

Chapter Eight

SUBDIVISION DESIGN, IMPROVEMENTS AND DEDICATIONS

8.1. GENERAL

8.1.1. Purpose

This Chapter is enacted for the purpose of promoting the health, safety, convenience, and welfare of the general public and to establish standards of design which will encourage the development of sound, economical, stable neighborhoods and create a healthy environment for present and future inhabitants of El Paso County, Colorado, by:

- Assisting in the orderly, efficient and integrated development of the County;
- Making provisions for adequate open spaces for traffic, drainage, recreation and parks, sites for schools and educational facilities, light and air;
- Making provisions for the proper location, width, and design of roads in order to minimize traffic hazards, and to provide for safe and convenient vehicular circulation;
- Specifying the extent to which, or manner in which, roadways shall be graded and improved and to what extent water, sewer and other utilities shall be required and installed;
- Ensuring that structures will harmonize with the physical characteristics of the site;
- Ensuring that land is divided into lots that are of adequate size and configuration for the purpose for which they are intended to be used;
- Protecting the natural resources, considering the natural vegetation and promoting the natural beauty of the County;
- Implementing the Master Plan;
- Ensuring that definite provision will be made for a water supply that will be sufficient in terms of quantity, dependability and quality to provide an appropriate supply of water for the type of development proposed; and
- Providing for an adequate and accurate system to record land divisions and ensuring proper legal descriptions and survey monumentation in order to inform the public, and especially future residents, of the facts about the division, thereby safeguarding the interests of the public, the homeowner, the applicant, and the County.

8.1.2. Applicability

This Chapter shall apply to divisions of land including subdivisions, replats, subdivision exemptions, and other actions resulting in the creation of new lots, parcels, or tracts or the reconfiguration of existing lots, parcels, or tracts, unless specifically exempted.

The dedication requirements, fees in lieu of dedication, or fees imposed by this Code shall be those requirements and fees in effect at the time a complete development application is submitted to the PCD unless specifically modified by a resolution of the BoCC.

8.2. CONFORMITY WITH PLANS AND STANDARDS

8.2.1.Conformity with the Master Plan

Divisions of land shall generally conform to the Master Plan. The County may require that reasonable efforts are made to help ensure a division of land conforms to the Master Plan.

8.2.2.Conformity with this Code

Divisions of land shall conform to this Code to help ensure that the division of land takes into account the basic design principles necessary for a safe, serviceable, attractive and healthy living environment while protecting the interests of the County.

8.2.3.Zoning and the Division of Land

Lands included within a plat shall be zoned prior to approval of a plat.

8.2.4.Conformity with the ECM

Divisions of land shall conform to the ECM to help ensure that the design and construction of common development and public improvements take into account the basic design principles necessary for a safe, serviceable, attractive and healthy living environment while protecting the interests of the County.

8.2.5.Conformity with Self-Imposed Restrictions

If an owner commits in writing or verbally in a hearing to restrictions or requirements greater than those required by this Code, the ECM or any other County regulation or ordinance, the plat shall conform to the self-imposed restrictions and the commitments shall be indicated on the face of the plat or contained within the SIA or development agreement. The commitments shall be fully enforceable under this Code.

8.3. RESTRICTIONS ASSOCIATED WITH THE PLAT

8.3.1.Plats to be Recorded

The approved plat shall be recorded with the Clerk and Recorder. Approval of the plat shall be evidenced by the signature of the approval authority on the face of the plat. The plat shall be recorded within one year of approval by the approval authority.

8.3.2.No Changes to Approved Plat without BoCC Approval

No changes, erasures, modification, or revisions shall be made on the plat after the approval by the BoCC, except as required by the BoCC to satisfy conditions of approval or with the approval of the PCD Director.

8.3.3.Actions Required at Recording of Plat

(A) Plat Notes Required

The BoCC may require specific plat notes to be included on a plat prior to recording including, but not limited to, notes to implement review agency recommendations, BoCC conditions, OCA conditions, and standard plat notes identified in the Procedures Manual to help ensure conformance of the plat with this Code and other County requirements.

(B) Plat Addressed Prior to Recording

No plat shall be recorded until the Building Official has assigned numeric addresses in a legible manner on the face of the plat.

(C) Taxes Paid Prior to Recording of Plat

No plat shall be recorded unless the ad valorem taxes applicable to the subject property, for all years prior to that year in which approval is granted, have been paid. [C.R.S. §30-28-110(4) (a)].

(D) Fees and Dedications

Any fees required by this Code shall be paid and any land dedications required by this Code shall be completed prior to or concurrently with filing of the plat for recording with the Clerk and Recorder.

8.3.4. Plat Filed Before Construction of Structures

No building permit shall be issued or structure erected before a plat of the subject property has been filed for recording with the Clerk and Recorder except as may be required to: (1) complete the common development or public improvements required as part of the approval of the division of land and construction permit issued by the ECM Administrator; or (2) construct model homes or other structures expressly authorized by the BoCC.

8.4. DESIGN CONSIDERATIONS AND STANDARDS**8.4.1. Planning Considerations**

The following planning considerations shall be adhered to when dividing land:

(A) Land Found Unsuitable for Development

Land unsuitable for development due to physical constraints shall not be divided unless methods authorized by this Code are used to mitigate the problems created by the unsuitable land conditions.

(B) Safe for the Intended Purpose

Land shall be divided in a manner that allows it to be used safely for the intended purpose without danger to the public health, safety or welfare or peril from fire, flood, geologic hazards or other natural hazards. Building sites shall not be located in areas subject to geologic hazards as determined by the CGS or a Geologic Report; or in a 100-year floodplain unless located in compliance with the Floodplain Regulations.

(C) Topography to be Considered

Consideration shall be given to topography. Building sites shall not be located on land with a slope of 30% or greater.

(D) Planning Required for Remainder Parcels

A remainder parcel shall be at least 35 acres, platted as a tract, identified as a future phase consistent with the preliminary plan, or exempted by the BoCC in accordance with Chapter 7. A remainder parcel is not eligible for use or building permits unless specifically approved by BoCC action.

(E) Continuation of Roads and Other Linear Facilities

Divisions of land shall be designed to accommodate the continuation of roads, trails, pedestrian access, utilities and drainage facilities into adjacent property unless there is sufficient justification for an alternative design. The connection shall provide a logical, safe and convenient circulation link for vehicular, bicycle,

pedestrian, or equestrian traffic with existing or planned circulation routes and, in particular, to destinations such as schools, parks and business or commercial centers.

(F) Lot Layout, Design and Configuration

Divisions of land shall be designed to provide for lots that are of an appropriate size and configuration for the site characteristics and intended uses; adequate buffering from the adverse impacts of adjoining uses through lot orientation, setbacks, landscaping or other appropriate methods; conservation of water, land and energy resources; conveniently located recreation facilities within the development; minimal grading, road cuts and fills; and a road system designed to preserve the integrity and function of the arterial and local roadway network. Lots shall have reasonable access to open space, trails, park land or recreation facilities that are set aside for either homeowner use or use by the general public.

(G) Preservation of Natural Landscape

The primary importance of the preservation and enhancement of the natural landscape and vegetation shall be considered. The layout and design of lots, blocks, and rights-of-way shall provide desirable settings for structures by making use of natural features, unique or distinctive topographic features including buttes and rock outcroppings, existing vegetation, natural drainage, riparian and wetland areas, significant wildlife habitats, identified aquifer recharge areas, and aesthetic features. Alteration of features shall be kept to a minimum and shall be based on practical engineering considerations.

(H) Preservation of Historical and Archaeological Sites

Alterations of historic or archaeological sites shall be avoided. Emphasis should be placed on reuse of historical structures and incorporation of historical and archaeological sites into the park and open space system. If disturbance of sites is unavoidable, the applicable public agency shall be provided the opportunity to excavate, purchase, or record the site before alteration takes place.

8.4.2.Environmental Considerations

The following environmental design considerations apply to divisions of land:

(A) Miscellaneous Environmental Requirements

(1) Buffers

(a) Planting Easement Along Collectors, Arterials, or Expressways

A planting or screening easement may be required along the property line of lots abutting collectors, arterials, or expressways. No vehicular access shall be allowed through a planting or screening easement.

(b) Landscaping between Differing Land Uses

Landscaping should be provided, especially as a buffer between different types of uses. Xeriscape should be used whenever possible to minimize water consumption.

(2) Multifamily Lots Served by Central Sewage Collection System

Multifamily residential lots shall be served by a central sewage collection system.

(3) Airport Impacts

Residential lots should be located to minimize adverse influences from airports and airport operations.

(4) Threatened and Endangered Species Compliance

The design shall consider threatened and endangered species.

(B) Hazards

Land shall not be divided until natural hazards have been removed or the impact of natural hazards mitigated as determined by the PCD Director. Lots or tracts subject to natural hazards which may be eliminated through specialized engineering shall be identified on the plat. Identification of natural hazards on the plat shall include a statement about the specific natural hazard and a statement of the engineering alterations required to eliminate the natural hazard. The following hazards are subject to these requirements:

- Geologic hazards including mine hazards, as identified by the applicant, review agency, or contained in the County inventory of geologic hazards;
- Soil hazards as identified by the applicant, review agency, or contained in the County inventory of soil hazards;
- 100-year floodplain as identified by the applicant, review agency, or the Floodplain Administrator;
- Wildfire hazards as identified on the County and State wildfire hazard inventory or maps;
- Hazards caused by high water table or polluted water, as identified by the applicant, review agency, or County inventory;
- Hazards associated with airports and major utility facilities; and
- Hazards associated with the presence of old landfills, fill areas, and surface and subsurface contamination.

Land subject to natural hazards shall generally be identified through field investigation and reports, existing County natural hazard inventories, and review agency comments.

(1) Flood Hazard Area Requirements

In areas of special flood hazards, the following standards shall be met:

(a) Review by Floodplain Administrator

Divisions of land shall be reviewed by the Floodplain Administrator for compliance with the Floodplain Regulations.

(b) Minimize Flood Damage

Divisions of land shall be designed and constructed to minimize potential flood damage to properties and public utilities and facilities such as sewer, gas, electrical, and water systems.

Development in the floodplain shall be limited to uses compatible

with the flood hazard and shall specifically exclude residential uses, sewage and water treatment plants, commercial shopping areas, and industrial sites.

(c) Hazardous Activities Prohibited

Activities in a Special Flood Hazard Area that may be hazardous to public health and water quality are prohibited, including but not limited to septic systems, landfills, disabled vehicles, etc.

(d) Lots or Portions of Lots within Floodplain

(i) Lots Less than 2.5 Acres in Size

Lots less than 2.5 acres in size are required to be located entirely outside of the 100-year floodplain. Lands within the 100-year floodplain shall be established in a tract. A special district, HOA, or other corporate entity shall be designated to maintain the tract unless otherwise provided by this Code.

(ii) Lots Greater than 2.5 Acres in Size

Lots 2.5 acres and larger are required to provide drainage easement for the 100-year floodplain with the restriction of "No Build" and "No Storage of Materials".

(e) Base Flood Elevations and Floodplain Boundaries

(i) Floodplain Boundaries to be Shown on Plat

Base flood elevation data approved by the jurisdictional floodplain authority and 100 year floodplain boundaries shall be shown on the plat.

(ii) Located within 300 Feet of a Zone A Floodplain

If any portion of a division of land is located within 300 feet of a Zone A Floodplain, FEMA-approved base flood elevations and boundaries are required to be determined and shown on the plat, or the applicant may provide a Floodplain Certification Letter by a professional engineer or architect stating that "To the best of the engineer's knowledge and based on field verified characteristics of the land being divided, the property is reasonably safe from flooding and, if studied, the 100-year floodplain would not be shown to enter the property in question."

(2) Noise

(a) Impacts of Noise Pollution to be Minimized

Divisions of land shall be designed to minimize the impacts of noise pollution to residents. Divisions of land shall be designed with reference to potential and actual noise pollution hazards based on both existing conditions and projected conditions as identified in the TIS.

(b) Roadway and Railroad Mitigation**(i) Types of Noise Mitigation**

Where noise levels exceed or are predicted to exceed 67 dBA Equivalent Sound Level (Leq), any or all of the following mitigation measures (in order of County preference) shall be included in the design:

- Increased building setbacks;
- Modified site orientation for buildings and outdoor areas;
- Landscape buffers or tracts;
- Noise easement;
- Soil berming; or
- Noise barrier.

In the event that building setbacks or orientation standards are utilized as the mitigation strategy, those building setbacks and orientation standards shall be noted on the plat.

(ii) Mitigation in Residential Subdivisions

Noise mitigation may be required for any residential subdivision, and shall be required for single-family and duplex residential subdivisions, which contain lots that will be individually owned, and are located adjacent to expressways, principal arterials or railroads. Where required, mitigation shall reduce the existing or projected exterior noise levels at the building site location and outdoor areas for patios and decks closest to the noise generator to 67 dBA Leq. A noise study to determine the area of potential impact is required where a subdivision includes or borders an expressway, principal arterial or railroad. A noise study is not required for minor subdivisions and minor replats.

(iii) Noise Activity Covenant and Disclosure Required

In the event noise mitigation within the area subject to noise levels of 67 dBA Leq would not achieve a noise level reduction of a minimum of 5 dBA Leq without a noise barrier, a Noise Activity Covenant and Disclosure is required to be applied to each lot which will remain in the 67 dBA Leq, either by notation on the plat or by recording a separate document.

(iv) Noise Mitigation Located Outside Right-of-Way

Noise mitigation measures shall be located in easements or on tracts to be maintained by a special district or homeowners association and outside of the right-of-way or roadway easements, unless otherwise

approved by the ECM Administrator. A noise easement or maintenance agreement is required to assure access to and maintenance of the noise mitigation.

(c) Noise Barriers

(i) Appropriateness of Noise Barriers

Noise barriers are generally more appropriate within an urban area or adjacent to urban development. Increased setbacks and orientation standards are more appropriate in rural areas. A noise barrier should not be the default design alternative unless other mitigation strategies cannot practically and effectively achieve the noise reduction.

(ii) Noise Barrier Standards and Construction

When noise barrier construction is selected as the noise mitigation strategy, the noise barrier should be designed to achieve a noise reduction of at least 10 dBA Leq.

Noise barriers shall be constructed according to current CDOT standards, unless specifically modified by the ECM.

(iii) Noise Barriers Required Prior to Occupancy

Noise barriers shall be installed prior to approval of a certificate of occupancy by the Building Department for residential structures, unless an extension of time to install the noise barrier is granted by the PCD Director.

(iv) Noise Barrier Not Required to Meet Zoning Setback

A noise barrier is not required to comply with zoning district setbacks.

(v) Consistency in Design and Materials

Noise barriers shall be of similar design and materials along an expressway, principal arterial, or railroad, unless an alternative design or material type is approved by the PCD Director.

(d) Airport Noise

Where lots are located within the 65 Day-Night Equivalent Sound Level (Ldn) noise contour as determined by a current FAR Part 150 study for public airports or an AICUZ study for military airfields, the plat shall include a plat note advising that construction shall achieve a 30 dBA interior noise level reduction through approved construction techniques as evidenced by a Noise Reduction Certificate.

(e) Military Installation Noise

Where lots are located within the 130 dBA noise contour line under adverse weather as determined by the current Fort Carson Installation Environmental Management Plan, the plat shall include a plat note restricting residential development on impacted lots. Development of commercial, industrial, or public structures devoted to office uses shall incorporate noise reduction measures sufficient to achieve an interior noise level reduction of 35 dBA as evidenced by a Noise Reduction Certificate.

(f) Relationship to the Noise Ordinance

The requirements of this Section do not supersede requirements of any applicable BoCC Ordinance regarding noise.

(3) Unsuitable Building Areas

Areas within lots or tracts which reflect one or more of the following characteristics shall be deemed unsuitable for building and shall be identified as no build areas on the plat.

- Areas not suitable for location of water or sewage disposal systems as determined by State and County health regulations.
- Areas where slopes are greater than 30%.
- Areas of identified or designated geologic, soil, or natural hazards as identified or designated in the El Paso County hazard identification inventory; provided that the limitations cannot be overcome through the application of specialized engineering.
- Areas within the 100-year floodplain as reflected on FEMA Flood Insurance Rate Map (FIRM), within proposed boundaries as reflected in LOMR/CLOMR, or as determined by a flood study as approved by the Floodplain Administrator.
- Areas within easements, without the permission or release from the beneficiary of the easement holder.

(4) Snow Drift Areas

Where the subdivision is adjacent to arterial roads subject to snow drifting problems as identified in the ECM, additional design features to prevent snow drifting as listed in the ECM are applicable.

8.4.3. Division of Land, Block, Lot, and Tract Layout Standards

(A) Division of Land Standards

(1) Minimum Frontage for Division of Land

A division of land shall have a minimum of 60 feet frontage on a public road.

(B) Block Standards**(1) General**

The lengths, widths, and shapes of blocks shall conform to the following standards:

(a) Separation of Differing Land Uses

Blocks shall be used to separate distinct land uses or zoning classifications.

(b) Vehicular and Pedestrian Circulation

Blocks shall be laid out and designed to provide for convenient control, safety, and access for vehicular and pedestrian circulation.

(c) Topography and Natural Features

Blocks shall be laid out with respect for the existing topography, vegetation, and other natural features.

(2) Block Lengths and Pedestrians

Block lengths in excess of 600 feet may require pedestrian access be provided approximately midway through the block.

(C) Lot Design

Lot design and layout shall conform to the following standards:

(1) Buildable Lots

Lots shall be buildable lots, unless specifically approved and restricted by plat note.

(2) Lot Area and Dimensions**(a) Minimum Lot Dimensions in Zoning District**

The minimum area and dimensions of lots shall conform to the requirements of the applicable zoning district.

(b) Adequate Buildable Area Required

Lots shall have sufficient buildable area to reasonably accommodate the allowed uses. Buildable areas shall be excluded from easements unless otherwise approved by the easement holder, and shall not encroach into natural hazard areas unless the natural hazards are mitigated as required by this Code.

(c) Lot Area Adequate to Accommodate Parking

Lot area shall be adequate to allow for the provision of necessary parking facilities for the allowed uses.

