguing that they needed to be a party to any change made to their previously approved plans.

The trial of the "remedies" portion of the dispute occurred before me from October 23, 2012 and November 2, 2012. As a result of the trial I hereby enter the following **Findings of Fact, Conclusions of Law and Order:**

Status of Right-of-Way determination:

There were numerous "developer" LLC's involved in various aspects of these disputes. Because they were added after the first trial, I gave them an opportunity to present evidence on issues that were generally resolved at the first trial. While collateral estoppel could arguably have precluded more litigation on the same issues, no one asked for such a determination. Accordingly, RS Construction, LLC and Howard Investments, LLC and "Infinity" were allowed to present testimony on whether the

neighbors had reached an earlier agreement to compromise their rights of way or whether an enforceable easement was created by the 1956 grant.

Having considered the testimony from both trials, I conclude that the Neighbors did NOT reach an agreement to allow any entity to change or take away their deeded easement. Although there was testimony that various parties came close to an enforceable agreement (see Francis letter at ILC 31), I am convinced that no binding agreement was reached. Any proposed agreement was clearly rejected by the neighbors before it became bilateral.

I also conclude that the Peck ex. B, the Right of Way Deed granted by the Cantrells in 1956, created a nonexclusive 30' easement in favor of the neighbors along Sopresa Road and Ski Lane. Like any specifically described and recorded interest in real estate, that easement was permanent and ran with the land. The Neighbors could not be divested of that land without their express consent and an appropriate conveyance. I was not convinced by the testimony of Mr. Whitmore that lack of "acceptance" by the grantees negated the creation of an easement.

Colorado statutes dealing with the conveyance of real property don't impose a formal obligation to "accept title". The common law generally required delivery and acceptance to pass title, particularly when an obligation was imposed on the grantee. *"A deed must be delivered before it becomes operative as a conveyance, and, in general, acceptance is essential to complete the delivery and pass the title. As to persons sui juris, acceptance as well as delivery is a matter of intention, to be proved by some act or declaration, or to be presumed from circumstances, but will not be lightly presumed where the grant imposes some burden or obligation upon the grantee; and the recording of a deed by the grantor without the direction or knowledge of the grantee is not, of itself, evidence of acceptance."* Rittmaster v. Brisbane, 35 P. 736, 738 (Colo. 1894).

I assume that Mr. Whitmore's concern with Peck ex. B is that the grantees did not sign the document as having been "accepted". I conclude by a preponderance of the evidence that there was acceptance of the grant, based upon the recording of the document in 1956, the fact that the Neighbors have claimed the benefits from the deed and that there has been 50 years of uninterrupted use made of the rights of way which are consistent with the grant. I conclude therefore that the Right of Way deed conveyed the easements to each Neighbor that have been the subject of this litigation.

Even if the neighbors did not have a right of way based upon the Cantrell deed, they clearly had a prescriptive right of way across the same land and in the same size and location. *"An easement by prescription is established when the prescriptive use is: 1) open or notorious, 2) continued without effective interruption for the prescriptive period, and 3) the use was either a) adverse or b) pursuant to an attempted, but ineffective grant."* Taylor v. Lobato, 71 P3d 938, 950 (Colo. 2002). The Ski Lane and

Sopresa easements were used openly, without interruption and adverse to any other grants or claims to the contrary for more than 50 years. Accordingly, the neighbors are entitled under a theory of prescription to the easements described in the 1956 Right of Way Deed, even if that deed was ineffective.

FINDINGS OF FACT:

Paul Howard became interested in the land that now comprises the Cumbre Vista subdivision in 2003. He purchased various parcels to form what later became the subdivision through Infinity Holding Company, LLC and Howard Family Investments, LLC. Infinity Holding members included Howard, Scott Hente and Robert Ormston. Howard Family Investment's members were Paul Howard and Jonathan Howard.

The land was combined into what later became known as the Cumbre Vista subdivision and sold by Infinity Holding and Howard Family Investments to Keller Homes, Inc. and the Campbell Companies, LTD on December 17, 2004 (KF 103 Ex. 34). Paul Howard had to first convey certain parcels within the proposed subdivision to Infinity. The perimeter of the land included Cowpoke Lane on the North, Ski Lane on the East and Sorpresa Lane on the southern boundaries. Section 6.2 provided that the Sellers would "complete improvements to boundary streets as required by the City...including asphalt, curbs, gutters, curb cuts...". Section 4.4 provided that the sellers could form a metropolitan district to help complete "Seller Improvements" that were established in the purchase agreement. Another section of the Agreement provided that the Seller would create a metro district and would be further responsible for platting and annexation the land into the City.

Commonwealth Land Title Insurance Company delivered to Keller Homes, Inc. a title commitment to the property (Peck ex. UU). The commitment is dated October 21, 2004. Contained as an **exception** to title insurance in Schedule B of that policy is the following language: "***Provisions and conditions contained in right of way for road and public utility services lines or pipes as recorded in Book 1573 at Page 596 and correction recorded in Book 1587 at Page 149***". That reference is to the Peck ex. B Right of Way Deed.

On January 12, 2005, Keller Homes and Campbell Companies wrote a "letter of intent" to Paul Howard personally, offering to buy 35 acres, known as Powerwood IV, east of Ski Lane and South of Cowpoke. (Peck ex. AAA). It provided that Howard would be responsible for grading of the entire site, all City approved improvements and the platting and annexation of the property. The letter specifically provided the following:

"This agreement includes an understanding that Ski Lane will be vacated and will not be constructed as contemplated for Cumbre Vista between Infinity, Campbell, Keller and others." The letter further indicated that removing Ski Lane would result in 16 additional lots.

On the 31st of March 2005, Keller Homes, Inc. and the Campbell Companies, Ltd. purchased 37 acres of ground to the east of Ski Lane from H2 Land Co. LLC (KF 103 ex 35). The members of H2 Land, LLC were Paul Howard and Jonathan Howard. The land conveyed was bordered by Ski Lane to the West, Cowpoke Road on the north and Sorpresa Lane on the south. (See attachment to ex 35). Paragraph 6.2 of that agreement provides that the Seller would ***"cause the District, at the District's sole cost and expense to complete improvements to the Boundary Streets..."*** That section further contains the following language: ***"Buyer acknowledges that the exiting right of way known as Ski Lane that runs along the westerly boundary of the Property shall be vacated by Seller in connection with the Governmental Approvals."*** Paragraph 6.4 of that agreement that either the seller or the District would complete construction of seller improvements.

The agreements envisioned Keller Homes, Inc. developing residential lots for resale within the area bordered by Tutt Blvd. to the West, Sorpresa on the South and Cowpoke on the north. Ski Lane was to be vacated in order to create more buildable lots.

Keller Homes, Inc. and Campbell Companies, Ltd. as the buyers of the property entered in to an "Omnibus Amendment to Purchase Agreements and Assignment of Assumption and Consent to Assignment and Assumption of Purchase Agreements" with the Infinity Holding, H2 Land Investments, Howard Family Investments and Howard, Hente and Ormston on November 22, 2005. (KF 103 ex. 36). That agreement provided for the transfer of Keller's and Campbell's interest to a new entity, Keller/Campbell Joint Venture, LLC. It also reiterated the requirement that the Seller entities would complete the perimeter roads including Sorpesa Lane. The agreement provided that Ski Lane had now been "incorporated" into the plat and was no longer a "boundary street". From that point forward, all parties to that Omnibus agreement contemplated that Ski Lane was to be vacated and replaced with a series of residential lots. Howard, Hente and Ormston all personally guaranteed performance of the Omnibus agreement.

At some point after the Omnibus agreement was signed, Mr. Campbell was bought out and KF 103 was formed and merged with Keller/Campbell Joint Venture, LLC. (Keller ex. 7)

A survey was completed in January 2005 (Peck ex. VV) That survey again indicated the existence of the recorded right-of-way deed. Mr. Howard began working with the City and executed an annexation agreement on October 26, 2005. (Peck Ex WW3) In that agreement H2 Land was responsible for construction of the roads and their ultimate dedication to the City. It envisioned a 60' right of way along Sorpresa would be built out. The approved development plan that had been negotiated with the City showed Ski Lane would no longer exist and that the entire area would be graded.

(Peck ex. Xx). A grading plan was approved in June 2005 that provided that the Sorpresa Lane would be cut down to a location that was approximately 10' below its former height. (3rd Party ex. Ss).

Mr. Mitros, a City engineer, testified that the City didn't realize there would be such a "slot cut" when it was approved. When grading stakes were set out, the Marchants contacted Mr. Mitros to complain. He merely indicated that "they can't do that". The Marchants believed that Mr. Mitros would do something to change the proposed grading plan. At the former trial, Mr. Larson, also of the City, indicated that the City would not have approved the grading had they realized that Sorpresa was going to be graded to its current configuration.

Grading began after in March or April 2005. Mallon construction was hired by RS Construction to perform the grading. Mr. Keller testified that the grading continued throughout that year and finished sometime before August 2006, to coincide with a "parade" opening.

In June 2006, Mr. Peck wrote letters to Mr. Howard and the City, complaining that the *proposed* grading of Sorpresa would interfere with his property and access rights (Peck ex. I & Peck ex S). He complained that the grading would infringe on at least 20' of his property. At about the same time, Charlie Williams, representing himself acting on behalf of "Infinity", posted a notice that Ski Lane would be closed "temporarily" for construction of utility lines (Peck ex. J). Ski Lane was in fact closed but it never reopened. City and neighbors subsequently talked to Mr. Williams and were assured on behalf of "Infinity" that closure of Ski Lane was temporary only. The neighbors claim in this suit that Mr. Williams knowingly or negligently misrepresented material facts by posting the sign and "lying" to them about plans for Ski Lane.

In an October 23, 2008 meeting at the City Administration building the following history was recorded: " The Cumbre Vista – Major Roads Grading and Erosion Control Plan Phase 2 was reviewed and signed off by City Engineering on July 21, 2006. The plan did show the intersection of Sorpresa Lane and Ski Lane. It showed significant grade changes between existing and proposed elevations at the intersection. It showed all grading to occur within the proposed right of way for Sorpresa Lane and the 30 feet "existing street" for Ski Lane. It showed the Sorpresa Lane typical section profile. City Engineering added the hand written note: "grading not to encroach into/on parcel 53060-00-032 (Peck's property)...Howard Gerrit Slater, Charlie Williams, Tim Mitros , Lydia Maring, Dave Litzelman and Larry Larsen were all present at that meeting. (Peck ex. Z)

Infinity Construction and Development, Inc., now known as RS Construction Development, Inc. had the obligation of constructing perimeter roads in the development. Shareholders of the entity are Hente and Ormston. Infinity Land

Corporation acted as a supervising general contractor over the development. Its shareholders are Paul Howard, Johnathan Howard and Charlie Williams.

While some efforts were apparently made to appease some Neighbors, grading continued. By May 12, 2007, photographs show that Sorpresa and Ski Lane were graded to their current levels and the "cliff" (to use the Neighbors term) was created. (Compare *before pictures* in Peck ex's H1 – H8 with *after pictures* Peck ex's. N1 – N4). The result of that grading was to cut the Neighbor's access along Sorpresa to a 10' width between a utility pole and a guard rail. The grading cut created a steep slope with no support that erodes during inclement weather. The Neighbors most directly and adversely affected by the grading of Sorpresa included Mr. Peck, the Olivers, the Marchants and Susan Hanson (see Peck ex's A & Peck ex's AA1 – AA12). The intersection with Ski Lane was cut down to its current grade and Ski Lane has been closed to vehicular access.

As grading progressed the neighbors began to complain strongly to the City. The City did research into the neighbor's claims that the neighbors might have an ownership interest in the roads. No one at that time ever considered that the neighbors might have gained prescriptive rights to the access easements. Nor apparently, did the neighbors assert prescriptive rights, which they could have. The City contacted the Keller Homes/ KFC 103 representative Ed Gonzales and suggested that he consider moving Sorpresa north into certain planned landscaped area so that the neighbors concerns could be accommodated. Representing himself as speaking on behalf of Keller Homes, Mr. Gonzales rejected that proposal as unsightly and unsafe. (Peck ex. EEE).

By June 4, 2007, the neighbors were asserting that while they didn't own Sorpresa and Ski Lane, they had a deeded 30' right of way. On June 6, 2007, Mr. Peck wrote the City, claiming that his right-of-way interest was conveyed in the recorded 1956 deed. (Peck ex. S). Tim Mitros wrote to *Infinity's* Charlie Williams on June 7, 2007 indicating he was concerned about the grading of Sorpresa and lack of access that the grading caused. (Peck ex. S2).

A meeting was held on November 29, 2007 to discuss the road problems. (see Peck ex. GGG). Present were Paul Howard and Charlie Williams, holding themselves out as *Infinity Land Corp*, Ed Gonzalez representing himself as acting for Keller Homes/KF 103, attorneys for the City, an attorney for *Infinity* and members of City Planning and Engineering. They discussed various options on dealing with the neighbors concerns.

Some other efforts were made to accommodate the neighbors. The neighbors hired a lawyer to assist them. Some negotiation occurred over the next several months and the parties all indicated they were close to an agreement, but ultimately the agreement fell through. The City approved the u-turn intersection that serves at Sorpresa and Ski Lane and the 10' elevation drop on March 4, 2008. (Peck ex. Z).

WHMD was tracking progress in negotiation throughout 2007 – 2008. (WHMD ex. 112). When road ownership became an issue, Mr. Howard purchased Mr. Cantrell's remaining ownership in Ski Lane and ultimately conveyed it to the District. (ex. 112 October 1, 2008 minutes). The District was encouraged by Howard to become "the face of negotiation", in hopes that a settlement could be reached with the neighbors. Ultimately counsel advised the District that they should join as parties to the quiet title suit. At all times, Mr. Hente and Mr. Howard were board members of WHMD. KF 103 as an adjoining land owner was talked into joining in the litigation by the District's counsel.

CONCLUSIONS:

The parties were given considerable latitude in the presentation of evidence in this remedies portion of trial. I allowed Infinity and others to present evidence to demonstrate that either no enforceable right-of-way easement existed in favor of the neighbors or that they had agreed to the substantial changes. The testimony presented only confirms my legal opinion from the liability portion of the trial; each of the defendant neighbors has a deeded and enforceable right-of-way easement over Sorpresa and Ski Lane. By unilaterally closing off Ski Lane Road and cutting into Sorpresa without the consent of the neighbors, the offending parties have trespassed on a clear property right.

I also confirm my previous findings that the Roaring Fork case relied upon by the original plaintiffs in this case was not complied with. The plaintiffs did not first obtain consent for the trespass nor did they come to the court for declaratory relief before the significant changes were made. Likewise, the trespass destroyed the utility of the Sorpresa right of way rather than merely replace it and the completion of Tutt road failed to provide an adequate substitute for Ski Lane.

Some other efforts were made to accommodate the neighbors. The neighbors hired a lawyer to assist them. Some negotiation occurred over the next several months and the parties all indicated they were close to an agreement, but ultimately the agreement fell through. The City approved of the u-turn intersection that serves at Sorpresa and Ski Lane and the 10' elevation drop on March 4, 2008. (Peck ex. Z). Accordingly, I confirm my previous finding that the Plaintiffs have in **no way** complied with Roaring Fork and were therefore not entitled to close Ski Lane and destroy "old" Sorpresa.

Further, I conclude that the intrusions are a **continuing trespass**. *"In cases when the defendant erects a structure or places something on or underneath the plaintiff's land, the defendant's invasion continues if he fails to stop the invasion and to remove the harmful condition. In such a case there is a continuing tort so long as the offending object remains and continues to cause the plaintiff harm."* Hunter v. Manswell, 240 P.3d 469, 477 (Colo. App. 2010), citing *Prosser & Keeton on the Law of Torts*, sec. 13 (5th e. 1984). *"For continuing intrusions...each repetition or*

continuance amounts to another wrong, giving rise to a new cause of action". Fowler & Hartper, et. al., The Law of Torts sec. 1.7 3d ed. 1996) Accordingly, a new trespass is committed every day until the intrusion is removed. See e.g. Hoery v. United States, 64 P3d. 214 (Colo. 2003).

The neighbors have asserted numerous claims for relief against the various parties. Those that play the most significant role in my decision are for Trespass and Civil Conspiracy.

Section 18:1 of Colorado's Civil Jury Instructions (CJI) (2012 ed.) provides the following elements for Trespass:

1. The plaintiff was the owner or in lawful possession of certain property;
2. The defendant intentionally entered upon or **caused another to enter upon that property;**
3. The trespass caused damages.

A person acts "intentionally" when "it is his or her purpose to enter upon or cause another to enter upon the property or when it is his or her purpose to do the act that in the natural course of events results in the intrusion".

To prevail on the claim of "civil conspiracy" the following 4 elements must be proven:

1. The defendants and at least one other person agreed, by words or conduct, to accomplish an unlawful goal or accomplish a goal through unlawful means;
2. One or more unlawful acts were performed to accomplish the goal;
3. The plaintiff suffered damages;
4. The plaintiff's injuries were caused by the acts performed to accomplish the goal.

The comments section of the CJI indicates that there are no comprehensive Colorado definitions of "unlawful means". There are cases referred to in the comments section that describe specific acts as "unlawful means", such as a breach of duty of loyalty, wrongful use of trade secrets and, notably, destruction of decreed reservoir rights.

In this case I conclude that the unlawful act(s) was the destruction of deeded and prescriptive right-of-way easements without the proper legal authority. Proper legal authority under Colorado law would come from consent of the neighbors, or properly conducted condemnation proceedings initiated by the City or some other legitimate means such as compliance with the Roaring Fork decision. The illegal means were the unilateral closing of Ski Lane and the destruction of Sorpresa Road.

There is considerable overlap between the theories of Trespass and Civil Conspiracy. Because conspiracy is a *derivative cause of action*, Double Oak Construction..LLC v. Cornerstone Dev. Int'l, LLC, 97 P.3d 140, 146 (Colo. App 2003), the Civil Conspiracy claim is interwoven with the claim of trespass. In this case I conclude that there was a Civil Conspiracy among virtually all of the Plaintiffs and third party defendants to trespass on the Neighbor's easements.

I found little if any evidence of malice. But neither malice nor any other form of "evil intent" is required to form a civil conspiracy. Rather, I find that the various developers in this case were intent on engaging in the perfectly legal activity of planning and constructing a significant residential community. From a layman's perspective, they did a good job of it. Unfortunately, in the process of planning and building the community, they ignored the property interests of the Neighbors.

The Keller Homes title commitment first showed the neighbors' easements as a "title defect". The title commitment "excepted" the rights of way from coverage. The survey that was ultimately prepared showed the same thing. The disclosures of those defects apparently had little impact on the parties. It would have been simple enough at the time to plan around the Neighbor's easements, but for a variety of reasons, they seem to have been ignored.

Even if there were no recorded easements in existence, which there were, the various developer parties should have been on notice of the potential of adverse claims to a road by the fact that Ski Lane and Sorpresa had been continuously used for over 50 years.

It became clear by the time of the March 2005 purchase agreement that Ski Lane was to be vacated. Both purchase agreements provided that the Sellers would be responsible for perimeter roads. Most significantly, the Omnibus agreement demonstrated that there was a meeting of the minds of all parties to that agreement, albeit with no specific malice toward the Neighbors, that the Neighbors' rights of way would be significantly impacted. Ski Lane was no longer to exist and the grading plan prepared as a result of the various agreements virtually destroyed much of the utility of Sorpresa from the Neighbors' perspectives.

The purchase agreements contemplated the formation of a metro district to carry out the seller's obligations. In fact, individual owners of various LLCs, including Mr. Howard and Mr. Hente became Board Members of the metropolitan district.

By the time of the signing of the Omnibus agreement, all parties were on either constructive or actual notice of the neighbor's easement rights. The testimony at trial was that counsel had advised each party to that agreement that the easements could be legally moved without consent, condemnation or court action. That advice, while it may demonstrate that the parties were acting without malice toward the Neighbors,

does not absolve them from being involved in a conspiracy to commit trespass. While the parties to that agreement may not have known that by vacating Ski Lane and re-grading Sorpresa they would be committing a trespass, they knowingly entered into an agreement that would create just such a result. The unlawful acts were the closing of Ski Lane and re-grading of Sorpresa without the legal right to do so.

Even ignoring the civil conspiracy theory, the signing of the Omnibus agreement clearly supports the finding of trespass. The agreement is clear evidence of the **"defendant intentionally causing another to enter upon the property"** of the Neighbors. The signers had constructive notice of the Neighbors' claim to the easements by virtue of the title commitment and survey and further constructive notice of prescriptive rights by the Neighbors' use of the roads for years. With such constructive notice the parties to the agreements had a duty to inquire further into competing rights of way before beginning construction.

By signing the purchase and Omnibus Agreements and actively pursuing the dictates of those agreements, each signer entered into a conspiracy to commit trespass against the Neighbors' real property interests. Likewise, pursuing those agreements resulted in "causing others to enter upon the property" of the Neighbors. Accordingly, I find the following parties liable for damage caused by a civil conspiracy and trespass: Keller Homes, Inc. and the successor KF 103, CV, LLC, Keller/Campbell Joint Ventures, LLC, Paul Howard, Jonathan Howard, Scott Hente, H2 Land Co. LLC, Infinity Holding Company, LLC and Howard Family Investments, LLC.

Each of the remaining parties on the "developer's side of the lawsuit" seek to be relieved from liability. I am not convinced by their arguments. I conclude they are likewise part of the same civil conspiracy and trespass for the following reasons:

RS Construction and various Infinity Entities:

The following judicial admission was made in this suit:

"13. After extended discussions between the City, the Owners, RS Construction, and Infinity, RS Construction altered the Intersection based on Mr. Milliken's advice. While RS Construction and Infinity, *inter alia*, believed that those alterations were approved beforehand by the Owners, the Homeowners ultimately objected to the final reconfigured Intersection that RS Construction built.

14. Mr. Mulliken was also, simultaneously or subsequently, retained by WHMD to provide legal advice about various issues involving the Cumbre Vista project. Mr. Mulliken recommended to WHMD and others, including but not limited to KF 103-CV, LLC ("KF 103"), as the current owner of the Cumbre Vista parcel, that a quiet title action be filed against the Homeowners to resolve what appeared to be a dispute about the title to the property in question. Mr. Mulliken advised at that time, and at future meetings between the parties, that such a lawsuit would essentially be a matter of no great concern and that would be easily resolved."

While various entities may have relied upon advice of counsel, that does not absolve them of their responsibility for the trespass. Accordingly, I conclude that RS Construction and each Infinity entity is likewise part of the same civil conspiracy and trespass.

WHMD:

The Metropolitan District argues that they had nothing to do with the trespass and that intrusion had occurred long before they became part of the suit. But that ignores the very nature of a "continuing trespass". Under a continuing trespass, a new trespass is committed every day until the trespass is removed. See eg. *Hoering v. U.S.*, *supra*. WHMD entered as a party even after knowing of the nature of the neighbor's claims and sought by this suit to make the trespass permanent.

The District accepted ownership of the land underlying the right of way to strengthen its legal position on the same day that the Board of the District was meeting to deal with the problem neighbors. There was evidence that Board members at some meeting or another had referred to the neighbors as **extortionists**. On the same day that the Board accepted title, its then-counsel sent a letter threatening to sue the neighbors on behalf of the District. One can reasonably conclude that as a member of the Board Mr. Howard was attempting to use the Board to isolate himself from liability and/or force acquiescence from the neighbors. It could also be reasonably argued from all of the evidence produced that the "cliff" was created as payback for the neighbors' intransigence.

WHMD was much more than an innocent "new face" in the dispute. It maintained in this suit that it had the right to permanently move the neighbor's easements. Board members of the District included Mr. Hente and Mr. Howard, who had a personal obligation to deliver new roads to KF 103. Ed Gonzales, representing himself as Keller Homes, Inc. and KF 103 participated in board meetings where the neighbors' claims were considered. WHMD was not an independent third party with "no dog in the fight", but rather was an entity created to facilitate compliance with the purchase agreement and an urgent need to resolve the ever growing dispute with Neighbors. Accordingly, I conclude that the District is just as responsible for the conspiracy and the trespass as other parties.

Keller Homes, Inc. and KF 103

KF 103 appears to be the fee owner of the land known as the Cumbre Vista subdivision. That ownership currently includes all of Ski Lane and at least a portion of Sorpresa. I conclude that Keller Homes and KF 103 are likewise equally responsible, although undoubtedly unwittingly, for the conspiracy and trespass. Like WHMD, KF 103 became a party to this suit and sought to make the trespass permanent. It became

aware of the neighbors' rights of way claims before filing of the suit. It admits knowledge of the neighbor's rights but indicates it innocently relied upon Howard, et al., to deal with Ski Lane and Sorpresa pursuant to the contract. While KF 103 was likely acting with an innocent assumption that the neighbors claims were being legally dealt with, it nonetheless is equally responsible for trespass and being part of a conspiracy to trespass. It had a duty to insure that adverse claims to the roads were legally resolved before it graded the land.

Keller and KF 103 were equally present throughout the run up to this suit. Mr. Gonzales participated and identified himself to the board and neighbors as representing both Keller Homes and KF 103. When it became obvious to Mr. Larsen of the City that the neighbors had more than just passing complaints, the City approached Mr. Gonzales in an attempt to move the road further north into the proposed development. On behalf of Keller and KF 103, he refused, insuring that the trespass would continue. Mr. Gonzales participated in WHMD board meetings where the neighbor's claims were being considered.

Most significantly, Keller Homes was a party to the Omnibus agreement. KF 103 apparently became Keller's successor.

The City of Colorado Springs

The City has never taken this suit very seriously as it relates to the potential for liability. It has submitted a proposed order that says it has no responsibility and that it will only follow its own regulations if I enter a remedial order. I interpret their proposed findings as indicating that "***if we (The City) don't like it, we won't approve it***". The City misjudges its own potential for liability for participating in an inverse condemnation.

"Inverse condemnation is the taking of private property for public or private use, without compensation, by a governmental or public entity which has refused to exercise its eminent domain power. **Inverse condemnation** proceedings are appropriate where the underlying activity warrants **condemnation** pursuant to the entity's eminent domain power." *Kratzenstein v. Board of County Commissioners*, 674 P.2d 1009 (Colo.App.1983).

The annexation agreement provides that the City will ultimately own most of the roads in Cumbre Vista. The City was made aware of adverse claims from the neighbors at a very early time. Complaints were made to Mr. Mitros about elevation changes and significant changes to the intersection with Ski Lane. Mr. Mitros admitted that he approved the grading plans without really understanding the impact on the Neighbors and without considering whether they had enforceable rights-of-way. Mr. Larsen acknowledged that the City didn't realize what the plans really entailed and indicated that had the City known, it would never have approved the grading plan. Moreover, Mr.

Larsen admitted at the first trial that the so-called "cliff" and hair pin u-turn were not acceptable, except on a very temporary basis. In spite of that knowledge, Mr. Marchant testified that the City "imposed" the "cliff" and hair pin turn on the Neighbors as the only viable solution.

The City did not present testimony at either hearing. They appear to have been just as involved as the various developer entities in creating the trespass. Absent some other explanation, that is the classic inverse condemnation situation. The City has the power to condemn the easements. If they did, the Neighbors would be entitled to compensation. Rather than condemn the property, the City has approved plans that do the same thing. Accordingly, the City is just a liable.

No one is asking that the City be held financially liable in this case. But the reality is that they approved plans that affectively took property rights from the neighbors. Since the City significantly contributed to the trespass that continues to occur, I believe I have jurisdiction to order them to approve a remedial plan that envisions partial restoration, whether that plan satisfies their current criteria or not. Accordingly, I reject the City's proposed order.

APPORTIONMENT:

It is impossible to apportion liability among the various third parties and plaintiffs. The reality is that each entity and person played some role in creating the contractual situation that resulted in the trespass to the neighbor's easements. LLC's were formed and dissolved for tax purposes with continued involvement of the same individuals. LLC members who testified had trouble keeping straight which LLCs were created to fulfill certain functions, why they were created in the first instance and who other members of respective LLC's were. While they seek the shelter of limited liability in this case, I found it significant that some members didn't even know which LLC's they were acting for at the time that critical events occurred.

The reality is Cumbre Vista was bought and created by a finite number of individuals. The LLC's were generally created based on advice of counsel for tax purposes. Without going into specifics, it is clear that there was cross-over of ownership of LLCs and that members were not careful to act only on the part of one LLC as opposed to another. This order does not attempt to pierce the "corporate veil". Primarily, because doing so is unnecessary. All parties had some role in creating Cumbre Vista and all parties share in responsibility for the trespass and conspiracy. y.

I find and conclude that each one of WHMD, Keller Homes, Inc., KF 103 CV, LLC, Infinity Holding Co, LLC, Howard Family Investments, LLC, H2 Land Co., LLC, Infinity Construction & Development, Inc. n/k/a RS Construction & Development, Inc., Infinity Land Corporation,. Scott Hente, Robert Ormston and Paul Howard are all jointly, severally and individually liable for the Trespass and Civil Conspiracy claimed.

REMEDIES:

The neighbors seek complete restoration of Ski Lane and Sorpresa to their former location and elevation.. In other words they seek a mandatory injunction to compel removal of the cliff and hairpin turn and return of Ski Lane in its former condition. They also have made claim for damages for a variety of losses such as loss of use, emotional distress and the like.

As an alternative to being absolved of liability, several of the developer parties have proposed a combination of partial restoration and an assessment of damages.

I conclude that my determination of a proper resolution is guided by traditional concepts of equity. Language found in Golden Press, Inc. v. Rylands, 235 P.2d 592 (Colo. 1951) is often cited with approval in other cases dealing with similar issues:

Where the encroachment is deliberate and constitutes a willful and intentional taking of another's land, equity may well require its restoration regardless of the expense of removal as compared with damage suffered there from; but where the encroachment was in good faith, we think the court should weigh the circumstances so that it shall not act oppressively. Id at page 596.

Likewise, the court in Hunter v. Mansell, 240 P.3d 469, at 481 (Colo.App.,2010) made the following observations about appropriate remedies:

"From the outset, the owner sought mandatory injunctive relief requiring the removal of the encroachments. The entry or denial of injunctive relief is a discretionary decision of the trial court that will not be disturbed on appeal absent an abuse of that discretion. Rocky Mountain Animal Defense v. Colorado Div. of Wildlife, 100 P.3d 508, 518 (Colo.App.2004). Therefore, we will reverse only if a trial court's decision is based on an erroneous application of the law, or is otherwise manifestly arbitrary, unreasonable, or unfair. Phoenix Capital, Inc. v. Dowell, 176 P.3d 835, 840 (Colo.App.2007). A court in equity has considerable discretion in fashioning a decree that achieves a fair result under the particular circumstances of the case. Fed. Deposit Ins. Corp. v. Mars, 821 P.2d 826, 831 (Colo.App.1991).

One noted treatise, 1 Dan B. Dobbs, Law of Remedies 816 (2d ed.1993), addresses considerations in determining whether it is more appropriate to grant damages or a mandatory injunction for the removal of an encroaching structure. It posits guiding principles, or policies: (1) no one should be permitted to take land of another merely because he or she is willing to pay the market price, as that would amount to private condemnation; and (2) while private condemnation cannot be sanctioned, neither can extortion or economic waste, and, therefore, conscionability and economic arguments may disfavor a mandatory injunction. Id. The treatise goes on to state:

If the total cost of removal of the encroachment, including the loss in value of the [possessor's] remaining building, was very high in comparison to the harm done to the plaintiff because the

building encroached on his property, that disparity in economic consequences would be a *significant* factor in determining whether to issue the injunction."

Appellate courts generally disfavor *waste* in remedies that seek to restore parties to the position that they should have been in absent the commission of a tort. In this case I conclude that complete restoration is impractical, wasteful and inappropriate for the following reasons:

1. The neighbors were aware of the nature of grading at an early stage. They could have brought this case to court and likely have succeeded in stopping the destruction of Sorpresa. I don't in any way fault the neighbors nor intimate that they had an obligation to file a suit to stop the trespass. But since they didn't the construction of the new housing development and attendant roads is complete. The residential subdivision now contains a substantial number of new occupied dwellings. The developers had reason to believe that they could come to an accommodation with the neighbors and therefore continued to complete the road grading and some home sales before the dispute became a law suit. Complete restoration could now impact the new home buyers.
2. Completely restoring the 30' easement to Sorpresa and Ski Lane and then adding additional slope to support the elevations would virtually destroy the paved portion of the new Sorpresa and adversely affect its use for the dozens of neighbors to the north. In light of the fact that only 20' of the Ski Lane and Sorpresa easements were actually used before they were destroyed, restoring an additional 20' to Sorpresa as the neighbors demand would be merely punitive and pointless.
3. I am most convinced by the testimony of Matrix's engineer, Mr. Slater, that complete restoration would constitute substantial waste. It would be very expensive to accomplish and, more importantly, it would create significant new drainage and access problems for the new neighbors to the north. Further, in Mr. Slater's words, restoration would also create a drainage "bath tub" for the low income housing developments on the south side of Sorpresa. The existing utilities would have to be pulled up and relocated at considerable expense.
4. Even if the entire Cumbre Vista development had remained north of the 30' easement on Sorpresa, construction of new roads to its north would have likely resulted in some form of cliff. That cliff would have been lawful and probably just as unsightly.

5. Most significant in my decision is that Mr. Slater has proposed an alternative that virtually restores the neighbors to the functional equivalent of complete restoration.

Mr. Slater has proposed a partial restoration that provides a 20' dirt road would be constructed on Sorpresa, extending its current 10' configuration. A retaining wall will be constructed so that there is a minimum drivable space of 20' between the utility pole shown in Peck exhibit AA4 and the edge of the a new retaining wall that will be constructed as part of the plan. The retaining wall will be properly engineered and constructed such that it will support the fill dirt that will be added to create the 20' width. The wall will be approximately 10' in height, that is, the height of "Old Sorpresa". The wall will have a natural stone finish as described in other testimony. Either Ski Lane or a new access to Cowpoke will be opened. A new intersection will be constructed at Ski Lane and Sorpresa.

I conclude that this proposal is a very reasonable partial restoration to what the Neighbors had before grading. It will result in the Neighbors enjoying the same driving surface as old Sorpresa. The new Intersection is a safe alternative and better than what the Neighbors had agreed to in concept before negotiations fell apart. And, the proposal opens up Ski Lane. In other words the proposal is the "functional" equivalent to what the neighbors had before. Any losses experienced will be compensated with damages. The proposal is what I suggested would be considered in my clarifying order of December 2010.

DAMAGES:

The neighbors have claimed entitlement to certain damages as a result of the conspiracy and trespass. Taking into account that a partial restoration is proposed, the following order is entered:

EMOTIONAL DISTRESS RESULTING FROM OUTRAGEOUS CONDUCT:

I will deal with this category of damages below in the section dealing with "damages of the nature of liquidated damages".

LOSS OF VALUE OF REAL ESTATE

Mr. Colon testified that with the partial remediation contemplated in Mr. Slater's plans, each homeowner would still experience some resulting loss in home value. I found his testimony convincing, based upon his experience in assessing home values, the nature of the comparisons that he used and his conclusions. Accordingly, I conclude that the neighbors should be awarded the

following to compensate them for the loss in value to their homes after partial restoration:

- a. Howell - - \$3,113 (mid-point of calculated range)
- b. Marchants- - \$4,537
- c. Olivers- - - \$6,390
- d. Peck- - - \$24,151.50
- e. Hanson- - no loss in real estate value, since no access required from Sorpresa

This award is based upon the assumption that the partial restoration is constructed and Ski Lane, or the equivalent, is opened). If Mr. Slater's proposal is not fully implemented, I will maintain jurisdiction in order to enter an alternative order. Mr. Colon agreed with Ms. Van der Way's testimony that the properties would lose 25% - 30% in value if Sorpresa were not partially restored.

LOSS OF USE OF SKI LANE

The Neighbors argue that they are entitled to an award for the loss of use of Ski Lane. I agree. The problem is how to reasonably value the loss of use of a dirt road. The Neighbors had the burden of establishing what that loss would be. Mr. Colon agreed that an appropriately experienced expert could place a value on the loss that an owner of a right of way easement would experience. From the court's knowledge, such valuations are often submitted in conjunction with condemnation proceedings. Such expertise exists.

I am not convinced by the loss calculations provided in the testimony of the Neighbors. Mr. Peck estimated that his loss of value was comparable to the value given to parking spaces at the Colorado Springs Airport. Mrs. Marchant on the other hand testified to a value for loss based upon tolls taken on E 470 in Denver. I find that neither of those calculations is reliable. I find no logical or reliable nexus between a parking place at an air port or a well-traveled toll road in a major metropolitan area on the one hand and the gravel road known as Ski Lane. Accordingly, even though I believe the loss of use is compensable, I decline to adopt either of their calculations.

As an alternative I will deal with loss of use in conjunction with other damages below.

SECTION 1983 CLAIM:

Mr. Peck counterclaimed against WHMD under 42 USC section 1983. Having heard the testimony, I conclude that his counterclaim is not a proper action under section 1983 and that there are ample state remedies for the trespass alleged.

Colorado's Supreme Court summarized municipal liability under section 1983 in Adams County v. Hibbard, 918 P.2d 212 (Colo. 1996). It stated the following:

"Congress intended municipal liability only when actions taken "pursuant to official policy of some nature caused a constitutional tort." Monell, 436 U.S. at 691, 98 S.Ct. at 2036. In particular, a local government cannot be liable under § 1983 "solely because it employs a tortfeasor...." Id. Under § 1983, municipal liability cannot attach on a respondeat superior theory. Id. The Court stated:

We conclude, therefore, that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.

Id. at 694, 98 S.Ct. at 2037.

Under Monell, municipalities may only be held liable for actions taken pursuant to a "custom" or "policy." Tuttle, 471 U.S. at 818, 105 S.Ct. at 2433 (plurality opinion) ("[T]he Monell Court held that only deprivations visited pursuant to 'custom' or 'policy' could lead to municipal liability."). The "policy" requirement was "intended to distinguish acts of the municipality from acts of employees of the municipality, and thereby make clear that municipal liability is limited to actions for which the municipality is actually responsible." Pembaur v. City of Cincinnati, 475 U.S. 469, 479-80, 106 S.Ct. 1292, 1298, 89 L.Ed.2d 452 (1986). To recover from a municipality, a plaintiff must establish that the municipality has "officially sanctioned or ordered" an act. Id. at 480, 106 S.Ct. at 1298. Under this rationale, municipal liability may attach for a single decision by policy makers under certain circumstances. Id. at 10

FN10. Policy acts or edicts may not necessarily involve written rules intended to be applied consistently over time. See id. at 480-81, 106 S.Ct. at 1298-99. A local government "frequently chooses a course of action tailored to a particular situation and not intended to control decisions in later situations." Id. at 481, 106 S.Ct. at 1299. In Pembaur, the Court explained: If the decision to adopt that particular course of action is properly made by that government's authorized decision makers, it surely represents an act of official government "policy" as that term is commonly understood. More importantly, where action is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly. To deny compensation to the victim would therefore be contrary to the fundamental purpose of § 1983. " supra at p218 - 219

However, a municipality is liable "only where the decision maker possesses final authority to establish municipal policy with respect to the action ordered." Id. at 481, 106 S.Ct. at 1299 (plurality opinion). The mere existence of an official's discretion does not "give rise to municipal liability based on an exercise of that discretion." Id. at 482, 106 S.Ct. at 1299 (plurality opinion); see also Praprotnik, 485 U.S. at 126, 108 S.Ct. at 926 (plurality opinion) ("If the mere exercise of discretion by an employee could give rise to a constitutional violation, the result would be indistinguishable from respondeat superior liability."). Before municipal liability attaches, a state official "must also be responsible for establishing final government policy...." Pembaur, 475 U.S. at 483, 106 S.Ct. at 1300 (plurality opinion).

Mr. Peck has failed to prove that WHMD was following any form of policy in joining in the law suit or having board members attempt to deal with the issues brought up by the neighbors. Accordingly, I find no liability under 42 USC 1983.

Loss of Rental Value

Mr. Peck also asserted a claim against various developer parties for loss of rental value for his house. I conclude that his testimony was not persuasive. His testimony was mostly conjecture and based upon hearsay as to the rental value of properties that are not comparable. Accordingly, I find against Mr. Peck on the issue of loss of rental value of his property.

DAMAGES IN THE NATURE OF LIQUIDATED DAMAGES:

After this suit was filed, Mr. Ormston met with the Marchants, and perhaps others, to attempt to negotiate a satisfactory settlement. Mr. Ormston and Mr. Marchant agreed at that time that in light of the changes being made by the developer entities to access roads, the Neighbors should be paid \$15,000 per Neighbor. Mr. Marchant testified that he felt that would have been a reasonable sum *at the time* to compensate them for loss of value in their homes, the use of Ski Lane and the general inconvenience caused by the developers' interference with their rights. The agreement fell apart, allegedly because the developer was unwilling to keep Ski Lane open.

The Rules generally require that settlement negotiations are not admissible; certainly not as evidence of liability. Likewise, the agreement for \$15,000 is not enforceable as liquidated damages, although somewhat analogous to the creation through negotiation of liquidated damages. I conclude however that in reaching such a tentative agreement that both parties involved in the negotiation had taken into account that the Neighbors had sustained certain losses, that the value of the losses were difficult to accurately measure but that the figure could reasonably compensate Neighbors for a variety of those losses. Mr. Ormston had indicated that he felt the demand was reasonable and would communicate it to his partners. Apparently, the "partners" chose to go forward with this suit and keep Ski Lane closed.

Liquidated damages are often agreed to in advance in cases where it will be difficult to determine damages once a breach occurs. The essential elements necessary for a valid and enforceable ~~liquidated damages~~ provision are: (1) the anticipated ~~damages~~ in case of breach must be difficult to ascertain; (2) the parties must mutually intend to ~~liquidate~~ them in advance; and (3) the amount stated as ~~liquidated damages~~ must be reasonable and proportionate to the presumed injury. Perino v. Jarvis, 135 Colo. 393, 312 P.2d 108 (1957); Oldis v. Grosse-Rhode, 35 Colo.App. 46, 528 P.2d 944 (1974)

Taken in the context of my order requiring partial remediation, I conclude that while no liquidated damages provision exists, still the parties reached a reasonable agreement as to what their losses would be worth *at that time*. In light of the fact that the losses claimed by the neighbors are real and yet nearly impossible to prove, I find that the \$15,000 that had tentatively been agreed to in the past is a reasonable measure of the damages that it encompassed at the time: loss of home value, stress,

loss of the use of Ski Lane, the partial loss of Sorpresa and the inconvenience of the process that the neighbors endured. The fact that one of the developers participated in reaching that figure demonstrates how both sides of the dispute at one time felt that \$15,000 would reasonably compensate the neighbors for inconvenience, stress, loss of use, loss of real estate value and the like.

Since no one presented other reliable evidence from which reasonable damages can be calculated, I am adopting the negotiated calculation that the parties reached in 2008 as an appropriate measure of the damages that the Neighbors suffered.

I conclude that the Marchants collectively, the Olivers collectively and Ms. Howell individually are all entitled to an award of \$15,000 as compensation for the loss of value to their homes, the stress suffered throughout this extended process, the loss of use of Ski Lane, the inconvenience of having 1/2 of Sorpresa taken from them through 2008 the present, the inconvenience suffered in not having the same access to Cowpoke road, the inconvenience of having to negotiate Sorpresa in its current configuration, the loss of the convenience of the old intersection of Sorpresa and Ski Lane which will now continue to require a sharp u-turn and any and all other damages suffered as a result of the use of their rights of way without permission.

While Ms. Hanson has not lost property value, she nonetheless suffered many of the same losses experienced by other neighbors who relied on Ski Lane. Accordingly, she is awarded \$10,000 in compensation for those losses.

Even after my 2010 order, Ski Lane has remained closed and Sorpresa remained the same. The Neighbors have had their property rights infringed upon for over five years. The last two years the Neighbors have had to engage in the seemingly endless legal wrangling with opposing parties. Accordingly, using the Ormston negotiations as a base-line, I conclude that Ms. Hanson, the Howell Estate, the Marchants and the Olivers are entitled to an additional award of \$5,000 to compensate them for the losses incurred since their initial discussion with Mr. Ormston in 2008.

Mr. Peck will not be entitled to an additional or alternative award. He did not live on Sorpresa while the construction was taking place nor has he suffered the same inconvenience as the other neighbors as a result of the use of his rights of way. Further, his award of \$24,151.50 is adequate compensation for his loss.

The above sums are considerably less than the Neighbors demanded. I have considered their testimony carefully. While this case has undoubtedly been a nightmare for them all, I must balance the equities in setting damages. In that regard, the neighbors are getting their rights-of-way returned to them. The Neighbors always had access to their properties, but were required to suffer considerable inconvenience in using what the developers and the City were willing to give them. At numerous points

in time, the Neighbors were treated with disdain by certain opposing parties. Their claims were often ignored by all parties.

These awards supplement, and do not replace, the partial remediation that must still be accomplished.

NEGLIGENT MISREPRESENTATION

The Neighbors claimed loss for the negligent misrepresentations made by Mr. Williams. I conclude that Mr. Williams did in fact make either negligent or knowing misrepresentations that Ski Lane would only temporarily be closed. At the time he made those misrepresentations, Mr. Williams was an agent for the various Infinity entities. The damages awarded are limited to those set forth in the prior section.

NEGLIGENCE

All developer parties owed a duty to the various neighbors to take reasonable steps to insure that they do not trespass or damage the real property of the neighbors. Each individual and entity violated that duty by ignoring the title exceptions, survey and prescriptive uses made of the roads. The fact that they may have relied upon the advice of counsel is a matter between them and counsel and does not relieve them of their duties to the neighbors. The damages and award are the partial remediation and the award made in the above section.

NANCE LOSSES:

I conclude that RS Construction & Development Inc. and Infinity Land Corporation are responsible for the removal from the Nance property of approximately 36,000 cubic yards of soil without her permission. I am not convinced by the testimony of Mr. Marchant that the value of that dirt is \$72,000. RS Construction & Development, Inc. and Infinity Land Corporation shall have 60 days from the date of this order to replace the removed dirt with comparable material. If they fail, a subsequent hearing will be scheduled to value that loss.

Since the Nance property is vacant land, she will not be entitled to a separate award of damages, other than to have the dirt replaced.

ORDER:

I find in favor of the neighbors and against all other parties. I conclude that KF103-CV, LLC, Keller Homes, Inc., Woodmen Heights Metropolitan District No's. 1 through 3, RS Construction & Development, Inc. f/k/a Infinity Construction and Development, Inc., RS Holding Company LLC, Howard Family Investments, LLC, H2

Land Co. LLC, Infinity Land Corporation, Paul Howard, Scott Hente and Robert Ormston are jointly, severally and individually liable to the Neighbors as indicated above.

Judgment and a declaration is hereby entered against the above parties that they shall restore Ski Lane and Sorpresa Road to the condition proposed in the testimony given by Mr. Slater. That shall result in Sorpresa being restored to no less than 20' in width throughout its length from the Peck property to the intersection with Ski Lane. A new intersection shall be developed. A retaining wall and safety fence shall be installed at the edge of the restored road. Ski Lane shall be reopened in its original dimensions within 30 days of this order and shall connect with Cowpoke Road. Considering the equities of this situation, a new access road may be substituted for Ski Lane when it is completed. The Neighbors shall have the same legal 30' right of way interest in the new road as they did in Ski Lane. The right of way interest in their portion of Sorpresa shall conform to its new 20' dimensions. A permanent intersection shall be installed to connect the restored Sorpresa either with Ski Lane or the new connecting road in accordance with Mr. Slater's proposal.

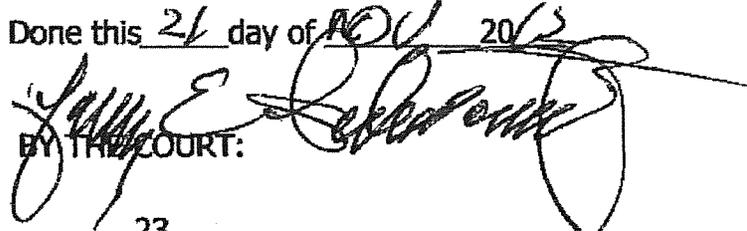
Judgment in the following amounts shall be entered against all of the above listed developer entities and individuals, jointly, severally and individually in favor of the following:

Marchants---\$20,000
Estate of Howell---\$20,000
Hanson-----\$15,000
Olivers---\$20,000
Peck---\$24,151.50

RS Construction and Development and Infinity Land Corporation shall restore 36,000 cubic yards of dirt to the Nance property within 60 days.

Once the plans for partial restoration are prepared, they shall be distributed to the parties. The court will review any objections from the neighbors before final construction of the remediation will begin.

The Neighbors are entitled to their costs. The motion to impose attorney fees, arguing that the assertions brought by the developers were frivolous and groundless are DENIED. I conclude that KF 103 and WHMD had at least a legitimate argument that the Roaring Fork case could be viewed as supporting their suit against the Neighbors.

Done this 21 day of NOV 2013

BY THE COURT:

Larry E. Schwartz
District Court Judge

cc: counsel of record
pro se parties

<p>El Paso County, Colorado DISTRICT COURT Court address: 270 South Tejon St. Colorado Springs, CO 80903 Phone number: (719) 448-7632</p>	<p>DATE FILED: October 15, 2013 DATE FILED: September 9, 2013 11:39 AM</p>
<p>WOODMEN HEIGHTS METROPOLITAN DISTRICT NO. 1, et. al. Plaintiffs, v. WILLIAM MARCHANT, et. al. Defendants v. KF 103-CV, LLC, et.al. Third Party Plaintiffs v. RS HOLDING COMPANY, LLC, et. al. Third Party Defendants</p>	<p>Court Use Only</p>
	<p>Case Number: 2008 CV 4553 Division 5</p>
<p>JUDGMENT</p>	

The Court having previously entered its Findings of Fact and Conclusions of Law hereby **ORDERS, ADJUDGES and DECREES** that judgment shall enter in favor of the following Defendants and against the Plaintiffs and Third Party Defendants, excluding the City of Colorado Springs, jointly and severally, as follows:

	Amount
Defendant William Howell as Trustee of the Marilyn J. Howell Trust	\$20,000.00
William Marchant and Maureen M. Marchant	\$20,000.00
Darrel Oliver and Kelli Oliver	\$20,000.00

William M. Peck	\$24,151.50
Susan Hanson	<u>\$15,000.00</u>
TOTAL	\$99,151.50

In addition to the above judgment amounts pre-judgment interest of 8% per annum shall be awarded on the above amounts commencing June 26, 2006 as prescribed by law. Said interest totals \$71,893.45 through the date of this Order, September 5, 2013.

IT IS FURTHER ORDERED that Judgment shall enter in favor of Defendant, C. Arlene Nance, against Third Party Defendants, Infinity Land Company, LLC and RS Construction and Development Inc., jointly and severally, in the amount of \$62,080.00 together with interest at 8% per annum from the date of the Nance damages hearing to the date of this Order in the amount of \$1,365.76.

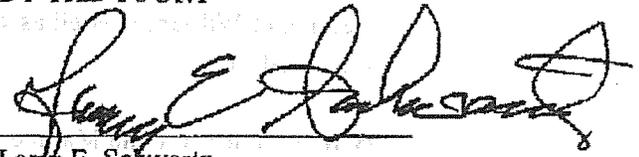
IT IS FURTHER ORDERED AND DECREED that the north 10 feet of Defendants' easement to Sorpresa Lane shall be vacated effective upon the completion of the ordered construction of the retaining wall and widening of Sorpresa Lane as set forth in the court's previous orders. With regard to said construction Plaintiffs and Third Party Defendants shall, within thirty (30) days after the date of this Judgment, submit to the court and all defendants full and complete construction drawings for the Sorpresa Lane retaining wall and widening, including the attendant intersection which the court has previously ordered to be constructed.

IT IS FURTHER ORDERED AND DECREED that upon the final construction of an alternate access which shall extend north from the new Sorpresa Lane intersection to Cowpoke Road, and which access road shall be of equal or greater quality and condition as historic Ski Lane, all of the Defendants' easements over the roads previously known as Ski Lane and El Glen shall be vacated in their entirety and that Defendants shall not be entitled to any compensation for said vacation.

for The costs of this action are also awarded to Defendants and Defendants shall file their Bill of Costs within 15 days after the entry of this final Judgment.

Dated this 15 day of Oct 2013.

BY THE COURT


Larry E. Schwartz,
District Judge

APPROVED AS TO FORM:

David H. Krall, attorney for defendants,
Howell, Marchant and Nance

William M. Peck, *pro se*

Susan Hanson, *pro se*

Darrel Oliver, *pro se*

John W. Cook, attorney for plaintiff, KF 103-CV, LLC.

Jonathon Cross, attorney for plaintiff, Woodmen
Heights Metropolitan Dist. Nos. 1, 2 & 3.

Kerri Atencio, attorney for third-party defendants,
Scott Hente, Robert Ormston, Paul Howard,
Jonathan Howard, deceased, Howard Family
Investments, LLC, H2 Land Co, LLC, and RS
Holding Company, LLC.

Kathleen Kulasza, attorney for third-party
defendant, RS Construction & Development, Inc.

**Peter H. Doherty, attorney for third-party
defendant, Infinity Land Company**

**Kenneth Hodges, attorney for City of
Colorado Springs**

**Steven Bailey, attorney for third-party
Defendant, Keller Homes, Inc.**

NEW BUSINESS CALENDAR

CITY PLANNING COMMISSION AGENDA

ITEM NOS: 5.A-5.E

STAFF: RICK O'CONNOR

FILE NO(S):

A. - CPC MP 84-00361-A4MN13 – QUASI-JUDICIAL

B. – CPC CP 13-00143 -- QUASI-JUDICIAL

C. - CPC ZC 13-00141 – QUASI-JUDICIAL

D. - CPC PUZ 13-00142 – QUASI-JUDICIAL

E. - CPC DP 13-00144 – QUASI-JUDICIAL

PROJECT: THE RENAISSANCE AT INDIGO RANCH

APPLICANT: N.E.S. INC

OWNER: PULPIT ROCK INVESTMENT



PROJECT SUMMARY:

1. **Project Description:** This project consists of five applications:
 - a. An amendment to the Stetson Ridge Master Plan which changes seven acres of commercial and 14 acres of residential at 12-24.99 dwelling units per acre (du/ac) to 21 acres of residential at 3.5-7.99 du/ac (**FIGURE 1**);
 - b. A rezoning of 10 acres zoned A/AO (Agricultural with Airport Overlay) to PBC/AO (Planned Business Center with Airport Overlay);
 - c. A concept plan showing five lots within the proposed 10 acres of commercial (**FIGURE 2**);
 - d. A rezoning of 21 acres from A/AO (Agricultural with Airport Overlay) to PUD/AO (Planned Unit Development, single family detached, 35-foot maximum height, maximum 4.78 du/ac with Airport Overlay) for a single-family residential development; and
 - e. A development plan for a 101-lot single family (small lot PUD) development covering 21 acres. (**FIGURE 3**).

The full project covers roughly 31 acres of land northwest of Marksheffel Rd. and Dublin Blvd.