(d) Corner Lots and Building Setbacks

Corner lots shall accommodate the required setback on both frontages, which may require extra lot width.

- (e) Minimum Frontage**

Lots shall have a minimum of 30 feet of frontage on and have access from a public road, except where private roads are approved by the BoCC pursuant to waiver granted under Section 8.4.4 (E).
- (f) Lots Using OWTS**

 - (i) Lots Designed to Use an OWTS**

Lots which will utilize an OWTS shall have a minimum area of 2.5 acres.
 - (ii) Minimum Buildable Area for Lots Using an OWTS**

A minimum of 1 acre of buildable area is required for lots proposed to utilize an OWTS.
- (g) Side Lot Lines at Right Angles**

Side lot lines shall be substantially at right angles or radial to road right-of-way lines.
- (h) Irregular or Wedge-Shaped Lots**

Irregular or wedge-shaped lots shall have sufficient width at the front setback line to accommodate construction of a principal structure that meets side setback requirements
- (3) Double Frontage and Reverse Frontage Lots**

 - (a) Limited Use of Double Frontage and Reverse Frontage Lots**

Double frontage and reverse frontage lots are discouraged except where essential to provide a separation of residential properties from arterial roads or incompatible uses, or where access is not allowed to one of the roads.
 - (b) Access to Double Frontage Lots Restricted**

Access for double frontage lots shall be taken from the lowest classification roadway providing access to the lot and not from perimeter collectors, arterials, or expressways. A statement dissolving the right of access to collectors, arterials, and expressways shall be required on the plat.
 - (c) Access Control Using Reserve Strips of Land**

Reserve strips of land to prevent access to roads are prohibited.
- (4) Flag Lots**

 - (a) Only Allowed Where Other Options Impractical**

Flag lots shall only be used where other lot layouts are impractical.
 - (b) Not Used to Avoid Public Road or Utilities Construction**

Flag lots shall not be used as a means of avoiding the construction of public roads or the extension of utilities.

(c) Cul-De-Sac Required

The lot layout shall incorporate a cul-de-sac where 3 or more abutting flag lots would occur.

(d) Shared Access

Flag lots shall be required to share access where inadequate frontage exists for multiple accesses in accordance with the access requirements of the ECM.

(e) Minimum Pole Width

The minimum width for a flag lot pole shall be 30 feet.

(f) Maximum Pole Length

The length of the flag lot pole shall not exceed the length of the longest side of the flag portion of the flag lot.

(g) Pole Not Included in Lot Area

The area of the pole of the flag lot shall not be included in the lot area in meeting the minimum lot area requirements. Where the pole is irregular or wedge shaped the PCD Director shall determine where the flag pole is measured to.

(5) Division of Lots by Boundaries and Man-Made or Natural Features**(a) Roads or Other Lots**

Lot shall not be divided by a road, alley, or another lot.

(b) Municipal, County or Zoning District Boundary

Lots shall not be divided by a municipal or County boundary or zoning district boundary.

(c) Special, Taxing, or School District Boundary

Lots shall not be divided by a special district, taxing district, or school district boundary, unless coordinated with the affected districts.

(d) Lots Divided by Irrigation Ditch, Stream or Drainage Facility

Lots should not be divided by an irrigation ditch, stream, or drainage facility unless a bridge or crossing is built to provide vehicular or pedestrian access to both sides.

(e) Lots Divided by Easements

Lots should not be divided by easements. Drainage easements which bisect a lot are only allowed where no reasonable alternative to the drainage solution exists.

(D) Tracts**(1) Not Eligible for Building Permits**

Tracts shall not be used for structures and are not considered eligible for building permits, unless authorized by the approving authority and expressly noted on the plat.

(2) Not Subject to Minimum Lot Size Requirements

Where a tract is not to be used for structures, the tract is not required to meet the minimum lot size requirements of the zoning district.

(3) Areas to Be Shown

Tract area shall be shown on the plat in square feet and acreage.

(4) Tract Boundary Line Locations

Tract boundary lines shall be located, when practicable, at the top of slopes or along benches or the flowlines of drainage courses.

(5) Minimum Frontage

Tracts shall have a minimum of 30 feet of frontage on and have access from a public road or approved access easement, except where private roads are approved by the BoCC.

(6) Park and School Tracts

(a) Dimensions of School Tracts

Tracts for schools shall have sufficient buildable area to reasonably accommodate the intended use. Buildable areas shall be excluded from easements unless otherwise approved by the applicable easement authority, and shall not encroach into hazardous areas unless the hazards are abated as specified in the required documents and plans.

(b) Access for School Tracts

Tracts for schools shall have access meeting the requirements of this Code and the ECM.

(c) Adequate Area for Recreation Required

Tracts for parks and schools shall have suitable areas for active or passive recreation facilities.

(7) Tracts Not Divided by Municipal, County, or Zoning District Boundary

Tracts shall not be divided by the boundary line of a County, city or zoning district.

(8) Public and Common Areas in Tracts

Land intended to be conveyed or reserved for common homeowner or public use except lands to be dedicated as rights-of-way use shall be located within tracts.

8.4.4. Transportation System Considerations and Standards

(A) Planning and Design of Transportation System

(1) Transportation System Design Principles

Transportation systems serving the division of land shall be designed in conformance with the planning and design principals and criteria in the ECM. New roadways and associated structures shall be designed and

built to bear a logical relationship to existing and planned roads and to provide suitable service to the ultimate land use of their service areas, and designed and constructed to achieve suitable capacity, safety, and levels of service and maintenance.

(2) Consistent with MTCP

The location and design of roads shall be consistent with the road network and functional classification as identified in the MTCP.

(3) Transportation Facilities Adequate

The nature and amount of traffic likely to be generated by the division of land shall be accommodated by existing and planned roadways without significant degradation of the physical condition or levels of service and safety as evidenced by a TIS prepared in conformance with the requirements in Appendix B of the ECM.

(B) Right-of-Way Dedication Required

Roads shall be located within a dedicated public right-of-way meeting the requirements of the ECM for the roadway classification proposed. In addition, adequate right-of-way shall be dedicated to accommodate the construction of the roads identified within the MTCP in accordance with BoCC policy. In accordance with BoCC policy, the BoCC may allow a disclosure such as "public ROW easement" or "future ROW" to be placed on a plat as an alternative to dedication.

(C) Public Roads Required

Divisions of land, lots, and tracts shall be served by public roads.

(D) Dead-End Road Standards

(1) Maximum Number of Lots on Dead-End Road

The maximum number of lots fronting and taking access from a dead-end road is 25. A corner lot is not counted in the maximum number of lots on a dead-end road when the fire department determines that adequate emergency access is provided to the corner lot by an alternative road.

(2) More than 25 Lots on a Dead-End Road

Where more than 25 lots would front and take access to a dead-end road, a second means of access shall be provided. The second access shall be either a public road or a road located within an easement specifically constructed for emergency access purposes.

In situations where a second access is planned but is not practicable to construct initially, a divided 4 lane road meeting the design and construction requirements of the ECM shall be considered a second means of access until the second access road is constructed. Provision for crossing the median of a 4 lane road by emergency vehicles shall be included in the design. Roads taking access from the 4 lane road shall be subject to the dead end and roadway termination standards of this Code and the ECM.

(3) Maximum Length of Dead-End Road

The maximum length of a dead-end road is governed by the ECM, and may be further limited in those areas subject to wildfire hazard in accordance with this Code.

(E) Private Road Allowances**(1) Use of Private Roads Generally Limited**

Private roads shall normally be confined to closed loops and dead-end roads not likely to be needed for the convenience and safety of the general public.

(2) Private Roads Require Waiver

The use of private roads is limited and allowed only by waiver. In granting a waiver to allow private roads, the BoCC shall make written findings supporting the use of private roads and may require the owner to enter into a Private Road Maintenance Agreement or create covenants whereby the lot owners are required to maintain the private roads.

(3) Private Roads to Meet County Standards

Generally, private roads shall be constructed and maintained to ECM standards except as may be otherwise determined in the waiver. Private road waivers may only include design standards for the following:

- Right-of-way width where suitable alternative provisions are made for pedestrian walkways and utilities;
- Design speed where it is unlikely the road will be needed for use by the general public;
- Standard section thickness minimums and pavement type where suitable and perpetual maintenance provisions are made;
- Maximum and minimum block lengths; and
- Maximum grade.

(4) Private Roads Determined to Comply with Access Requirements

In cases where private roads are approved, the private roads shall be deemed to comply with the access and frontage requirements of this Code as if the private roads were public roads.

(5) Private Roads Posted

Private roads shall be posted and identified on the plat.

8.4.5. Drainage Considerations and Standards**(A) Drainage Design Concepts**

- The design and operation of the drainage facilities serving a division of land shall ensure that: Historical flow patterns are maintained in a manner that will reasonably preserve the natural character of the area and prevent property damage of the type generally attributed to runoff peak flow and velocity increases, diversions, concentration and unplanned ponding of storm runoff;

- Runoff volumes and peaks in areas affected by runoff conform to the applicable provisions of the ECM;
- The division of land does not impede the flow of natural water courses;
- Low points within the affected area are ensured adequate drainage;
- The drainage system considers the drainage basin as a whole and is capable of accommodating not only runoff from the proposed division of land, but also, where applicable, the runoff from areas adjacent to and upstream of the division of land;
- Provision exists in the design or operation of proposed drainage facilities for suitable maintenance including requiring the applicant to enter into a Private Detention Basin Maintenance Agreement and Easement or create covenants whereby the lot owners are required to maintain the detention basin(s); and
- Where a division of land will cause the introduction of new pollutants into the runoff water, storage, treatment and removal of pollutants conforms to the requirements of the ECM.

(B) Site Drainage Standards

(1) Lot Grading

Lots and tracts shall be laid out to provide positive drainage away from building sites. Overlot grading shall be designed and maintained consistent with the drainage basin planning study and master drainage plan.

(2) Coordinated with Drainage and Flood Control Systems

The design and site drainage shall be coordinated with the drainage and flood control systems.

(C) Drainage and Bridge Facility Design and Construction Standards

(1) Drainage and Bridges Constructed to ECM Standards

Drainage and bridge facilities shall be designed and constructed in conformance with the standards specified in this Code and the ECM.

(2) Compliance with Drainage Basin Planning Study and Master Drainage Plan

Drainage improvements shall conform to the requirements of the drainage basin planning study and master drainage plan.

(D) Maintenance Provisions Required

Provision for the maintenance of drainage areas shall be included as part of the subdivision easement and documents.

(E) Protection of Hazardous Areas Associated with Drainage Facilities

(1) Low-Lying Areas Preserved

Low-lying lands along watercourses subject to flooding or overflowing during storm periods, whether or not included in areas for easement dedication, shall be preserved and retained in their natural state as drainage ways.

(2) Prudent Line Setback

Where applicable, the Prudent Line Setback, which is a buffer zone on either side of the channel where development is prohibited and the channel is allowed to move laterally, shall be shown as a no-build area and shall have a maintenance easement to grant El Paso County maintenance access.

(3) Subdivision Below a Jurisdictional Dam

Land which is subject to possible failure of an upstream dam meeting the size, volume or height standards of a jurisdictional dam shall not be platted unless the potential flooding condition is alleviated according to plans approved by the ECM Administrator or the State Engineer. A Dam Failure Analysis may be required prior to approval of downstream subdivisions.

(F) Detention Ponds and Permanent BMPs

Detention ponds and permanent BMPs shall be located in separate tracts or permanent easements where appropriate or required by the ECM.

(G) Drainage Easements**(1) Drainage Easements Required for Watercourses and Ditches**

A drainage easement shall be provided if a division of land is traversed by a watercourse, drainageway, channel, stream, water supply ditch, or canal. The easement shall exclude the right to make improvements of the type which would interfere with runoff. Dedication shall include a right to access if necessary.

(2) Drainage Easements Required Outside Subdivision Boundaries

When a proposed drainage system will carry water across land outside the division of land, appropriate drainage rights and easements shall be secured.

(3) Drainage Easements Required for Runoff Leaving Roadside Ditch

Drainage easements shall be established for runoff which enters private property from a roadside ditch.

(4) Width of Drainage Easements**(a) General Requirements**

A drainage easement or right-of-way shall conform to the lines of watercourse and the requirements of this Code, the ECM, and related technical documents, and be of a width adequate for the intended purpose and maintenance. The minimum requirements for easements shall be based on the base flood, but shall not be less than 15 feet in width unless otherwise approved by the ECM Administrator.

(b) Standard Drainage Easement Widths and Locations

Drainage easements may be coincident with the required utility easements unless requested otherwise by the review engineer.

The standard drainage easements for urban and rural lots shall be provided as follows:

- (i) Urban Density
 - Side Lot Lines: 5 feet
 - Rear Lot Lines: 7 feet
- (ii) Rural Density
 - Front Lot Lines: 10 feet
 - Side Lot Lines: 10 feet
 - Rear Lot Lines: 10 feet

8.4.6. Utilities Considerations and Standards

(A) General

Provision shall be made for facility sites, easements, and rights of access for electrical and natural gas utility service sufficient to ensure adequate electric and natural gas service for the division of land.

(B) Utilities Standards

(1) Utilities Located Underground

Utility facilities shall be located underground throughout the division of land except in situations or locations where undue hardship result from compliance with this requirement and the overriding intent of this Code has been demonstrated to the satisfaction of the PCD Director. Transformers, switching boxes, pedestals and other necessary facilities may be placed aboveground.

(2) Extended to Each Lot or Building Site

Utilities shall be extended to each lot, tract or building site.

(3) Utilities Located in Rights-of-Way or Easements

Utility lines, including appurtenances, shall be placed either within rights-of-way or within the easements or tracts provided for the particular facilities in accordance with the approved utility service plan and the ECM. Utility easements shall be identified for water, sewer, gas, electric power, telephone, cable television, and drainage facilities on the plat.

(C) Standards for Easements

(1) General

(a) Meet ECM Requirements

Utility easements shall meet the requirements of the El Paso County ECM.

(b) Located to Provide for Efficient Installation

Easements shall be located to provide for efficient installation and maintenance of utilities, drainage, vehicular and pedestrian access, emergency access, detention/retention facilities, water courses, and fire protection.

- (c) Utility Rights within Easements**

Easements for the utility companies for the installation and maintenance of utilities, including, but not limited to, electric lines, gas lines, telephone lines, water lines, and sewer lines, shall include the right to trim interfering trees and brush and a perpetual right of ingress and egress for installation, maintenance, and replacement of lines.
- (d) Approved by Utility Companies Providing Service**

Utility easements shall be approved by utility companies serving the project or the beneficiary of the easement.
- (e) Shared Utility Easements**

Shared use of a given easement is encouraged to minimize the number of easements.
- (f) Free of Conflicting Encumbrances**

Easements shall be free from conflicting legal encumbrances, avoid unnecessary removal of trees or excessive excavations, and be reasonably free from physical obstructions.
- (g) Blanket Utility Easements Prohibited**

Blanket utility easements shall be prohibited. Existing blanket or undefined easements shall be defined or located on the ground. If an easement already of record cannot be definitely located, a statement of the existence, the nature of the easement, and its recorded reference shall be placed in the note section.
- (h) No Structures Over Easements**

No structure or obstruction may be erected in, placed on or extend over an easement unless approved in writing by the entity or entities having jurisdiction over the easement.
- (i) Easements Used for Stated Purpose**

Easements shall only be used for stated purpose as shown on the recorded plat.
- (2) Easement Locations and Dimensions**

 - (a) Easements Along Lot and Tract Lines**

Utility easements shall be provided along lot and tract lines in accordance with the serving utility, this Code, and ECM.
 - (b) Easements Abutting Rear Lot Lines**

Where an easement abuts a rear lot line which is not the rear lot line of another lot, or which is on the perimeter of the division of land, the easement width shall be 10 feet or more.
 - (c) Utility Easements Combined with Drainage Easements**

Where easements are combined with a water course, drainage way, channel, or stream, an additional utility easement of at least

10 feet in width shall be provided if the use would be in conflict with drainage requirements or wetlands.

(d) Standard Easement Widths and Locations

Unless otherwise required by the utility provider, the standard utility easements for urban and rural lots shall be provided as follows.

- (i) Urban Density
 - Side Lot Lines: 5 feet.
 - Rear Lot Lines: 7 feet.
- (ii) Rural Density
 - Front Lot Lines: 10 feet
 - Side Lot Lines: 10 feet
 - Rear Lot Lines: 10 feet

(D) Vacation of Easements

(1) Easement Vacation to Follow Requirements of Chapter 7

Easements may be vacated in accordance with the provisions of Chapter 7 and the Procedures Manual after review by public utilities or other service providers providing designated services to the area in and around the subdivision.

(2) Approval of Structure over Easement Not Construed as Vacation

Approval in writing for the placement of a structure within an easement shall not be construed to be a vacation of the easement.

8.4.7. Water Supply Standards

(A) General

(1) Purpose

The purpose of this Section is to promote the health, safety, and welfare of the residents of El Paso County and is adopted pursuant to various State statutory authorities granted to counties, including, but not limited to, C.R.S. §§30-28-101, et seq., C.R.S. §§30-28-201, et seq., C.R.S. §§29-20-101, et seq., C.R.S. §§24-65.1-101, et seq., C.R.S. §§24-67-101, et seq., respectively.

This Section is not intended to enhance, diminish, displace, modify or supersede any applicable State Statutes or regulations regarding the initiation, adjudication, administration or use of water rights.

(2) Applicability

The requirements of this Section shall apply to any development application which results in the creation of new lots, except as otherwise provided, with the following clarifications:

- The effective date of this Section is originally November 20, 1986, and this Section shall fully apply to any subdivision which does not have preliminary plan approval prior to that date;

- Any proposed subdivision with a preliminary plan approval by the BoCC prior to November 20, 1986, but still in the process of obtaining plat approval, shall be subject to the previously existing water supply regulations in this Code and any controlling State statutory requirements regarding subdivision water supplies. Notwithstanding the foregoing, a subdivision proposing a change in its source of water which would result in a substantial decrease in the quality, quantity or dependability of the water supply or a substantial increase in the annual water demand shall be subject to this Section. In no case shall a change from a renewable to non-renewable source provide less than a 300-year water supply; and
- The requirements of this Section shall apply if there has been a substantial change in the water supply of the subdivision. The BoCC, with recommendations from the County Hydrogeologist or the OCA, shall determine if a substantial change in the water supply or water demand is proposed. Factors to be considered in the determination of a substantial change in the water supply or water demand include the percent increase or decrease in water demand or water availability and the absolute quantity increase or decrease in the water demand or water availability.

(3) Exceptions

The requirements set forth in this Section shall not apply to:

- Subdivisions which will not use water;
- Agricultural uses not associated with residential, commercial, or industrial activities requiring subdivision approval;
- A proposed subdivision which, by reason of the nature, type and extent of the proposed development, will not require a water supply as prescribed herein. Subdivisions meeting this requirement are not designed or developed for permanent occupation or habitation. The determination shall be made by the BoCC, following recommendations by the OCA, PCD Director, or County Hydrogeologist, on a case-by-case basis, and shall be based on a specific request and supporting evidence presented by the applicant along with recommendations of the Planning Commission. If exempted by the BoCC, any subsequent change in the subdivision as approved may require compliance with this Section;
- A vacation or vacation and replat of an existing subdivision or lots within an existing subdivision or any plat change, any of which will not result in significantly greater total water use than previously anticipated for the subdivision. All determinations as to the significance of the change in water use shall be made by the BoCC, with recommendations by the County Hydrogeologist or OCA; and

- The Planning Commission may recommend and the BoCC may, on a case-by-case basis, waive any or all of the requirements of this Section pursuant to a waiver application; however the finding of sufficiency for the quality, quantity, and dependability for water supplies shall not be waived; and

(4) Terminology

Unless specifically provided by this Code, water terminology within this Section shall have the same meaning, definition and application as set forth in C.R.S. §§37-90-101, et seq. and §§37-92-101, et seq.,

(B) Water Resource Report

(1) General

(a) Purpose

The purpose of the water resources report is to provide the data necessary for the Planning Commission and the BoCC to determine whether the proposed water supply is sufficient in terms of quality, quantity and dependability for the proposed subdivision.

(b) Water Resources Report Required

A water resources report as required by this Section shall be submitted with sketch plan, preliminary plan, final plat, and any subdivision applications which will create a new lot. A copy of the report will be kept on file in the El Paso County PCD.

(c) Prepared by Qualified Professional

The water resources report shall be prepared by a qualified hydrogeologist, hydrologist, licensed civil engineer, qualified groundwater geologist, or other qualified professional with appropriate experience.

(d) Document Adequate Water Supply

The Water Resources Report shall include adequate documentation that the proposed water supply is sufficient in terms of quantity, dependability, and quality for the proposed subdivision.

(e) Enforcement

In addition to any other remedies provided by law or this Code, the BoCC shall have the right to enforce compliance with the provisions of this Section, including any agreement provided pursuant to this Section, by means of withholding building permits within the subject subdivision or withholding plat approvals for additional development phases within the subject subdivision pending full compliance or other resolution.

(2) Description Report Contents and When Required**(a) Sketch Plan Report**

The initial water resource report submitted with the sketch plan may be of a general nature, may be based on published and unpublished data and reports, and need not include site-specific hydrogeologic data. The purpose of the report included with the sketch plan is to identify probable compliance of the proposed subdivision with the water supply standards and to identify the need for additional water supplies which will be required for the subdivision.

(b) Preliminary Plan Report

The water resource report submitted with the preliminary plan shall include all of the data needed to determine whether the water supply is sufficient in terms of quality, quantity and dependability for the proposed subdivision. The report shall be based on engineering calculations and site-specific data and shall include a detailed discussion of the water demand, supply, quality, dependability, and supply facilities for the proposed project. The report shall identify those aspects of the water supply plan which are insufficient in terms of quantity, quality or dependability and shall identify the actions to remedy the deficiencies.

(c) Final Plat and Replat Report

The water resource report submitted with the final plat shall include all of the data needed to determine whether the proposed water supply is sufficient in terms of quality, quantity and dependability for the type of subdivision proposed. The report shall be based on engineering calculations and site-specific data and shall include a detailed discussion of the water demand, supply, quality, dependability, and supply facilities for the proposed subdivision.

A water resources report is not required if the BoCC made a finding that the proposed water supply plan of the preliminary plan was sufficient in terms of quantity, quality and dependability. However, an amended water resources report is required if there is a substantial change in either the water supply or the estimated water demand.

(d) Residential Subdivisions of 4 Lots or Fewer

A complete water resources report is not always required for minor subdivisions. State statute requires the State Engineer to review all proposed water supplies. The State Engineer requires at a minimum a narrative discussion and a Water Supply Information Summary Form.

(3) Water Resource Report

The water resource report shall document the requirements of this Section and shall include the following data, documentation, and analysis at a level of detail necessary to make the determinations of sufficiency:

(a) Summary of the Proposed Subdivision

The water resource report shall include a summary of the proposed subdivision with the following information:

- A location map including roads, Township and Range, a copy of all maps required with sketch and preliminary plan and final plat submittals, and legal description; and
- A description of subdivision including acreage of each proposed land use, number of dwelling units, etc. For phased projects the description shall clearly describe the acreages, land uses and number of units of each phase. The location of each proposed land use shall be shown on appropriate maps.

(b) Information Regarding Sufficient Quantity of Water**(i) Calculation of Water Demand**

The water resource report shall include water demand calculations in separate calculations for the type, number and annual water requirements of existing, proposed and potential maximum uses of the subject property and a general timetable when the demands are expected. Acceptable methods of determining water demand are described in this Section.

(ii) Calculation of Quantity of Water Available

The water resource report shall identify and describe each source of water including: (1) a map showing the location of any off-site water to be used and the location of major water transmission lines, reservoirs, etc; (2) calculations of the quantity of water available from each source (on-site and off-site sources shall be determined separately); and (3) a description of groundwater sources.

(iii) Groundwater Source Information

The water resource report shall list each aquifer to be used. Each aquifer shall be identified as tributary, non-tributary, not non-tributary or from a designated basin, and as either renewable or non-renewable aquifers. The report shall discuss the need for and the status of any augmentation plans required to use the proposed supply. The report shall also describe the annual and the

300-year quantity of water available from each proposed aquifer.

(iv) Production Wells Information

The water resource report shall discuss location, construction and production details of existing and proposed production wells. The following shall be included: (1) estimated number, size and short- and long-term yields of wells necessary to serve the proposed subdivision; (2) estimated life expectancy of wells; (3) estimated short and long-term well development schedule indicating probable timing of bringing additional wells on line; (4) A map showing locations of wells to be used during the first 5 years of the subdivision and probable locations of wells in the following years; (5) Well drilling logs and well completion reports; and (6) Pumping test data and analysis, including data and analysis of constant rate and step drawdown tests.

(v) Surface Water Sources

The report shall list each surface water supply to be used. The report shall discuss the need for and the status of any augmentation plans required to use the proposed supply. In addition, the report shall describe the annual and the 300-year quantity of water available from each proposed surface water supply, and calculate the number of years of water supply. For phased projects, the calculation shall delineate the years of water available for each phase.

(c) Information Regarding Sufficient Dependability of Water Supply

The water resource report shall include the following information to allow a determination of sufficient dependability of the water supply to be established:

(i) Proof of Ownership

Proof of ownership or right of acquisition of use of existing or proposed water rights sufficient in quality, quantity and dependability to serve the proposed use including well permits, court decrees, well applications, export permits, etc.

(ii) Financial Plan

Financial plan and capital improvements plan of water provider.

- (iii) **Description of Water Supply**
Description of the water supply, location shown on maps, and, when appropriate, engineering designs of existing and proposed water supply facilities, including wells, storage facilities, major transmission lines, etc.
 - (iv) **Calculations Demonstrating Quantity**
Calculations and documentation demonstrating that the aquifers are capable of supplying the required quantity of water and analysis showing the wells are capable of producing the required water supplies, if groundwater is to be used.
 - (v) **Evidence of Water System Source**
If a public or private water system is to be used, evidence that the source can and will supply water to the proposed subdivision stating the amount of water available for use within the subdivision and the feasibility of extending service to the area. This evidence shall include the following information: (1) A letter indicating a commitment to serve (except in the case of a sketch plan); (2) Name and address of the municipality, quasi-municipality, or water company which will supply the water; (3) Current capacities of the existing system; (4) Total amount of current and committed use; and (5) Amount and timing of water to be supplied to the subdivision.

This requirement does not apply to subdivisions to be supplied by individual wells.
 - (vi) **Evidence of Short-Term Supply for Fire**
Evidence that short-term water supply needs of the subdivision can be met to satisfy fire demand and reduction of supplies as a result of flooding, and damaged or otherwise incapacitated systems. Short-term dependability can be satisfied by such features as reservoirs, cisterns, standby wells and standby connections with other water supply or distribution systems.
- (d) Information Regarding Sufficient Quality**
The following shall be supplied: (1) Chemical analyses of proposed water from each proposed source; (2) Evidence of compliance with County and State water quality standards; and (3) Discussion of potential for water quality degradation from on-site and off-site sources.

(e) Public and Private Commercial Water Providers**(i) Information from Commercial Water Providers**

It is the responsibility of the applicant to provide information regarding the availability of water supplies from any source, including public and private commercial water providers. Should the subdivision fall within a water provider's service district, a general water resources report supplied by the provider may be used to evaluate available water resources provided the content meets or exceeds the requirement of the Water Resource Report.

(ii) Water Providers Report

In those cases where the water provider submits a general Water Resources Report, the water resource report shall be updated annually, by February of each year. Update information shall include:

- Volume of water sold in the previous year;
- New water acquisitions, commitments, augmentation plans, etc.;
- Water trades or other losses of water supplies;
- Anticipated water acquisitions for the upcoming year;
- Legal documentation accompanying new water acquisitions and augmentation plans;
- Major capital improvements accomplished during the past year and anticipated major capital improvements for the upcoming year; and
- Other information which would be useful in evaluating the availability of water supplies.

(f) Review of Water Resource Report

Water Resource Reports will be referred to the State Engineer and any applicable designated groundwater management district or water service provider, and reviewed by the County Hydrogeologist, OCA, EPCDHE, and PCD. When a proposed subdivision is located within a designated groundwater management district, El Paso County may receive comments and review recommendations from the district; however, the recommendations are not binding on the County.

(i) Sketch Plan Report

After receipt of the report, County staff and review agencies will submit a statement of their conclusions, finding and recommendations to the PCD.

Given the general and preliminary nature of water information available at the sketch plan stage, the OCA

will not provide recommendations or comments on the sufficiency of the water supply for sketch plan.

(ii) Preliminary Plan Report

The County Hydrogeologist will, in consultation with the OCA and the PCD, prepare a recommendation that the water supply be found sufficient or insufficient in terms of quantity and dependability. The EPCDHE will prepare a recommendation that the water supply is sufficient or insufficient in terms of quality. If the County Hydrogeologist, OCA or EPCDHE recommend that the proposed water supply be found insufficient they shall identify the deficiencies in the water supply plan to be corrected prior to submittal of the final plat.

(iii) Final Plat

The County Hydrogeologist will, in consultation with the OCA and the PCD, prepare a recommendation that the water supply be found sufficient or insufficient in terms of quantity and dependability. The EPCDHE will prepare a recommendation that the water supply is sufficient or insufficient in terms of quality. If the County Hydrogeologist, OCA or EPCDHE recommend that the proposed water supply be found insufficient they shall identify the deficiencies in the water supply plan.

(4) Basis of Determination of Sufficiency

(a) General Provisions

The Planning Commission shall, as part of its deliberations, make a recommendation regarding the sufficiency of the proposed water supply. The BoCC shall determine the sufficiency of the proposed water supply in terms of quantity, dependability, and quality based on the information presented and the recommendation of the Planning Commission.

In determining the sufficiency of a proposed water supply, the BoCC shall, at a minimum, consider the Water Resources Report, data and recommendations from the State Engineer's Office, OCA, the County staff, and the County Hydrogeologist; the recommendations of the Planning Commission; and public comment. In all cases the burden of proof in demonstrating sufficiency rests with the applicant, and it shall be the applicant's sole responsibility to document in the Water Resources Report that the proposed water supply is sufficient in terms of quantity, dependability, and quality.

(b) Conditional Finding of Sufficiency

Conditional findings of sufficiency can be made by the Planning Commission and the BoCC specifying conditions that shall be

met prior to recording the final plat. Some examples of conditions include, but are not limited to: written proof that a well has been abandoned or re-permitted, written proof that an applicant has voluntarily reduced the amount of withdrawal, completion of CDPHE Technical, Managerial and Financial (TMF) analysis and issuance of PWSID number for a new central water system, and formal annexation of the lot into a central water system's service area. Once these requirements are met, the conditional finding of sufficiency becomes a finding of sufficiency.

(c) Exception to 300-Year Water Supply

An exception to the 300-year water supply can be granted to those lot(s) not included in the Water and Sanitation or Metropolitan District's service area but the applicant desires to subdivide their land, annex into the District, and utilize the District's service for the new lot(s), which lot(s) may be granted an exception of the 300-year water supply requirement due to the fact that the District has effectively appropriated all the groundwater under the proposed subdivision by virtue of the cylinders of appropriation around its pre-1973 well(s). However, if exempt well(s) will continue to be used by an existing lot (and will not use the District's water service), the applicant must reduce the amount of withdrawal from their exempt well(s) to meet the County's 300-year supply life requirement.

(d) Documents Needed for Review by the OCA

The following documents shall be reviewed by the OCA:

- Water Supply Information Summary Form
- Letter of Commitment from Water District
- Copies of all well permits
- Copies of all Water Court Decrees
- Copies of all Colorado Groundwater Commission Determinations of Water Rights
- State Engineer's Office Opinion

(e) Phases of Plan Approval

(i) Sketch Plan:

Approval of a sketch plan by the Planning Commission and BoCC does not require a finding that the proposed water supply is sufficient in terms of quality, quantity and dependability.

(ii) Preliminary Plan

- Action of the Planning Commission: The Planning Commission shall make a recommendation that the proposed water supply is or is not sufficient in terms of quantity, dependability, and quality. Separate recommendations may be made. A preliminary plan

may be approved even if a recommendation of insufficiency is made. The Planning Commission shall identify the deficiencies in its recommendations to the BoCC.

- Action of the BoCC: The BoCC shall make a finding that the proposed water supply is or is not sufficient in terms of quantity, dependability, and quality. Separate findings may be made. A preliminary plan may be approved even if a finding of insufficiency is made. The BoCC shall identify the deficiencies with respect to the water supply plan.

(iii) Final Plat

- No final plat shall be approved by the Planning Commission or the BoCC without a finding that the proposed water supply is sufficient in terms of quality, quantity and dependability for the proposed subdivision.
- For subdivisions with 4 lots or more whose water supply consists of wells, and particularly where there are water augmentation or replacement obligations, the applicant shall establish a HOA or other entity approved by the OCA that shall be responsible to carry out the obligations under the water court decree, Colorado Groundwater Determination, and any related augmentation or replacement plans. For subdivisions with 3 lots or less, while creation of an HOA is preferred, responsibility for the obligations may be placed on the individual lot owners in the covenants or in a Joint Use Well-Sharing and Easement Agreement. Unless the water court or Colorado Groundwater Commission authorizes differently, no more than 6 lots shall share a well in a joint-use well sharing arrangement. Plat notes concerning the responsibility for the obligations and for conveyances of water rights shall be included on the face of the final plat. Prior to recording the final plat for any such subdivision, the applicant shall provide to PCD and the OCA for review and approval documents including, but not limited to, water court decrees and plans for augmentation signed by the Water Judge; determinations of water rights and replacement plans signed by the Colorado Groundwater Commission; deeds to cure defects in title to water rights; form deeds conveying water rights to individual lot owners; deeds conveying water rights for augmentation or replacement to the HOA (or to lot owners for

subdivisions with 3 lots or less); Joint Use Well Sharing and Easement Agreements (where applicable); restrictive covenants; and documents creating the HOA including articles of incorporation, certificate of incorporation by the Secretary of State, and bylaws.

(5) Finding of Sufficient Dependability

The proposed water supply shall meet the following criteria to be found sufficient in terms of dependability:

- The supply is of sufficient quantity to meet the needs of the proposed subdivision for 300 years;
- The proposed water supply system and water supply is capable of meeting the average annual and peak daily demand of the proposed subdivision; and
- The applicant has provided adequate evidence of ownership or the right of acquisition or use of existing or proposed water rights sufficient in quantity, dependability, and quality to serve the proposed uses within the subdivision; and (1) the legal capability to accomplish any changes in the uses or points of diversion of the rights with quantities and dependability necessary to serve the proposed subdivision without material injury to vested water rights; or (2) adequate evidence that the public or private water provider can and will supply the proposed subdivision with water of adequate quality, quantity and dependability.

(6) Adequate Proof of Ownership or Right of Acquisition

No final plat will be approved without adequate proof of ownership or the right of acquisition or use of existing and proposed water rights.

Following are the minimum requirements of each type of water supply as proof of ownership or the right of acquisition of or use of existing and proposed water rights of surface or groundwater:

(a) Surface Water

For surface water and underground water defined in C.R.S. §37-92-103 (11), the following shall be considered adequate proof of ownership or right of acquisition:

- Copies of appropriate well permits or court decrees for water rights, changes of water rights, and augmentation plans or State Engineer approved temporary exchange plans; or
- If the decree or historic use and priority does not provide for a probable uninterrupted supply, the applicant shall submit a legally binding alternative supply plan, such as reserve groundwater.

(b) Groundwater Outside the Designated Groundwater Basins

For groundwater outside the designated groundwater basins and subject to C.R.S. §37-90-137(4) (S.B.-5 and S.B.-213), the following shall be considered adequate proof of ownership or right of acquisition:

- Copies of well permits, court decrees for the intended type of use and quantity, or determinations made by the State Engineer under rules and regulations adopted pursuant to C.R.S. §37-90-137(9) in response to water court request pursuant to C.R.S. §37-92-302(2), and in the referral and review process of C.R.S. §30-28-136(1) (h)(I);
- With respect to groundwater classified as not non-tributary, a court decree approving a plan of augmentation is required.