2. **Applicant's Project Statement:** (**FIGURE 4**)
3. **Planning and Development Department's Recommendation:** Approval of the five applications, subject to modifications noted under the Staff Recommendations at the end of this report.

BACKGROUND:

1. **Site Address:** Not applicable
2. **Existing Zoning/Land Use:** A AO (Agricultural with Airport Overlay)/vacant-undeveloped
3. **Surrounding Zoning/Land Use:**
North: PUD AO (Planned Unit Development with Airport Overlay)/single family (under construction)
South: A AO (Agricultural with Airport Overlay), PUD AO (Planned Unit Development with Airport Overlay), PBC AO (Planned Business Park with Airport Overlay)/planned school site, single family residential, vacant commercial.
East: PUD AO/ Single family residential with Airport Overlay.
West: PF (Public Facility), A and PUD/Fire Station 21, future park and future single family.
4. **Comprehensive Plan/Designated 2020 Land Use:** The easterly portion of the request is identified as a Community Activity Center (undergoing PBC zoning) and the balance is General Residential (the density requested through the rezoning is consistent with the general residential designation)
5. **Annexation:** The property was annexed as part of the Stetson Ridge Addition Annexation in 1986.
6. **Master Plan/Designated Master Plan Land Use:** Stetson Ridge Master Plan / A portion of the master plan is being amended as part of this request.
7. **Subdivision:** Final plat pending for the first phase of the residential. The final plat is reviewed administratively.
8. **Zoning Enforcement Action:** None.
9. **Physical Characteristics:** The property has native grasses with some over-lot grading. There are no significant features on the site.

STAKEHOLDER PROCESS AND INVOLVEMENT: The public process involved the mailing to seven property owners within 500 feet of the applications and a posting of the property. The same notification and posting will occur prior to the Planning Commission meeting. No comments were received.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

There are no issues with the master plan amendment, rezonings or the concept plan for the 10 acres of commercial. However, School District 49 (**FIGURE 5**) has raised concerns with the additional students and the limitations with their facilities and cautiously approves of the residential zone change (note that Classic Homes is a member of the District 49 “Falcon Community Builders for Classrooms” organization which is providing additional school funding).

The concept plan is consistent with the master plan and can be used to plat lots from. It indicated the access locations that will serve the development.

Small Lot PUDs

The development plan is subject to the Small Lot PUD Review Criteria and Guidelines (**FIGURE 6**). The guidelines were prepared by the Planning and Community Development Department as a mechanism to address the applicable review criteria of both the general development plan review criteria (7.5.502 E.) and more specifically the PUD review criteria (7.3.606) as they relate to small lot developments.

Small lot PUDs by definition are detached single family homes on lot sizes averaging less than 6,000 square feet. The lots are either Greenway Orientated Units (which provide a primary access toward a courtyard or landscaped area, with pedestrian connections) or Street Orientated units that front onto a street. Street cross-sections are typically reduced in size and traffic volumes are limited.

The Small Lot PUD criteria attempt to address the following elements:

- A more walkable pedestrian community;
- Less reliance on the garage being the main focal point along the frontage;
- Units that front onto common open space;
- Smaller individual lots with common areas owned/maintained in common; and
- Orientation of the front of the house toward the open space.

The Small Lot PUD Review Criteria and Guidelines are not codified (as specific zoning requirements) but are meant to provide guidance and techniques that allow compliance with the specific review criteria contained within a small lot PUD project.

There have been a handful of small lot PUDs with varying degrees of success. One of the more successful small lot subdivisions that follows many of the Small Lot PUD Guidelines (though the guidelines were not adopted until 2005) is the Chaparral Point at Indigo Ranch, approved in March of 2004. Chaparral Point is located along the west side of Marksheffel and north of Stetson Hills Boulevard, approximately one mile south of this application. The proposed project will closely replicate that development (**FIGURE 7**).

Specific Project Overview/Summary

The development plan application includes the following:

- 101 single family detached homes;
- Lot sizes ranging from 2,970 s.f. to 3,825 s.f.; a typical 3,825 s.f. lot is 45 feet X 85 feet;
- All garages are rear loaded (**FIGURE 8**);
- Majority of the units face the open space/common use tracts;
- Perimeter tracts to be owned/maintained by the Metro District; internal tracts to be owned/maintained by the HOA
- 51 additional parking stalls are provided throughout the development with many at the end of the dead end streets;
- All streets are public;
- Considerable grade changes are present from Dublin Blvd. to the dwelling units; roughly a 20-foot difference at the southwest corner, and 10-12 feet at the southeast corner;
- Retaining walls are utilized to take up the grade at the southeast corner;
- Stormwater quality facility located at the southwest corner;
- Greenway tracts between the houses are roughly 50 feet'-96 feet in width;

1. Review Criteria / Design & Development Issues:

There are two primary issues to address: compliance with the Small Lot PUD Guidelines and traffic noise along a principal arterial.

This application meets most of the review criteria and satisfies the intent of the small lot PUD concept. Two items that deviate from the criteria are road connections and the amount of units that are not Greenway Orientated units.

Within Chaparral Point, the internal rear access roadways are continuous and connect with a looped system. Within this proposal, many of the units are accessed with dead end streets (called "access" streets with a 22 foot mat/27 foot width to back of curb); however the number of units being served by the dead end streets is limited to not more than 10. The dead end streets do reduce the amount of pavement and provide adequate access to the units. City Engineering and Fire support this concept as public streets.

The second deviation is the number of units that do not actually front onto a greenway. The design manual limits the amount of non-greenway units to 10%; this proposal includes approximately 20% non-greenway units. While the non-greenway units do not have front loaded garages (all garages accessed in the rear), they do orient toward a street instead of a greenway. The minimum greenway width called out within the manual is a 40-foot width. Many of the units that do not face the greenway are along the two adjoining collector streets, Mustang Rim and Issaquah Drive.

This project is adjacent to Dublin Boulevard which is classified as a Principal Arterial. Currently only one-half of the street's cross-section is constructed. It is anticipated that Dublin will ultimately carry considerable traffic as it continues through the Banning Lewis Ranch development. Additional noise is anticipated on Dublin due to emergency vehicles originating from the adjacent Fire Station 21.

Noise issues are one of the review criteria that deserve discussion. The typical standard to address noise is the construction of a noise wall and additional setbacks. While the setback area for this development is significant adjacent to Dublin, the applicants are not installing a noise wall and the grade actually rises from the road to the finished units. Instead, the applicants had a noise study completed to address this issue. Apparently the results indicate that additional soundproofing is necessary for those dwellings adjacent to Dublin. Staff has requested a copy of the study and a proposed technical modification below is suggested to update the development plan to address the necessary noise mitigation.

2. Conformance with the City Comprehensive Plan:

Policy LU 601: Assure Provision of Housing Choices

Distribute housing throughout the City so as to provide households with a choice of densities, types, styles and costs within a neighborhood or residential area

Strategy LU 303a: Design Pedestrian Friendly Environments

Plan and design neighborhoods and activity centers as coordinated pedestrian friendly environments.

Strategy LU 501a: Link Neighborhood Layout and Design to a Larger Residential Area

In master plans and in community planning areas, layout and design individual neighborhoods to form a coherent residential area.

Strategy LU 502c: Plan Community Activity Centers to Serve Residential Areas

Plan community activity centers to serve more than one neighborhood in a residential area.

Strategy NE 404b: Use Noise Mitigation Techniques

Utilize, develop and implement noise mitigation strategies including quiet paving materials, landscaping and other means to ensure all city communities, neighborhoods, and parks are desirable places to live, work and play.

3. Conformance with the Area's Master Plan: The applicable area master plan is the Stetson Ridge Master Plan which is undergoing an amendment; if the amendment is approved, the residential component will be consistent with the plan (the commercial is currently consistent with the plan).

STAFF RECOMMENDATIONS:

Item No: 5.A CPC MP 84-00361-A4MN13 - Master Plan Amendment

Approve the amendment to the Stetson Ridge Master Plan, based upon the finding that the master plan complies with the master plan review criteria in City Code Section 7.5.408.

Item No: 5.B CPC CP 13-00143 – Concept Plan

Approve the Renaissance at Indigo Ranch Concept Plan, based upon the finding that the plan complies with the concept plan review criteria in City Code Section 7.5.501 E.

Item No: 5.C CPC ZC 13-00141 - Rezoning to PBC AO

Approve the PBC/AO (Planned Business Center with Airport Overlay) rezoning, based upon the finding that the rezoning complies with the three review criteria in City Code Section 7.5.603 B.

Item No: 5.D CPC PUZ 13-00142 - Rezoning to PUD AO

Approve the Renaissance at Indigo Ranch PUD/AO rezoning (single family residential detached, 35-foot maximum height, 4.78 dwelling units per acre with Airport Overlay), based upon the finding that the rezoning complies with the three review criteria in City Code Section 7.3.603.

Item No: 5.E CPC DP 13-00144 - Development Plan

Approve the Renaissance at Indigo Ranch Development Plan, based upon the finding that the development plan complies with the development plan review criteria in City Code Section 7.5.502.E and with the PUD development plan review criteria in City Code Section 7.3.606, subject to compliance with the following technical and/or informational plan modifications:

Technical and Informational Modifications

1. Sound study information from LSC was not provided. The development plan needs to include information as to specific units that are subject to additional sound attenuation. Provide a copy of the study and indicate on the development plan the affected units and the necessary noise mitigation.
 2. Provide a detail of the retaining walls (materials).
 3. Address the items noted by the Landscape Architect consisting of the following:
 - a. Include all street names and classifications on the landscape plan.
 - b. Show all Landscape categories requirements (setbacks, internal, and buffers if there are commercial uses across the non-arterial).
 4. Provide a letter from the Metro District which indicates that they will accept all responsibility for the ownership and maintenance of properties as noted on the plan.
-

Land Use Comparison Tables

Land Use Table (Previous) 5-11-13

Residential (2-3.5 DU/AC)	25.2 ac.
Residential (3.5-7.99 DU/AC)	306.1 ac.
Residential (8.0-11.99 DU/AC)	0 ac.
Residential (12-24.99 DU/AC)	14.1 ac.
Community Commercial	20 ac.
Elementary School	7.5 ac.
Secondary School	20 ac.
Fire Station	2 ac.
Office Low Density	0 ac.
Office Medium Density	0 ac.
Neighborhood Park	5 ac.
Community Park	10 ac.
Open Space (Includes 5 Ac. Trail)	13.7 ac.
Right of Way	44 ac.
Total Acres	467.1

Land Use Comparison Tables

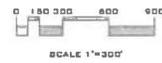
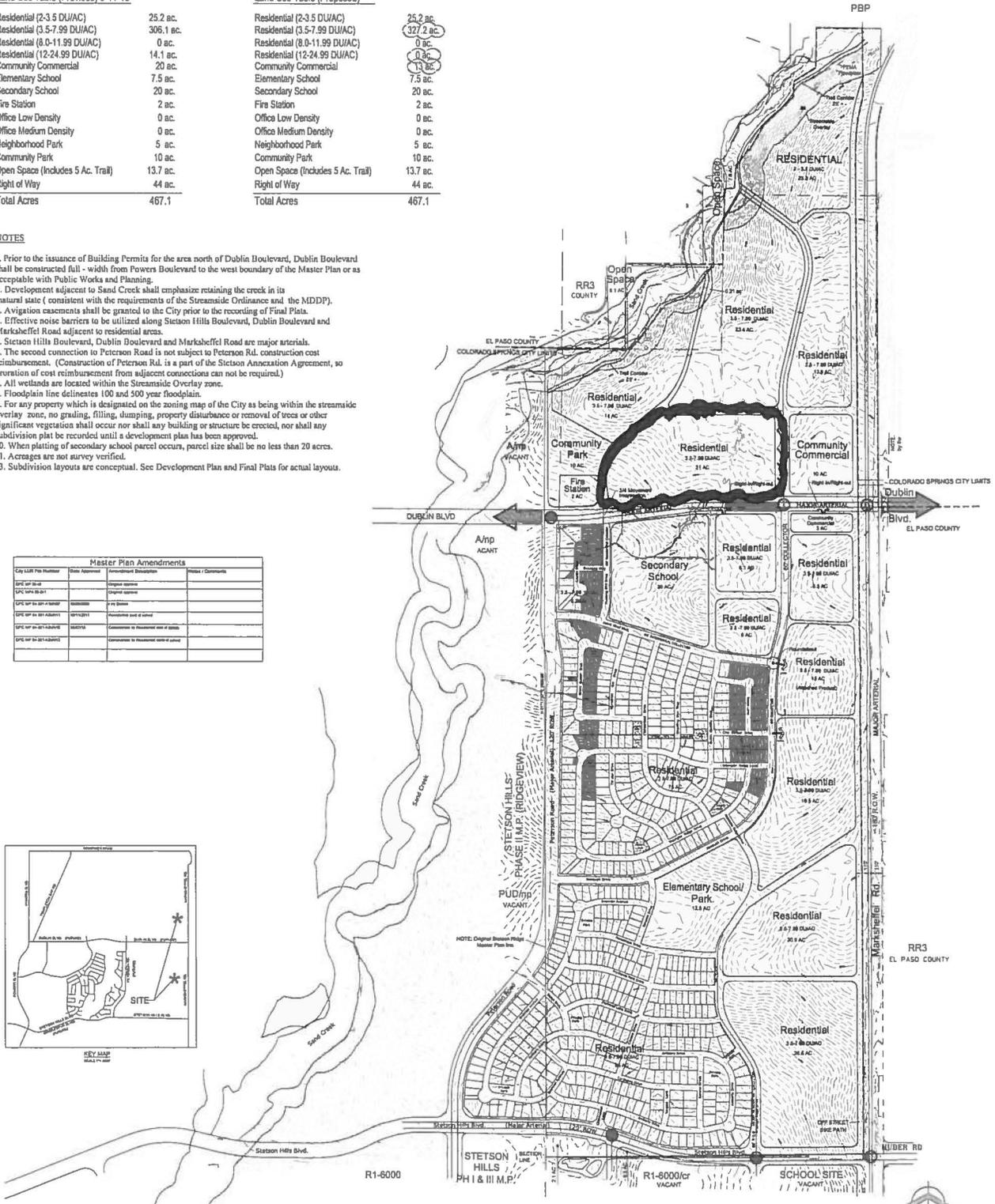
Land Use Table (Proposed)

Residential (2-3.5 DU/AC)	25.2 ac.
Residential (3.5-7.99 DU/AC)	327.2 ac.
Residential (8.0-11.99 DU/AC)	0 ac.
Residential (12-24.99 DU/AC)	0 ac.
Community Commercial	13 ac.
Elementary School	7.5 ac.
Secondary School	20 ac.
Fire Station	2 ac.
Office Low Density	0 ac.
Office Medium Density	0 ac.
Neighborhood Park	5 ac.
Community Park	10 ac.
Open Space (Includes 5 Ac. Trail)	13.7 ac.
Right of Way	44 ac.
Total Acres	467.1

NOTES

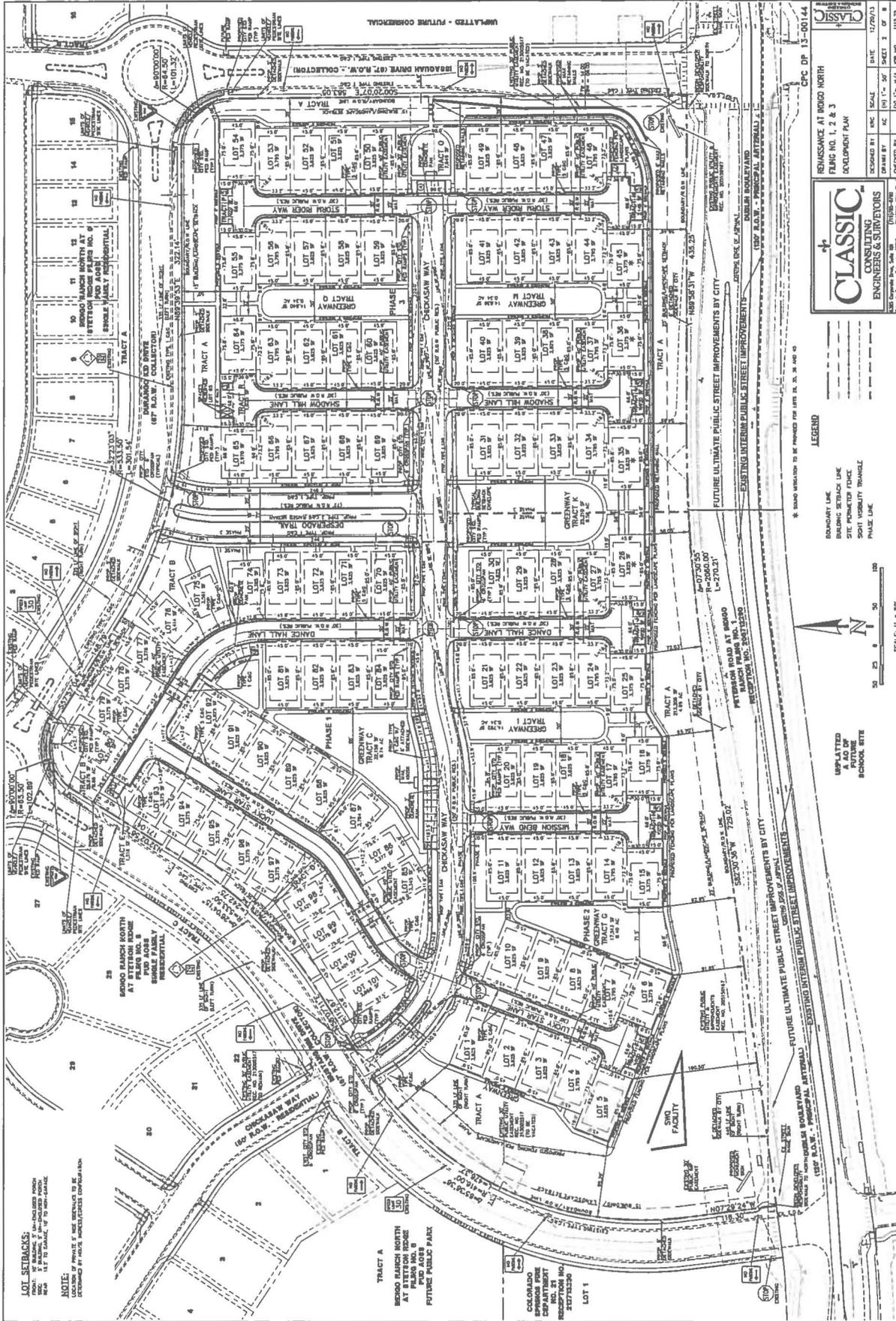
1. Prior to the issuance of Building Permits for the area north of Dublin Boulevard, Dublin Boulevard shall be constructed full - width from Powers Boulevard to the west boundary of the Master Plan or as acceptable with Public Works and Planning.
2. Development adjacent to Sand Creek shall emphasize retaining the creek in its natural state (consistent with the requirements of the Streamside Ordinance and the MDDP).
3. Avigation easements shall be granted to the City prior to the recording of Final Plats.
4. Effective noise barriers to be utilized along Stetson Hills Boulevard, Dublin Boulevard and Markshaffel Road adjacent to residential areas.
5. Stetson Hills Boulevard, Dublin Boulevard and Markshaffel Road are major arterials.
6. The second connection to Peterson Road is not subject to Peterson Rd. construction cost reimbursement. (Construction of Peterson Rd. is a part of the Stetson Annexation Agreement, so provision of cost reimbursement from adjacent connections can not be required.)
7. All wetlands are located within the Streamside Overlay zone.
8. Floodplain line delineates 100 and 500 year floodplain.
9. For any property which is designated on the zoning map of the City as being within the streamside overlay zone, no grading, filling, dumping, property disturbance or removal of trees or other significant vegetation shall occur nor shall any building or structure be erected, nor shall any subdivision plat be recorded until a development plan has been approved.
10. When platting of secondary school parcel occurs, parcel size shall be no less than 20 acres.
11. Acreages are not survey verified.
12. Subdivision layouts are conceptual. See Development Plan and Final Plats for actual layouts.

Master Plan Amendments			
City LUP File Number	Date Approved	Amendment Description	Notes / Comments
CPC MP 04-01	04/15/04	Original version	
CPC MP 04-02	04/15/04	Original version	
CPC MP 04-03	04/15/04	Original version	
CPC MP 04-04	04/15/04	Original version	
CPC MP 04-05	04/15/04	Original version	
CPC MP 04-06	04/15/04	Original version	
CPC MP 04-07	04/15/04	Original version	
CPC MP 04-08	04/15/04	Original version	
CPC MP 04-09	04/15/04	Original version	
CPC MP 04-10	04/15/04	Original version	
CPC MP 04-11	04/15/04	Original version	
CPC MP 04-12	04/15/04	Original version	
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CPC MP 04-46	04/15/04	Original version	
CPC MP 04-47	04/15/04	Original version	
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CPC MP 04-49	04/15/04	Original version	
CPC MP 04-50	04/15/04	Original version	

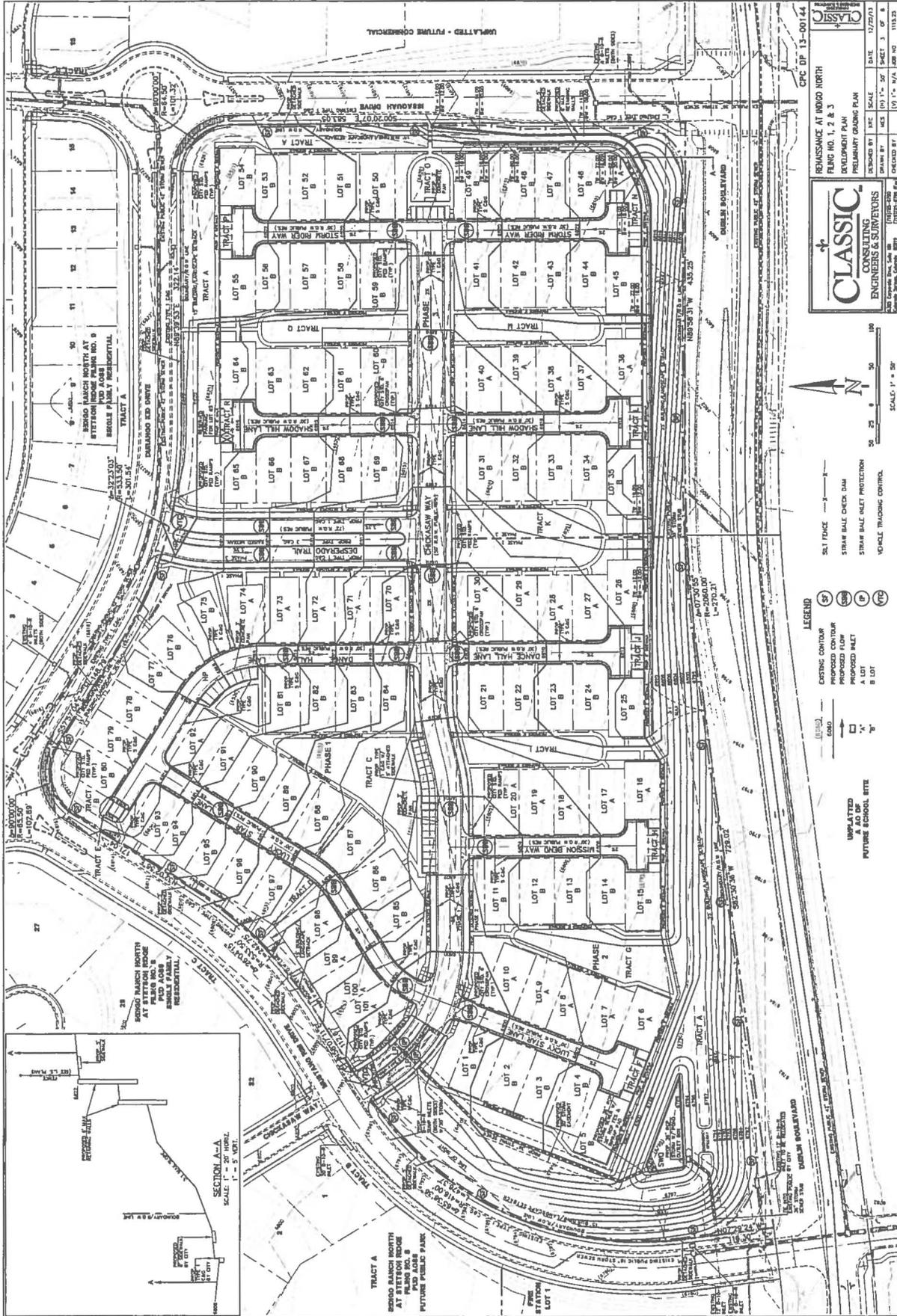


<p>URBAN DESIGN LAND PLANNING & LANDSCAPE ARCHITECTURE</p> <p>4800 South 48th St., Ste. 200 Colorado Springs, CO 80909 Tel: 719-441-2800 Fax: 719-441-2801</p>	<p>STETSON RIDGE MASTER PLAN</p>		<p>DATE: 12/11/13 DESIGNER: B. GARRETT CHECKER: J. HAYWARD</p>	<p>DATE: 07/20/14 BY: [Signature] FOR: [Signature]</p>	<p>SHEET NO: 1 OF 1 SHEETS</p> <p>CPC MP 04-36-1-ADD-13</p>
	<p>STETSON HILLS SECTION LINE</p>				

FIGURE 1



DEV'T PLAN FIGURE 3



CLASSIC
 CONSULTING
 ENGINEERS & SURVEYORS

RENAISSANCE AT WOOD NORTH
 TRACED NO. 1, 2 & 3
 DEVELOPMENT PLAN
 PRELIMINARY GRADING PLAN

PREPARED BY: [Name]
 CHECKED BY: [Name]
 DATE: 11/27/13
 SHEET 3 OF 8
 SCALE: 1" = 30'

CPC DP 13-00144

SCALE: 1" = 30'

0 25 50 75 100

LEGEND

- EXISTING CONTOUR
- PROPOSED CONTOUR
- PROPOSED INLET
- A LOT
- B LOT

UNPLATTED
 A AD OF
 FUTURE SCHOOL SITE

SILT FENCE
 STRAW BALE CHECK DAM
 STRAW BALE INLET PROTECTION
 VEHICLE TRUCKING CONTROL

SECTION A-A
 SCALE: 1" = 20' HORIZ.

SECTION B-B
 SCALE: 1" = 20' HORIZ.

SECTION C-C
 SCALE: 1" = 20' HORIZ.