(c) Designated Groundwater**(i) Alluvial Groundwater**

For alluvial groundwater, permits or determinations issued by the Colorado Groundwater Commission for the intended type of use or court decrees shall be considered adequate proof of ownership or right of acquisition. If appropriate, export permits are required.

(ii) Bedrock Groundwater

For bedrock groundwater, permits or determinations issued by the Colorado Groundwater Commission for the intended type of use, or court decrees and estimates of the quantity of groundwater in Denver Basin formations shall be considered adequate proof of ownership or right of acquisition. Either a permit or a court decree is required for water which will be used during the first 20 years of the proposed project. Denver Basin formation estimates are only permissible for those deeper aquifers which will not be needed during the first 20 years of the project life. If appropriate, export permits are required.

- Perfected Groundwater Rights (1973): For groundwater rights perfected prior to enactment of Senate Bill 213 (July 6, 1973) and not defined in §37-92-103 (11), C.R.S., a court decree or well permits for the intended types of use shall be considered adequate proof of ownership or right of acquisition.

(d) Other Information Required

In addition to the above requirements, the applicant shall provide any other pertinent information and documentation which further

expands, restricts or modifies (or which could potentially expand, restrict, or modify) the existence, ownership and right to use the subject water rights for the proposed subdivision.

(e) Written Evidence Required

The applicant shall provide written evidence satisfactory to the BoCC that documented water rights have been committed to and will be retained for subdivision use to the fullest extent necessary to satisfy the water demand of the proposed subdivision as required by this Section. The written evidence may include one or a combination of the following:

- An adequate letter of commitment from an established water provider agreeing to provide water service to the proposed subdivision, and stating the amount of water available for use within the proposed subdivision and the feasibility of extending service to that area;
- A legally binding agreement between the BoCC and the applicant or water provider setting forth and prescribing the terms, conditions, limitations and restrictions as to the commitment and retention of documented water rights necessary to satisfy the present and anticipated future water demand of the proposed subdivision or the respective filing thereof in accordance with this Section; or
- A plat note conveying or identifying the documented water rights committed to the proposed subdivision, and restricting the further conveyance, sale, transfer, or change in use of the committed water rights.

In determining the appropriate means to accomplish the foregoing, the BoCC shall consider, among other factors, the legal classification of the water involved, the type of water system proposed, and the water provider's history of experience and reliability of providing service.

(f) Written Documentation Recorded Prior to Plat Approval

The written documentation required by the BoCC pursuant to this Section 8.4.7, shall be finalized, fully executed and recorded prior to or concurrent with the recording of the final plat for the subject property, except that the letter of commitment shall not be recorded. HOA documents shall be recorded, to the extent that the HOA is in existence at the time of plat recording.

(g) Adequate Proof from Water Provider

(i) General

Adequate proof is required of the capability of the water provider to serve the proposed subdivision and pre-

existing subdivisions, if any, with adequate quantity, dependability, and quality at average annual and at peak daily demand. The 300-year water supply requirement does not apply to pre-existing (prior to November 20, 1986) subdivisions.

(ii) Financial and Capital Improvement Plan

The financial plan and capital improvements plan shall include a program for future wells if future groundwater development is planned and shall show that necessary financial resources have been satisfactorily committed to extend water service to the proposed subdivision and to adequately maintain and operate the water supply system. Projects in which each residence will be served by an individual well are not required to have a financial or capital improvement plan.

(iii) Water Bearing Capacity of Aquifers

Proof shall be provided that the water bearing properties of aquifers (i.e., hydraulic conductivity, transmissivity, storativity, storage coefficient, etc.) are adequate to yield the quantity of water which is proposed to be extracted from the aquifer.

(iv) Physical Facilities and Technical Capabilities Adequate

Proof shall be provided that physical facilities, or the necessary financial and technical resources and legal commitments and authority to construct a system, for raw water acquisition, collection, storage and treatment, and for treated storage and distribution and maintenance or water pressure are sufficient to serve the needs of the proposed subdivision.

(v) Water Demands for Fire

Proof shall be provided that water demands needed to satisfy fire demand, replacement of supplies reduced due to flooding, damaged or otherwise incapacitated systems can be met. This short term dependability is satisfied by such features as reservoirs, cisterns, standby wells and standby connections with other water supply or distribution systems.

(vi) Compliance with Drinking Water Regulations

When a new community water system subject to the Colorado Primary Drinking Water Regulations is proposed in conjunction with a subdivision, a conditional finding of sufficiency may be issued by the Planning Commission and BoCC in the approval of a preliminary plan or final plat subject to the following:

- CDPHE TMF capacity, analysis and approval thereof, as evidenced by issuance of a Public Water System Identification (PWSID) number;
- Adequate construction surety for the proposed water system which includes all waterworks identified in the CDPHE TMF analysis;
- Restrictions on the sale of lots and the issuance of building permits until the water system is constructed and certified are included on the final plat; and
- An entity acceptable to the water court, or Colorado Groundwater Commission or the CDPHE shall be formed or engaged to assure operation of the community water system.

(7) Finding of Sufficient Quantity

(a) Sources of Water

Water shall be supplied from legally and physically available water sources and may be supplied from on-site sources, off-site sources, or both.

(b) Required Water Supply

The water supply shall be of sufficient quantity to meet the average annual demand of the proposed subdivision for a period of 300 years. Sketch plans are not required to include documented evidence that the proposed water supply will meet the needs of the proposed subdivision for a period of 300 years.

(c) Determination of Water Demand

(i) Sketch Plan

The total 300-year water demand shall be estimated for the entire subdivision. Each phase of a subdivision shall be estimated independently. It is recognized that this estimate will be based on the general concept of the proposed subdivision and not final engineering plans. Acreages of community landscaping, lawn sizes, specific types of commercial and industrial uses, etc., may be based on estimates.

(ii) Preliminary Plan and Final Plat

Estimates shall be based on actual acreages and densities, engineering plans and designs, land surveys and restrictive covenants, as applicable.

(d) Presumptive Use Values

In the absence of data on water use to the contrary or other minimum values established as acceptable by the State Engineer, the following presumptive values will be used to calculate the annual water demand:

- Residential inside use 0.26 acre feet per year for single family residences and 0.20 acre feet per year for each occupancy unit in multiple family residences other than single family. A duplex contains 2 occupancy units, a triplex contains 3 occupancy units, etc;
- Residential and commercial landscaping use 0.0566 acre feet per 1,000 square feet of landscaping;
- Commercial and industrial inside use 0.1 gallon per day for each square foot of developed space; and
- Miscellaneous irrigation (landscaping, golf courses, etc.) use 2.46 acre feet per acre per year.

(e) Calculation of Unusual Water Demands

Unusual water demands for residential projects, such as large swimming pools, lakes, large fountains, irrigation of golf courses, greenbelts and pasture land, shall be determined and calculated separately.

(f) Water Use for Uses Not Itemized

For uses not itemized above the applicant shall conduct a site specific study.

(g) Water Demand of Comparable Projects

The applicant may also submit an estimate of annual water demand based on the water use of comparable projects, water reuse, groundwater recharge, water conservation, or other innovative methods. Complete documentation shall accompany these estimates, and it shall be the applicant's sole responsibility to demonstrate the validity of water demand estimates made from alternative calculations. If alternative calculations are included, calculations using the above presumptive values shall also be included. The BoCC will make the final determination of water demand.

(h) Adjustments to Water Demand Calculations

At the preliminary plan and final plat stage of a subdivision, the calculations of the water demand may be adjusted for the time required for subdivision buildout. The adjustment shall be in increments of whole years and the adjustment period shall not exceed 20 years from the date of final plat approval.

(8) Determination of Available Water

(a) Sketch Plan

Existing and potential water supplies shall be estimated for the entire subdivision. Proposed quantities of available water are considered general estimates and need not be based on court decrees, well permits or final engineering plans. The quantity of

water available from each proposed on-site and off-site source and each aquifer shall be determined and described separately. For phased projects the supply for each phase shall be estimated independently. The quantities of available water shall be expressed in acre feet per year and total acre feet for the proposed subdivision to evidence a 300-year supply. Because substantial differences may exist between the estimates included with the sketch plan submittal and actual water supplies available for preliminary plan and final plat submittals, acceptance of the estimates accompanying the sketch plan will not guarantee the number of dwelling units permissible in later stages of the subdivision approval process.

(b) Preliminary Plan and Final Plat

The quantity of water available from each proposed on-site and off-site source and each aquifer shall be determined and described separately. Calculations shall be based on court decrees, well permits, approved augmentation plans and determinations by the State Engineer. The quantities of available water shall be expressed in acre feet per year and total acre feet for the proposed subdivision to evidence a 300-year supply.

(9) Water Calculation by Category of Water Type

(a) Surface and Undergroundwater as Defined by Statute

Available surface and undergroundwater as defined in C.R.S. §37-92-103(11) are calculated as follows.

(i) Renewable Water Sources

Certain water as defined in C.R.S. §37-92-103(11) which is provided from surface water and underground sources is considered to be annually renewable and is therefore considered to have a minimum life of 300 years.

(ii) Well Permits and Court Decrees

The quantities of water available shall be derived from appropriate well permits, court decrees for water rights, changes of water rights, augmentation plans, and State Engineer approved temporary water exchange plans which will be legally and physically available for the proposed subdivision. In the event the court decreed quantity or well sited quantity of water has historically been unavailable at times because of a junior priority or for other reasons, the water supply may only be counted if an alternative supply, of equal quantity, is available when the surface supply is not. For example, if the priority of a surface water supply is such that water is only available seasonally, then an equal supply of reliable alternative water shall be available when the surface supply is not available.

(iii) Calculation of Quantity

The quantity of water available shall be calculated by multiplying the annual appropriation, in acre feet, times 300 years. If a supplemental water supply is required, reduce the number of years by the percentage of time the supply is not available. For example, if a supply of surface water is not available for 6 months out of the year, then the quantity of surface water available shall be reduced by 50%. The supplemental source shall be documented independently.

(b) Groundwater Outside Designated Basins

Available groundwater outside designated groundwater basins and subject to C.R.S. §37-90-137(4) (S.B. 5 (July 1, 1985) and S.B. 213 (July 6, 1973) groundwater) is calculated as follows:

(i) Quantity of Nontributary and Not-Nontributary Groundwater

The quantity of nontributary and not nontributary groundwater available is that quantity prescribed by court decrees, wells, or quantity determinations made by the State Engineer under rules and regulations adopted pursuant to C.R.S. §37-90-137(9), in response to water court request pursuant to C.R.S. §37-92-302(2) and in the referral and review process of C.R.S. §30-28-136(1)(h)(I). With respect to groundwater classified as not nontributary, the applicant shall furnish a court decree approving a plan of augmentation.

(ii) Calculation of Quantity

The quantity is calculated by multiplying the annual appropriation by 100 years. The quantity shall be adjusted for the quantity of groundwater used in prior years. Calculations of the quantity of groundwater available shall be based on the following priority: first, court decrees; second, well permits; and third, State Engineer's recommendations.

(c) Available Designated Groundwater

(i) Not Exceed Quantity Allocated by Commission or Court

The quantity of groundwater may not exceed the quantity of groundwater allocated by permits or determinations approved by the Colorado Groundwater Commission, or the quantity exhibited by court decrees plus the quantity of groundwater which occurs beneath the project site in Denver Basin formations for which the Colorado Groundwater Commission has not approved well permits.

- (ii) **Priority of Wells a Factor**

If a court or the Colorado Groundwater Commission has decreed a priority appropriation list of wells in the basin, the priority and significance of the priority of the proposed wells to any condition of basin over-appropriation shall be a factor in determining sufficiency.
- (iii) **Quantity of Alluvial Groundwater**

The quantity of renewable alluvial groundwater is calculated by multiplying the annual well appropriation or court decree, in acre feet, by 300 years. The appropriation shall be adjusted, if necessary, to account for a junior priority appropriation.
- (iv) **Quantity of Bedrock Groundwater**

The quantity of nonrenewable bedrock groundwater is calculated by multiplying the annual appropriation, as specified in the Colorado Groundwater Commission determination or court decrees and well permits, in acre feet, by 100 years. The appropriation shall be adjusted, if necessary, to account for groundwater previously appropriated or extracted. Denver Basin groundwater underlying the project site for which Colorado Groundwater Commission determinations or court decrees or well permits have not been issued may be counted as part of the water supply. The estimates of Denver Basin groundwaters are only permissible for those deep aquifers which will not be needed during the first 20 years of the project.

(d) Available Perfected Groundwater

Available groundwater from groundwater rights perfected prior to enactment of Senate Bill 213 (July 6, 1973) is calculated as follows:

- (i) **Calculating Quantity of Groundwater**

If renewable (i.e. alluvial) multiply the annual appropriation by 300 years; if nonrenewable (i.e. Denver Basin aquifers) multiply the annual appropriation by 100 years. If appropriate make adjustments for the 3/7 rule on the Arkansas River or other extraction limitations.
- (ii) **Calculating Quantity of Pre-1973 Court Decree and Groundwater**

The quantity of groundwater from pre-1973 court decrees and well permits shall be calculated independently, and when appropriate the cylinder of appropriation of the well shall be subtracted from the area of other groundwater calculations.

(10) Finding of Sufficient Quality

In conjunction with applicable State and federal water quality standards and requirements, the proposed water supplies shall meet the following requirements:

(a) Chemical Analysis Required

A chemical analysis shall be performed on a representative water sample from every bedrock groundwater source which will be utilized by the subdivision during the first 5 years and from every non-bedrock source to be used by the subdivision. Large subdivisions may require multiple samples from the same source (not the same well) to ensure representative water quality analyses.

(b) Contaminant Levels to Meet Drinking Water Requirements

Maximum permissible contaminant levels shall meet the requirements of the Colorado Primary Drinking Water Regulations, as clarified by the EPCDHE.

(c) Analysis of Major Ions

Analyses of the major ions calcium, magnesium, potassium, sodium, bicarbonate/carbonate, chloride and sulfate may be required by the EPCDHE.

(d) Collection Techniques

Samples shall be collected by qualified personnel using standard collection and preservation methods and shall be analyzed within the limits of standard holding times. A chain of custody shall be maintained and documented from sampling to a laboratory analysis. Samples shall be analyzed by a Colorado certified testing laboratory.

(e) Sampling Location

Samples from bedrock aquifers shall be collected within ½ mile of the project site or off-site source. If the bedrock source will not be used during the first 5 years of the project and if wells are not available for sampling, the requirement for bedrock aquifer water quality analysis may be deferred as a condition of approval by the BoCC. Samples from shallow alluvial aquifers shall be collected within 500 feet of the project site or off-site source and shall be collected from the closest up-gradient well. All samples shall be representative of the source.

(f) Water Quality Not Meeting Standards

If the quality of the source water does not meet the standards specified in the Colorado Primary Drinking Water Regulations, as clarified by the EPCDHE, the applicant shall demonstrate that treatment facilities will be constructed and maintained which will bring the water within the standards.

(g) Presumption of Water Quality

In the absence of evidence to the contrary, a presumption is made that residential subdivisions of 4 or fewer lots will meet the water quality standards. In the absence of evidence to the contrary, it is presumed that water supplied from an existing Community Water Supply, which operates in conformance with the Colorado Primary Drinking Water Regulations and the CDPHE requirements, as clarified by the EPCDHE, is determined to meet the water quality standards as required by the section.

(h) Future Water Quality to Meet Standards

Under foreseeable and likely future conditions, the quality of the proposed water supply shall meet or exceed the water quality standards established herein. Both on-site and off-site source conditions shall be considered.

(i) Compliance Not to Diminish Other State and Federal Standards

Compliance with this Section is not intended to modify, displace, supersede or diminish compliance with other State and federal water quality requirements.

(C) General Requirements (Clarifications)**(1) Renewable Groundwater Life 300 Years**

Water provided from renewable groundwater sources is considered to be annually renewable and, therefore, is considered to have a minimum life of 300 years.

(2) Recharge Not Used to Modify Bedrock Calculations

Groundwater recharge may not be used to modify the calculations of the quantity of extractable groundwater in bedrock aquifers unless it is included in court decrees, well permits, approved augmentation plans or determinations by the Colorado Groundwater Commission and the State Engineer.

(3) Alternative Supplies May be Considered Renewable

Alternative water supplies such as treated effluent may be considered renewable or nonrenewable and shall be evaluated on a case-by-case basis.

(4) Private Arrangements and Agreements

Any private or public arrangements, agreements or contracts that modify, limit, or condition the use of any water rights or water supplies may result in a reduction of the water calculated to be available for subdivision use.

(5) Nonrenewable Water from Off-Site

When nonrenewable water is provided to a development from an off-site location, the calculation of water for purposes of this Section is at the

point of delivery to the development or customer, rather than at the point of pumping of the well.

(D) Post-Approval Compliance

(1) Prior to Authorization of Building Permits

Prior to authorization by the PCD for the issuance of building permits, the following shall be accomplished. This provision does not apply to subdivisions supplied by individual wells.

- All required step drawdown tests shall be performed on production wells.
- For new community water supply systems a certification shall be issued by a qualified professional (knowledgeable with the water system) certifying that the water system is operational for the intended use. CDPHE TMF capacity analysis and approval thereof, as evidenced by issuance of a public water system Identification (PWSID) number shall be provided.
- For existing and established community water supply systems the certification may come from the water supplier's engineer or may be satisfied by the district or supplier's acceptance of the facilities.

(2) Proof of Well Permit Prior to Approval of Building Permits

Subdivisions subject to this Section shall provide proof of a well permit prior to the PCD's authorization for the issuance of building permits for residential usage for properties located within the designated groundwater basins and for individual lots within a subdivision dependent on an individual on lot well system.

(3) Water Provider No Longer Able to Supply

In the event that the applicant or his water provider is no longer able to supply the subdivision with the quality, quantity, or dependability of water identified in this Section and in the final plat and associated documents approved for the subdivision, the issuance of building permits for the subdivision may be limited by the BoCC until the problem is resolved to the satisfaction of the BoCC.

(4) Production Well Testing

The following shall apply:

(a) Step Drawdown Test Performed

A step drawdown test shall be performed on each production well which will be needed to meet the daily and peak water needs of the proposed subdivision and which meet the following criteria: (1) The well or anticipated production rate is for 40 gpm or more, or (2) The well is a community well and will ultimately serve more than 50 acres or 100 dwelling units or an equivalent commercial or industrial project which is subject to the provisions of this Section.

Step drawdown testing is encouraged for all wells. Step drawdown tests shall be an appropriate number of steps of adequate duration to allow evaluation of the production potential of the well. Step drawdown testing is not required for approval of sketch plans. It is recommended that the test results be included with the preliminary plan and final plat submittals.

(b) Test Results to Determine Capacity

Test results will be used to determine whether the production wells have adequate capacity to supply the needs of the subdivision. If test results indicate additional production wells are necessary, the additional wells shall be installed and tested prior to authorization by the PCD for issuance of building permits for the subdivision. Prior to issuance of building permits, the County Hydrogeologist shall review the test results and shall certify that the test results indicate that the production wells have, at the time of certification, adequate production capability to supply the needs of the subdivision.

(c) Sufficient Production Wells Required Before Approval of Building Permits

The PCD shall not authorize the issuance of a building permit for an approved subdivision until sufficient production wells needed to supply the subject phase of the subdivision are installed,, tested, and conveyance is established..

(5) Water Level Monitoring

The following monitoring and reporting is required until all plats for a proposed subdivision have been approved and all building permits for the subdivision have been issued:

- Monthly pumping volumes from each community production well shall be reported to the PCD semiannually;
- Water level and piezometric level monitoring is required for all projects using community or commercial wells. The purpose of this monitoring is to develop historical data of long-term water level changes. Measurements will usually be taken monthly. Monitoring shall be done in accordance with a monitoring plan approved by the County Hydrogeologist. It is anticipated that most monitoring programs will use existing wells. Deep bedrock wells may not be required for monitoring purposes only; and
- All required water level monitoring devices shall be maintained in good working order and the wells shall be available to County staff at reasonable times for water level measurements. The water supplier will be responsible for maintaining the water level monitoring devices.

(E) Substantial Change In Water Supply**(1) Substantial Change Requires Compliance**

A substantial change in the water supply for a subdivision shall require compliance with this Section. A substantial change to the water supply includes, but is not limited to, the following:

- A change in the source of water which would result in a substantial decrease in the quality, quantity or dependability of the water supply;
- A change in the subdivision which would result in an increase in the annual water demand exceeding 10%;
- A change from a central water system to individual wells;
- A change from individual wells to a central water system;
- A change that causes modifications to an approved and recorded subdivision plat, covenants as they relate to water supply, a decree, or an augmentation plan;
- A change that results in the water being supplied from a different aquifer from that which was proposed in the review and approval of the subdivision; or
- A change from a renewable source of water to a non-renewable source which would provide less than a 300 year water supply.

(2) Administrative Determination of Whether Change is Substantial

The administrative determination whether the change in water supply is considered substantial shall be made by the PCD Director, in consultation with OCA and County staff. Factors to consider in this determination include, but are not limited to:

- The percent increase or decrease in water demand or water availability; or
- The absolute quantity increase or decrease in the water demand or water availability.

(3) Substantial Change Requires New Final Plat Submittal

In the event that the change is determined to be substantial, the application for a substantial change in water supply may be a customized submittal as determined by OCA and County Staff, and processed as a platting action which may require submittal of new plat documents, and which is subject to approval by the Board of County Commissioners.

(4) Administrative Approval of Change Granted

In the event that the change is determined to be not substantial, administrative approval of the change may be granted along with any other modifications to implement the administrative approval.

8.4.8. Wastewater Disposal

(A) General

(1) Purpose

The purpose of this Section is to establish the wastewater disposal provisions at the sketch plan or preliminary plan stage of subdivision development and ensure conformance of wastewater disposal with this Code at the time of approval of the final plat.

(2) Applicability

This Section shall apply to all development applications for subdivision and any other action that creates a new lot or parcel.

(B) Minimum Standards

(1) General

(a) Central Wastewater System Required

A central wastewater system is the required method of wastewater collection and treatment in all new subdivisions or zoning districts with a density greater than one dwelling unit per 2½ acres or where lot sizes are less than 2½ acres. Every reasonable effort shall be made to provide a central wastewater system.

(b) Compliance with EPCDHE Regulations

All wastewater disposals shall comply with the EPCDHE regulations and the CDPHE guidelines, as applicable.

(c) Favorable Recommendation from EPCDHE Required

The EPCDHE is considered the County's expert concerning the adequacy of a proposed sewage treatment system. No sketch or preliminary plan or final plat shall receive the approval of the BoCC unless EPCDHE has made a favorable recommendation regarding the proposed method of sewage disposal.

(d) Wastewater Treatment to Meet Requirements of this Section

In addition to the requirements of the EPCDHE, the provisions of this Section shall be used to evaluate the adequacy of the wastewater treatment system intended to serve a proposed subdivision.

(e) New and Replacement Systems Designed to Minimize Flood Impacts

New and replacement wastewater systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood water.

(C) Onsite Wastewater Treatment Systems (OWTS)**(1) Burden of Proof on Subdivider to Show OWTS Effective**

The burden of proof for showing that an OWTS meets the spirit and intent of this Section shall be on the applicant. Reports, data, and other evidence shall illustrate that the subdivision, at a minimum, achieves the following:

- Non-contamination of surface or subsurface water resources;
- Non-interference with water resources of adjoining lots. The standard for determining interference shall be the probability of well deepening or the necessity to remove land from agricultural use;
- Non-interference with the enjoyment, use, or utility of adjoining land by virtue of pollution, odor, health hazard or water usage. Placement of leach fields within the cone of influence of a well shall constitute interference, unless otherwise approved by the EPCDHE;
- Lot sizes compatible with the limitations inherent in soils, geologic, and hydrologic characteristics of the site. Lot sizes in excess of 5 acres may be required in areas in which site characteristics dictate larger lots; and
- Compliance with any physical setback requirements of the EPCDHE regulations.

(2) Two OWTS Sites Required for All Lots or Parcels

All lots shall be designed to insure that each lot has a minimum of 2 sites appropriate for OWTS which do not fall in the restricted areas identified on the preliminary plan, soils and geology report, or other reports required under this Code.

(D) Public System**(1) Evidence Provision Made for System**

If a public sewage disposal system is proposed, evidence shall be provided with the preliminary plan or final plat to establish that provision has been made for the system that complies with State and local laws and regulations.

(2) Public System Operated in Conformance with Regulations

At the time of preliminary plan submittal and final plat recording, the public sanitation district or company shall be operating in compliance with State and County regulations, or shall have received approval of a service plan in accordance with C.R.S. §§32-1-201, et seq., and approval of location or a 1041 Permit in accordance with Appendix B and site application in accordance with State regulations.

(3) Plans for Off-Site and New Facilities

The construction drawings shall include any plans and specifications for off-site facilities and any new facilities proposed within any existing or proposed County right-of-way.

(4) Construction Costs

The construction costs for wastewater facilities including any required wastewater lift stations or off-site facilities necessary to serve the subdivision which are not guaranteed by the wastewater provider or which are not the responsibility of the wastewater provider shall be included in the construction surety estimate required by the ECM and this Code.

(E) Report Requirements**(1) General****(a) Wastewater Disposal Report Required**

All sketch plans, preliminary plans, and final plats submitted for review shall be accompanied with a wastewater disposal report. The requirements of the preliminary plan report shall not be deferred or postponed until the final plat application.

(b) New Report Not Required

A final plat is not required to be accompanied by a new report where a wastewater report was previously approved, unless there are modifications to the report.

(c) Letter of Commitment Required

A letter of commitment is required for all final plats involving creation of new lots within an area served by a public sewer system.

(d) Professional Engineer Required to Prepare Report

The wastewater disposal report shall be prepared by a professional engineer licensed to practice in the State of Colorado.

(2) Types of Reports**(a) Sketch Plan Report**

The following information shall be included in the wastewater report submitted with the sketch plan application:

- Map showing relative location of point of connection to an existing system;
- Map showing relative location of the existing or proposed treatment facility;
- Estimate of projected population, units, and density, as related to wastewater production on an average daily basis;

- Capacity of the existing treatment plant and current utilization;
- Anticipated capacity of any proposed treatment plant; and
- Letter of commitment from the wastewater provider proposed for service, with identification of whether the sketch plan area is within the service boundaries of the proposed provider.

(b) Preliminary Plan Report

The following information shall be included in the wastewater report submitted with the preliminary plan application:

- All items required to be included with the sketch plan report; and
- Letter of commitment from the wastewater provider proposed for service, which includes whether the preliminary plan area is within the service boundaries of the proposed provider, and a statement by the wastewater provider that adequate capacity exists or will exist in order to provide service.

(c) Final Plat Report

The following information shall be included in the wastewater report submitted with the final plat application:

- Unless previously provided with a preliminary plan application for the property, all items required to be included with the sketch plan report; and
- Unless provided with the preliminary plan, a Letter of Commitment from the wastewater provider proposed for service, which includes information indicating that the land has been included into the boundaries of the provider's service area, or that contractual arrangements for service have been met.

(d) OWTS Report

(i) General Requirements

The following shall be fully addressed in or submitted with an OWTS Report. The EPCDHE may require the subdivider to submit additional engineering or geological applicant reports or data and to conduct a study of the economic feasibility of service by central sewage system prior to making its recommendations.

- A map, drawn at the same scale as the preliminary plan, locating all lots, drainage-ways, floodplains, slopes in excess of 30%, surface and sub-surface

- soils hazards, geologic hazards, depth to bedrock, water table depth, and other hazards;
- Soil conditions, NRCS soils classification, slope of the terrain, groundwater table, subsurface rock, and limitations on site location of the system;
- Conditions which may cause deleterious effects to systems in the area, such as runoff or irrigation;
- The availability of a central sewage system and the feasibility of inclusion into the system;
- The proximity of water wells, lakes, streams, irrigation ditches, and other water sources in the area being subdivided;
- Soils test including a minimum of one percolation test per standard soils category. Additional tests may be required if necessary to evaluate the site. Conditions requiring additional tests shall include presence of steep slopes or major drainage channels in the area being subdivided. The percolation test procedure shall comply with the OWTS regulations.
- All test sites shall be clearly flagged in order that reviewing agencies may make field checks of test locations;
- Groundwater profile including an 8 foot deep soil/groundwater profile analysis at the site of each percolation test; and
- A narrative summary of the conditions of the land to be subdivided including any precautions to developers and residents, construction constraints, and special problems foreseen by the engineer: (1) all locations not suited for placement of leach fields due to soils, geologic, topographic, or hazard conditions shall be noted on the preliminary plan and final plat; (2) relationship of the leach fields to leach fields, wells, structures, lakes, streams, irrigation systems, and other water features on adjoining parcels and identification of any possible hazards; and (3) if private wells are to be utilized in conjunction with OWTS, the probability of contamination shall be analyzed.

(ii) Additional Requirements for Lot Sizes Between 2½ and 5 Acres

For lots of between 2½ and 5 acres where OWTS are proposed, the wastewater disposal report shall additionally address the following:

- Percolation tests conducted for no fewer than 20% of the total number of lots in the filing. In cases in which unique geologic, topographic, or soils conditions, such as: depth to bedrock, depth of water, slopes in excess of 10%, etc. are found, additional tests may be required ; and
- An analysis of the availability of a central sewage system and the feasibility of service by a central sewage system. If there is a central sewage system within one mile of the proposed subdivision, or if the subdivision is within an organized sewage district or municipal service area, the applicant shall submit documentation that the district or municipality is incapable of serving the site or that the costs of service are prohibitive.

(iii) **Additional Requirements for OWTS on Lots Within 400 Feet of a Sewer Line**

When a subdivision is proposed that is within 400 feet of a sewer line or triggers the connection requirements of the OWTS regulations, the following additional requirements apply:

- The EPCDHE requires connection to the central system unless the district refuses service to the property;
- Should the district accept the service connection from outside the district boundaries, then connection is required by the EPCDHE, unless otherwise approved; and
- The owners of any lot that meets this description are required to apply to the EPCDHE for an OWTS to repair or replace a failing approved secondary leach field area.

8.4.9. Geology and Soils Standards and Reports

(A) Geology and Soils Report Required

(1) Required with Sketch Plans and Preliminary Plans

All sketch plans and preliminary plans submitted for review shall be accompanied by geology and soils report. Where a preliminary plan is not required or where a geology and soils report has never been reviewed, the applicant may be allowed to utilize a modified report requirement, as determined by the PCD Director.

(2) Previously Submitted

Where a geology and soils report has been completed and reviewed at an earlier stage of the subdivision review process, a new report may not be required if in the determination of the PCD Director the existing report

provides the level of site specific detail necessary to review the subdivision application, and the recommendations of the report and CGS have been followed in the preparation of the preliminary plan.

(B) General

(1) Prepared by Professional Geologist

The geology and soils report shall be prepared by, or under the direction of, a professional geologist, as defined by State Statute.

(2) Combined with Wastewater Disposal Report

The geology and soils report requirements of this Section and wastewater disposal report may be combined in a single report.

(3) Roads, Drainage, Trail Improvements Avoid Natural Hazards

Roads, drainage improvements and trails shall be constructed away from geologic hazards or protected from geologic hazards in accordance with the provisions of the ECM.

(4) No Interference with Extraction of Commercial Mineral Deposits

Development of the subdivision shall not interfere with the extraction of any known commercial mineral deposit as defined in C.R.S. §34-1-302(1).

(C) Report Requirements

(1) Data to be Complete to Allow Review

It is recognized that certain geologic interpretations cannot be firm or complete, at least in advance of grading operations, but it is expected that all pertinent data will be presented fully and clearly so that interpretations and recommendations can be critically reviewed by others.

(2) Issues to be Addressed by Report

The following concerns shall be fully addressed in the geology and soils report. If any of these items are addressed in other reports, reference may be made to the appropriate reports.

(a) Mapping

(i) Large-Scale Map Required

A detailed large-scale map is required for geology and soils report on a tract or smaller area in which the geologic relationships are not simple.

(ii) Structure Sections Required

Where three-dimensional relationships are significant but cannot be described satisfactorily in words alone, the geology and soils report should be accompanied by one or more appropriately positioned structure sections.

(iii) Test Hole Locations Mapped

The locations of test holes and other specific sources of subsurface information should be indicated on the map and on any sections that are submitted with the geology and soils report, or, if none are submitted, in the text of the geology and soils report.

(b) General Information

The geology and soils report should include definite statements concerning the following matters:

- Location and size of subject area and its general setting with respect to major geographic and geologic features;
- Who did the geologic mapping on which the report is based and when the mapping was done;
- Any other kinds of investigations made by the geologist and, where pertinent, reasons for doing the work;
- Topography and drainage in the subject area;
- Abundance, distribution, and general nature of exposures of earth materials within the area; and
- Nature and source of available subsurface information. Suitable explanations should provide any technical reviewer with the means for assessing the probable reliability of the data. Subsurface relationships can be variously determined or inferred, for example, by projection of surface features from adjacent areas, by the use of test hole logs, and by interpretation of geophysical data. It is evident that different sources of the information can differ markedly from one another in degree of detail and reliability according to the method used.

(c) Geologic Descriptions

The geology and soils report should contain brief but complete descriptions of all natural materials and structural features recognized or inferred within the subject area. Where interpretations are added to the recording of direct observations, the basis for the interpretations should be clearly stated. The following checklist may be useful as a general, though not necessarily complete, guide for descriptions:

(i) Bedrock (Igneous, Sedimentary, Metamorphic Types)

- Identification as to rock type (e.g., granite, silty sandstone, mica schist);
- Relative age, and where possible, correlations with named formations;

- Distribution;
- Dimension features (e.g., thickness, outcrop breadth, vertical extent);
- Physical characteristics (e.g., color, grain size, nature of stratification, foliation, or schistosity, hardness, coherence);
- Special physical or chemical features (e.g., calcareous or siliceous cement, concretions, mineral deposits, alteration other than weathering);
- Distribution and extent of weather zones; significant differences between fresh and weathered rock; and
- Response to natural surface and nearsurface processes (e.g., raveling, gullyng, and mass movement).

(ii) Structural Features

The geology and soils report should contain brief descriptions of the structural features, stratification, foliation, schistosity, folds, and zones of contortion or crushing, joints, shear zones, faults, etc., including information about:

- Occurrence and distribution;
- Dimensional characteristics;
- Orientation and shifts in orientation;
- Relative ages (where pertinent);
- Special effects on the bedrock (Describe conditions of planar surfaces); and
- Specific features of faults (e.g., zones of gouge and breccia, nature of offsets, timing of movements) and whether faults are active in either the geological sense or the historical sense.

(iii) Surficial (Unconsolidated) Deposits

The geology and soils report should contain brief description of surficial deposits include artificial (man-made) fill, topsoil, stream-laid alluvium, beach sands and gravels, residual debris, lake and pond sediments, swamp accumulations, dune sands, marine and non-marine terrace deposits, talus accumulations, creep and slope wash materials, various kinds of slump and slide debris, etc., including the following information:

- Distribution, occurrence, and relative age; relationships with present topography;
- Identification of material as to general type;
- Dimensional characteristics (e.g., thickness, variations in thickness, shape);

- Surface expression and correlation with features such as terraces, dunes, undrained depressions, anomalous protuberances;
 - Physical or chemical features (e.g., moisture content, mineral deposits, content of expansible clay minerals, alteration, cracks and fissures, fractures);
 - Physical characteristics (e.g., color, grain size, hardness, compactness, coherence, cementation);
 - Distribution and extent of weathered zones; significant differences between fresh and weathered material; and
 - Response to natural surface and near-surface processes (e.g., raveling, gullying, subsidence, creep, slope-washing, slumping, and sliding).
- (iv) Drainage of Surface Water and Groundwater
- The geology and soils report should contain information about surface and groundwater including:
- Distribution and occurrence (e.g., streams, ponds, swamps, springs, seeps, subsurface basins);
 - Relations to topography;
 - Relations to geologic features (e.g., previous strata, fractures, faults);
 - Sources and permanence;
 - Variations in amounts of water (e.g., intermittent spring and seeps, floods);
 - Evidence for earlier occurrence of water at localities now dry; and
 - The effect of water on the properties of the in-place materials.
- (v) Features of Special Significance
- The geology and soils report should describe features of special significance including:
- Features representing accelerated erosion (e.g., cliff reentrants, badlands, advancing gully heads);
 - Features indicating subsidence or settlement (e.g., fissures, scarplets, offset reference features, historic records and measurements);
 - Features indicating creep (e.g., fissures, scarplets, distinctive patterns of cracks or vegetation, topographic bulges, displaced or tilted reference features, historic records and measurements);
 - Slump and slide masses in bedrock or surficial deposits; distribution, geometric characteristics,

correlation with topographic and geologic features, age and rates of movement;

- Deposits related to recent floods (e.g., talus aprons, debris ridges, canyon-bottom trash); and
- Active faults and their recent effects on topography and drainage.