GRADING

11. TRACED NO. 1, 2 & 3

FIGURE 3

NES, Inc.
 508 South Tejon, Suite 200
 Colorado Springs, CO 80905
 Tel: 719-471-0077
 Fax: 719-471-0077
 www.neslandscape.com
 © 2014, All Rights Reserved

**Renaissance
 At Indigo**

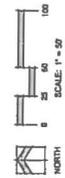
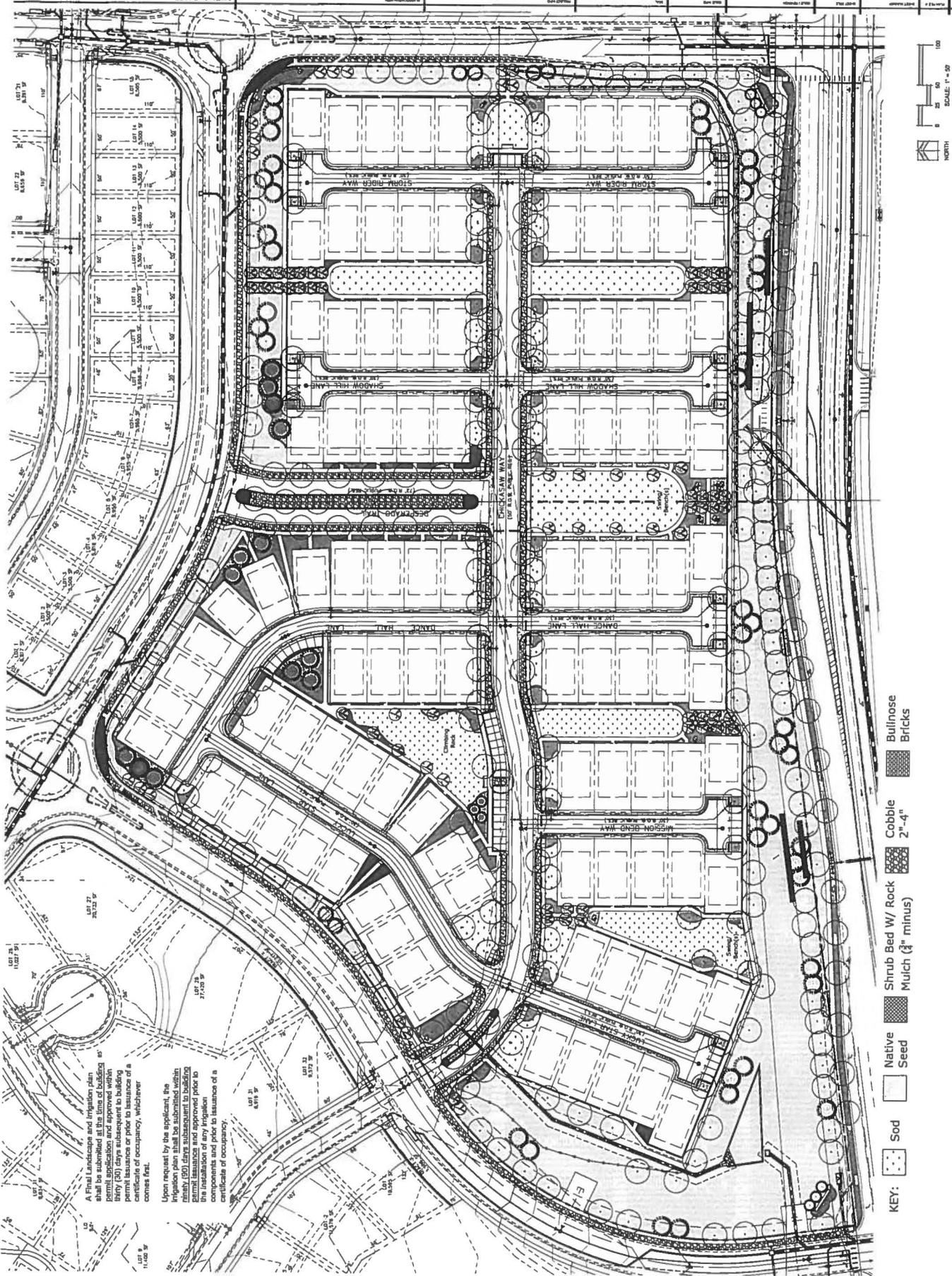
Landscape Plan
 PROJECT ADDRESS

Preliminary
 Landscape Plan

DATE	BY	REVISION

SHEET TITLE

LS
 7 of 8
 CPC PUD 13-001



- KEY:**
- Sod
 - Native Seed
 - Shrub Bed W/ Rock
 - Mulch (3" minus)
 - Cobble 2"-4"
 - Bullnose Bricks

Upon request by the applicant, the irrigation plan shall be submitted within ninety (90) days subsequent to building permit issuance and approved prior to the installation of any irrigation system. The applicant shall provide a certificate of occupancy, whichever comes first.

LANDSCAPE PLAN

FIGURE 3

Project Statement
Renaissance at Indigo Ranch
December 2013
Revised February 2014

Renaissance at Indigo Ranch is proposed as a Small Lot PUD under the guidelines established for this type of residential development. The site is located on the north side of Dublin Blvd. It is bounded on the west by Mustang Rim Drive and a Fire Station; on the north by Durango Kid Drive and single family residential land use; and on the east by a vacant parcel proposed for commercial use. The property is within the Stetson Ridge Master Plan and consists of two parcels designated as Residential 12-25, and Commercial. A Master Plan amendment is a part of the submittal package which proposes to change the land use on the Stetson Ridge Master Plan to Residential 3.5 – 7.99, a Minor Amendment.

The applications associated with this request include: a Minor Amendment to the Stetson Ridge Master Plan; A Zone Change from A to PUD consisting of approximately 21 acres; a Zone Change from A to PBC consisting of approximately 10 acres; a Development Plan for a Small Lot PUD; a Concept Plan for the proposed PBC property; and a Final Plat for the PUD for the first of two phases.

The Small Lot PUD proposes 101 lots on 21.13 acres for a density of 4.8 units per acre. Seven primary common open space areas function as pedestrian access ways to some units and as buffers between units. These spaces will also be programmed for recreational amenities suited to preferences of buyers. While a majority of the lots are directly adjacent to proposed greenway areas, approximately 23 homes (23%) that front the adjacent roadways do not. This exceeds a 10% maximum suggested in the guidelines. The greenways are much larger than the minimum suggested in the guidelines and sidewalks are proposed to link the perimeter homes to the nearby greenway areas. When combined with the aesthetic benefit of having the rear-loaded garages internal and the front of homes facing out, this increase in non-greenway adjacent lots is desirable and beneficial to the overall neighborhood.

Alley/cul-de-sacs are designed with guest parking at the ends. Additional guest parking spaces are provided adjacent to the Mail Kiosk along the main entry road from Mustang Rim Drive and on-street parking will be allowed along Chickasaw Way. A total of 53 guest parking spaces are provided (does not include parking along streets).

After conferring with City Staff, all internal streets, including the access streets are proposed as public streets. Landscape and common areas will be owned and maintained by the Stetson Ridge Metropolitan District No. 3 and either maintained by the District or the Renaissance at Indigo North Homeowner's Association as reflected on the Development Plan and Final Plat.

Master Plan

The proposed Master Plan amendment will reduce the proposed intensity of use by changing multi-family residential and commercial land uses to single family land use. The Dublin Road frontage includes a tract that will be landscaped as a buffer. It will be owned and maintained by the Stetson Ridge Metropolitan District. This buffer, and the proposed land use, provides an intensity transition from Dublin Road to the developing traditional single family to the north.

Zone Change Criteria

1. The action will not be detrimental to the public interest, health, safety, convenience or general welfare. ***This zone change will implement the Stetson Ridge Master Plan as it is proposed to be amended by this series of applications. The use provides a transition in density from Dublin Blvd. to the existing single family homes of lower density to the north and west.***
2. The proposal is consistent with the goals and policies of the Comprehensive Plan. ***The proposed land use provides a distinct housing choice to this area of the community and within the Stetson Ridge Master Plan. The provision of housing variety is one of the goals of the Comprehensive Plan.***
3. Where a master plan exists, the proposal is consistent with such plan or an approved amendment to such plan. Master plans that have been classified as implemented do not have to be amended to be considered consistent with a zone change request. ***This use will be in conformance with the Stetson Ridge Master Plan as it is proposed to be amended with this series of land use applications.***

Development Plan Criteria

1. Will the project design be harmonious with the surrounding land uses and neighborhood? ***Yes. The proposed land use is single family detached, consistent with existing and developing single family lots to the north and west. The site design has the fronts of proposed homes facing toward existing homes.***
2. Will the proposed land uses be compatible with the surrounding neighborhood? Will the proposed development overburden the capacities of existing streets, utilities, parks, schools and other public facilities? ***This site has been planned for higher intensity uses; therefore, the capacity of infrastructure is in place to serve this site. Compatibility is achieved by providing similar land use to existing land use.***
3. Will the structures be located to minimize the impact of their use and bulk on adjacent properties? ***This criterion is not relevant to this land use request.***
4. Will landscaping, berms, fences and/or walls be provided to buffer the site from undesirable views, noise, lighting or other off-site negative influences and to buffer adjacent properties from the negative influences that may be created by the proposed development? ***Buffering is not required for this use since use to use relationship is compatible.***

5. Will vehicular access from the project to the streets outside the project be combined, limited, located, designed and controlled to channel traffic to and from such areas conveniently and safely and in such a manner which minimizes traffic friction, noise and pollution and promotes free traffic flow without excessive interruption? ***Vehicular access to the site has been confined to two access points to collector streets thereby minimizing traffic impacts.***
6. Will all the streets and drives provide logical, safe and convenient vehicular access to the facilities within the project? ***Yes. Internal streets are consistent with the Small Lot PUD Design Guidelines.***
7. Will streets and drives within the project area be connected to streets outside the project area in such a way that discourages their use by through traffic? ***Yes. Internal streets are designed to serve only residents of this project.***
8. Will adequately sized parking areas be located throughout the project to provide safe and convenient access to specific facilities? ***Yes. Each home will have a 2-car garage. Guest parking areas are provided throughout the project.***
9. Will safe and convenient provision for the access and movement of handicapped persons and parking of vehicles for the handicapped be accommodated in the project design? ***As a single family development, the needs of handicapped persons will be custom designed for each home buyer.***
10. Will the design of streets, drives and parking areas within the project result in a minimum of area devoted to asphalt? ***Yes. Internal streets that directly serve lots function as alleys, which have less asphalt than traditional local streets.***
11. Will pedestrian walkways be functionally separated from vehicular traffic and landscaped to accomplish this? Will pedestrian walkways be designed and located in combination with other easements that are not used by motor vehicles? ***Sidewalks are an integral part of the site design since they provide access to the front doors of the proposed homes. The walkway system is primarily internal and provides access throughout the project.***
12. Does the design encourage the preservation of significant natural features such as healthy vegetation, drainage channels, steep slopes and rock outcroppings? Are these significant natural features incorporated into the project design? ***There are no significant natural features on this site.***



10850 East Woodmen Road · Falcon, CO 80831
Tel: 719-495-1100 · Fax: 719-494-8900

January 10, 2014

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

Re: - Renaissance at Indigo Ranch

Mr. O'Connor,

The above referenced Zoning Change is for 21 acres, located north of Dublin, south of Durango Kid Drive, and east of Mustang Rim Drive, currently zoned as agricultural to become zoned as a single family planned unit development proposed for 101 lots.

Based on our calculations, approximately 36 elementary, 14 middle school, and 25 high school students would be generated from this preliminary plan. Ridgeview Elementary School, Skyview Middle School and Vista Ridge High School currently serve this area. Capacities and recent enrollments of these schools are:

<u>School (Grades)</u>	<u>Student Capacity</u>	<u>Enrollment (10/01/13)</u>	<u>Seats Available (Short)</u>
Ridgeview	600	720	(120)
Skyview Middle	900	1022	(122)
Vista Ridge High	1200	1,230	(30)

Capacities of the schools that will serve this proposed development have surpassed their design limit. Accelerated residential growth and strong growth potential heighten the School District's concern regarding its ability to provide adequate educational opportunities.

Falcon School District does not currently have any capital funding available to build or expand any of our current facilities. We have been unsuccessful with the last few attempts to pass a Bond or Mill Levy Override. Further, on a per pupil basis, District 49 is the second lowest funded District in the State. This and the failure to pass a Bond measure create the inability to fund school construction.

*Peter Hilts, Chief Education Officer ~ Brett Ridgway, Chief Business Officer ~ Jack Bay, Chief Operations Officer
Monty Lammers, Falcon Area Innovation Zone Leader ~ ~ Sean Dorsey, Sand Creek Innovation Zone Leader
Michael Pickering, POWER Innovation Zone Leader ~ ~ Kim McClelland, iConnect Innovation Leader*



*10850 East Woodmen Road · Falcon, CO 80831
Tel: 719-495-1100 · Fax: 719-494-8900*

Based upon our calculations, land dedication is not feasible from a development of this size. District 49 cautiously approves the Zoning Change, with the clear understanding of the infrastructure capacity being inadequate and requests that the developer agree to pay cash in lieu of land at the current market value of land within the District. The District would like the opportunity to respond to any land use changes associated with this project.

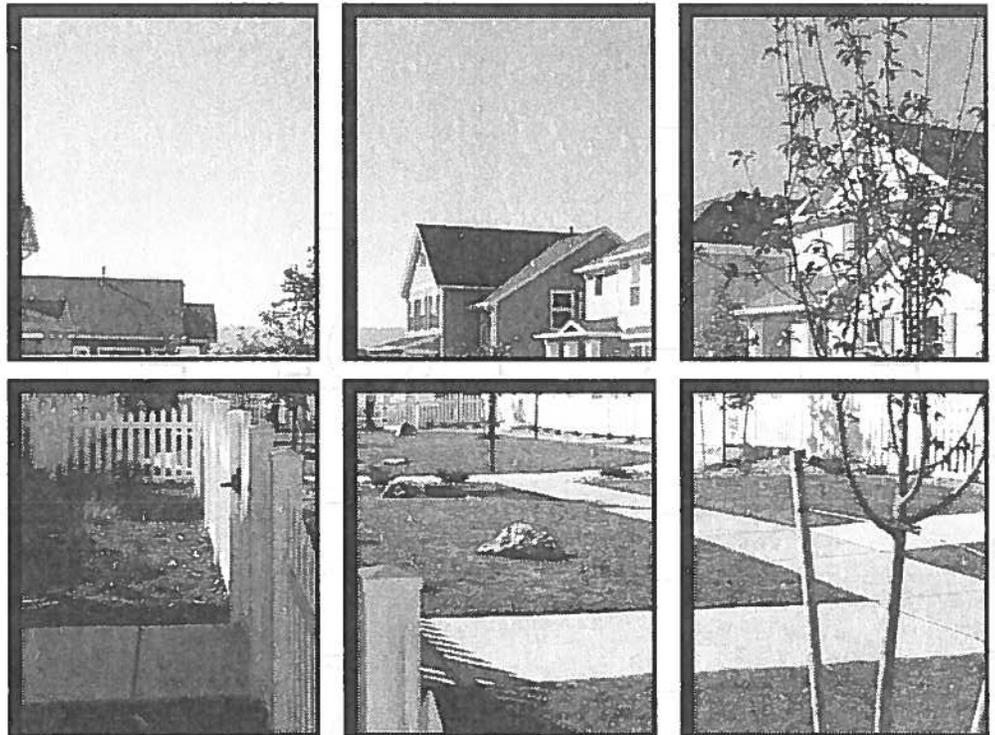
Additionally, it is respectfully requested that this project participate in the 501(c) (3) “Falcon Community Builders for Classrooms” non-profit organization which is intended to assist with relieving a portion of the overcrowding within the District. For additional payment information please contact Lori VonFeldt-Wingert at (719) 447-1777.

Your continuing cooperation is sincerely appreciated, as is the opportunity to comment upon issues of interest to the County, the School District and our mutual constituents.

Should you have questions or desire further information, please contact me at your convenience at (719) 494-8997 or mandrews@d49.org.

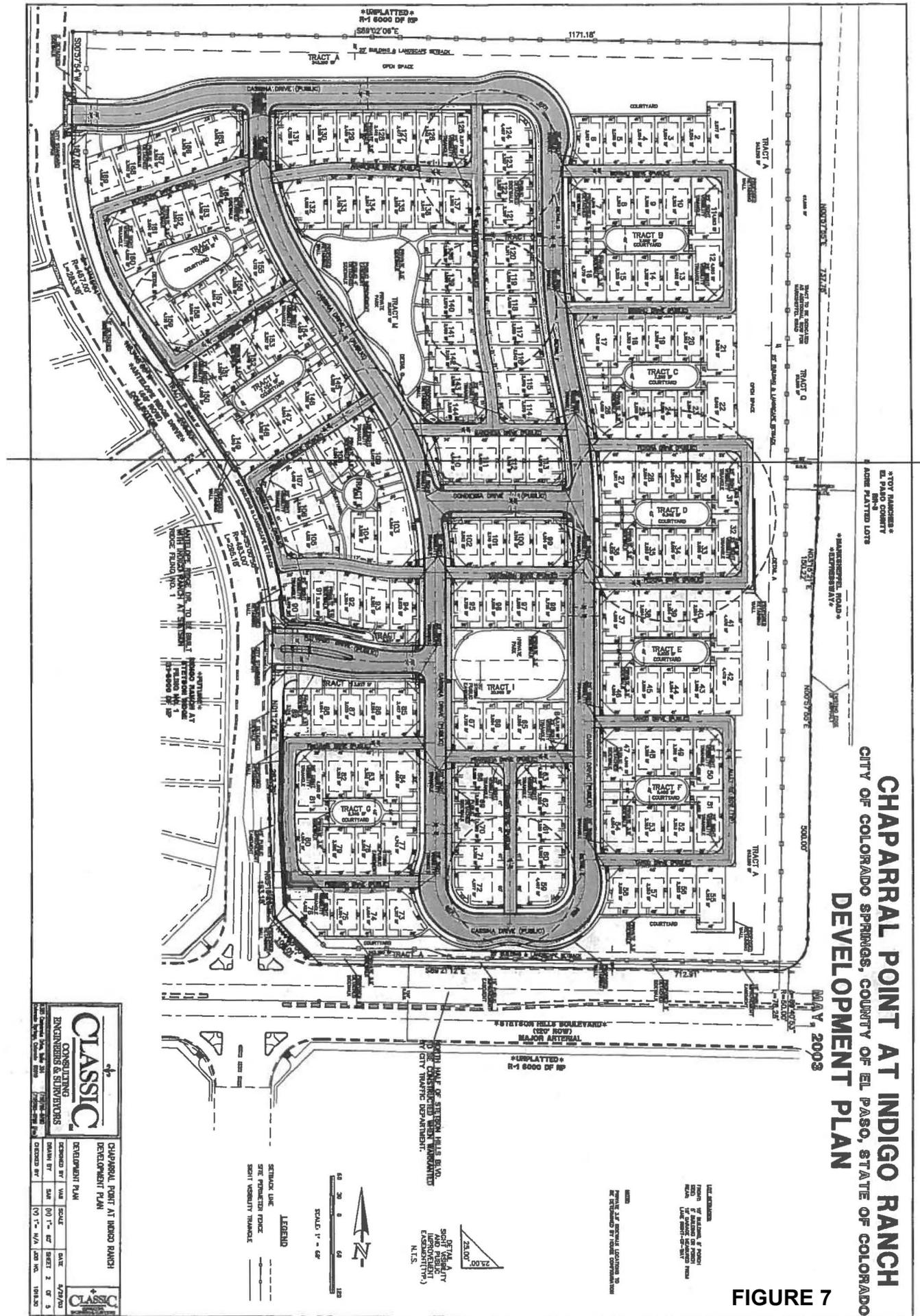
FALCON SCHOOL DISTRICT 49

Melissa Andrews
District Strategic Planner



Small Lot Planned Unit Developments

Review Criteria and Guidelines



CHAPARRAL POINT AT INDIGO RANCH
 CITY OF COLORADO SPRINGS, COUNTY OF EL PASO, STATE OF COLORADO
DEVELOPMENT PLAN
 MAY, 2003

CLASSIC
 CONSULTING
 ENGINEERS & SURVEYORS

CHAPARRAL POINT AT INDIGO RANCH
 DEVELOPMENT PLAN

DESIGNED BY: VAS SCALE: DATE: 4/23/03
 DRAWN BY: SMR (0) 1" = 60' SHEET 2 OF 3
 CHECKED BY: (V) 1" = 60' N/A LDP NO. 1048.03

LEGEND
 SETBACK LINE
 FIRE FIGHTER FORCE
 SCOT VEHICULAR TRAVEL

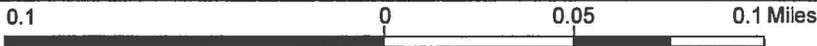
SCALE: 1" = 60'

NOTES:
 1. ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
 4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

FIGURE 7



1: 2,920

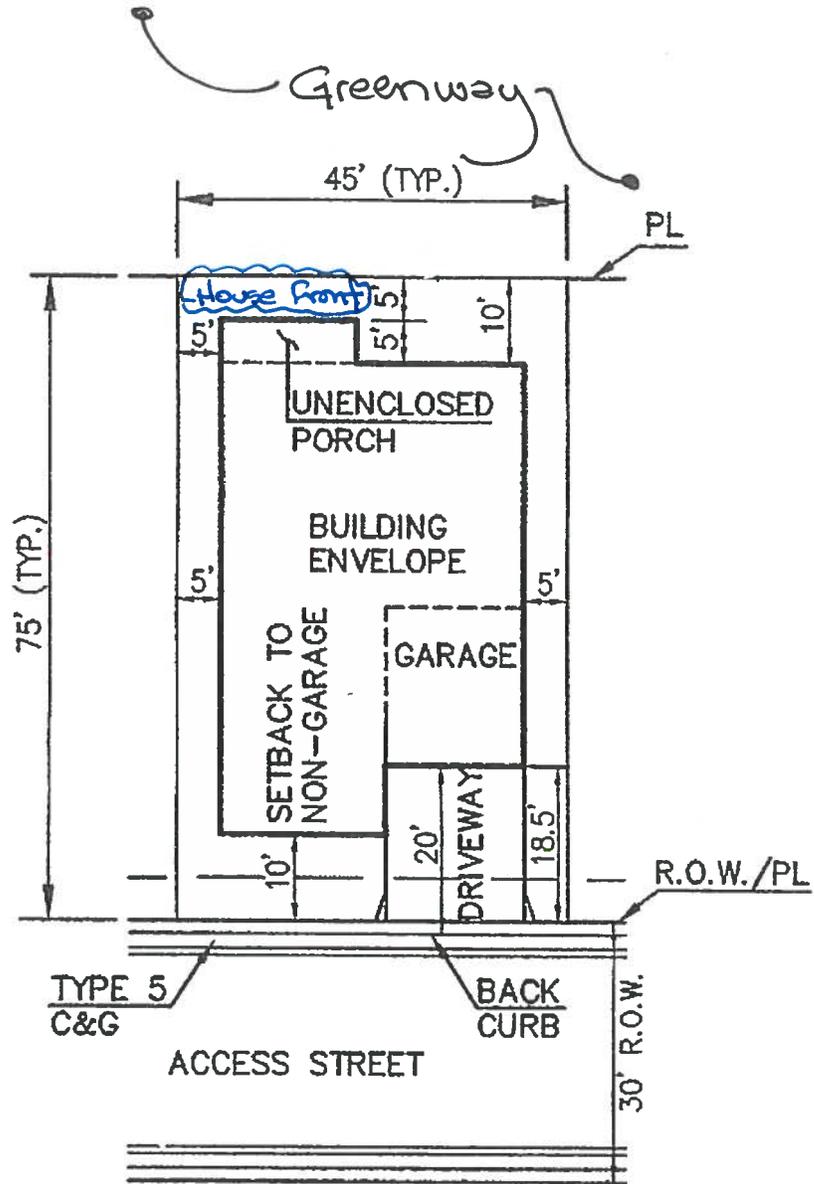


NAD_1983_StatePlane_Colorado_Centra_FIPS_0502_Feet
© Latitude Geographics Group Ltd

This map is a user generated static output from an Internet mapping
is for reference only. Data layers that appear on this map may or ma
accurate, current, or otherwise
THIS MAP IS NOT TO BE USED FOR NAVIG

FIGURE 7

m



**TYPICAL LOT
(GREENWAY ORIENTED)**

CITY PLANNING COMMISSION AGENDA

ITEM NO: 6.A, 6.B

STAFF: LARRY LARSEN

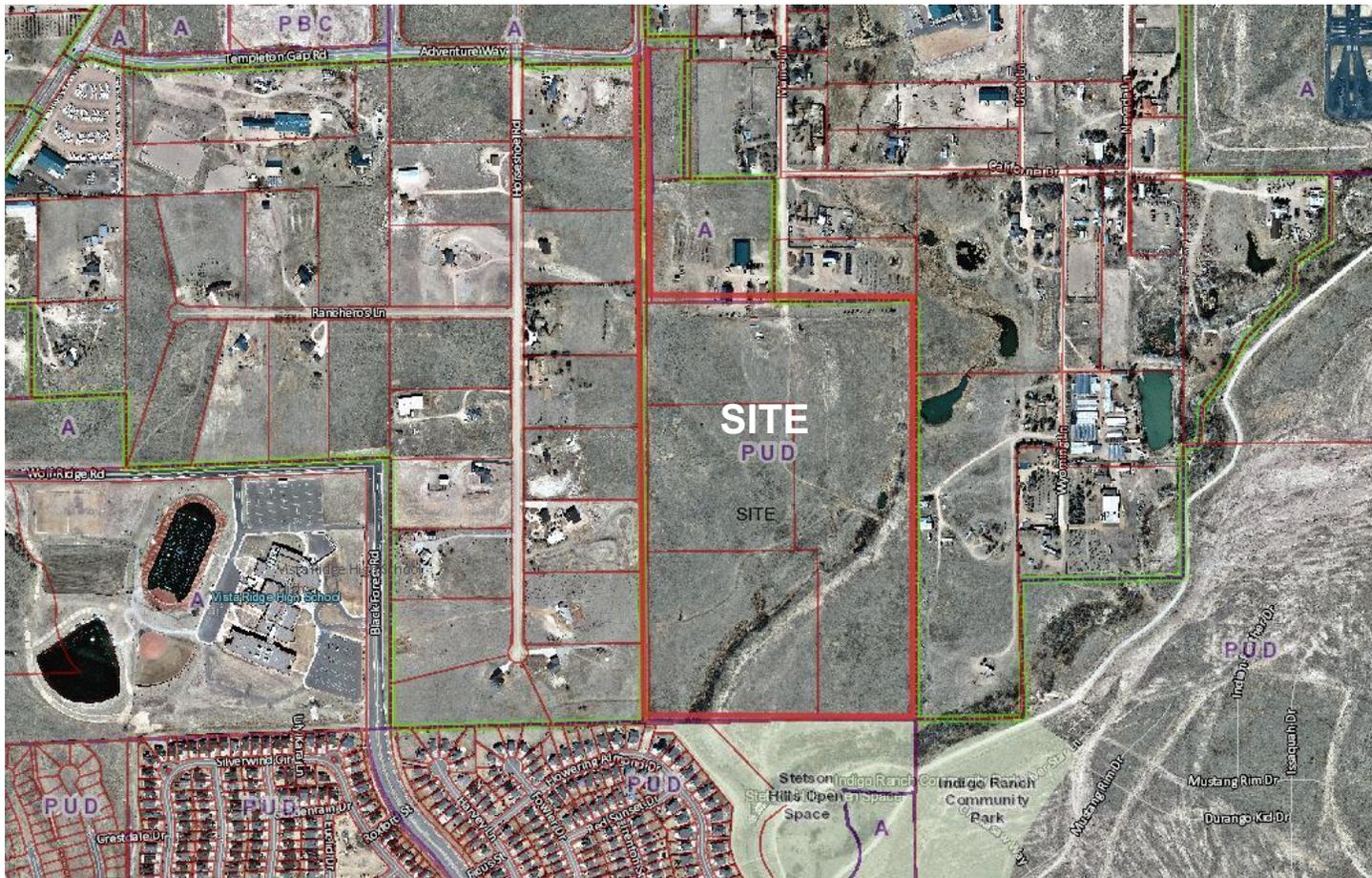
FILE NO: CPC PUP 05-00264-A1MN12 - QUASI-JUDICIAL
FILE NO: CPC PUD 06-00336-A1MN12 - QUASI-JUDICIAL

**PROJECT: APPEAL OF ADMINISTRATIVE DECISION: QUAIL BRUSH CREEK
CONCEPT PLAN AND DEVELOPMENT PLAN AMENDMENTS**

**APPELLANT: BRIAN NEWBURG, NEIGHBORHOOD REPRESENTATIVE, ON BEHALF
OF THE NEIGHBORS SURROUNDING THE PROJECT**

APPLICANT: M&S CIVIL CONSULTANTS, INC.

OWNER: IQ INVESTORS, LLC



PROJECT SUMMARY:

1. Project Description: An appeal by Brain Newberg, vicinity property owner, regarding the administrative approvals of minor amendments to the approved Quail Brush Creek PUD Concept Plan and Development Plan. This project allows for a change in the phasing sequence, street and lot layout, and a reduction in the number of lots. The property consists of 62.2 acres and is located east of existing Nebraska Lane, north of Gold Drop Drive, and north of Flowering Almond Drive. **(FIGURES 1 & 2)**
2. Appellant's Statement **(FIGURE 3)**
3. Applicant's Rebuttal Statement: **(FIGURE 4)**
4. Planning and Development Department's Recommendation: Deny the appeal, affirming the administrative approval of the applications.

BACKGROUND:

1. Site Address: The property is located east of existing Nebraska Lane, north of Gold Drop Drive, and north of Flowering Almond Drive.
2. Existing Zoning/Land Use: PUD/AO (Planned Unit Development – Single-Family Residential with Airport Overlay) / Vacant (planned single-family residences) **(FIGURE 5)**
3. Surrounding Zoning/Land Use:
North: A (Agricultural) & County A-5 (Agricultural) / single-family residences
South: A (Agricultural) & PUD (Planned Unit Development) / open space & single-family residences
East: County RR-5 (Rural Residential) / single-family residences
West: County RR-5 (Rural Residential) / single-family residences
4. Comprehensive Plan/Designated 2020 Land Use: General Residential
5. Annexation: Woodmen Heights No. 7 (2007)
6. Master Plan/Designated Master Plan Land Use: Dublin North Master Plan / Residential 8 to 11.99 dwelling units per acre
7. Subdivision: unplatted
8. Zoning Enforcement Action: None.
9. Physical Characteristics: The generally site slopes towards the south. The site has some significant vegetation (trees, grasses and shrubs) within a tributary of Sand Creek.

STAKEHOLDER PROCESS AND INVOLVEMENT:

Two neighborhood meetings were conducted during the review of this project.

The first neighborhood meeting was conducted at Woodmen Valley Chapel East on February 19, 2013, after the applications were submitted during the internal review stage. Approximately 30 persons attended. The neighborhood concerns included: traffic generation and distribution, updated traffic studies, access location and possible alternatives, density and lot sizes, construction impacts, phasing, screening and buffering, dust control, school impacts, and protection of the area's rural lifestyle.

The second neighborhood meeting was conducted at Vista Ridge High School on September 10, 2013, after revised plans were submitted during the internal review stage. The same neighborhood concerns voiced at the first neighborhood meeting were expressed again.

The standard City notification process for the internal review included posting the property with a notice poster and mailing postcards to approximately 49 property owners within 1,000 feet of the project area.

The same posting and notification process will be utilized prior to the CPC public hearing.

All applicable agencies and departments were asked to review and comment. No significant concerns were identified. All issues and concerns were incorporated into the development plan or provided as conditions of approval. Final compliance will be verified and confirmed prior to issuance of a building permit.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Background:

- a. Quail Brush Creek, a single-family detached residential neighborhood, was annexed into the City in 2007 as part of the Woodmen Heights No.7 annexation.
- b. Quail Brush Creek is part of the Dublin North Master Plan that designates this area for residential use at the density of 8 to 11.99 dwelling units per acre, as approved in 2007.
- c. Quail Brush Creek was zoned PUD/AO (Planned Unit Development for single-family residential use with the airport overlay) in 2007.
- d. The initial Quail Brush Creek Development Plan was approved in 2007 and has not been amended, until this most recent amendment.
- e. Quail Brush Creek has not been platted; although a plat was administratively reviewed and approved concurrent with the two amendments subject to this appeal. This plat has yet to be recorded.
- f. The project has been planned and will be developed in four phases.
- g. The original development plan approval date was extended in 2011 to March 21, 2012, and subsequently expired at that time when no building permits were issued.
- h. In December of 2012, the City accepted the submittal of the applications for the Amendments to the Approved Quail Brush Creek Concept Plan and Development Plan to reinstate the plans and propose new modifications.
- i. After project review and considering neighborhood comments, the City Planning and Development Staff approved the applications on January 30, 2014.
- j. The appellant filed his application for appeal within the ten-day appeal period on February 7, 2014. The statement was amended after it was discovered that it cited the wrong plan review criteria code sections.
- k. The City Planning Commission is now scheduled to hear this appeal at their regular meeting of March 20, 2014, per City Code requirements and provisions.

2. Appeal Issues:

- 1.) *The administrative decision was erroneous, unreasonable, and inconsistent with the goals and objectives of the City Comprehensive Plan and City Code review criteria.*

The Staff decision was correct. Similar to all applications submitted and reviewed by Staff, this application was processed in accordance with City Code provisions and policy. The City Comprehensive Plan identifies this area for general residential use; this project is for residential use.

Applicable submittal and checklist requirements were adhered to. Review criteria were appropriately evaluated. Neighborhood comments and concerns were also considered.

2.) *The land use and proposed densities are not compatible with the surrounding area.*

This project allows for detached single-family residential uses with open space, drainage channel, a pocket park and public streets. The proposed single-family use is the same as the surrounding area. Most of the County neighborhood residents also enjoy using their property for home occupations and businesses associated with their homes and the keeping of horses and other animals. To the south, in the City, in the Ridgeview at Stetson Hills neighborhood, single-family residences were built in the past decade.

The densities for the Quail Brush Creek project are similar to the Ridgeview neighborhood to the south; lot sizes range between 6,000 to 11,000 square feet for both. While the majority of the surrounding parcels located within the County are properties of five acres or more; this is typical for this area. As this area transitions from rural to urban residential, the densities and intensities naturally increase. As discussed at the neighborhood meetings, the City is interested in encouraging growth and development within its boundaries and promoting urban uses. This is evidenced by the residential areas approved and developed in the surrounding Banning Lewis Ranch, Stetson Hills, Cumbre Vista and Forest Meadows neighborhoods.

When this project area was annexed into the City during 2007, it was master planned and zoned for single-family residential use at the density of 8 to 12 units per acre, which would allow for much smaller lots. The 2007 PUD development plan was approved with a density of 4.77 dwelling units per acre. The 2014 amended PUD development plan was approved at an even lesser density, 4.4 dwelling units per acre; it reduced the possible total number of lots from 330 to 230.

Requiring the developer to modify the project to conform to rural densities of the surrounding area would not be consistent with the City Comprehensive Plan, the Dublin North Master Plan or previously approved, but expired concept plan and development plan. *The development plan does not provide for an adequate harmonious transition from the City to the rural country lifestyle.*

Provisions were incorporated into the 2007 plans and continued in the 2014 plans to allow only lots of 11,000 square feet or greater, together with the adjoining buffer along the western boundary of the project. It was not required along the southern, northern or eastern boundaries of the project. The southern boundary is adjacent to dedicated open space and similar lot sizes, in the City. .

Again, requiring the developer to modify the project to conform to rural country lifestyles or densities of the surrounding area would consistent with the City Comprehensive Plan, the Dublin North Master Plan or previously approved, but expired concept plan and development plan. Furthermore, it would be an inefficient use of land within the urban and suburban context of Colorado Springs, particularly availability and connection to urban services.

3.) *The buffering (including fences and sound barriers) and lot sizes bordering the rural areas is inconsistently applied.*

Provisions were incorporated into the 2007 plans and continued in the 2014 plans to require a six foot (6') cedar privacy fence along the western, northern, and a portion of

the eastern boundaries of the project. It was not required along the southern boundary of the project. The southern boundary is adjacent to dedicated open space and similar lot sizes, in the City. Sound barriers are not required or deemed necessary between the proposed single-family residences and residential projects within the County.

In addition to fencing, a 30' landscape buffer and lots of 11,000 square feet or greater are required along the western boundary, again shown in the 2007 approved plans and maintained in the 2014 amendment. Along a portion of the northern and eastern boundaries a 30' utility easement with a required access will serve as an additional buffer in those areas. Buffering along the south is not necessary.

Normally, landscape buffers and screening is not a requirement between single-family residential use projects. However, provisions were added in the 2007 plans and carried over to the 2014 amendment to recognize this concern. Staff finds that additional buffering is not necessary.

4.) *The traffic created by such densities cannot be safely supported by the proposed and existing road system.*

Together with the 2007 plans, a traffic impact analysis (study) was prepared, reviewed, and accepted by City Traffic Engineering. The study included elements addressing the proposed project, the existing roadway and traffic conditions, trip generation and distribution, and traffic impacts, and offered street system recommendations.

It was determined by City Traffic Engineering, and supported by Planning and Development, that an updated study was not necessary for the 2014 amendment since the amendment provided for a decrease in the number of lots and the access locations stayed the same.

One of the major concerns shared by the neighborhood is the existing street system and its ability to accept additional traffic. In most areas of transition this is a concern that may require additional time and future projects to help resolve.

The original 2007 plans for Quail Brush Creek and the 2014 amendment identify two primary points of access into this project; one to the south through the Ridgeview neighborhood utilizing existing public neighborhood streets within the City and the other north to Adventure Way, a County road, serving as a frontage road for Woodmen Road. Provisions have been included to provide additional access to the east once those properties are annexed and development occurs and to the west when platted lots for this project exceed 230.

Recognizing the potential impact to the existing neighborhood and its streets to the south, provisions have been included to limit the number of new residences to 25 until the new northern connection to Adventure Way is made. This agreed upon provision between the developer and the City presents a significant burden to the developer, while protecting the Ridgeview neighborhood to the south from disproportionate traffic increases.

No other alternatives have been identified. The developer has already reduced the total number of possible units from 330 to 230. The developer has preliminarily explored the purchase of property to the west to connect to the future extension of Black Forest Road,

but without success. Building permits are limited. Failure to not approve the amended plans because of traffic and other concerns is not a recommended option. Planning and Traffic Engineering staff find that the proposed land use and densities will not overburden the existing street network and that future improvements will alleviate any short term challenges. Other projects will help resolve this issue in the future.

3. Conformance with the City Comprehensive Plan: The amendment and use is consistent with the City Comprehensive Plan. The Plan's 2020 Land Use Map identifies this area as a "General Residential".

The following City Comprehensive Plan goals, objectives and policy statements apply to this project:

Policy LU 201: Promote a Focused, Consolidated Land Use Pattern: Locate new growth and development in well-defined contiguous areas in order to avoid leapfrog, scattered land use patterns that cannot be adequately provided with City services.

Strategy LU 302c: Promote Compatibility between Land Uses of Differing Intensities: Design and develop mixed land uses to ensure compatibility and appropriate transitions between land uses that vary in intensity and scale.

Objective LU 5: Develop Cohesive Residential Areas: Neighborhoods are the fundamental building block for developing and redeveloping residential areas of the city. Likewise, residential areas provide a structure for bringing together individual neighborhoods to support and benefit from schools, community activity centers, commercial centers, community parks, recreation centers, employment centers, open space networks, and the city's transportation system. Residential areas also form the basis for broader residential land use designations on the citywide land use map. Those designations distinguish general types of residential areas by their average densities, environmental features, diversity of housing types, and mix of uses. Residential areas of the city should be developed, redeveloped and revitalized as cohesive sets of neighborhoods, sharing an interconnected network of streets, schools, parks, trails, open spaces, activity centers, and public facilities and services.

Policy LU 501: Plan Residential Areas to Integrate Neighborhoods into the Wider Subarea and Citywide Pattern: Plan, design, develop, and redevelop residential areas to integrate several neighborhoods into the citywide pattern of activity centers, street networks, environmental constraints, parks and open space, school locations and other public facilities and services.

Strategy LU 501a: Link Neighborhood Layout and Design to a Larger Residential Area: In master plans and in community planning areas, layout and design individual neighborhoods to form a coherent residential area.

Policy LU 601: Assure Provision of Housing Choices: Distribute housing throughout the City so as to provide households with a choice of densities, types, styles and costs within a neighborhood or residential area.

Objective N 1: Focus On Neighborhoods: Create functional neighborhoods when planning and developing residential areas. Regard neighborhoods as the central organizing element for planning residential areas. Rely on neighborhood-based

organizations as a means of involving residents and property owners in the decision-making process.

Objective N 3: Vary Neighborhood Patterns: Integrate a variety of housing types and densities with amenities, services, and retail uses to generate opportunities and choices for households. When the character, context and scale of the surrounding neighborhood are taken into account, mixed-use developments can provide unique opportunities for employment, shopping, housing choice, and public gathering space, while having a positive impact on the neighborhood.

Objective CCA 6: Fit New Development into the Character of the Surrounding Area: Often the overall character of a new development is not realized until the project is completed. This can lead to unintended impacts and incompatible development. Applicants for new developments need to clearly identify how their projects will fit into the character of the surrounding area and the community as a whole with respect to height, scale, bulk, massing, roof forms, signage, overall site design, pedestrian and vehicular access, and relation to the public right-of-way.

Policy CCA 601: New Development Will be Compatible with the Surrounding Area: New developments will be compatible with the surrounding land uses and will complement the character and appearance of adjacent land uses.

It is the finding of the City Planning and Development Staff that the Quail Brush Creek project and amendments are consistent with the City's Comprehensive Plan 2020 Land Use Map and the Plan's goals, objectives and policies for General Residential use.

4. Conformance with the Area's Master Plan: This project is located within the Dublin North Master Plan area and is designated for residential use.

It is the finding of the City Planning and Development Staff that the Quail Brush Creek project and amendment are consistent with the Dublin North Master Plan.

5. Concept Plan Amendment: The Quail Brush PUD Concept Plan Amendment is substantially consistent with the previously approved Quail Brush Creek PUD Concept Plan.

PUD concept plans are reviewed based upon the PUD concept plan review criteria found in City Code Section 7.3.605.

It is the finding of the City Planning and Development Staff that the Quail Brush Creek Concept Plan Amendment meets the PUD concept plan review criteria found in City Code Section 7.3.605.

6. Development Plan Amendment: The Quail Brush PUD Development Plan Amendment is substantially consistent with the previously approved Quail Brush Creek PUD Development Plan.

PUD Development plans are reviewed based upon the PUD development plan review criteria found in City Code Section 7.3.606.

It is the finding of the City Planning and Development Staff that the Quail Brush Creek PUD Development Plan Amendment meets the PUD development plan review criteria found in City Code Section 7.3.606.

7. Appeal Review Criteria: An appeal must substantiate the criteria for review of an appeal of an administrative decision found in City Code Section 7.5.906.A.4.

It is the finding of the City Planning and Development Staff that the appeal fails to substantiate the criteria for review of an appeal of an administrative decision found in City Code Section 7.5.906.A.4.

STAFF RECOMMENDATION:

Item No: 6.A CPC PUP 05-00264-A1MN12 – PUD Concept Plan Amendment

Deny the appeal and affirm the administrative approval of the amendment to the previously approved Quail Brush Creek PUD Concept Plan, based upon the finding that the amendment complies with the PUD concept plan review criteria found in City Code Section 7.3.605 and the appeal fails to substantiate the criteria for review of an appeal of an administrative decision found in City Code Section 7.5.906.A.4.

Item No: 6.B CPC PUD 06-00336-A1MN12 – PUD Development Plan Amendment

Deny the appeal and affirm the administrative approval of the amendment to the previously approved Quail Brush Creek PUD Development Plan, based upon the finding that the amendment complies with the PUD development plan review criteria found in City Code Section 7.3.606 and the appeal fails to substantiate the criteria for review of an appeal of an administrative decision found in City Code Section 7.5.906.A.4.

**QUAIL BRUSH CREEK PHASE 1
 PUD DEVELOPMENT PLAN**
 COLORADO SPRINGS, CO
 FINAL LANDSCAPE DEVELOPMENT PLAN

NOT FOR CONSTRUCTION

PROJ. NO.: 13-18-003
 DATE: 01.16.2014
 SCALE: 0.5" = 10'-0"
 DRAWN: JMD
 CHECKED: JMD
 SHEET 5 OF 5

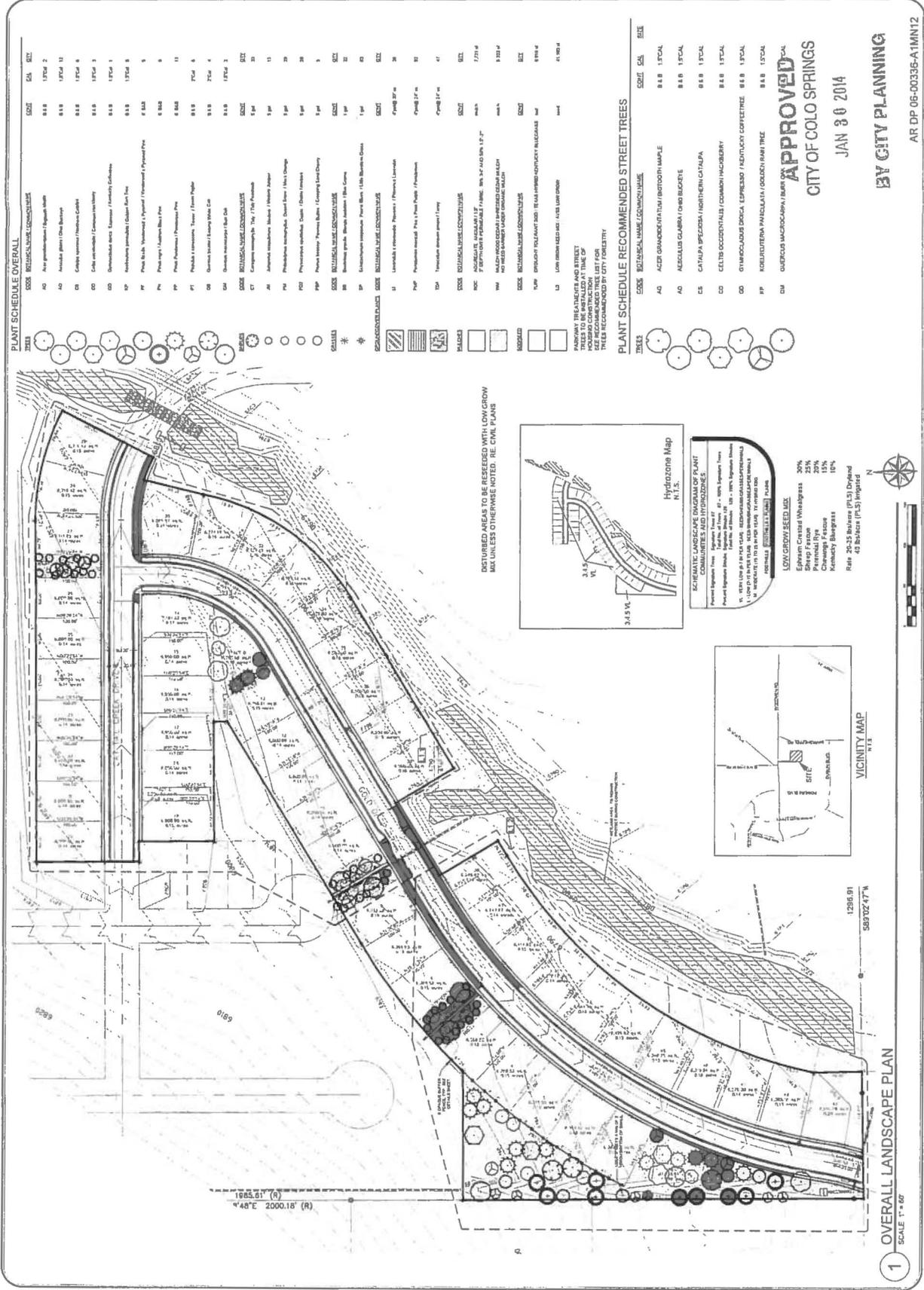


FIGURE 2

February 7, 2014

Mr. Larry Larsen
Sr. Land Use Review Planner
City of Colorado Springs
Land Use Review
30 South Nevada, Suite 105
Colorado Springs, CO 80903

RE: Appeal of Administrative Decision
Development: Quail Brush
File Number: CPC PUP 05-00264-A1MN12 – Amendment to the Approved Quail Brush Creek PUD Concept Plan and AR PUD 06-00336-A1MN12 – Amendment to the Approved Quail Brush Creek PUD Development Plan.

Dear Mr. Larsen:

First, I want to thank you for all of the time and energy you and others have invested in meeting with our neighborhood and your availability to answer our questions and consider our concerns throughout this entire process.

As outlined in Section 7.5.906 (A)(2(d)), I am submitting this appeal of the administrative decision on behalf of the neighbors surrounding the proposed Quail Brush Development. Specifically, we believe the administrative decision is erroneous, unreasonable and inconsistent with the goal and objectives provided in the Comprehensive Plan and with the Review Criteria for PUD Concept and Development Plans as provided in the City Code 7.3.605 and 7.3.606. We believe the following Review Criteria were not properly applied to the proposed Quail Brush Development:

7.3.605 Review Criteria for PUD Concept Plans

- E. Does the development pattern proposed within the PUD concept plan promote the stabilization and preservation of the existing or planned land uses in adjacent areas and surrounding residential neighborhoods?
- F. Does the development pattern proposed within the PUD concept plan provide an appropriate transition or buffering between uses of differing intensities both on site and off site?
- H. Are the permitted uses, bulk requirements and required landscaping appropriate to and compatible with the type of development, the surrounding neighborhood or area and the community?
- I. Does the PUD concept plan provide adequate mitigation for any potentially detrimental use to use relationships (e.g., commercial use adjacent to single-family homes)?
- J. Does the PUD concept plan accommodate automobile, pedestrian, bicycle and transit modes of transportation as appropriate, taking into consideration the development's primary function, scale, size and location?
- K. Does the PUD concept plan include a logical hierarchy of perimeter and internal arterial, collector and local streets that will disperse development generated vehicular traffic to a variety of access points and ways,

reduce through traffic in adjacent residential neighborhoods and improve resident access to jobs, transit, shopping and recreation?

- L. Will streets and drives within the project area be connected to streets outside the project area in a way that minimizes significant through traffic impacts on adjacent residential neighborhoods, but still improves connectivity, mobility choices and access to jobs, shopping and recreation?
- M. Does the PUD concept plan provide safe and convenient vehicle and pedestrian connections between uses located within the zone district, and to uses located adjacent to the zone district or development?
- P. Will the proposed development overburden the capacities of existing or planned streets, utilities and other public facilities?
- Q. Are the areas with unique or significant natural features preserved and incorporated into the design of the project? (Ord. 03-110; Ord. 03-190; Ord. 09-70; Ord. 09-80; Ord. 12-68)

7.3.606: Review Criteria for PUD Development Plan:

C. Compatibility Of The Site Design With The Surrounding Area:

- 1. Does the circulation plan minimize traffic impact on the adjacent neighborhood?
- 2. Do the design elements reduce the impact of the project's density/intensity?
- 3. Is placement of buildings compatible with the surrounding area?
- 4. Are landscaping and fences/walls provided to buffer adjoining properties from undesirable negative influences that may be created by the proposed development?
- 5. Are residential units buffered from arterial traffic by the provision of adequate setbacks, grade separation, walls, landscaping and building orientation?

D. Traffic Circulation:

- 1. Is the circulation system designed to be safe and functional and encourage both on and off site connectivity?
- 2. Will the streets and drives provide logical, safe and convenient vehicular access to the facilities within the project?
- 3. Will adequately sized parking areas be located to provide safe and convenient access, avoid excessive parking ratios and avoid expanses of pavement?
- 4. Are access and movement of handicapped persons and parking of vehicles for the handicapped appropriately accommodated in the project design?
- 5. As appropriate, are provisions for transit incorporated?

E. Overburdening Of Public Facilities: Will the proposed development overburden the capacities of existing and planned streets, utilities, parks, and other public facilities?

F. Privacy: Is privacy provided, where appropriate, for residential units by means of staggered setbacks, courtyards, private patios, grade separation, landscaping, building orientation or other means?

Background:

The Quail Brush development was originally approved by the City in March of 2007 and presumably because of economic conditions has remained dormant until this past year. Quail Brush is bordered to the South by a neighborhood of single family homes with a similar density to what is being proposed in the Quail Brush concept plan. Quail Brush is bordered to the west by the Horseshoe Rancheros neighborhood which consists of 30 five acre residential home sites. Quail Brush is bordered to the North and East by rural residential homes on lots varying in size from 5 acres to over 20 acres. So the proposed Quail Brush development is bordered on 3 sides by rural home sites which are all predominately within El Paso County and not part of the City of Colorado Springs.

Summary of our basis for the appeal:

- 1.) The land use and proposed densities are not compatible with the surrounding area. [Section 7.3.605 E, F, H, I and 7.3.606 C, F]
- 2.) The development plan does not provide for an adequate harmonious transition from the City to the rural county lifestyle. [Section 7.3.605 E, F, H, I and 7.3.606 C, F]
- 3.) The buffering (including fences and sound barriers) and lot sizes bordering the rural areas is inconsistently applied. [Section 7.3.605 E, F, H, I and 7.3.606 C, F]
- 4.) The traffic created by such densities cannot be safely supported by the proposed and existing road system. [Section 7.3.605 J, K, L, M, P and 7.3.606 D, E]

COMPATABILITY and HARMONIOUS TRANSITION

The comprehensive plan requires that development activities are compatible and provide for harmonious transitions with surrounding neighborhoods and properties.

We believe the planner erroneously and unreasonably applied the review criteria for PUD Development and Concept plans and should have required a lower density development, larger lot sizes and greater buffering to provide greater compatibility and a more harmonious transition.

This proposed high density neighborhood is not compatible with the surrounding neighborhoods in many ways. We enjoy a way of life that is very different and we have much concern that we will have a high density of people complaining about things like livestock, roosters, target practicing, and motorized vehicles (such as tractors, dirt bikes and 4-Wheelers). We would like to see our natural wildlife and birds continue to thrive - this includes a good population of great horned owls. The prong horn antelope have moved on. So we ask that minimal damage be done to the resources such as trees and ponds that are a natural part of the Quail Brush land. We would like to see trees and vegetation planted as soon as possible in order to maintain the beauty. We would ask that the HOA require more trees and flowers than in a typical neighborhood because of the natural foraging for the bees that will be destroyed when this land is developed.

All of the properties to the West (Horseshoe Rancheros Estates) are 5 acre home sites. The properties to the north and east are 5 acre ++ home sites and rural commercial home business based properties. The neighbors contend that this development is not compatible or consistent with the surrounding neighborhoods and this was not properly addressed or considered when the property was annexed and the development plan was approved. For compatibility purposes, a better option would be larger lots. Ideally, 2 ½ - 5 acres would be best, but the neighbors would welcome lots sizes of 1/2 acre or more.

In an effort to provide for a harmonious transition, the City has required that the lots which are adjacent to the Horseshoe Rancheros Estates Neighborhood be a minimum of 11,000 square feet including a 30 foot buffer. We believe the planner erroneously excluded the properties to the north and east. To provide for consistency, we would also request that the lots that are adjacent to those properties also reflect the 11,000 minimum including a 30 foot buffer.

We would like low lighting to be considered for this development to minimize light pollution. Currently, we are able to enjoy the night sky and the stars and would like to continue to be able to do so. This is very important to our rural lifestyle.

FENCING and SOUND BARRIERS

The residents to the West still would like to see a sound-proof wall dividing our properties from the road noise from the estimate of 1,150 car trips being made north each day. The surrounding areas, as a whole, see major security concerns and would like a 6 ft sound proof, security wall built around this development. This is typical between multi-family living vs. Single Family living or for different uses (i.e. commercial vs. residential) within the city...we would like to see heavy consideration given to Rural Living vs. Urban Living. Land use and lifestyles are very different. There are many business/resident land uses surrounding this development.

We believe the planner made an error in not requiring adequate and consistent use of fencing around the entire development as part of the buffering and harmonious transition.