(vi) **Mineral Resources**

The geology and soils report should contain brief description of mineral resources including the identification of the types, location and value of mineral resources within the land to be subdivided. These include, but are not limited to, limestone used for construction, coal, sand, gravel, and quarry aggregate, for which extraction by an extractor is or will be commercially feasible, or which is a deposit having significant economic or strategic value to the County, state, or nation. Any area known to contain a commercial mineral deposit shall not be subdivided until the deposit is extracted, unless the BoCC finds that extraordinary environmental damage or public hazard results from the extraction.

(d) **Bearing of Geologic Factors on the Intended Land Use**

Treatment of this general topic, whether presented as a separate section or integrated in some manner with the geologic descriptions, normally constitutes the principal contribution of the geologic and soils report. It involves: (1) the effects of geologic features on the proposed grading, construction, and land use; and (2) the effects of these proposed modifications on future geological processes in the area. The following checklist includes the topics that ordinarily should be considered in submitting discussion, conclusions, and recommendations in the geologic reports:

(i) **Compatibility with Proposal**

General compatibility of natural features with proposed land use related to:

- Topography;
- Lateral stability of earth materials;
- Problems of flood inundation, erosion, and deposition;
- Problems caused by features or conditions in adjacent properties; and
- Other general problems.

- (ii) Proposed Cuts
 - Prediction of what materials and structural features will be encountered;
 - Prediction of stability based on geologic factors;
 - Problems of excavation (e.g. unusually hard or massive rock, excessive flow of groundwater); and
 - Recommendations for reorientation or repositioning of cuts, reduction of cut slopes, development of compound cut slopes, special stripping above daylight lines, buttressing, protection against erosion, handling of seepage water, setbacks for structures above cuts, etc.
 - (iii) Proposed Masses of Fill
 - General evaluation of planning with respect to canyon-filling and sidehill masses of fill;
 - Comment on suitability of existing natural materials for fill; and
 - Recommendations for positioning of fill masses, provision for underdrainage, buttressing, special protection against erosion.
 - (iv) Onsite Waste Disposal (if applicable)
 - Soil types, depths, distributions and relationship to bedrock;
 - General slope conditions, and limitations of slope to building sites and disposal sites; and
 - Present and expected percolation rates.
 - (v) Recommendations for Subsurface Testing and Exploration
 - Cuts and test holes needed for additional geologic information; and
 - Program of subsurface exploration and testing, based on geologic considerations that are most likely to provide data needed by the soils engineer.
 - (vi) Special Recommendations
 - Areas to be left as natural ground;
 - Removal or buttressing of existing slide masses;
 - Flood protection;
 - Problems of groundwater circulation; and
 - Position of structures, with respect to active faults.
- (e) Report Modification**

Where a report modification is authorized by the PCD Director such as in the instance of a minor subdivision, the report is not

required to be prepared by a professional geologist but shall include information regarding the following:

- Streams, lakes, topography, and vegetation;
- Geologic characteristics of the area and a determination of the impacts of the characteristics on the proposed subdivision;
- Suitability of types of soil in the proposed subdivision, including where appropriate, maps and tables in accordance with any standard soil classification; and
- Identification of potential radiation hazards, where applicable.

(D) Relationship to ECM

In addition to these requirements, the ECM requires soils investigation reports and mitigation and outlines the basic criteria and procedures for soils investigations associated with construction of subdivision improvements.

(E) Referral to and Resolution of Issues Raised by the CGS

The geology and soils report will be referred to the CGS for review and recommendations. The applicant is responsible for payment of fees associated with the review by the CGS. The applicant is responsible for resolution of issues raised by the CGS, to the satisfaction of the PCD Director.

(F) Effect of Approval

The geology and soils report will be maintained in the subdivision file, available for public viewing. The applicant is responsible for implementation of the report recommendations and review agency recommendations to the satisfaction of the PCD Director. The resolution of an issue may be in the form of modification of the development design to mitigate the hazards, placement of notes on the plat to advise buyers of the hazard, restrictions on construction within a lot or within the subdivision, or a determination that the hazard may be mitigated by specialized engineering or construction techniques and identification of who is responsible for the mitigation.

8.5. DEDICATION AND FEE STANDARDS AND REQUIREMENTS

8.5.1. General

(A) Applicant or Owner Responsible

The applicant or owner is responsible for paying required fees and making the required land dedications at the time of filing the final plat for recording with the Clerk and Recorder in accordance with the following standards. Land dedication may include both public and private land dedications.

(B) Common Homeowner Land

(1) Homeowners Association Required

For a division of land that includes easements or tracts to be used for common facilities including common open space or areas, private roads,

detention facilities, water facilities, water augmentation obligations, landscaping or other features requiring maintenance, the owner shall establish a HOA or other entity approved by the OCA to be responsible for the maintenance. For subdivisions with 3 lots or less, maintenance responsibility may be placed on the individual lot owners in the covenants without having to create an HOA or other entity. Prior to recording the final plat for any subdivision with maintenance requirements, the applicant shall provide to PCD and the OCA for review and approval the appropriate legal documents (e.g., covenants, articles of incorporation, bylaws, maintenance agreements, etc.) necessary to create the HOA or other entity and to place maintenance responsibility on said HOA, other entity, or the individual lot owners.

(2) Conveyance of Common Homeowner Land

Easements, lots or tracts to be owned and maintained by the HOA shall be dedicated by both a statement on the final plat and warranty deed. A plat note concerning the responsibility for ownership and maintenance of the easements or tracts shall be included on the face of the final plat.

(C) Public Land Dedications and Payment of Fees in Lieu

(1) Dedication of Public Lands

(a) Dedication by Warranty Deed at Time of Filing of Plat

Dedications of land both on site and off site to be used for public uses and owned by the County, a public agency, special district or other corporate entity that are required by this Code, including lots, tracts, or parcels for open space, parks, schools or drainage facilities or where reversionary interests will exist shall be dedicated by warranty deed in favor of El Paso County or other corporate entity approved by the BoCC to receive the land dedication at the time the plat is filed for recording with the Clerk and Recorder. Prior to recording the final plat, the applicant shall provide said warranty deed to PCD and the OCA for review and approval. The legal description contained in the warranty deed shall be prepared by a licensed surveyor.

(b) Dedicated Land Free of Encumbrances

The title associated with the dedicated land shall be free and clear of any and all liens and encumbrances, including real property taxes prorated to the time of conveyance as evidenced by a current title insurance policy in the County's name, a certified survey, and a treasurer's certificate proving that current taxes, prorated to the date of deed transfer, have been paid at the time of conveyance.

(c) Indemnification to be Provided for County

If fee title interest in a lot, tract or parcel for open space, parks, schools or drainage facilities is to be dedicated to the County by warranty deed or where reversionary interests will exist, the

property owner shall indemnify the County from any and all damages, claims, losses, injuries and expenses including attorney's fees related to or arising out of the presence of solid waste, hazardous materials, or petroleum products whether known or unknown, including, without limitation, any cleanup costs for said materials. The indemnification shall be in a form and manner acceptable to the OCA.

(2) Payment of Fees in Lieu

(a) Payment Due at Time of Filing

Fees in lieu of required land dedications, where approved by the BoCC, shall be paid at the time the plat is filed for recording with the Clerk and Recorder.

(b) Deferral of Fees for Condominium or Townhome Lots

When a lot is platted which will require the filing of condominium plats, townhome plats or administrative plats prior to development of the lot, collection of park and school fees in lieu of required land dedications may be deferred to the time of recording of said administrative plats. Any deferral of the payment of fees in lieu of land dedication shall be expressly authorized by the BoCC.

(3) Dedication of Easements

(a) Plat to Show Easements

The plat shall show existing and proposed easements. Existing easements shall bear notation of dedication or conveyance by recordation information.

(b) Owner Required to Dedicate Easements

The owner shall dedicate or deed easements required by this Code, or the ECM, or to serve the division of land with utilities and other required services, or those easements that may be requested by public agencies including, but not limited to:

- Avigation easements;
- Trail easements;
- Open space and scenic easements;
- Utility easements;
- Wetlands or wetlands mitigation easements;
- Conservation easements;
- Easements relative to protected species; and
- Noise Easements.

(c) Shown in Standard Form

Easements shall be clearly labeled, identified, dimensioned and tied to reference points within the division of land and be shown by fine dashed lines. The beneficiary of and maintenance

responsibility for easements shall be designated and the disposition thereof indicated in the plat note section of the plat.

(d) Temporary Easements

Temporary easements, if reflected on the plat, shall include the trigger event and action necessary to relinquish them.

(4) Land Dedication and Fees Not Personal Obligation

Land dedications or fees in lieu of land dedications required by this Code are not personal, but are specific to the property being divided, and are not transferable to other divisions of land unless alternative arrangements are expressly authorized by the BoCC.

(5) Disposition of Dedicated Lands and Refund of Fees

(a) Disposition of Land

(i) Future Disposition of Dedicated School or Park Lands

If a dedicated park or school land is no longer needed by the County, the BoCC may sell the land, may trade the land for other park or school land, or dispose of the land in a manner allowed by statute. The owner shall have a right of first refusal to purchase all or a portion of any land dedicated by the owner to the County, school district, or other public entity before the land is sold, transferred, or conveyed to any party other than a school district. Statutory notice provisions to the owner shall be followed. Any such right of first refusal shall expire twenty (20) years from the date the land was dedicated by the owner to the County, school district, or other public entity.

(ii) Disposition of Other Dedicated Lands

The disposition of all other lands dedicated during the development review and permit process shall be governed by State Statute.

(b) Refund of Fees

(i) No Refunds of Fees Paid if Lower Densities Achieved

The failure to achieve the density stated in the development application or assumed based on the density allowed by the applicable zoning district shall not be grounds for a refund of any fees paid in lieu of land dedication, but may be used as a basis for establishing either fee or land credit within the same development.

(ii) Refund of Traffic or Transportation Fees Not Spent, Credits for Payment or Overpayment, Transfer of Credits

The refund, transfer and credit of traffic and transportation impact fees are governed by the

provisions of this Code concerning Off-Site Road Studies and Plans and Impact Assessments.

8.5.2.Park and Open Space Standards and Dedications

(A) General

(1) Purpose

The purpose of this Section is to provide the definition and structure, outline the requirements, and assigns the responsibility for providing, developing, operating and maintaining specific categories of public park lands within the unincorporated areas of El Paso County.

(2) Dedication of Land for Parks

It is hereby found and determined:

- That a part of the public need for both regional and urban parks, trails and open space generated by the influx of new subdivisions should be provided by a mandatory dedication of land, fees in lieu of land or a combination of land and fees as a condition of preliminary plan or final plat approval.
- That it is reasonable to require the dedication of land, payment of fees in lieu of land or a combination of land and fees to provide the following facilities: regional parks, open space, regional trails or urban parks (reserved land).
- That urban park lands acquired by the County as a result of land dedication under the provisions of this Section may be classified as "reserved lands" and held in reserve by the County in an essentially undeveloped state for another unit of government provided that the perpetual use of the park land shall be for park purposes and shall provide reasonable recreation opportunities for residents of the neighborhood or community planning unit from which the lands were originally dedicated to the County.
- That the decision on whether the dedications will consist of land, fees in lieu of land or a combination of land and fees will rest with the BoCC in consideration of recommendations of the Parks Advisory Board.

(3) Exemptions from Dedication or Fee Requirements

A division of land that is exempted from the definition of subdivision by the BoCC in accordance with the provisions of C.R.S. §30-28-101(10) shall be exempt from the park land dedication and fee in lieu of dedication requirements of this Code.

(4) Establishment of Agency to Acquire and Transfer Land

(a) Responsible Agency

The El Paso County Community Services Department (EPCCSD) shall be a Regional Park Agency and shall be charged with the responsibility of providing, developing,

operating and maintaining regional parks, trails and open space within El Paso County.

(b) Authority to Acquire and Transfer Park Land in Association

Within the unincorporated areas of the County, wherever urban density development occurs, the EPCCSD may, through the subdivision review process, function as a land acquisition agency for the purpose of acquiring and preserving urban category park lands for transfer to another unit of government.

(5) Banking Reserved Land

(a) Designation as Reserved Land and Land Bank

Land acquired in accordance with urban density subdivision requirements for urban park purposes shall become designated as "reserved land" and placed into a land bank category for future transfer to another governmental or quasi-governmental entity for urban park purposes.

(b) Agreement of Recipient Entity to Take Reserved Land

Governmental or quasi-governmental agencies, such as metropolitan districts, special districts, school districts, and homeowners associations providing a bonding or financing mechanism for maintenance and insurance, shall provide written intent to accept the reserved land prior to final plat approval by the BoCC. Property in the reserved land category shall become the development, operation and maintenance responsibility of the recipient governmental or quasi-governmental entity.

(B) Considerations in Locating Park Land

Land to be dedicated as park land shall generally conform to the following criteria. Generally, park land should be located in consideration of:

- Conservation and maintenance of the natural environment of the region;
- Combating air quality problems, enhancing the environment, and preserving community integrity in the most practical, attractive manner possible;
- The size, shape, topography, geology, presence and condition of ground cover and timber, condition of soil, drainage, location, access and availability of water to lands proposed for park, trail, and open space uses;
- An assessment of the suitability of proposed land dedications for both regional and urban park, trail, and open space needs;
- A determination of the population densities which will result from the proposed subdivision and their relation to both regional and urban park, trail, and open space needs;
- Compliance with regional plans, particularly the EPCCSD policies and development statement for regional parks, trails and open space per the current Master Plan;
- The protection of natural and historical features, scenic vistas, watersheds, timber and wildlife;

- The need to provide regional park land, trails, open space and facilities which will serve the entire region and will support outdoor recreation programs including, but not limited to, interpretation of the natural and historic qualities of the region;
- The continuity of open space links, trails and other major components of the regional open space system;
- A determination of the location of parks, trails open space and recreational facilities within specific subdivisions and the broad scope of the County regional park, open space and regional trail system; and
- The provision of urban park lands as “reserved lands” which, with future development, will reasonably serve the needs of the intended neighborhood or community planning unit.

(C) Standards for Dedicated Land

(1) Dedicated Land Reasonably Adaptable for Park Use

The dedicated park land shall be reasonably adaptable for use as regional park, open space, regional trail or urban park. Factors to be used in evaluating the adequacy of proposed park areas shall include, but not be limited to, size, shape, topography, geology, flora, fauna, access, and location.

(2) Associated Water Rights to be Dedicated

Unless otherwise negotiated between the County and owner, the dedicated park land shall include the real property together with tributary and non-tributary water rights owned by the applicant as a consequence of ownership of the dedicated property, water rights underlying the property, well rights, ditches and ditch rights appurtenant to the property, mineral rights and improvements thereon.

(3) Conveniently Located and Free of Hazards

The dedicated park land shall be conveniently located and have public access. The land shall be free of hazards that would threaten the safety of those using the land.

(4) Served by Roads, Utilities and Required Infrastructure

The dedicated park land shall be served by the required roads, traffic signalization, utilities, and other public infrastructure necessary to support the use of the dedicated land for parks. A SIA and appropriate collateral shall be required in lieu of providing the required facilities prior to recording the final plat.

(D) Dedication Requirements

Land, fees in lieu of land, or a combination of land and fees for public parks and open space may be required when a proposed subdivision will generate a need for parks or open space. The presumed need shall be determined in accordance with the following standards. The need shall be based on the subdivision density category of the proposed subdivision. The subdivision density category is based

on a per acre dwelling unit density, or the average lot size of a residential use classification within a proposed subdivision or portions of a proposed subdivision.

(1) Park Land Dedication Requirements

Dedication of land for regional parks, open space, regional trails, or urban parks (reserved land) purposes shall be based on the following subdivision density categories:

(a) Rural Density Subdivisions

(i) Commercial/Industrial Use

In rural density subdivisions, the minimum land dedicated for regional park purposes shall be .05 acre of land for each gross acre of commercial/industrial use contained within the proposed subdivision. For land dedication requirements, refer to the current Schedule of Park Fees in Lieu of Land as adopted by the BoCC.

(ii) Residential Use

In rural density subdivisions, the minimum land dedicated for regional park purposes shall be .0194 acre of land for each dwelling unit contained within the proposed subdivision.

(b) Urban Density Subdivisions

(i) Regional Park Requirements

- **Commercial/Industrial Use:** In urban density subdivisions, the minimum dedication for regional park purposes shall be .05 acre of land for each gross acre of commercial/industrial use contained within the proposed subdivision. For land dedication requirements, refer to the current Schedule of Park Fees in Lieu of Land as adopted by the BoCC.
- **Residential Use:** In urban density subdivisions, the minimum dedication for regional park purposes shall be .0194 acre of land for each dwelling unit contained within the proposed subdivision.

(ii) Urban Park Requirements

- **Commercial/Industrial Use:** For land dedication requirements, refer to the current Schedule of Park Fees in Lieu of Land as adopted by the BoCC.
- **Residential Use:** The combined urban park standard for park land dedication shall be 4 acres of park land per 1,000 projected residents. The number of projected residents shall be based on 2.5 residents per dwelling unit. The combined urban park standard shall provide for both the neighborhood and community park needs in accordance with the

following standards: (a) the neighborhood park standard is 1.5 acres of park land per 1,000 projected residents or 0.00375 acres of park land for each dwelling unit contained within an urban density subdivision; and (b) the community park standard is 2.5 acres of park land per 1,000 projected population of the combined urban park dedication standard or 0.00625 acres of park land for each dwelling unit contained within an urban density subdivision.

- Neighborhood Park Size and Location: The minimum size of a neighborhood park to be dedicated shall be 3 acres. Neighborhood parks should be located adjacent to elementary schools and within a ½ mile radius of the residential units that they are intended to serve.
- Community Park Size and Location: The minimum size of a community park to be dedicated shall be 24 acres. Community parks should be located adjacent to junior high or senior high schools and within a one mile radius of the residential communities that they are intended to serve.

- (iii) Consideration of Reductions in Land Dedication
Dedication of less than the required urban park dedications may be considered in association with a specific plat if agreements provide for the dedication of park land on adjacent properties such that the composite park land area will result in: (1) a park area meeting the minimum area of the specific type of urban park required; and (2) the overall minimum park land dedication requirements being met on dedication of the park land on the adjacent properties.

(2) Trail Dedication Requirements

If the proposed subdivision is in an area where the Master Plan identifies a regional trail, a 25 foot trail easement shall be provided.

(3) Fees in Lieu of Park Land Dedication

(a) Requirement for Fee in Lieu of Land

When dedication of required regional park, open space, regional trail or urban park lands is not deemed feasible or not in the public interest, the BoCC shall require the applicant to pay to El Paso County a fee in lieu of land.

(b) Fees Established Annually by Subdivision Density Category

Fees in lieu of land shall be established each year by resolution of the BoCC. Fees in lieu of land for regional park, open space, regional trail, or urban park purposes shall be based on the

same subdivision category standards used to establish land dedication requirements.

(c) Fees Credited to Park Fee Fund

Fees paid to the County in lieu of land dedication shall be credited to the proper park fee fund and utilized for the defined purpose of that fund.

(4) Combination of Land and Fees in Lieu of Land

When either dedication of required regional park, open space, regional trail or urban park lands alone or payment of required fees in lieu of land alone is not deemed feasible or in the public interest, or not sufficient to mitigate impacts the BoCC shall require the owner to dedicate and to pay to El Paso County a combination of land and fees in lieu of land. The combination of land dedication and payment of fees in lieu of land shall not exceed the fair market value of the land area required.

(5) Adjustments to Park Land Dedication Requirements

(a) Existing Dwelling Units Excluded

Existing dwelling units shall be excluded from the calculation of the park land dedication requirement if they have previously been included in the calculation for park land dedication unless the lot on which the existing dwelling will be located allows for greater residential density, in which case the dedication requirements shall be calculated based on the maximum potential residential density.

(b) Calculating Dedication for Replats or Resubdivisions

(i) Land Platted Before July 17, 1972

Land subdivided or platted prior to July 17, 1972 which is replatted or resubdivided shall be subject to the land dedication and fee in lieu of dedication requirements of this Code.

(ii) Land Where Park Land Dedicated Previously Made

Land replatted or resubdivided shall be exempt from the land dedication and fee in lieu of dedication requirements of this Code if fees in lieu of land have been paid or park land has been dedicated when the land was previously subdivided, unless as a result of the replat or resubdivision residential acreage or density or commercial/industrial acreage is increased.

(iii) Residential Acreage or Density Increased

Where the replat or resubdivision increases the residential acreage or density, the replatted or resubdivided land shall be subject to the fee in lieu of land dedication and park land dedication requirements of this Code as applied only to the additional number of

residential units or the additional number of residential units that are a result of increased acreage.

(iv) **Residential Acreage or Density Altered to Reach Urban Density**

Where the replat or resubdivision either increases the average dwelling unit density per acre or decreases the average lot size, such that the resulting subdivision meets the definition of urban density subdivision, the entire park and open space requirement will be recalculated and amended based on fee in lieu of land dedication and park land dedication requirements of this Code. Previously paid fees in lieu of land or park land dedication will be credited to the appropriate amended requirements.

(v) **Commercial/Industrial Acreage or Density Increased**

Where the replat or resubdivision increases the commercial/industrial acreage, the replatted or resubdivided land shall be subject to the fee in lieu of land dedication and park land dedication requirements of this Code as applied only to the additional commercial/industrial acreage. Where the replat or resubdivision increases commercial/ industrial density, the entire park and open space requirement will be recalculated and amended based on fee in lieu of land dedication and park land dedication requirements of this Code. Previously paid fees in lieu of land or park land dedication will be credited to the appropriate amended requirements.

(6) Credit for Required Park Land Dedication

Credit for park land dedication may be approved by the Parks Advisory Board on a case-by-case basis.

(7) Regional Park Requirements

Credit for park land dedication may be approved if a unique opportunity to expand the regional park system in the respective region and the value meets or exceeds the required land dedication or fees in lieu of land.

(8) Credit for Joint Use for School and Park Sites

Credit for park land dedication for joint use of park and school sites may be approved.

(E) Park Land Dedications to Other Entities

(1) Dedication to Governmental or Quasi-Governmental Entity

If the subdivision is located within the service area of a governmental or quasi-governmental entity that is willing and capable of acquiring, developing, operating and maintaining the required urban park property,

the Parks Advisory Board may recommend that the required urban park land dedication be deeded directly to the entity.

(2) Dedication to Future Quasi-Governmental Entity

If the subdivision is located within the service area of a future quasi-governmental entity that would be organized and formed by the applicant, either prior to or concurrently with the approval of the plat, and that the entity would be capable of acquiring, developing, operating and maintaining the required urban park property, the Parks Advisory Board may recommend that the required urban park land dedication be deeded directly to the approved entity after formation.

8.5.3.School Land Standards and Dedications

(A) General

(1) Purpose

The purpose of this Section is to ensure that adequate land areas and funds for the acquisition of school sites and other capital outlay are made available through the subdivision process to meet the needs of future County residents. It is reasonable that those who accommodate population increases through the subdivision of land should provide for the additional need for school sites that the subdivision creates.

(2) Exemptions from Dedication or Fee Requirements

A division of land that is exempted from the definition of subdivision by the BoCC in accordance with the provisions of C.R.S. §30-28-101(10) shall be exempt from the school land dedication and fee in lieu of dedication requirements of this Code.

(3) Division of Responsibility

(a) School District Responsibilities

The appropriate school district shall, pursuant to statute and after review of the subdivision, make recommendations to the Planning Commission and the BoCC concerning the adequacy of provisions for school needs to serve the subdivision. When a subdivision results in lots which are split among more than one school district, the school district which will include the largest land area of affected lots or the greatest number of dwelling units is considered the appropriate school district.

(b) BoCC Responsibilities

The BoCC shall make the final determination of the method by which the dedication requirement shall be satisfied.

(B) Criteria for Determining Appropriateness of Dedication

When reviewing a subdivision, the appropriate school district shall consider the following criteria prior to making recommendation to the Planning Commission and the BoCC concerning the dedication:

- The assurance that areas set aside for schools within the subdivision have been examined for compliance with regional plans, particularly the Master Plan;
- The determination of the population densities which will result from the proposed subdivision and their relations to school needs;
- The assessment of the suitability of proposed land dedications for school uses;
- The examination of the size, shape, topography, geology, presence, and condition of ground cover and timber, condition of soil, drainage, location, access and availability of water to lands proposed for school uses;
- The assurance of the protection of natural and historical features, scenic vistas, watersheds, timber and wildlife; and
- The demonstration of a present or future need for a school site.

(C) Standards for Dedicated Land

(1) Land Centrally Located and Public Access

The dedicated school land shall be centrally located and have public access and public road frontage.

(2) Dedication Reasonably Provides for Future Residents

The dedication of land shall be reasonably necessary to serve the proposed subdivision's future residents.

(3) Land Free of Hazards

The dedicated school land shall be free of hazards that would threaten the safety of those using the land, or be capable of having the hazards eliminated through subdivision improvements.

(4) Land Served by Required Roads, Utilities and Infrastructure

The dedicated school land shall be served by the required roads, traffic signalization, utilities, and other public infrastructure necessary to support the use of the dedicated land for schools prior to platting. A SIA and appropriate collateral shall be required in lieu of providing the required facilities prior to filing the plat for recording with the Clerk and Recorder.

(5) Land to Accommodate Intended Use

The dedicated school land shall be a single parcel, meet minimum area requirements, and be sufficiently configured to be usable for the intended use.

(6) School Site Area Standards

The minimum acreage for the dedication of school sites shall be based on the site area guidelines in Table 8-1.

Table 8-1. School Site Area Guidelines.

Type of Facility	Minimum Site Area Required
Elementary schools	10 acres
Junior high schools	20 acres
Senior high schools	45 acres

(D) Standards for Dedication

Dedication of land, fees in lieu of dedication, or a combination of land dedication and fees shall be required to meet school needs. The following standards will be employed by the appropriate school district in making recommendations concerning dedication of land or fees in lieu of dedication or a combination thereof and by the BoCC in their decision.

(1) General

(a) Requirements Independent of Other Contributions

Applicability of this Section is independent of voluntary contributions or impact fees which may be negotiated between the appropriate school district and the applicant.

(b) Credit for Joint Use for School and Park Sites

Joint use or credit for park and school sites may be considered on a case by case basis

(c) Land Dedication and Fees Not Personal Obligation

School land dedication or fees in lieu of land dedication are not personal, but are specific to the property being subdivided, and are not transferable to other subdivisions unless alternative arrangements are expressly authorized by the BoCC.

(d) Resulting Dedication Inadequate for School Site

Where the subdivision does not generate the required land dedication area for a school site or there is not an acceptable location for a school site within the subdivision, the owner may enter into an agreement for the acquisition of a school site located outside the subdivision so long as the site will reasonably serve the subdivision. The owner shall receive credits against the dedication requirement if approved by the BoCC. The agreement shall be executed by the owner, the owner of the subject property, the guarantor, and the BoCC. The owner shall provide proof of ownership. The agreement shall include a legal description of the property to be dedicated and shall be recorded with the Clerk and Recorder. The agreement shall be binding on the owner's and the owner's heirs, legal representatives, successors in interest, and assigns.

(e) Type of Dedication at Option of School District

When dedication of all or portions of required school lands is not deemed feasible or in the public interest, the appropriate school district may recommend to the BoCC one of the other options authorized by State Statute and this Code.

(2) Dedication Requirements

Dedication of land for school purposes shall be based on the dedication standards in Table 8-2. If in the opinion of the BoCC following the recommendation by the appropriate school district, adequate land for school purposes is not provided by the applicant to meet the demand by the development under consideration, the application may be denied.

Table 8-2. Land Area Dedication Requirements per Dwelling Unit.

School District	Area to be Dedicated per Single Family Detached Unit¹	Area to be Dedicated for Each Other Residential Unit²
Lewis Palmer District 38	697 sq. ft.	384 sq. ft.
Academy District 20	697 sq. ft.	384 sq. ft.
Falcon District 49	675 sq. ft.	371 sq. ft.
Widefield District 3	653 sq. ft.	359 sq. ft.
Other Districts	653 sq. ft.	359 sq. ft.

¹Single Family Detached Unit: A residential dwelling unit completely separate of other units and situated on its own lot. A mobile home subdivision or manufactured home shall be included within this definition for dedication requirement calculation, as well as patio home or townhome where not attached.
²Other Residential Units: All other types of residential units not included as single family detached units, including but not limited to attached single family homes, townhomes, condominiums, apartments, and mobile home parks.

(3) Adjustment to School Land Dedication Requirements

(a) Existing Dwelling Units

Existing dwelling units shall be excluded from the calculation of the school land dedication requirement if they have previously been included in the calculation for school land dedication unless the lot on which the existing dwelling will be located allows for greater residential density in which case the dedication requirements shall be calculated based on the maximum potential residential density.

(b) Number of Dwellings Undefined

When a division of land results in the creation of a new parent parcel where the number of dwelling units is undefined, the maximum density allowed by the zoning district will be used in the calculation of land dedication or fees in lieu of land requirements.

(4) Fees in Lieu of Land Dedication

When, after recommendation of the appropriate school district, dedication of all or portions of required school lands is not deemed feasible or in the public interest, the BoCC shall require the payment of fees in lieu of land dedication. The fees in lieu of land dedication shall be established and reviewed each year by the BoCC.

(E) Guarantee of Future School Land Dedication

Guarantee of future land dedication may be requested by the appropriate school district when dedication of all or portions of required school lands is not deemed feasible or in the public interest in a particular phase of the subdivision. Prior to

or in conjunction with final plat approval, the owner and the BoCC shall enter into an SIA or development agreement in which the applicant guarantees the future dedication of land for school sites. The agreement shall be executed by the owner of the site, the guarantor, and the BoCC. The owner shall provide proof of ownership. The agreement shall include a legal description of the property to be dedicated in a subsequent phase of the subdivision and shall be recorded with the Clerk and Recorder. The agreement shall also be binding on the owner and the owner's heirs, legal representatives, successors in interest, and assigns.

(F) Reservation of School Sites for Future Acquisition by a School District

(1) Purpose of Reservation

The purpose of reserving a school site on a plat is to allow flexibility in planning for school needs. When the dedication of land or fees in lieu of dedication or a combination thereof will not be adequate to meet school needs, reservation of a school site for future acquisition may be used to set aside the land needed and to be acquired by the appropriate school district.

(2) Reservation for 5 Years Does Not Constitute Conveyance

The reservation of land for school purposes merely sets aside land as specified on the plat for public school purposes for a period of 5 years and does not constitute a conveyance of that land to the BoCC or appropriate school district.

(3) Reservation Not a Substitute for Dedication

Reservation of a school site does not operate as a substitute for the dedication of school land and is only an option in addition to the requirements of either the dedication of land or the payment of fees in lieu of dedication of land or a combination thereof.

(4) Compensation of Owner by School District

The owner of the property is entitled to compensation by the school district when the appropriate school district elects to take reserved land for school purposes. Acquisition of a reserved school site from the owner shall be the responsibility of the appropriate school district.

(5) Reserved Land Not to be Used Inconsistently with Reservation

Until the designation of a site as reserved for school purposes is removed by the County from the plat, the owner shall not utilize the property in a manner inconsistent with the reservation.

(6) Plat Designation and Plat Note Required

The owner shall indicate the designated school site on the plat as "reserved for public school purposes for 5 years from the date of recording of this instrument" and shall include a specific plat note referencing the reservation.

(7) Extension of 5 Year Reservation by Mutual Agreement

The 5 year period for reservation of school sites may be extended by the mutual consent of the appropriate school district and the owner, or the

owner's successors and assigns. The agreement shall be in writing and shall be recorded with the Clerk and Recorder, and a copy of the agreement shall be provided to the PCD.

(8) Removal of the Plat Restriction Reserving School Land

(a) Before Expiration of 5-Year Reservation

The designation of land as reserved for public school purposes may be removed from the plat by the County prior to the expiration of the 5-year period utilizing the procedures for amending a plat if mutually agreed to by the owner or the owner's successors and assigns and the appropriate school district.

(b) Expiration of 5 Year Reservation

After expiration of the 5 year period, the owner may petition to remove the designation of land as reserved for public school purposes from the plat using the procedures for amending a plat or replatting.

(G) Transfer of Land and Fees to School District

(1) Transfer of Land to School District

(a) School District Request for Land and Transfer of Land

The BoCC shall give written notification to the appropriate school district of the dedication. Following notice, an appropriate school district may request the property and shall demonstrate to the BoCC a need for the land. On approval by the BoCC of the school district's request for the land, the property shall be immediately conveyed by the BoCC to the school district. The deed conveying the land to the school district shall include a reverter clause providing that the land shall revert to El Paso County if the land is not used for public school purposes. If a dedicated school site is not requested by the appropriate school district within 20 years from the date of dedication, the BoCC may consider disposal of the dedicated school land pursuant to this chapter.

(b) Disposal of Dedicated Land

If a dedicated school site is no longer needed by a school district, the BoCC may sell the land at the request of the appropriate school district. The owner who previously dedicated the school land shall be given the right of first refusal for a 20 year time period from the date the land was dedicated by the owner to the County or school district to purchase all or part of the land, after payment of the current fees in lieu of school land dedication. The proceeds of the sale of dedicated school land shall be held by the BoCC until the appropriate school district demonstrates a need for the use of the fees pursuant to State Statute.

(c) Request by School District to Transfer Fees

Periodically, the BoCC shall give written notification of the receipt of school fees to the appropriate school district. A school district may request the fees in accordance with County Policy and shall demonstrate to the BoCC a need for the use of the fees pursuant to State Statute. On approval by the BoCC of the school district's request for fees, the fees shall be transferred to the school district.

8.5.4.Road Dedication and Fees

(A) Dedication of Right-of-Way

(1) Dedication of Right-of-Way Required

The owner shall dedicate the entire right-of-way for roads, trails, and other public improvements associated with the division of land in accordance with standards in this Code, the ECM and the MTCP. Dedications shall be shown on the plat and meet the general dedication requirements of this Code. The County requirements regarding Roadway Functional Classification, Roadway Design Criteria, and Access Criteria are included in Chapter 2 of the ECM.

(2) Subdivision Adjoining Existing Road

Where the division of land adjoins an existing right-of-way, the ordinary obligation of the owner is for one-half of the required additional right-of-way required by the ECM or the MTCP, if any.

(3) Section Line Road Dedication

Where a division of land borders a section line road, the dedication shall include the ownership to the section line.

(4) Dedication of Half of Road Right-of-Way

The dedication of 1/2 of a required road right-of-way is only allowed with the approval of the BoCC where evidence is provided that the owner is unable to secure the entire right-of-way.

(5) Dedication Modified When Not Proportional to Impact

Dedication requirements may be modified where the BoCC determines the dedication is not roughly proportional to the impact caused by the division of land.

(B) Fair Share Reimbursement Fees Paid Before Recording

Where a Fair Share Reimbursement applies to the subject property, the owner shall submit payment in the amount established by the BoCC to the PCD prior to filing the plat for recording with the Clerk and Recorder.

(C) Traffic or Transportation Fee Paid Before Recording

Where an Off-Site Road Improvement Study and Plan has been approved and a specific mechanism has been established requiring payment of fees, no plat shall be filed for recording with the Clerk and Recorder within the study and plan area boundaries until all required fees have been paid, unless otherwise provided by the resolution approving the Off-Site Road Improvement Study and Plan.