TRAFFIC

The comprehensive plan requires a transportation system with a high degree of efficiency, mobility, accessibility, connectivity and safety.

Our understanding is that the traffic study for this project was completed prior to 2006 and never updated. So the study is nearly 8 years old and did not take into consideration current conditions. We believe the planner made an error in not requiring an updated traffic study to take into account the changes in the road systems and current traffic patterns that have been created by the additional development in the area including, a significant number of new residential homes, the addition of Vista Ridge High School, the Fire Station, the extension of Dublin Road to Marksheffel Rd, etc. We believe an updated traffic study would support reducing the density of this development.

We do appreciate the efforts of the City to address this in requiring a phased approach for development which limits the number of permits and construction until two access points (Gold Drop Drive to the South and Nebraska Lane to the North) are established. We also appreciate that the developer has agreed to reduce the number of planned dwelling units from 330 units to 230 units which will no longer require a westerly access through the Horseshoe Rancheros Estates neighborhood.

However, even with the modifications, we still believe that the Gold Drop Drive access to the south through the "Flowering Almond" neighborhood will result in traffic counts which significantly exceed the planned capacity of 600 cars per day per road. Since all of the schools that will serve the homes in Quail Brush are all to the south, it seems logical that many of the trips out of the neighborhood will be to the south, through neighborhood streets not designed to accommodate the volume of traffic. This will result in very inefficient traffic patterns and unsafe roads for motorists, cyclists and pedestrians.

We also have concerns about creation of Nebraska Lane to the north that will become part of a T-intersection with Adventure Way. At a previous neighborhood meeting the City and the Developer revealed there are

significant engineering and construction challenges with constructing the road making sure that there are adequate sight lines at the intersection. It was reported that the road and intersection are yet to be designed. From the topography it will require a large retaining wall be constructed at the corner. With the amount of traffic generated from the Mountain Springs Church on Saturday evenings, Sunday mornings, Wednesday evenings, and other various times during the week, this intersection could be very difficult to safely navigate and is a safety concern.

One option to reduce the traffic concerns would be to further reduce the housing density and include more open space or a park or another use like a church or elementary school which produce lower average traffic volumes. Lower density would result in larger lot sizes that also would provide for a more harmonious transition with the 5 acres home sites to the west, north and east.

Another option would be to abandon the Gold Drop access to the South and move the southerly access to the eastern edge of the property and align it with Peterson road. This would facilitate traffic flow to the south in a much safer and more efficient manner. This would be quick access to Dublin for East West traffic flow and Peterson to the south. We understand this would result in a bridge over Sand Creek which is an added expense. Since it would only serve the homes in Quail Brush, it could be the same width and capacity as the Gold Drop Drive access.

Thank you in advance for consideration of this appeal.

Respectfully submitted by

A handwritten signature in black ink that reads "Brian Newberg". The signature is written in a cursive, flowing style.

Brian Newberg
Neighborhood Representative
Horseshoe Rancheros Estates and surrounding Quail Brush Neighbors.

FLYNN WRIGHT & FREDMAN, LLC
ATTORNEYS AT LAW

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FWF File No. 3336.001

March 5, 2014

Via email to LLarsen@springsgov.com

Mr. Larry Larsen
Senior Land Use Review Planning
Land Use Review Division
City of Colorado Springs Planning and Development Department
30 S. Nevada Avenue
Colorado Springs, CO 80903

RE: CPC PUP 05-00264-A1MN12 (Concept Plan Amendment)
AR PUD 06-00336-A1MN12 (Development Plan Amendment)

Dear Mr. Larsen:

This firm represents IQ Investors, LLC (IQ Investors) in the above-referenced matter.

This letter is in response to the Notice of Appeal originally filed February 7, 2014, and then as amended by a filing made after the 10-day filing limitation as set forth in Section 7.5.906 (A).

IQ Investors objects to any filing made after the 10-day filing limitation, as the City Code does not provide for any such procedure.

The Land Use Review Division (Land Use Review) has properly classified both of the above-referenced amendments as minor amendments. Appellant is not appealing whether Land Use Review properly classified the plans as minor amendment. Appellant is appealing whether Land Use Review properly applied the criteria set forth in the Code to a minor amendment.

Land Use Review properly classified the proposed change to the Concept Plan as a minor amendment because the applicant only proposed the re-configuration of the lot layouts and a new phasing schedule. Furthermore, Concept Plan Amendment states on its face it complies with the buffering requirement of three – 11,000 square foot lots inclusive of a 30-foot landscape buffer as originally required by City Council when it originally approved the Concept Plan. The

Mr. Larry Larsen
Senior Land Use Review Planning
March 5, 2014
Page 2

Concept Plan Amendment does not propose an increase in density; the overall land use plan proposes a decrease in density.

Accordingly, with respect to the Concept Plan Amendment, the issue becomes whether Land Use Review acted erroneously or unreasonably in failing to reconsider the same criteria City Council considered several years when it approved both the rezoning to PUD and the original Concept Plan when the only issues before the Land Use Review Division in the current matter were the re-configuration of the lot layouts and a new phasing schedule. In order to show the Land Use Review Division acted erroneously or unreasonably, Appellant has the burden to show that based on the information presented to it, the Land Use Review Division acted arbitrarily or capriciously in refusing to apply the facts to the criteria.

This is an extremely difficult standard to meet, especially since here is no logical nexus of whatsoever kind or nature between the proposed changes in the Concept Plan and the criteria Appellant alleges the Land Use Review Division should have applied. Furthermore, the face of the documents City Council considered several years ago in the context of the surrounding land uses and the face of the documents submitted in support of the Concept Plan Amendment demonstrate there has not been a substantial change of whatsoever kind or nature in the surrounding land uses.

Lastly, it is fundamentally unfair and unlawful for the Planning Commission to reopen for discussion land use issues that were determined approximately seven years ago. The same analysis applies to the Development Plan Amendment.

Thank you for your attention to this matter.

Sincerely,


WILLIAM H. LOUIS

WHL/pjb

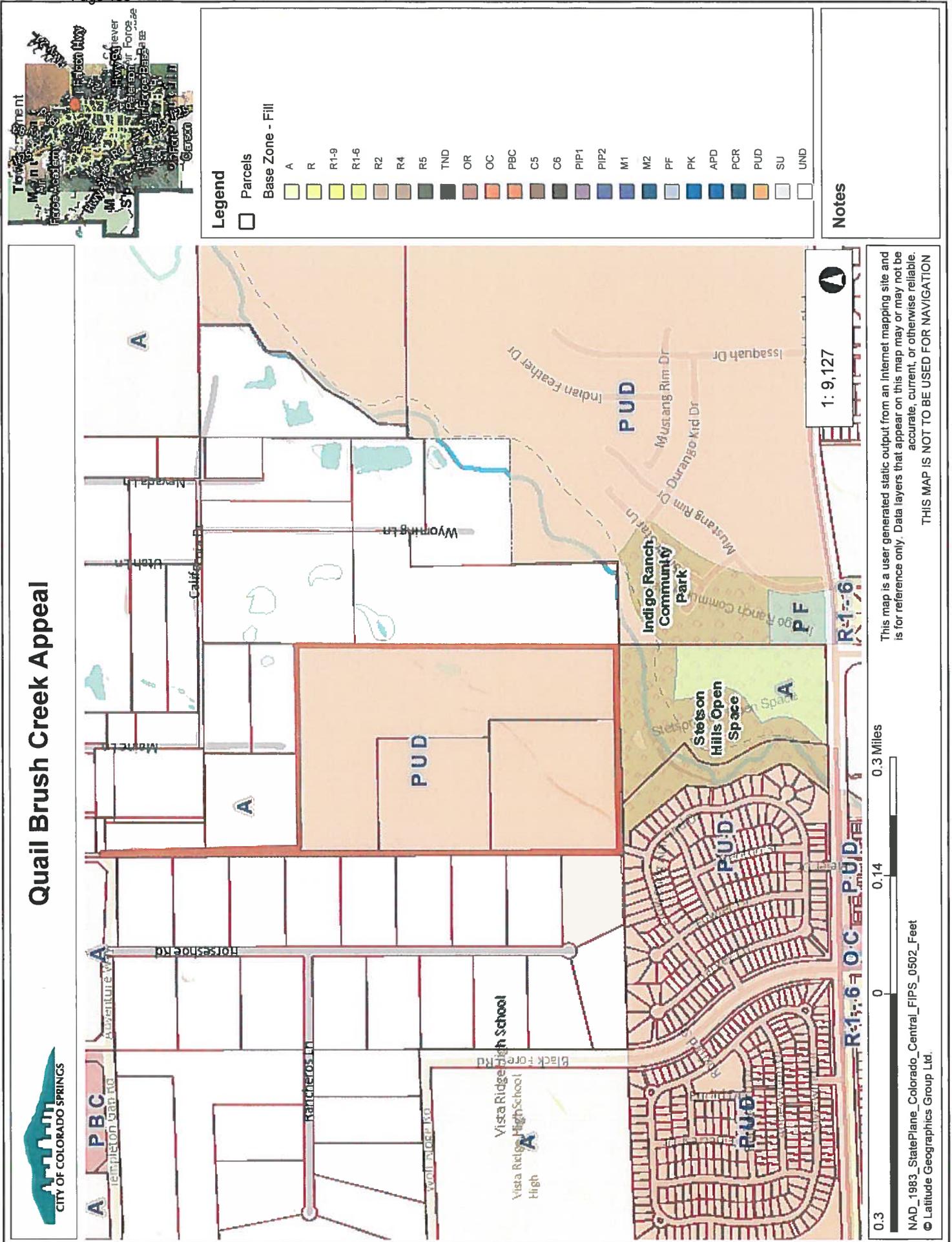


FIGURE 5

CITY PLANNING COMMISSION AGENDA

ITEM NO: 7.A – 7.C

STAFF: LARRY LARSEN

FILE NO: CPC A 13-00111 - LEGISLATIVE
FILE NO: CPC MP 13-00131 - LEGISLATIVE
FILE NO: CPC ZC 13-00130 - LEGISLATIVE

**PROJECT: SADDLETREE ANNEXATION & THE RIDGE AT CUMBRE VISTA
MASTER PLAN**

APPLICANT: M&S CIVIL CONSULTANTS, INC.

OWNER: NEXTOP HOLDINGS, LLC



PROJECT SUMMARY:

1. Project Description: This project includes the following applications: 1.) the Saddletree Annexation (**FIGURE 1 & 2**), 2.) the Ridge at Cumbre Vista Master Plan (**FIGURE 3**), and 3.) establishing the zone district as A/AO (Agricultural with Airport Overlay). The property is located south of Cowpoke Road, approximately ¼ mile west of the Cowpoke Road and Black Forest Road intersection and consists of approximately 14.18 acres.

The applications are necessary for the future development of the Ridge at Cumbre Vista project. The project proposes single-family detached residential use at the density of 3.5 to 7.99 dwelling units per acre. The submittal of a new base zone, development plan, and subdivision plat will be necessary prior to development of the subject property.

2. Applicant's Statement: (**FIGURE 4**)
3. Planning and Development Department's Recommendation: Approval the applications, subject to conditions.

BACKGROUND:

1. Site Address: Not applicable.
2. Existing Zoning/Land Use: County RR-5 Rural Residential / vacant & single-family residence to be removed (**FIGURE 5**)
3. Surrounding Zoning/Land Use:
North: PUD (Planned Unit Development) / Vacant (Planned: Residential – Wolfe Ranch)
South: County RR-5 (Rural Residential) / vacant
East: County A-5 (Agricultural) / Private Riding Arena
West: R-1-6000 / DF / AO (Single-Family Residential with Design Flexibility and Airport Overlays) / Single-family residences (Cumbre Vista)
4. Comprehensive Plan/Designated 2020 Land Use: Potential Annexation Area - General Residential
5. Annexation: Pending
6. Master Plan/Designated Master Plan Land Use: Pending - the Ridge at Cumbre Vista / single-family residential, 3.5 to 7.99 dwelling units per acre
7. Subdivision: Unplatted
8. Zoning Enforcement Action: None.
9. Physical Characteristics: The majority of the site slopes towards the south. The site has no significant vegetation (grasses and shrubs) or natural features.

STAKEHOLDER PROCESS AND INVOLVEMENT: The standard City notification process for the internal review included posting the property with a notice poster and mailing postcards to approximately 101 property owners within 1,000 feet of the project area.

One letter was received regarding drainage concerns. (**FIGURE 6**) The issue is being addressed in the review and approval of drainage plans for this project.

The same posting and notification process will be utilized prior to the CPC public hearing.

All applicable agencies and departments were asked to review and comment. No significant concerns were identified. All issues and concerns were incorporated into the development plan or provided as conditions of approval. Final compliance will be verified and confirmed prior to issuance of a building permit.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Design and Development Issues: None. This annexation and accompanying applications are the first steps toward the development of a small single-family residential neighborhood which is compatible with properties adjacent to the site within the City. No significant issues or concerns have been identified.
2. Conformance with the City Comprehensive Plan: The annexation and master plan are consistent with the City Comprehensive Plan. The Plan's 2020 Land Use Map identifies this area as a "Potential Annexation Area".

The following City Comprehensive Plan goals, objectives and policy statements apply to this project:

Policy LU 201: Promote a Focused, Consolidated Land Use Pattern: Locate new growth and development in well-defined contiguous areas in order to avoid leapfrog, scattered land use patterns that cannot be adequately provided with City services.

Strategy LU 302c: Promote Compatibility between Land Uses of Differing Intensities: Design and develop mixed land uses to ensure compatibility and appropriate transitions between land uses that vary in intensity and scale.

Objective LU 5: Develop Cohesive Residential Areas: Neighborhoods are the fundamental building block for developing and redeveloping residential areas of the city. Likewise, residential areas provide a structure for bringing together individual neighborhoods to support and benefit from schools, community activity centers, commercial centers, community parks, recreation centers, employment centers, open space networks, and the city's transportation system. Residential areas also form the basis for broader residential land use designations on the citywide land use map. Those designations distinguish general types of residential areas by their average densities, environmental features, diversity of housing types, and mix of uses. Residential areas of the city should be developed, redeveloped and revitalized as cohesive sets of neighborhoods, sharing an interconnected network of streets, schools, parks, trails, open spaces, activity centers, and public facilities and services.

Policy LU 501: Plan Residential Areas to Integrate Neighborhoods into the Wider Subarea and Citywide Pattern: Plan, design, develop, and redevelop residential areas to integrate several neighborhoods into the citywide pattern of activity centers, street networks, environmental constraints, parks and open space, school locations and other public facilities and services.

Strategy LU 501a: Link Neighborhood Layout and Design to a Larger Residential Area: In master plans and in community planning areas, layout and design individual neighborhoods to form a coherent residential area.

Policy LU 601: Assure Provision of Housing Choices: Distribute housing throughout the City so as to provide households with a choice of densities, types, styles and costs within a neighborhood or residential area.

Objective N 1: Focus On Neighborhoods: Create functional neighborhoods when planning and developing residential areas. Regard neighborhoods as the central

organizing element for planning residential areas. Rely on neighborhood-based organizations as a means of involving residents and property owners in the decision-making process.

Objective N 3: Vary Neighborhood Patterns: Integrate a variety of housing types and densities with amenities, services, and retail uses to generate opportunities and choices for households. When the character, context and scale of the surrounding neighborhood are taken into account, mixed-use developments can provide unique opportunities for employment, shopping, housing choice, and public gathering space, while having a positive impact on the neighborhood.

Objective CCA 6: Fit New Development into the Character of the Surrounding Area: Often the overall character of a new development is not realized until the project is completed. This can lead to unintended impacts and incompatible development. Applicants for new developments need to clearly identify how their projects will fit into the character of the surrounding area and the community as a whole with respect to height, scale, bulk, massing, roof forms, signage, overall site design, pedestrian and vehicular access, and relation to the public right-of-way.

Policy CCA 601: New Development Will be Compatible with the Surrounding Area: New developments will be compatible with the surrounding land uses and will complement the character and appearance of adjacent land uses.

It is the finding of the City Planning and Development Staff that the Saddletree Annexation and the Ridge at Cumbre Vista Master Plan are consistent with the City's Comprehensive Plan 2020 Land Use Map and the Plan's goals, objectives and policies for General Residential use.

3. Conformance with the City Annexation Plan: This project is located within an existing enclave and is encouraged to be annexed when issues regarding the provision of utilities, facilities and services can be resolved. **(FIGURE 2)**

It is the finding of the City Planning and Development Staff that the Saddletree Annexation and the Ridge at Cumbre Vista Master Plan are consistent with the City's Annexation Plan for General Residential use.

4. Conformance with the Area's Master Plan: Not Applicable.

STAFF RECOMMENDATIONS:

Item No: 7.A CPC A 13-00111 – Annexation

Approve the Saddletree Village Annexation, based upon the finding that the annexation complies with the findings of City Code Section 7.6.203, subject to the following conditions and technical and/or informational modifications:

1. Prior to requesting the City Council to schedule their public hearing, the draft annexation agreement shall be approved by the applicant, Land Use Review, Engineering Development & Stormwater Review, Traffic Engineering, and City Utilities.
2. Prior to requesting the City Council to schedule their public hearing, City Budget staff must prepare the required fiscal impact analysis.
3. Provide Engineering Development & Stormwater Review's approval of the Master Development Drainage Plan (MDDP).
4. Provide the Bureau of Reclamation's approval for inclusion into the Southeastern Colorado Water Conservancy District.
5. Provide City Utilities approval and execute a Special Warranty Deed transferring water rights to the City (which will require the Owner to obtain an inventory of the Owner's water rights appropriations for the property) prior to recording.

Item No: 7.B CPC MP 13-00131 – Master Plan

Approve the Ridge at Cumbre Vista Master Plan based upon the finding that the plan complies with the review criteria of City Code Section 7.5.408, subject to the following conditions and technical and/or informational modifications:

1. Provide City Utilities' approval of the Master Plan's Utility Plan and wastewater facilities report.
2. On Sheet 1, under Site Data – Land Use, remove the existing zoning, it is not applicable.
3. On Sheet 1, show the zone districts and existing land uses on all adjacent properties. Remove the City or County designation, platting and ownership information.
4. On Sheet 1, under notes, Note #5, add "...and within the inclusion area of the Woodmen Heights Metro District".
5. On Sheet 1, under notes, Note #2 add, " ... adjacent property owners".

Item No: 7.C CPC ZC 13-00130 – Establishment of Zone District

Approve the establishment of the A/AO (Agricultural zone with Airport Overlay), based upon the finding that it complies with the review criteria of City Code Section 7.5.603.B.

**SADDLETREE VILLAGE ANNEXATION
ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT, dated this ____ day of _____, 20____, is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and Nextop Holdings, LLC ("Owners" or "Property Owners").

I.
INTRODUCTION

The Owners own all of the real property located in El Paso County, Colorado, identified and described on the legal description attached as Exhibit A (the Property).

The growth of the Colorado Springs metropolitan area makes it likely that the Property will experience development in the future. The Owner will be required to expend substantial amounts for installation of infrastructure needed to service the Property and, therefore, desires to clarify Owner's obligations for installation of or payment for any off-site infrastructure or improvements and with regard to the City's agreements with respect to provision of services to the Property and cost recoveries available to Owner. Subject to the terms and conditions set forth in this Agreement, both the City and Owner wish to annex the Property into the City to ensure its orderly development. In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which are acknowledged by each of the parties, the City and Owner agree as follows.

II.
ANNEXATION

The Owners have petitioned the City for annexation of the Property as set forth in Exhibit A. The annexation will become effective upon final approval by the City Council and the recording of the annexation plat and annexation ordinance with the El Paso County Clerk and Recorder.

All references to the Property or to the Owners' Property are to the Property described in Exhibit A except as otherwise indicated.

III.
LAND USE

The Ridge at Cumbre Vista Master Plan for the Property has been proposed and submitted to the City for approval. Owners will comply with the approved Master Plan or an amended Master Plan approved in accord with applicable provisions of the Code of the City of Colorado Springs 2001, as amended or recodified ("City Code").

IV. ZONING

A. Zoning. The Planning and Development Department of the City agrees to recommend that the initial zone for the Owners' Property shall be zoned A (Agricultural) upon annexation. While zoned A, a development plan shall be required for any use requiring a building permit except for agricultural uses. Owners acknowledge and understand that the City Council determines what an appropriate zone is for the Property, and this recommendation does not bind the Planning Commission or City Council to adopt the recommended zone for the Property.

B. Change of Zoning. A change of zone request shall conform to the Master Plan, as approved or as amended by the City in the future. Rezoning in accord with the Master Plan will occur prior to actual development of the site.

V. PUBLIC FACILITIES

A. General. As land is annexed into the City it is anticipated that land development will occur. In consideration of this land development the City requires public facilities and improvements to be designed, extended, installed, constructed, dedicated and conveyed as part of the land development review and construction process. Public facilities and improvements are those improvements to property which, after being constructed by the Owner and accepted by the City, shall be maintained by the City or another public entity. Generally, the required public facilities and improvements and their plan and review process, design criteria, construction standards, dedication, conveyance, cost recovery and reimbursement, assurances and guaranties, and special and specific provisions are addressed in Chapter 7, Article 7 of the City Code (the "Subdivision Code"). Public facilities and improvements include but are not necessarily limited to: 1.) Utilities for water, wastewater, fire hydrants, electric, gas, streetlights, telephone and telecommunications (Refer to Section VI. Utilities of this Agreement.); 2.) Streets, alleys, traffic control, sidewalks, curbs and gutters, trails and bicycle paths; 3.) Drainage facilities for the best management practice to control, retain, detain and convey flood and surface waters; 4.) Arterial roadway bridges; 5.) Parks; 6.) Schools; and 7.) Other facilities and improvements warranted by a specific land development proposal.

It is understood that all public facilities and improvements shall be under the provisions of the Chapter 7, Article 7 of the City Subdivision Code, unless otherwise specifically provided for under the terms and provisions of this Agreement. Those specifically modified public facilities and improvements provisions are as follows:

B. Metropolitan Districts. The Owner and City agree that the Metropolitan Districts have been created to design, extend, install, and construct specific public facilities and improvements as identified in this Agreement.

1. Woodmen Road Metropolitan District (WRMD). Annexor acknowledges that Woodmen Road shall be designed and constructed to meet City Subdivision Code and Public Works Policy Manual design standards as identified and in accord with the County's Major Thoroughfare Plan and the City's Intermodal Transportation Plan. The City has previously entered into an Intergovernmental Agreement (the "Woodmen Road IGA"), originally approved

February 25, 2003, and as subsequently amended, concerning Woodmen Road with the WRMD and the County. The Woodmen Road IGA provides for construction by the WRMD of improvements to Woodmen Road required by the City. In full satisfaction of Annexor's obligation for any needed improvements to Woodmen Road, Annexor agrees to petition for inclusion of the Annexor's Property into the WRMD or provide WRMD approval of a one-time participation fee.

2. Woodmen Heights Metropolitan District (WHMD). Annexor acknowledges that specified public improvements shall be designed and constructed to meet City Subdivision Code and Public Works Policy Manual design standards. It should be noted that WHMD was responsible for the design and construction of area roadway improvements including Sorpresa Lane, Cowpoke Road, and Tutt Boulevard to meet City Subdivision Code and Public Works Policy Manual design standards. WHMD has also responsible for the design and construction of the following other public improvements including the Cumbre Vista Park, the extension of streets and city utilities for water, wastewater, gas and electric service. The City has entered into an Intergovernmental Agreement (the "Woodmen Heights IGA"), approved _____, concerning the above mentioned public improvements with the WHMD. The Woodmen Heights IGA provides for construction by the WHMD of the public improvements required by the City. In full satisfaction of Annexor's obligation for any needed improvements to Woodmen Road, Annexor agree to petition for inclusion of the Annexor's Property into the WHMD or provide WHMD approval of a one-time participation fee.

C. Streets, bridge and Traffic Control. Unless agreed to elsewhere in this Agreement the Owner agrees to construct, at the Owner' expense, those street, bridge and/or traffic improvements adjacent to or within the Property. These improvements shall also include mutually acceptable dedications of right-of-way and easements, and extension of streets and right-of-way. The provisions of City Code §§ 7.7.706 (Reimbursements) and 7.7.1001-1006 (Arterial Roadway Bridges) are excluded. City participation or reimbursement for Arterial Streets and Arterial Bridges within the Property will not be allowed.

1. On-Site or Adjacent Streets

a. Cowpoke Road: Cowpoke Road right-of-way is located partially within the City at this time. This annexation will effectively include all of the right-of-way within the City. Cowpoke Road was re-constructed as part of the Powerwood No. 3-6 Annexation and the Cumbre Vista project. No additional improvements, except for the construction of a public sidewalk at the time of development, are required as part of this annexation. A cost recovery for Cowpoke Road may be imposed.

b. Eastern "No-Name" Street Extension: This street connection is necessary to provide a future possible frontage road link parallel to Black Forest Road. This street shall not be required to be built until such time as the properties to the south are annexed into City. This street construction will be the responsibility of future annexors to the south at the time of their project development.

2. Off-Site Streets and Bridges: Not Applicable.

3. Traffic Control Devices. Owner shall pay for installation of traffic and street signs, striping, and traffic control devices, and permanent barriers, together with all associated conduit for all streets within or contiguous to the Property as determined necessary by the City and in accord with uniformly

applied criteria set forth by the City. Traffic signals will be installed only after the intersection warrants signals, as outlined in the Manual on Uniform Traffic Control Devices in use at the time or another nationally accepted standard. Once the intersection meets the outlined criteria, the City will notify the Owner in writing and the Owner will install the traffic signal within one hundred eighty (180) days after receipt of that notice. The Owner will be responsible for all components of the traffic signal, except the City will supply the controller equipment and cabinet (Owner will reimburse the City for its reasonable costs of the equipment and cabinet).

D. Drainage. A Master Development Drainage Plan shall be prepared and submitted by the Owner to the City and approved by the City Engineer. Final Drainage Reports and Plans shall be prepared and submitted by the Owner to the City and approved by the City Engineer, prior to recording subdivision plats. Owner shall comply with all drainage criteria, standards, policies and ordinances in effect at the time of development, including but not limited to the payment of any drainage, arterial bridge and detention pond fees and the reimbursement for drainage facilities constructed. Owner shall be responsible for conformance with the Cottonwood Creek Drainage Basin Planning Study and the Sand Creek Drainage Basin Planning Study.

E. Parks Fees in lieu of park land dedication shall be required for this annexation.

F. Schools: Fees in lieu of school land dedication shall be required for this annexation.

G. Improvements Adjacent to Park and School Lands. Not Applicable.

VI. UTILITY SERVICES

A. Colorado Springs Utilities' (CSU) Services: CSU's water, non-potable water, wastewater, electric, streetlight, and gas services ("Utility Service" or together as "Utility Services") are available to eligible customers upon connection to CSU's facilities or utility systems on a "first-come, first-served" basis, provided that (among other things) the City and CSU determine that the applicant meets all applicable City ordinances and regulations, and applicable CSU tariff requirements and regulations for each application for Utility Service. In addition, the availability of Utility Services is contingent upon the terms detailed herein and the dedication of public rights-of-way, private rights-of-way, or easements that CSU determines are required for the extension of any proposed Utility Service from CSU system facilities that currently exist or that may exist at the time of the proposed extension.

Owners shall ensure that the connection and/or extension of Utility Services to the Property are in accord with all codes and regulations in effect at the time of Utility Service connection and/or extension, including but not limited to CSU's tariffs, rules, and policies, City ordinances, resolutions, and policies, and Pikes Peak Regional Building Department codes. Further, as specified herein below, Owners acknowledge responsibility for the costs of any extensions or utility system improvements that are necessary to provide Utility Services to the Property or to ensure timely development of integrated utility systems serving the Property and areas outside the Property as determined by CSU.

CSU's connection requirements may require the Owners to provide a bond(s), or to execute a Revenue Guarantee Contract or other CSU-approved guarantee for the extension of any Utility Service before CSU authorizes the extension of Utility Services and/or other utility systems improvements, and/or

any request for service connection to the Property by Owners. Owners acknowledge that such connection requirements shall include Owners' payment of all applicable development charges, recovery-agreement charges, advance recovery-agreement charges, aid-to-construction charges and other fees or charges applicable to the requested Utility Service, and any costs CSU incurs to acquire additional service territory for the Utility Service to be provided, including those costs specified in paragraph C below. Because recovery agreement charges, advance recovery-agreement charges, and aid-to-construction charges may vary over time and by location, Owners are responsible for contacting CSU's Customer Contract Administration at (719) 668-8111 to ascertain which fees or charges apply to the Property.

Owners acknowledge that annexation of the Property does not imply a guarantee of water supply, wastewater treatment system capacity, or any other Utility Service supply or capacity, and CSU does not guarantee Utility Service to the Property until such time as permanent service is initiated. Accordingly, no specific allocations or amounts of Utility Services, facilities, capacities or supplies are reserved for the Property or Owners upon annexation, and the City and CSU make no commitments as to the availability of any Utility Service at any time in the future.

B. Dedications and Easements: Owners, at Owners' sole cost and expense, shall dedicate by plat and/or convey by recorded document, all property (real and personal) and easements that CSU, in its sole discretion, determines are required for all utility-system facilities necessary to serve the Property or to ensure development of an integrated utility system, including but not limited to, any access roads, gas regulation or electric substation sites, electric transmission and distribution facilities, water storage reservoir/facility sites, and wastewater or water pump station sites. CSU, in its sole discretion, shall determine the location and size of all property necessary to be dedicated or otherwise conveyed.

Owners shall provide CSU all written, executed conveyances prior to platting or prior to the development of the Property as determined by CSU in its sole discretion. Owners shall pay all fees and costs applicable to and/or associated with the platting of the real property to be dedicated to the City, and all fees and costs associated with the conveyance of real property interests by plat or by separate instrument, including but not limited to, Phase 1 and Phase 2 environmental assessments, 'closing' costs, title policy fees, and recording fees for any deeds, permanent or temporary easement documents, or other required documents. Dedicated and/or deeded properties and easements are not, and shall not be, subject to refund or reimbursement and shall be deeded or dedicated to the City free and clear of any liens or encumbrances, with good and marketable title and otherwise in compliance with City Code § 7.7.1802.

Further, all dedications and conveyances of real property must comply with the City Code, the City Charter, and any applicable CSU policies and procedures, and shall be subject to CSU's environmental review. Neither the City nor CSU has any obligation to accept any real property interests. All easements by separate instrument shall be conveyed using CSU's then-current Permanent Easement Agreement form without modification.

If Owners, with prior written approval by CSU, relocate, require relocation, or alter any existing utility facilities within the Property, then the relocation or alteration of these facilities shall be at the Owners' sole cost and expense. If CSU, in its sole discretion, determines that Owners' relocation or alteration requires new or updated easements, Owners shall convey those easements prior to relocating or altering the existing utility facilities using CSU's then-current Permanent Easement Agreement form without

modification. CSU will only relocate existing gas or electric facilities during time frames and in a manner that CSU determines will minimize outages and loss of service.

C. Extension of Utility Facilities by CSU: Subject to the provisions of this Article, including sections A and B above, and all applicable CSU tariffs, rules, regulations, and standards, CSU will extend electric and gas service to the Property if CSU, in its sole discretion, determines that there will be no adverse effect to any Utility Service or utility easement. Owners shall cooperate with CSU to ensure that any extension of gas or electric facilities to serve the Property will be in accord with CSU's Line Extension and Service Standards.

1. Natural Gas Facilities: If prior to annexation any portion of the Property is located outside CSU' gas service territory, then upon annexation, CSU will acquire the gas service territory within the Property from the then-current gas service provider. Accordingly, Owners shall be solely responsible for all costs and expenses, including but not limited to attorneys' fees, that CSU incurs due to any Colorado Public Utilities Commission ("CPUC") filings made or arising from annexation of the Property. Owners shall support and make any CPUC filings necessary to support CSU's filings to the CPUC.
2. Electric Facilities: CSU, in its sole discretion, may require Owners to enter into a Revenue Guarantee Contract for the extension of any electric service or facilities, including any necessary electric transmission or substation facilities. If any portion of the Property is located outside CSU's electric service territory, then upon annexation, CSU will acquire the electric service territory within the Property that is not served by CSU from the then-current electric service provider in accord with C.R.S. §§ 40-9.5-201 *et seq.*, or 31-15-707, and Owners shall be solely responsible for all costs and fees, including but not limited to attorneys' fees, that CSU incurs as a result of or associated with the acquisition of such electric service territory. Accordingly, Owners agree to pay the then-current electric service provider, directly, for the costs associated with CSU's acquisition of the electric service territory as specified in C.R.S. §§ 40-9.5-204 (1) (a) and 40-9.5-204 (1) (b) within 30 days of receipt of an invoice for such costs. Owners also agree to pay CSU for the costs associated with CSU's acquisition of the electric service territory as specified in C.R.S. §§ 40-9.5-204 (1) (c) and 40-9.5-204 (1) (d) within 30 days of receipt of an invoice for such costs.

Further, Owners acknowledge sole responsibility for the costs that CSU incurs in the conversion of any overhead electric lines to underground service and the removal of any existing electric distribution facilities (overhead or underground) that were previously installed by the then-current electric service provider. These costs shall be paid by Owners concurrent with the execution of a contract between the Owners and CSU that obligates Owners to reimburse CSU for such conversion or removal of existing electrical facilities.

3. Water and Wastewater Facilities by CSU: The Owners shall pay any advance recovery-agreement charges, or other fees or charges that are not currently approved by CSU for the Property, but which may become applicable as a result of any on-site or off-site water or wastewater system facilities that CSU or other developers may design and construct in order to ensure an integrated water or wastewater system supplying the Property. Additionally, the Owners shall be subject to cost recovery for the engineering, materials and installation costs incurred by CSU in its design, construction, upgrade or improvement of any water pump stations, water suction storage facilities, water transmission and distribution pipelines, or other water system facilities and appurtenances and any wastewater pump stations or treatment facilities, wastewater pipeline facilities, or other wastewater

collection facilities and appurtenances that CSU, in its sole discretion, determines are necessary to serve the Property.

D. Water and Wastewater System Extensions by Owners: Owners must extend, design, and construct all potable and non-potable water system facilities and appurtenances, and all wastewater collection system facilities, wastewater pump stations, and any water or wastewater service lines to and within the Property at Owners' sole cost and expense in accord with all applicable CSU tariffs, rules, regulations, including CSU's Line Extension and Service Standards, and all City ordinances and regulations in effect at the time of each specific request for water or wastewater service. Consistent with City Code 7.7.1102 (B), Owners shall complete the design, installation and obtain preliminary acceptance of such utility facilities prior to CSU's approval of Owners' water and wastewater service requests.

Owners shall be solely responsible for all costs and fees associated with engineering, materials, and installation of all water system facilities and appurtenances, and all wastewater collection facilities and appurtenances, whether on-site or off-site, that are necessary to serve the Property or to ensure development of an integrated water or wastewater system serving the Property and areas outside the Property as determined by CSU. Further, Owners acknowledge that CSU may require that such water or wastewater system facilities be larger than necessary to serve the Property itself, and may require the Owners to participate with other development projects on a fair-share, pro rata basis in any necessary off-site system facilities improvements.

The plans, specifications and construction of the water facilities and appurtenances, and the wastewater facilities and appurtenances are each subject to CSU's inspection and written acceptance, and CSU shall make the final determination as to the size, location, point(s) of connection and the required appurtenances of the system facilities to be constructed. No work shall commence on any proposed water or wastewater extension facilities until CSU provides written approval of Owners' water or wastewater construction plans and copies of such approved plans are received by CSU's Planning and Engineering Department. Owners may only connect newly-constructed facilities to CSU's existing water or wastewater system upon CSU's inspection and written acceptance of such facilities.

As part of any development plan submittal for the Property, Owners acknowledge that a Preliminary Utility Plan, Wastewater Master Facility Report, Hydraulic Grade Line Request Form, and Hydraulic Analysis Report (as determined by CSU) are required and must be completed and approved by CSU.

The water distribution system facilities must meet CSU's criteria for quality, reliability and pressure. The water distribution system shall ensure capacity, pressure and system reliability for both partially completed and fully completed conditions and the static pressure of the water distribution system shall be a minimum of 60 psi. Also, to ensure the protection of public health and to maintain compliance with state regulatory requirements, the detailed plans for all customer-owned, non-potable water distribution systems, including irrigation systems, must be approved by CSU.

Further, Owners recognize that the extension of water system facilities may affect the quality of water in CSU's water system. Consequently, Owners acknowledge responsibility for any costs that CSU, in its sole discretion, determines necessary to incur in order to maintain water quality in its system as a result of Owners' water system extensions, including but not limited to, the cost of any lost water, materials and labor from pipeline-flushing maintenance activities, temporary pipeline loop extensions, or other appurtenances and measures that CSU determines are necessary to minimize pipeline flushing and to

maintain water quality (Water-quality Maintenance Costs). Owners shall reimburse CSU for such Water-quality Maintenance Costs within thirty (30) days of receipt of an invoice for such costs.

E. Limitation of Applicability: The provisions of this Agreement set forth the requirements of the City and CSU in effect at the time of the annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or CSU to adopt different ordinances, rules, regulations, resolutions, policies or codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally and are in accord with the then-current tariffs, rates, regulations and policies of Spring Utilities. Subject to the provisions of the Article of this Agreement that is labeled "WATER RIGHTS", CSU's tariffs, policies, and/or contract agreements, as may be modified from time to time, shall govern the use of all Utilities Services, including but not limited to, groundwater and non-potable water for irrigation use by the Owners for the Owners' exclusive use.

F. Southeastern Water Conservancy District: Notice is hereby provided that upon annexation the property is subject to subsequent inclusion into the boundaries of the Southeastern Water Conservancy District pursuant to C.R.S. § 37-45-136 (3.6) as may be amended, and the rules and procedures of that district and shall be subject thereafter to a property tax mill levy for the purposes of meeting the financial obligations of that district.

VII. WATER RIGHTS

As provided in the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement and hereby incorporated by reference, Owners grant to the City, all right, title and interest to any and all groundwater underlying or appurtenant to and used upon the Property, and any and all other water rights appurtenant to the Property (collectively referred to as "the Water Rights"), together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the City to appropriate, withdraw and use the Water Rights. The Deed conveying the Water Rights shall be executed by the Owners concurrently with this Agreement and shall be made effective upon the date of the City Council's final approval of the annexation of the Property.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, on behalf of Owner and all successors in title, Owner irrevocably consents to the appropriation, withdrawal and use by the City of all groundwater underlying or appurtenant to and used upon the Property.

In the event the City chooses to use or further develop the Water Rights that have been conveyed, Owners agree to provide any and all easements required by the City prior to the construction and operation of any City well or water rights related infrastructure on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owners' Property without additional consent from Owners.

Upon annexation of the Property, any wells or groundwater developed by Owners prior to annexation will become subject to CSU's applicable tariffs, Rules and Regulations, and rates as amended in the future. Owners' uses of groundwater shall be subject to approval by the City and CSU, and shall be consistent with CSU's standards, tariffs, policies, and the City's ordinances, resolutions and policies for

the use of groundwater now in effect or as amended in the future. No commingling of well and City water supply will be permitted.

VIII. FIRE PROTECTION

The Owner acknowledges that the Property is located within the boundaries of the Black Forest Fire Protection District (the "Fire District") and is subject to property taxes payable to the Fire District for its services. The Owner further acknowledges that, after annexation of the Property to the City, the Property will continue to remain within the boundaries of the Fire District until such time as the Property is excluded from the boundaries of the Fire District. After annexation of the Property to the City, fire protection services will be provided by the City through its Fire Department and by the Fire District unless and until the Property is excluded from the Fire District. After annexation, the Property will be assessed property taxes payable to both the City and the Fire District until such time as the Property is excluded from the boundaries of the Fire District.

The Owner understands and acknowledges that the Property may be excluded from the boundaries of the Fire District under the provisions applicable to special districts, Article 1 of Title 32 C.R.S., and as otherwise provided by law. Upon request by the City, the person who owns the Property at the time of the City's request agrees to apply to the Fire District for exclusion of the Property from the Fire District. The Owner understands and acknowledges that the Owner, its heirs, assigns and successors in title are responsible for seeking any exclusion from the Fire District and that the City has no obligation to seek exclusion of any portion of the Property from the Fire District.

IX. FIRE PROTECTION FEE

The Owners agree to pay a fee of \$1,631.00 per gross acre of the entire annexed area as their share of the capital cost of a new fire station and the initial apparatus purchase required to service this annexation as well as adjacent areas of future annexation. Fee payment for the gross acreage of each phase of development shall be made prior to issuance of the initial subdivision plat for that phase. When land purchase and construction of the Fire station and acquisition of the apparatus required to service this annexation are imminent, the City shall notify Owners in writing that payment of the Fire Protection Fee required by this Agreement is due in full. Owners shall have 60 days to make arrangements to pay the Fire Protection Fees due on the remaining gross acreage of the annexed Property for which the fee has not previously been paid at platting. The fee shall be subject to a yearly escalation factor, as determined by the City, equal to the increase in the City of Colorado Springs Construction Index from the date of this agreement. The City agrees as future annexations occur within the service area of the proposed fire station the owners of future annexations will be required to pay a per-acre fee to the City for the capital improvements to the fire station.

X. POLICE SERVICE FEE

The Owner agrees to pay a fee of \$677.00 per gross acre of the entire annexed area as Owner's share of the capital cost of a new police station and the initial equipment purchase required

to service this annexation as well as adjacent areas of future annexation. Fee payment for the gross acreage of each phase of development shall be made prior to issuance of the initial subdivision plat for that phase. When land purchase and construction of the police station and acquisition of the equipment required to service this annexation is imminent, the City shall notify Owner in writing that payment of the Police Service Fee required by this Agreement is due in full. Owner shall have 60 days to make arrangements to pay the Police Service Fees due on the remaining gross acreage of the annexed Property for which the fee has not previously been paid at platting. The fee shall be subject to a yearly escalation factor equal to the increase in the City of Colorado Springs Construction Index from the date of this Agreement. The City agrees as future annexations occur within the service area of the proposed police station the owners of future annexations will be required to pay a per-acre fee to the City for the capital improvements to the police station.

XI. PUBLIC LAND DEDICATION

Owner agrees that all land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be platted and all applicable development fee obligations paid.

Owner agrees that any land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be free and clear of liens and encumbrances. All fees that would be applicable to the platting of land that is to be dedicated to the City (including park and school land) shall be paid by Owner. Fees will be required on the gross acreage of land dedicated as of the date of the dedication in accord with the fee requirements in effect as of the date of the dedication. All dedications shall be platted by the Owner prior to conveyance, unless otherwise waived by the City.

In addition, any property dedicated by deed shall be subject to the following:

- A. All property deeded to the City shall be conveyed by General Warranty Deed.
- B. Owner shall convey the property to the City within 30 days of the City's written request.
- C. Any property conveyed to the City shall be free and clear of any liens and/or encumbrances.
- D. All property taxes levied against the property shall be paid by the Owner through the date of conveyance to the City.
- E. An environmental assessment of the property must be provided to the City for review and approval, unless the City waives the requirement of an assessment. Approval or waiver of the assessment must be in writing and signed by an authorized representative or official of the City.

XII. SPECIAL PROVISIONS

(This section may not apply, depending upon specific locations and special provisions such as airport concerns, METEX, overlapping special districts, etc. To be removed if not needed.)

XIII.
ORDINANCE COMPLIANCE

Owners will comply with all tariffs, policies, rules, regulations, ordinances, resolutions and codes of the City which now exist or are amended or adopted in the future, including those related to the subdivision and zoning of land, except as expressly modified by this Agreement. This Agreement shall not be construed as a limitation upon the authority of the City to adopt different tariffs, policies, rules, regulations, ordinances, resolutions and codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally.

XIV.
ASSIGNS AND DEED OF TRUST HOLDERS

Where as used in this Agreement, the term "the Owners" or "Property Owners," shall also mean any of the heirs, executors, personal representatives, transferees, or assigns of the Owners and all these parties shall have the right to enforce and be enforced under the terms of this Agreement as if they were the original parties hereto. Rights to specific refunds or payments contained in this Agreement shall always be to the Owners unless specifically assigned to another person.

By executing this Agreement, the deed of trust holder agrees that: (1) should it become owner of the Property through foreclosure or otherwise that it will be bound by the terms and conditions of this Agreement to the same extent as Owner; and (2) should it become owner of the Property, any provisions in its deed of trust or other agreements pertaining to the Property in conflict with this Agreement shall be subordinate to and superseded by the provisions of this Agreement. *(OR, THE FOLLOWING IS TO BE INSERTED IF THERE ARE NO DEED OF TRUST HOLDERS: Owners affirmatively state that there exist no outstanding deeds of trust or other similar liens or encumbrances against the Property).*

XV.
RECORDING

This Agreement shall be recorded with the Clerk and Recorder of El Paso County, Colorado, and constitute a covenant running with the land. This Agreement shall be binding on future assigns of the Owners and all other persons who may purchase land within the Property from the Owners or any persons later acquiring an interest in the Property. Any refunds made under the terms of this Agreement shall be made to the Owners and not subsequent purchasers or assigns of the Property unless the purchase or assignment specifically provides for payment to the purchaser or assignee and a copy of that document is filed with the City.

XVI.
AMENDMENTS

This Agreement may be amended by any party, including their respective successors, transferees, or assigns, and the City without the consent of any other party or its successors, transferees, or assigns so long as the amendment applies only to the property owned by the amending party. For the purposes of this article, an amendment shall be deemed to apply only to property owned by the amending party if this Agreement remains in full force and effect as to property owned by any non-amending party.

Any amendment shall be recorded in the records of El Paso County, shall be a covenant running with the land, and shall be binding on all persons or entities presently possessing or later acquiring an interest in the property subject to the amendment unless otherwise specified in the amendment."

XVII. HEADINGS

The headings set forth in the Agreement for the different sections of the Agreement are for reference only and shall not be construed as an enlargement or abridgement of the language of the Agreement.

XVIII. DEFAULT AND REMEDIES

If either Owner or City fails to perform any material obligation under this Agreement, and fails to cure the default within thirty (30) days following notice from the non-defaulting party of that breach, then a breach of this Agreement will be deemed to have occurred and the non-defaulting party will be entitled, at its election, to either cure the default and recover the cost thereof from the defaulting party, or pursue and obtain against the defaulting party an order for specific performance of the obligations under this Agreement and, in either instance, recover any actual damages incurred by the non-defaulting party as a result of that breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Agreement, as well as any other remedies provided by law.

XIX. GENERAL

Except as specifically provided in this Agreement, City agrees to treat Owner and the Property in a non-discriminatory manner relative to the rest of the City. In addition, any consent or approval required in accord with this Agreement from the City shall not be unreasonably withheld, conditioned or delayed. City agrees not to impose any fee, levy or tax or impose any conditions upon the approval of development requests, platting, zoning or issuance of any building permits for the Property, or make any assessment on the Property that is not uniformly applied throughout the City, except as specifically provided in this Agreement or the City Code. If the annexation of the Property or any portion of the Property is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended, pending the outcome of the referendum election. If the referendum challenge to the annexation results in the disconnection of the Property from the City, then this Agreement and all its provisions shall be null and void and of no further effect. If the referendum challenge fails, then Owner and City shall continue to be bound by all terms and provisions of this Agreement.

XX. SEVERABILITY

If any provision of this Agreement is for any reason and to any extent held to be invalid or unenforceable, then neither the remainder of the document nor the application of the provisions to other entities, persons or circumstances shall be affected.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals
the day and year first written above.

CITY OF COLORADO SPRINGS

BY: _____
MAYOR

ATTEST:

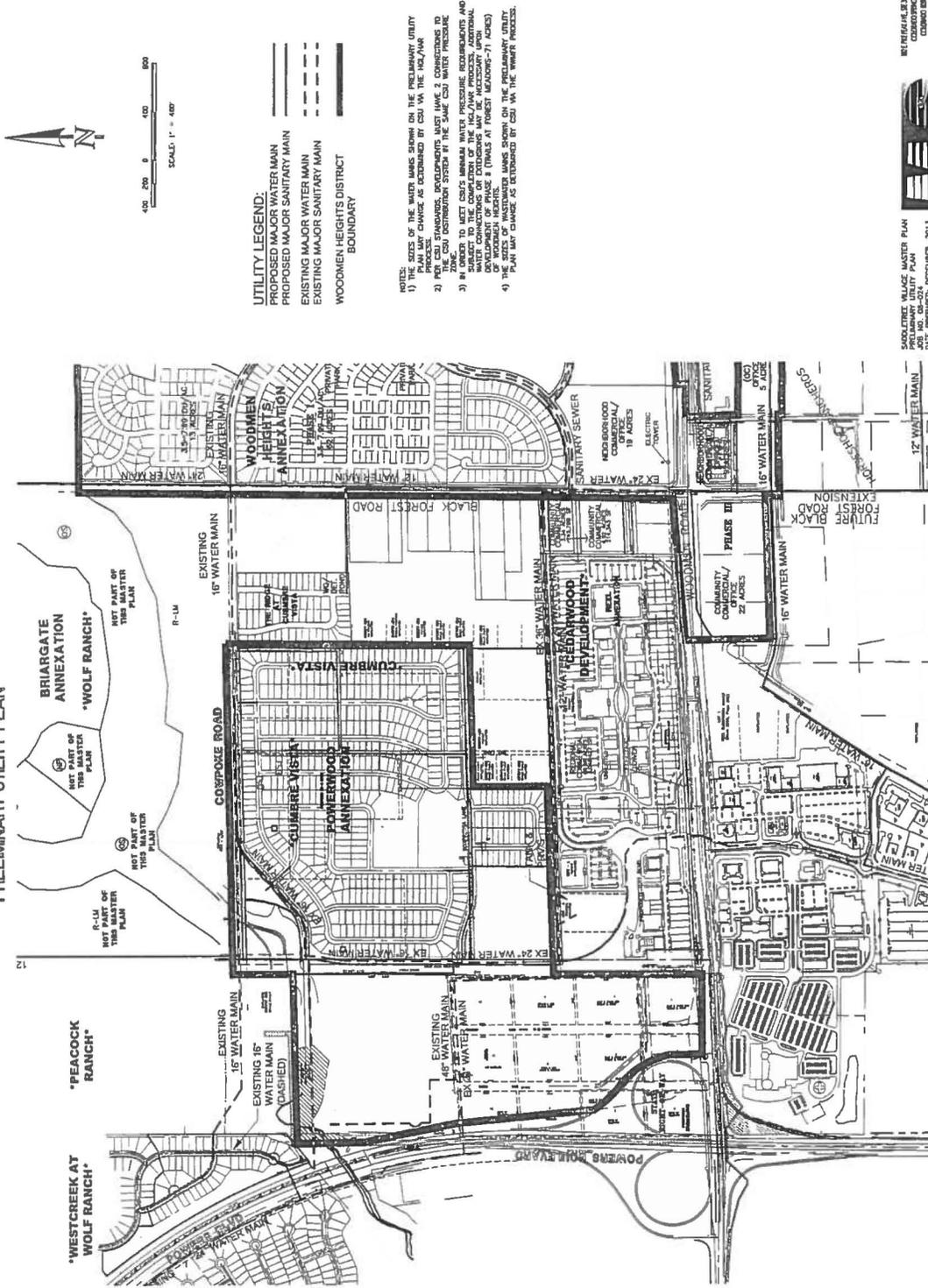
BY: _____
CITY CLERK

APPROVED AS TO FORM:

BY: _____
CITY ATTORNEY

EXHIBIT A
LEGAL DESCRIPTION

SADDLETREE VILLAGE MASTER PLAN PRELIMINARY UTILITY PLAN



UTILITY LEGEND:
 PROPOSED MAJOR WATER MAIN
 PROPOSED MAJOR SANITARY MAIN
 EXISTING MAJOR WATER MAIN
 EXISTING MAJOR SANITARY MAIN
 WOODMEN HEIGHTS DISTRICT BOUNDARY

NOTE: THE SIZES OF THE WATER MAINS SHOWN ON THE PRELIMINARY UTILITY PLAN MAY CHANGE AS DETERMINED BY CSU VIA THE HQ/HAR FOR CSU STANDARDS. DEVELOPMENTS MUST HAVE 2 CONNECTIONS TO THE CSU DISTRIBUTION SYSTEM AT THE SAME CSU WATER PRESSURE. IN ORDER TO MEET CSU'S MINIMUM WATER PRESSURE REQUIREMENTS AND DEVELOPMENT OF PHASE II (THINKS AT FOREST MEADOWS-71 ACRES) WATER CONNECTIONS OR EXTENSIONS MAY BE NECESSARY AND THE SIZES OF WASTEWATER MAINS SHOWN ON THE PRELIMINARY UTILITY PLAN MAY CHANGE AS DETERMINED BY CSU VIA THE WWTMP PROCESS.

WOODMEN HEIGHTS WATER MAIN
 PRELIMINARY UTILITY PLAN
 JOB NO. 09-2014
 DATE: OCTOBER, 2013

WETTERFELDER
 CIVIL ENGINEERS, INC.
 1711 MARK
 SHEET 2 OF 2

CITY FILE NO: CPC MP 13-131

FIGURE 3



102 E. Pikes Peak Ave., Ste. 306
Colorado Springs, CO
Mail to: P.O. Box 1360
Colorado Springs, CO
80901-1360
v 719.955.5485 f 719.444.8427

City of Colorado Springs
Planning Department
30 S. Nevada Ave., Suite 102
Colorado Springs, CO 80901

November 5, 2013

RE: Project Statement for Saddletree Village Master Plan and Annexation

Dear Mr. Larsen,

The Saddletree Village is located west of Black Forest Road, South of Cowpoke Road in Section 6, Township 13 South, Range 65 west of the 6th P.M. in the City of Colorado Springs, El Paso County, Colorado.

The following package contains a request for approval of an; Annexation Plat, a Master Plan, and a change of Zone for 13.98 Acres. The site is directly adjacent to the City of Colorado Springs boundary on the west and north sides. [To the west is the Cumbre Vista residential subdivision, to the north is a proposed residential land use within the Wolf Ranch Master Plan.] To the east and south are existing mixed use (Residential/Commercial/Light Industrial) land parcels in El Paso County. The proposed site can be considered an “enclave” within the City of Colorado Springs Comprehensive Plan, and is considered a “Potential Annexation Area” on the City of Colorado Springs 2020 Land Use Map. The proposed land use is compatible with the adjacent planned land uses in the City of Colorado Springs.

The proposed development is planned to consist of approximately 60-70 single family residential lots, with standard public 50-foot wide street rights-of-way with utilities, sidewalks, etc... The development will be planned and constructed as a “typical” residential subdivision, per normal standards and specifications in the City of Colorado Springs and Colorado Springs Utilities. The lots sizes will average 8,500 square feet. The homes sizes will vary from 1,600-4,000 square feet. Public facilities will include the public streets, utilities, sidewalks, and storm water detention via Sand Creek Regional Detention Basin No. 6. No public school site or park site is planned for dedication within the proposed master plan. School and Park fees will be paid in lieu of land dedication.

The existing land parcel contains a two-story single family home with a detached garage/shed and barn. The existing home and structures are serviced by; a well for water, a septic system, and electric from an overhead service line serviced by Mountain View Electric. The existing home, outbuildings and utilities will be properly removed, discarded or abandoned upon redevelopment in the City of Colorado Springs.

The site was included within the Master Development Drainage Plan for Woodmen Heights, and within the Wastewater Master Facility Plan for Woodmen Heights. Development of the proposed property is not likely to require an amendment to these previously approved master plan studies. However, a final

drainage report and findings from a Hydraulic Grade Line Request will determine the final infrastructure characteristics.

The master plan conforms to the City's intermodal transportation plan. The development will be accessed in two locations off of Cowpoke Road. Cowpoke Road (Proposed Minor Arterial) connects to Black Forest Road on the east, and Tutt Boulevard on the west (Existing Major Arterial). The development will plan for a 50-foot right-of-way extension for the property to the south. No other internal transportation circulation through the development is planned. Right-of-Way for Cowpoke Road will be dedicated with a subdivision final plat.

The proposed site does not contain any significant natural features. The property is not within a FEMA designated floodplain and does not contain any wetlands or endangered species.

The applicant respectfully requests that the fiscal impact analysis be prepared by the City of Colorado Springs Budget Office. Due to the size of the proposed development (~14 acres, 60-70 Lots), no major off-site infrastructure needs, etc....the inclusion of the property into the City of Colorado Springs should not create a significant burden.

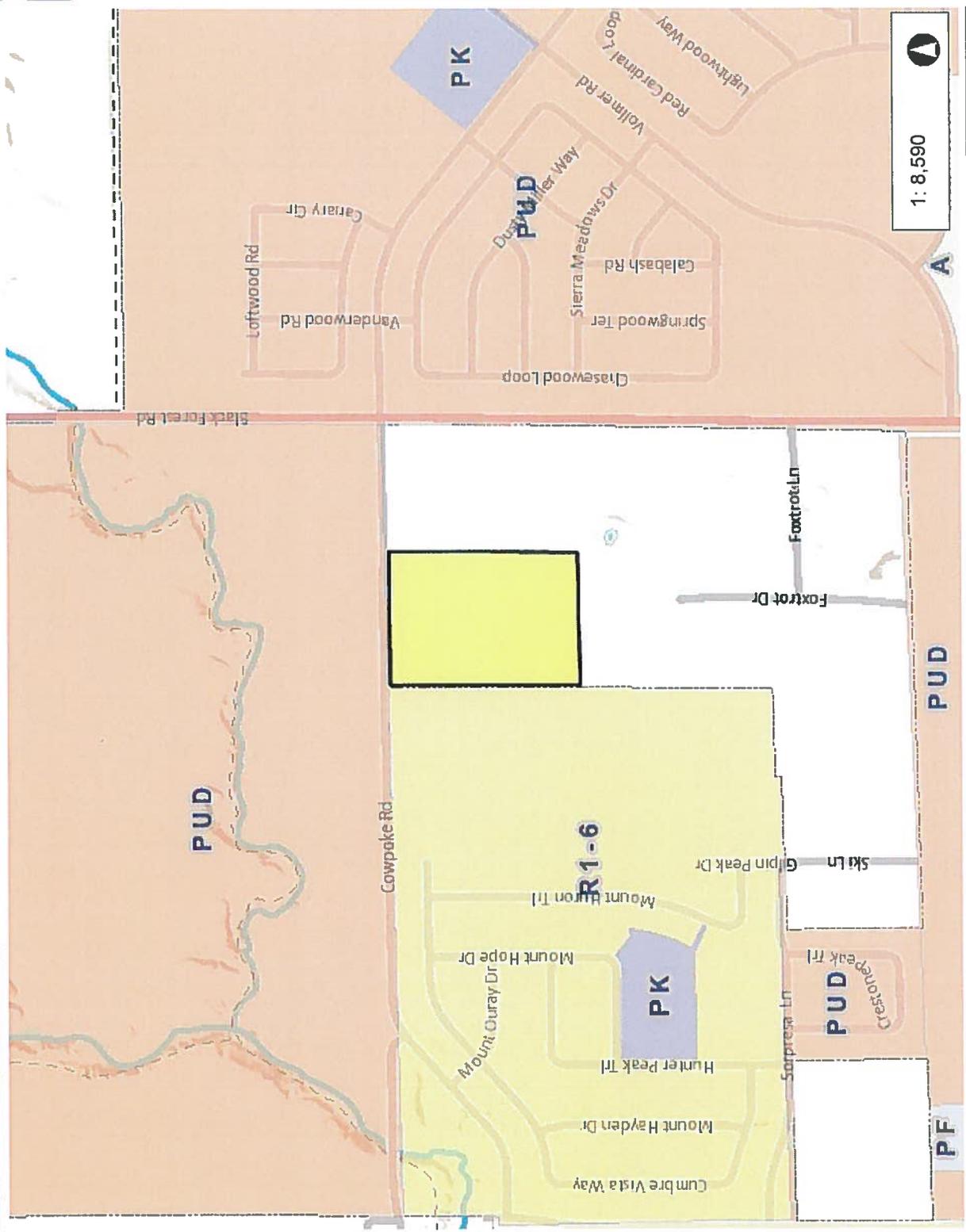
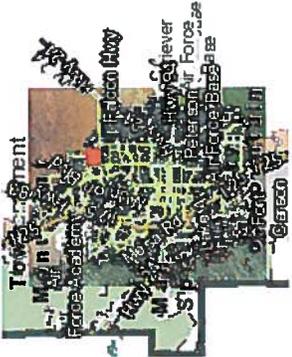
On behalf of the owners of Nextop Holdings, LLC, we respectfully request that attached plans and the associated applications be reviewed for comment by the City of Colorado Springs land development staff.

Sincerely,



Virgil A. Sanchez, P.E.

Saddletree Village Annexation



Legend

Base Zone - Fill

A	Lightest Yellow
R	Light Yellow
R1-9	Yellow-Green
R1-6	Light Green
R2	Light Green
R4	Light Green
R5	Light Green
TND	Light Green
OR	Light Green
OC	Light Green
PBC	Light Green
C5	Light Green
C6	Light Green
PIP1	Light Green
PIP2	Light Green
M1	Light Green
M2	Light Green
PF	Light Green
PK	Light Green
APD	Light Green
PCR	Light Green
PUD	Light Green
SU	Light Green
UND	Light Green
National Forest	Green

Notes

1: 8,590



This map is a user generated static output from an internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION

NAD_1983_StatePlane_Colorado_Central_FIPS_0502_Feet
 © Latitude Geographics Group Ltd.

FIGURE 5

Tri-Lakes Development Corp.
1450 Old North Gate Rd.
Colorado Springs, CO 80921
(719)574-3642
fherman@TriLakesDevelopment.com

December 3, 2013

Mr. Larry Larsen
Planning and Community Development
City of Colorado Springs
P.O. Box 1575, MC 155
Colorado Springs, CO 80901-1575

Larry--

I have received your mailing for the Saddletree Village Annexation and The Ridge at Cumbre Vista Master Plan, and have reviewed the documents that I was able to find on-line for the filings. I am generally in favor of the project as far as the disclosures to date, but have one potential issue regarding drainage.

I understand that a drainage report needs to be provided for the project and that it is too early for a drainage study to be submitted. I did find the drainage report for the adjacent Cumbre Vista Master Plan (CVMP,) and my review of that report indicates that the proposed project parcel is outside of this master plan study area. The CVMP drainage study does show that the subject parcel drains partly into the Cottonwood Creek basin, and partly into the Sand Creek basin. Our parcel appears to be entirely within the Sand Creek basin, and as such, it may be impacted by the planned improvements to Black Forest Rd..

Until the applicants submit a drainage study for their project, I will not be able to determine to what extent, if any, their grading will impact our property. Accordingly, I would like to put your department on notice that we do not agree to accept any developed flow onto our property (5306000011,) and do understand that we still are required to accept historical flow from the subject property.

I would appreciate receiving a printed copy of the applicants drainage report when it is submitted in the future. I furthermore reserve the right to comment on any proposed infrastructure improvements to the subject property as additional submissions becomes available, prior to City approval of the project.

On another note, I heard that you will be having foot surgery this month and hope you have a speeding recovery, and I hope you will be back on the dance floor soon :o)

Sincerely,



Frederic Herman, P.E.
President, Tri-Lakes Development Corp.

APPENDIX

Development Application Review Criteria

7.3.603: ESTABLISHMENT AND DEVELOPMENT OF A PUD ZONE:

- A. A PUD zone district may be established upon any tract of land held under a single ownership or under unified control, provided the application for the establishment of the zone district is accompanied by a PUD concept plan or PUD development plan covering the entire zone district which conforms to the provisions of this part.
- B. An approved PUD development plan is required before any building permits may be issued within a PUD zone district. The PUD development plan may be for all or a portion of the entire district. The review criteria for approval of the PUD concept plan and approval of a PUD development plan are intended to be flexible to allow for innovative, efficient, and compatible land uses. (Ord. 03-110, Ord. 12-68)

7.3.605: PUD PLAN REVIEW CRITERIA:

Substantial compliance with the criteria is necessary for the approval of the PUD plan. The Director may determine that certain criteria are not applicable based on the characteristics of the individual project. PUD plans shall be reviewed based on the following review criteria:

- A. Is the proposed development pattern consistent with the Comprehensive Plan, the 2020 Land Use Map, and all applicable elements of the Comprehensive Plan (including the Intermodal Transportation Plan and the Parks, Recreation and Trails Master Plan)?
- B. Are the proposed uses consistent with the primary and secondary land uses identified in the 2020 Land Use Map of the Comprehensive Plan, as amended?
- C. Is the proposed development consistent with any City approved Master Plan that applies to the site?
- D. Is the proposed development consistent with the intent and purposes of this Zoning Code?
- E. Does the development pattern proposed within the PUD concept plan promote the stabilization and preservation of the existing or planned land uses in adjacent areas and surrounding residential neighborhoods?
- F. Does the development pattern proposed within the PUD concept plan provide an appropriate transition or buffering between uses of differing intensities both on site and off site?
- G. Does the nonresidential development pattern proposed within the PUD concept plan promote integrated activity centers and avoid linear configurations along roadways?
- H. Are the permitted uses, bulk requirements and required landscaping appropriate to and compatible with the type of development, the surrounding neighborhood or area and the community?
- I. Does the PUD concept plan provide adequate mitigation for any potentially detrimental use to use relationships (e.g., commercial use adjacent to single-family homes)?
- J. Does the PUD concept plan accommodate automobile, pedestrian, bicycle and transit modes of transportation as appropriate, taking into consideration the development's primary function, scale, size and location?
- K. Does the PUD concept plan include a logical hierarchy of perimeter and internal arterial, collector and local streets that will disperse development generated vehicular traffic to a variety of access points and ways, reduce through traffic in adjacent residential neighborhoods and improve resident access to jobs, transit, shopping and recreation?
- L. Will streets and drives within the project area be connected to streets outside the project area in a way that minimizes significant through traffic impacts on adjacent residential neighborhoods, but still improves connectivity, mobility choices and access to jobs, shopping and recreation?
- M. Does the PUD concept plan provide safe and convenient vehicle and pedestrian connections between uses located within the zone district, and to uses located adjacent to the zone district or development?
- N. Will adequately sized parking areas be located to provide safe and convenient access, to avoid excessive parking ratios and avoid excessive expanses of pavement?
- O. Are open spaces integrated into the PUD concept plan to serve both as amenities to residents/users and as a means for alternative transportation modes, such as walking and biking?
- P. Will the proposed development overburden the capacities of existing or planned streets, utilities and other public facilities?
- Q. Are the areas with unique or significant natural features preserved and incorporated into the design of the project? (Ord. 03-110; Ord. 03-190, Ord. 12-68)

7.3.606: REVIEW CRITERIA FOR DEVELOPMENT PLAN:

A PUD development plan for land within a PUD zone shall be approved if it substantially conforms to the approved PUD concept plan and the PUD development plan review criteria listed below. An application for a development plan shall be submitted in accord with requirements outlined in article 5, parts 2 and 5 of this chapter. Unless otherwise specified by a development agreement, the project shall be vested by the PUD development plan in accord with section 7.9.101 and subsection 7.5.504(C)(2) of this chapter.

- A. Consistency with City Plans: Is the proposed development consistent with the Comprehensive Plan or any City approved master plan that applies to the site?
- B. Consistency with Zoning Code: Is the proposed development consistent with the intent and purposes of this Zoning Code?
- C. Compatibility Of The Site Design With The Surrounding Area:
 - 1. Does the circulation plan minimize traffic impact on the adjacent neighborhood?
 - 2. Do the design elements reduce the impact of the project's density/intensity?
 - 3. Is placement of buildings compatible with the surrounding area?
 - 4. Are landscaping and fences/walls provided to buffer adjoining properties from undesirable negative influences that may be created by the proposed development?
 - 5. Are residential units buffered from arterial traffic by the provision of adequate setbacks, grade separation, walls, landscaping and building orientation?
- D. Traffic Circulation:
 - 1. Is the circulation system designed to be safe and functional and encourage both on and off site connectivity?
 - 2. Will the streets and drives provide logical, safe and convenient vehicular access to the facilities within the project?
 - 3. Will adequately sized parking areas be located to provide safe and convenient access, avoid excessive parking ratios and avoid expanses of pavement?
 - 4. Are access and movement of handicapped persons and parking of vehicles for the handicapped appropriately accommodated in the project design?
 - 5. As appropriate are provisions for transit incorporated?
- E. Overburdening Of Public Facilities: Will the proposed development overburden the capacities of existing and planned streets, utilities, parks, and other public facilities?
- F. Privacy: Is privacy provided, where appropriate, for residential units by means of staggered setbacks, courtyards, private patios, grade separation, landscaping, building orientation or other means?

G. Pedestrian Circulation:

1. Are pedestrian facilities provided, particularly those giving access to open space and recreation facilities?
2. Will pedestrian walkways be functionally separated from vehicular ways and located in areas that are not used by motor vehicles?

H. Landscaping:

1. Does the landscape design comply with the City's landscape code and the City's landscape policy manual?
2. The use of native vegetation or drought resistant species including grasses is encouraged. The City's landscape policy manual or City Planning's landscape architect can be consulted for assistance.

I. Open Space:

1. Residential Area:

A. Open Space: The provision of adequate open space shall be required to provide light, air and privacy; to buffer adjacent properties; and to provide active and passive recreation opportunities. All residential units shall include well designed private outdoor living space featuring adequate light, air and privacy where appropriate. Common open space may be used to reduce the park dedication requirements if the open space provides enough area and recreational facilities to reduce the residents' need for neighborhood parks. Recreational facilities shall reflect the needs of the type of residents and proximity to public facilities.

B. Natural Features: Significant and unique natural features, such as trees, drainage channels, slopes, and rock outcroppings, should be preserved and incorporated into the design of the open space. The Parks and Recreation Advisory Board shall have the discretion to grant park land credit for open space within a PUD development that preserves significant natural features and meets all other criteria for granting park land credit.

2. Nonresidential And Mixed Use; Natural Features: The significant natural features of the site, such as trees, drainage channels, slopes, rock outcroppings, etc., should be preserved and are to be incorporated into the design of the open space.

J. Mobile Home Parks: Does a proposed mobile home park meet the minimum standards set forth in the mobile home park development standards table in section 7.3.104 of this article? (Ord. 03-110; Ord. 03-190, Ord. 12-68)

MASTER PLAN REVIEW CRITERIA:

7.5.408: REVIEW CRITERIA:

Master plans and major and minor amendments to approved master plans shall be reviewed for substantial conformance with the criteria listed below. Minor amendments are not subject to review criteria in subsection F of this section.

A. Comprehensive Plan: The Comprehensive Plan and the 2020 Land Use Map are the context and the benchmark for the assessment of individual land use master plans. The proposed land use master plan or the amendment conforms to the policies and strategies of the Comprehensive Plan. The proposed land use pattern is consistent with the Citywide perspective presented by the 2020 Land Use Map.

B. Land Use Relationships:

1. The master plan promotes a development pattern characterizing a mix of mutually supportive and integrated residential and nonresidential land uses with a network of interconnected streets and good pedestrian and bicycle connections.
2. Activity centers are designed so they are compatible with, accessible from and serve as a benefit to the surrounding neighborhood or business area. Activity centers also vary in size, intensity, scale and types of uses depending on their function, location and surroundings.
3. The land use pattern is compatible with existing and proposed adjacent land uses and protects residential neighborhoods from excessive noise and traffic infiltration.
4. Housing types are distributed so as to provide a choice of densities, types and affordability.
5. Land use types and location reflect the findings of the environmental analysis pertaining to physical characteristics which may preclude or limit development opportunities.
6. Land uses are buffered, where needed, by open space and/or transitions in land use intensity.
7. Land uses conform to the definitions contained in article 2, part 2 of this Zoning Code.

C. Public Facilities:

1. The land use master plan conforms to the most recently adopted Colorado Springs parks, recreation and trails master plan.
2. Recreational and educational uses are sited and sized to conveniently service the proposed population of the master plan area and the larger community.
3. The proposed school sites meet the location, function and size needs of the school district.

4. The land use master plan conforms to the adopted plans and policies of Colorado Springs Utilities.
5. Proposed public facilities are consistent with the strategic network of long range plans.
6. The master development drainage plan conforms to the applicable drainage basin planning study and the drainage criteria manual.

D. Transportation:

1. The land use master plan is consistent with the adopted intermodal transportation plan. Conformity with the intermodal transportation plan is evidence of compliance with State and local air quality implementation and maintenance plans.
2. The land use master plan has a logical hierarchy of arterial and collector streets with an emphasis on the reduction of through traffic in residential neighborhoods and improves connectivity, mobility choices and access to jobs, shopping and recreation.
3. The design of the streets and multiuse trails minimizes the number of uncontrolled or at grade trail crossings of arterials and collectors.
4. The transportation system is compatible with transit routes and allows for the extension of these routes.
5. The land use master plan provides opportunities or alternate transportation modes and cost effective provision of transit services to residents and businesses.
6. Anticipated trip generation does not exceed the capacity of existing or proposed major roads. If capacity is expected to be exceeded, necessary improvements will be identified, as will responsibility, if any, of the master plan for the construction and timing for its share of improvements.

E. Environment:

1. The land use master plan preserves significant natural site features and view corridors. The Colorado Springs open space plan shall be consulted in identifying these features.
2. The land use master plan minimizes noise impacts on existing and proposed adjacent areas.
3. The land use master plan utilizes floodplains and drainageways as greenways for multiple uses including conveyance of runoff, wetlands, habitat, trails, recreational uses, utilities and access roads when feasible.
4. The land use master plan reflects the findings of a preliminary geologic hazard study and provides a range of mitigation techniques for the identified geologic, soil and other constrained natural hazard areas.

F. Fiscal:

1. A fiscal impact analysis and existing infrastructure capacity and service levels are used as a basis for determining impacts attributable to the master plan. City costs

related to infrastructure and service levels shall be determined for a ten (10) year time horizon for only the appropriate municipal funds.

2. The fiscal impact analysis demonstrates no adverse impact upon the general community and the phasing of the master plan is consistent with the adopted strategic network of long range plans that identify the infrastructure and service needs for public works, parks, police and fire services.
3. The cost of on site and off site master plan impacts on public facilities and services is not borne by the general community. In those situations where the master plan impacts are shown to exceed the capacity of existing public facilities and services, the applicant will demonstrate a means of increasing the capacity of the public facilities and services proportionate to the impact generated by the proposed master plan. Mitigation of on site and off site costs may include, but is not limited to, planned expansions to the facilities, amendments to the master plan, phasing of the master plan and/or special agreements related to construction and/or maintenance of infrastructure upgrades and/or service expansions. Any special agreements for mitigation of on site and off site impacts for public improvements, services and maintenance are shown to be workable and supported by financial assurances. Preexisting and/or anticipated capacity problems not attributable to the master plan shall be identified as part of the master plan review.
4. Special agreements for public improvements and maintenance are shown to be workable and are based on proportional need generated by the master plan.
5. Any proposed special districts are consistent with policies established by the City Council. (Ord. 84-221; Ord. 87-38; Ord. 91-30; Ord. 94-107; Ord. 97-109; Ord. 01-42; Ord. 02-51)

7.5.501 (E): CONCEPT PLAN REVIEW CRITERIA:

- D. Concept Plan Review Criteria: A concept plan shall be reviewed using the criteria listed below. No concept plan shall be approved unless the plan complies with all the requirements of the zone district in which it is located, is consistent with the intent and purpose of this Zoning Code and is compatible with the existing and proposed land uses surrounding the site.
1. Will the proposed development have a detrimental effect upon the general health, welfare and safety or convenience of persons residing or working in the neighborhood of the proposed development?
 2. Will the proposed density, types of land uses and range of square footages permit adequate light and air both on and off the site?
 3. Are the permitted uses, bulk requirements and required landscaping appropriate to the type of development, the neighborhood and the community?
 4. Are the proposed ingress/egress points, traffic circulation, parking areas, loading and service areas and pedestrian areas designed to promote safety, convenience and ease of traffic flow and pedestrian movement both on and off the site?
 5. Will the proposed development overburden the capacities of existing streets, utilities, parks, schools and other public facilities?
 6. Does the proposed development promote the stabilization and preservation of the existing properties in adjacent areas and surrounding residential neighborhoods?
 7. Does the concept plan show how any potentially detrimental use-to-use relationships (e.g., commercial use adjacent to single-family homes) will be mitigated? Does the development provide a gradual transition between uses of differing intensities?
 8. Is the proposed concept plan in conformance with all requirements of this Zoning Code, the Subdivision Code and with all applicable elements of the Comprehensive Plan? (Ord. 94-107; Ord. 01-42; Ord. 03-157; Ord. 09-78)

7.5.502 (E): DEVELOPMENT PLAN REVIEW CRITERIA:

- E. Development Plan Review Criteria: A development plan shall be reviewed using the criteria listed below. No development plan shall be approved unless the plan complies with all the requirements of the zone district in which it is located, is consistent with the intent and purpose of this Zoning Code and is compatible with the land uses surrounding the site. Alternate and/or additional development plan criteria may be included as a part of an FBZ regulating plan.
1. Will the project design be harmonious with the surrounding land uses and neighborhood?
 2. Will the proposed land uses be compatible with the surrounding neighborhood? Will the proposed development overburden the capacities of existing streets, utilities, parks, schools and other public facilities?
 3. Will the structures be located to minimize the impact of their use and bulk on adjacent properties?
 4. Will landscaping, berms, fences and/or walls be provided to buffer the site from undesirable views, noise, lighting or other off site negative influences and to buffer adjacent properties from negative influences that may be created by the proposed development?
 5. Will vehicular access from the project to streets outside the project be combined, limited, located, designed and controlled to channel traffic to and from such areas conveniently and safely and in such a manner which minimizes traffic friction, noise and pollution and promotes free traffic flow without excessive interruption?
 6. Will all the streets and drives provide logical, safe and convenient vehicular access to the facilities within the project?
 7. Will streets and drives within the project area be connected to streets outside the project area in such a way that discourages their use by through traffic?
 8. Will adequately sized parking areas be located throughout the project to provide safe and convenient access to specific facilities?
 9. Will safe and convenient provision for the access and movement of handicapped persons and parking of vehicles for the handicapped be accommodated in the project design?
 10. Will the design of streets, drives and parking areas within the project result in a minimum of area devoted to asphalt?
 11. Will pedestrian walkways be functionally separated from vehicular traffic and landscaped to accomplish this? Will pedestrian walkways be designed and located in combination with other easements that are not used by motor vehicles?
 12. Does the design encourage the preservation of significant natural features such as healthy vegetation, drainage channels, steep slopes and rock outcroppings? Are these significant natural features incorporated into the project design? (Ord. 94-107; Ord. 95-125; Ord. 01-42; Ord. 02-64; Ord. 03-74; Ord. 03-157; Ord. 09-50; Ord. 09-78)

7.5.603 (B): ESTABLISHMENT OR CHANGE OF ZONE DISTRICT BOUNDARIES:

B: A proposal for the establishment or change of zone district boundaries may be approved by the City Council only if the following findings are made:

1. The action will not be detrimental to the public interest, health, safety, convenience or general welfare.
2. The proposal is consistent with the goals and policies of the Comprehensive Plan.
3. Where a master plan exists, the proposal is consistent with such plan or an approved amendment to such plan. Master plans that have been classified as implemented do not have to be amended in order to be considered consistent with a zone change request.
4. For MU zone districts the proposal is consistent with any locational criteria for the establishment of the zone district, as stated in article 3, "Land Use Zoning Districts", of this Zoning Code. (Ord. 94-107; Ord. 97-111; Ord. 01-42; Ord. 03-157)

USE VARIANCE REVIEW CRITERIA:

7.5.803 (B): CRITERIA FOR GRANTING A USE VARIANCE:

The following criteria must be met in order for a use variance to be granted:

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to the property or class of uses in the same zone so that a denial of the petition would result in undue property loss; and
2. That such variance is necessary for the preservation and enjoyment of a property right of the petitioner; and also
3. That such variance will not be detrimental to the public welfare or convenience nor injurious to the property or improvements of other owners of property.

7.5.906 (A)(4) : CRITERIA FOR REVIEW OF AN APPEAL OF ADMINISTRATIVE DECISION:

4. Criteria For Review Of An Appeal Of An Administrative Decision: In the written notice, the appellant must substantiate the following:
 - a. Identify the explicit ordinance provisions which are in dispute.
 - b. Show that the administrative decision is incorrect because of one or more of the following:
 - (1) It was against the express language of this zoning ordinance, or
 - (2) It was against the express intent of this zoning ordinance, or
 - (3) It is unreasonable, or
 - (4) It is erroneous, or
 - (5) It is clearly contrary to law.
 - c. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

7.6.203: CONDITIONS FOR ANNEXATION:

To assist the City Council in its decision, each proposal for annexation shall be studied to determine whether:

- A. The area proposed to be annexed is a logical extension of the City's boundary;
- B. The development of the area proposed to be annexed will be beneficial to the City. Financial considerations, although important, are not the only criteria and shall not be the sole measure of benefit to the City;
- C. There is a projected available water surplus at the time of request;
- D. The existing and projected water facilities and/or wastewater facilities of the City are expected to be sufficient for the present and projected needs for the foreseeable future to serve all present users whether within or outside the corporate limits of the City;
- E. The annexation can be effected at the time the utilities are extended or at some time in the future;
- F. The City shall require as a condition of annexation the transfer of title to all groundwater underlying the land proposed to be annexed. Should such groundwater be separated from the land or otherwise be unavailable for transfer to the City, the City, at its discretion, may either refuse annexation or require payment commensurate with the value of such groundwater as a condition of annexation. The value of such groundwater shall be determined by the Utilities based on market conditions as presently exist;
- G. All rights of way or easements required by the Utilities necessary to serve the proposed annexation, to serve beyond the annexation, and for system integrity, shall be granted to the Utilities. Utilities, at the time of utility system development, shall determine such rights of way and easements;
- H. If the proposed annexation to the City overlaps an existing service area of another utility, the applicant shall petition the PUC (Public Utilities Commission) or other governing authority to

revise the service area such that the new service area will be contiguous to the new corporate boundary of the City.

After the foregoing have been studied in such depth as the City Council shall require, the City Council in its discretion may annex or not annex the proposed area. In the event the City Council chooses to annex, it may require a contemporary annexation agreement specifying the installation and the time of installation of certain public and utility improvements, both on site and off site, that are required or not required under this Subdivision Code. City Council may specify such other requirements, as it deems necessary. In the event the City Council chooses not to annex, utilities shall not be extended unless Council is assured that an agreement for annexation can be enforced, and that the remaining provisions of this section for annexation subsequent to extension of utilities have been met. (Ord. 96-44; Ord. 01-42)