8.5.5.Drainage Facilities Dedication and Fees

(A) Purpose

The purpose of this Section is to:

- Provide uniform and consistent standards for drainage and bridge facilities and related easements necessary to serve the proposed division of land and implement the provisions of the ECM;
- Implement the provision of BoCC Resolution 99-383 as it may be amended regarding equitable contribution to the total costs of the drainage and bridge facilities in the drainage basin in which the subdivision is located; and
- Implement the provisions of the Master Plan for Drainage Basins of Mutual Concern.

(B) Dedication of Right-of-Way Required

The owner shall dedicate the entire easement or right-of-way for drainage improvements associated with the division of land in accordance with this Code and the ECM. Dedications shall be shown on the plat and meet the general dedication requirements of this Code.

(C) Drainage Basin Fees and Bridge Fees

(1) Drainage Basin Fees Established

Drainage basin fees shall consist of a drainage fee and, where applicable, a bridge fee. The drainage basin fee schedule, which includes bridge fees, is set by the BoCC. A request to modify a fee requires BoCC approval.

(2) Fees Paid at Time of Filing of Plat for Recording

Drainage basin fees shall be paid at the time of filing the plat for recording with the Clerk and Recorder. The required fees shall be those in effect at the time the final plat is submitted for approval.

(3) Fee Reductions, Credits or Reimbursement for Facilities

(a) Credit for Construction of Planned Facilities

The owner will be credited for fees related to eligible drainage and bridge facility construction costs when the applicant constructs facilities identified in the applicable drainage basin planning study in accordance with the provisions of this Code, the ECM, and the drainage fee resolution. The mechanism and details for receiving a fee reduction or credit shall either be included within the drainage fee calculation required with the drainage report or within a separate SIA or development agreement, at the discretion of the County.

(b) Determining Allowable Credits or Reimbursements

- (i) **Reduction of Fees by Cost of Reimbursable Facilities**
When the engineer's cost estimate for reimbursable drainage facilities is less than the drainage fees for the subdivision, the amount of the engineer's cost estimate is subtracted from the fees due to obtain the balance

due in cash at the time of filing the plat for recording with the Clerk and Recorder.

(ii) **Excess Costs Eligible for Credit or Reimbursement**

When the engineer's cost estimate for providing reimbursable drainage facilities is greater than the drainage fees due for a subdivision, no cash fees are paid at the time of filing the plat for recording with the Clerk and Recorder. Actual costs of the facilities in excess of the fees due are eligible for credit or reimbursement from the drainage basin fund as funds become available.

If the plat is applicable to only a portion of the ownership and located in the same drainage basin as the remainder of the ownership, the credit for the cost of facilities installation in excess of the drainage basin fees may be credited to the drainage basin fees due at the time of subdivision of the balance of the ownership.

(c) Determining Fee Reductions and Credit Allowances

(i) **Lots of 2.5 Acres or Larger**

A fee reduction of 25% occurs for those portions of subdivisions that consist entirely of 2.5 acre and larger lots.

(ii) **Prudent Line and Dedications**

If the prudent line is determined by the ECM Administrator to be appropriate in a proposed subdivision, a fee reduction of up to the total fee may be granted for the land in excess of the floodplain which is required to be dedicated. If the reduction exceeds the total fee, the remainder of the credit will be paid by the County when the basin account has sufficient funds. In addition, a reasonable construction cost for channel improvements associated with the prudent line will be eligible for credits or reimbursement.

(iii) **Credit for Small On-Site Ponds**

50% of the reasonable construction cost of small on-site ponds (less than 15 acre-feet) that meet County criteria will be eligible for credits or reimbursements.

(iv) **Credit for Large On-Site Ponds**

100% of the reasonable land and construction cost of large on-site ponds that are either required facilities in a drainage basin planning study or an addendum to a drainage basin planning study and that are accepted by the County and paid for other than by the County are eligible for credits or reimbursement.

- (v) **Credit for Other Regional Facilities**
100% of the reasonable land and construction cost of other regional facilities that are identified as reimbursable in a drainage basin planning study will be eligible for credits or reimbursements.
- (vi) **Approved Drainage Basin Planning Studies**
100% of the cost of approved drainage basin planning studies will be eligible for credits or reimbursements.
- (vii) **Credit for Fees Previously Paid**
When drainage basin fees for a lot or development have been previously paid and a subsequent development permit results in an increase in the impervious area, the drainage basin fee assessed in association with the development permit shall equal the difference between the current drainage basin fees and the previous drainage and bridge fees paid.

(d) Appeal of Fee Reduction or Credit Decisions

The ECM Administrator is responsible for decisions regarding fee reductions or credits. Appeal of a decision shall be in accordance with the applicable provisions of the ECM.

8.6. CONSTRUCTION AND ACCEPTANCE OF REQUIRED IMPROVEMENTS

8.6.1.General

(A) Construction of Common Development and Public Improvements

The owner shall be responsible for constructing the required common development and public improvements unless otherwise explicitly provided, including roads, drainage facilities, bridges and related structures, utilities, etc.

(B) Improvements to Division of Land Require Construction Permit

No common development or public improvements shall be constructed until a Construction Permit and Notice to Proceed have been secured from the ECM Administrator in accordance with the ECM.

8.6.2.Responsibility for Road Construction

(A) Road Construction to Conform to this Code and ECM

Roads shall be constructed in conformance with the roadway standards specified in this Code, the ECM, related technical documents, and other applicable County standards, regulations, and ordinances. The County requirements regarding roadway functional classification, roadway design criteria, and access criteria are included in Chapter 2 of the ECM.

(B) Capital Cost of Adequate Transportation Facilities

Capital costs for new roadway systems and transportation system improvements directly assignable to the needs generated by the division of land shall be paid by those who would benefit.

(C) Construction of Required Road Improvements

The owner is responsible for construction of the road and related improvements necessary to serve the division of land and connect the division of land to existing roads, which may include but are not limited to curbs, gutters, sidewalks, roads, traffic control devices, drainage facilities, drainage structures and trails.

(1) Internal Roads

The entire cost associated with construction of the internal roads and related facilities is the responsibility of the owner, including any costs associated with the construction of a road with an arterial classification or below as identified in the MTCP, the TIS, or both, which is located entirely within the division of land.

(2) Adjacent Roads and Related Improvements

Where an existing County road must be extended to serve the division of land, the owner of the division of land shall pay the entire cost of the extension. For review purposes, the improvements shall be considered a part of the division of land.

(3) Half Road Construction

If ½ of a required road right-of-way is approved for dedication, the entire road cross-section may be required to be constructed in the dedicated half if approved by the ECM Administrator.

(4) Railroad Grade Separations Required

Where railroad crossings are proposed or are affected, provisions for grade separation, buffer strips, and safety protection devices shall be provided by the owner. Obtaining approval from the affected railroad company and the Colorado Public Utilities Commission, where applicable, shall be the owner's responsibility.

8.6.3. Responsibility for Drainage Improvements

(A) Owner Responsible for Drainage Improvements

The owner shall construct the required drainage, bridge, and related structures. Drainage, bridge, and related structures shall be constructed in conformance with ECM requirements.

(B) Extension of Facilities Outside Boundaries of Subdivision

Where drainage structures must be extended to or beyond the subdivision, the owner shall pay the entire cost of the extension, subject to appropriate reimbursement provisions of the Drainage Fee Resolution and the drainage criteria. For review purposes, the improvements shall be considered a part of the division of land, shall be included in the surety estimate, and shall be constructed to County standards. If the owner is not authorized to extend drainage facilities beyond the owner property, the owner shall redesign the drainage plan in conformance with the ECM.

8.6.4. Acceptance of Public Improvements

(A) Acceptance of Public Improvements Required Before Maintenance Begins

The BoCC shall withhold public maintenance of rights-of-way, easements or public improvements that have not been accepted by the BoCC in accordance with the provisions of the ECM and this Code.

(B) County Acceptance of Public Improvements

The ECM provides an acceptance process and warranty period for new or upgraded public roads, drainage facilities, and other improvements. The acceptance process requires financial surety to ensure that the public will not be forced to bear the cost of maintaining or correcting inadequately designed or constructed improvements.

8.7. PUBLIC INFRASTRUCTURE FINANCING PROVISIONS

8.7.1. Off-Site Road Studies, Plans and Impact Assessments

The Cost Recovery for Off Site Improvements section has been replaced by the El Paso County Road Impact Fee Program Resolution (Resolution No. 16-454), or any amendments thereto.

8.7.2. Cost Recovery for Off Site Improvements

(A) General

(1) Purpose

The purpose of this Section is to state the conditions and procedures under which an applicant subdivider may be required to reimburse requestor subdivider for a fair share of the cost of certain improvements that the County required to have installed as part of the development approval, and which improvements would benefit the proposed development.

(2) Applicability

This section shall apply to applications for divisions of land which fall under the definition of "subdivision" and to development applications and actions that fall within the purview of this Code.

(3) Retroactive Application

A requestor subdivider may apply for a fair share reimbursement for any plat, including any amendment thereto, approved by the BoCC and recorded on or after August 8, 2001. A request for a fair share reimbursement shall only be applicable, however, to an applicant subdivider's petition for final plat approval that is accepted as a complete submittal by the DSD on or after the date of BoCC approval of the requestor subdivider's plat.

(B) Eligibility

(1) Improvements that May be Eligible for Cost Recovery

An improvement may be eligible for cost recovery if it is adjacent to the applicant subdivider's subdivision or the applicant subdivider's subdivision receives the presumed use of the improvement. An

improvement located within the boundary of the requestor subdivider's subdivision may also be eligible for cost recovery.

(2) Right to Apply for Cost Recovery Approved by DSD Director

Whether a requestor subdivider may apply for cost recovery is an administrative decision to be made by the DSD Director.

(3) Assignments

Unless the instrument of assignment provides otherwise, the assignee shall have the same rights and obligations as the assignor. The instrument of assignment shall be in writing signed by the assignor and assignee, and each signature shall either be acknowledged or subscribed and sworn before a notary public. The instrument of assignment shall provide a full and complete description in clear and plain language of the rights being assigned. The DSD Director shall have the sole and complete discretion to accept or reject the instrument of assignment.

(4) Metropolitan Districts, Local Improvement Districts, Regional Transportation Authorities, or Similar Governmental Entities

A metropolitan district, local improvement district, regional transportation authority, or similar type of governmental entity may qualify as a requestor subdivider when a document under the subdivision approval process identifies the metropolitan district, local improvement district, regional transportation, or similar type of governmental entity as being responsible for the installation of an improvement. The metropolitan district, local improvement district, regional transportation authority, or similar type of governmental entity may seek fair share reimbursement as an assignee of requestor subdivider.

(5) Limits to Cost Recovery

Under no circumstances may a requestor subdivider recover more than the actual costs incurred for the improvement less the actual costs of improvement attributable to use by the requestor subdivider's subdivision.

(6) Ineligibility to Pursue Cost Recovery

A requestor subdivider is not eligible to seek fair share reimbursement if the DSD Director determines that there is another procedure under this Code that enables the requestor subdivider to otherwise receive a fair share reimbursement for the cost of an otherwise eligible improvement.

(C) Approval and Effect of Private Agreements

(1) Allowed and Limited Rights to Seek Cost Recovery

Nothing prohibits a requestor subdivider and an applicant subdivider from entering into a private agreement for the recovery of the fair share reimbursement; however, a private agreement renders a requestor subdivider ineligible to seek cost recovery for the relevant improvement with respect to property that is the subject of a private agreement.

(2) Private Agreement to be Reviewed and Approved by DSD Director

A private agreement considered for review by the DSD shall be in a writing signed by the requestor subdivider and the applicant subdivider, or benefited property, and each signature shall either be acknowledged or subscribed and sworn before a notary public. The private agreement shall provide a full and complete description in clear and plain language of the rights and obligations contained in the private agreement. The DSD Director shall have the sole and complete discretion to accept or reject a private agreement.

(D) Process for Request and Approval of Fair Share Reimbursement

(1) Application for Fair Share Reimbursement

A requestor subdivider seeking fair share reimbursement for the costs of an improvement shall file a cost recovery statement, which shall include the submittals required below, with the DSD no earlier than the date of final plat approval and no later than one year after the date of completion of the improvement. Different improvements in a subdivision may have different application dates and different application deadlines.

Furthermore, there may be multiple applications per subdivision, but under no circumstances shall a requestor subdivider be entitled to submit more than one application for a particular improvement. The requestor subdivider shall submit the following with the cost recovery statement:

- A clear description and drawing of the improvement together with an itemized statement of the total actual costs of the improvement together with copies of paid receipts or other evidence of payment of the costs. This does not preclude preparation of a cost recovery statement based upon estimated costs;
- A statement, report, or study, including supporting data, prepared or certified by a professional engineer or other professional in the relevant field, that expresses the maximum and net remaining capacity of the improvement in quantitative terms generally accepted by professionals in the relevant area of expertise and consistent with any procedures maintained by the County;
- A calculation that relates the quantitative measurement derived per the requirements of the above-stated paragraph to a dollar cost per the quantitative measurement. For example, in the case of a road the amount should generally be expressed in terms of dollar cost per ADT or similar terms; and
- A list of all properties, identified by address (if available), legal description, and tax parcel number, to which the requestor subdivider may desire to make a request for fair share reimbursement, any of which hereinafter shall be referred to as a potential benefited property, together with a scaled drawing or survey establishing the location of the relevant improvement in relation to these properties. For all properties, a list of the names

and mailing addresses of the property owners, any of which may be referred to as a potential benefited property owner. For purposes of determining a property owner's address, the requestor subdivider may use the most current records of the El Paso County Assessor's Office.

(2) Request Based on Estimated Cost of Improvement

A requestor subdivider may submit a request for fair share reimbursement based only upon the estimated costs of an improvement. The estimated costs of an improvement shall be the those established for the improvement in the surety estimate associated with the SIA, exclusive of any percentage of overage (i.e. contingency) required by the County.

A requestor subdivider that has selected the estimated cost approach may change that selection to actual cost approach; however, in changing the selection, the requestor subdivider shall follow the procedures as if submitting a new request for fair share reimbursement. Furthermore, in changing the selection, the requestor subdivider shall not be entitled to seek fair share reimbursement from an applicant subdivider who received a final determination of fair share reimbursement or from the owner of any property that is no longer subject to cost recovery due to the passage of time.

(3) Review of Cost Recovery Statement

The DSD Director shall review the cost recovery statement. The review shall include, but is not limited to, an analysis of the following: the accuracy and veracity of the costs, the reasonableness and appropriateness of the costs; a comparison of the costs to prevailing rates; consistency of the cost recovery statement with technical and professional standards, in order to generally assure that the cost recovery statement does not disproportionately or inequitably attempt to shift the cost of constructing the improvement to other property owners; and general conformance with the requirements of this Section. The DSD Director may request additional information from the requestor subdivider. A request for additional information shall be made within 30 days after submission of the cost recovery statement and the requestor subdivider shall have 30 days following the date of the request to submit the additional material requested.

(4) Initial Notice to Potential Benefited Property Owners

Within 10 days after submission of the cost recovery statement to the DSD, the DSD Director shall prepare a notification to potential benefited property owners.

(5) Approval or Denial of Cost Recovery Statement

Within 60 days after submission of the cost recovery statement, or within 30 days after the receipt of the requested additional materials, whichever is later, the DSD Director shall prepare and issue a written determination, which includes a description of the reasons for the determination, to: (1) approve the cost recovery statement as submitted, or (2) approve the

cost recovery statement with adjustments, or (3) deny the cost recovery statement because of failure to produce required or requested materials or because the improvements do not provide benefits to other property owners.

(6) Notice of DSD Director Decision

As soon as practicable after making its determination, the DSD Director shall send the written determination to the requester subdivider and to each potential benefited property owner. The DSD Director shall include with the written determination a notice of right to appeal to both the requester subdivider and any benefited property owner.

(7) Notice of Fair Share Reimbursement Recorded

As soon as practicable after the issuance of the BoCC's final determination upon appeal, or, if no appeal is taken, after the expiration of the period for appeal from the determination of the DSD Director, the DSD shall prepare and record a Notice of Fair Share Reimbursement in the chain of title for each benefited property. The DSD shall mail a copy of the recorded notice to the requester subdivider and each benefited property owner.

(E) Notification

(1) Notification by Mail

Whenever a notice or a mailing is required, the notice shall always be sent to the person or entities both by first class mail, postage prepaid return receipt requested, and by first class mail, postage prepaid. Notice shall be deemed received when mailed. In the event the last day for giving or receiving notice falls on a day when DSD is not open for business, the last day shall be deemed to extend to the next business day in which the DSD is open for business.

(2) Address to be Used for Notice

Notice to a potential benefited property owner shall be sent to the address in the El Paso County Assessor's Office current property records. Notice to a requestor subdivider shall be sent to the last known address of the requestor subdivider provided with the request for fair share reimbursement. Notice to any applicant subdivider shall be sent to the address in the DSD files for the relevant subdivision.

(3) Burden to Keep County Informed of Current Address

It is the obligation of the requestor subdivider and applicant subdivider to keep the DSD informed of a current mailing address. The sole and exclusive method to keep the DSD informed is to mail an address notification to the DSD. The notice shall reference the relevant file number for the requestor subdivider or applicant subdivider. The absence of address notification in a requestor subdivider or applicant subdivider file at the DSD shall be conclusive proof that the notice was not received.

(F) Appeal

(1) Notice of Appeal

The requestor subdivider or any benefited property owner may appeal the decision of the DSD to the BoCC by filing a written request for appeal in accordance with the Procedures Manual and this Code. In order to be considered for appeal, the notice of appeal shall be received by the DSD no later than 30 calendar days after the date of mailing of notice of the DSD Director's determination.

(2) Notice of Hearing

The DSD Director shall set the matter for hearing before the BoCC, which hearing shall be held in an open and public meeting no later than 45 calendar days after the DSD receives a copy of a notice of appeal. The DSD shall send notice of the hearing to the requestor subdivider and each potential benefited property owner.

(3) BoCC Hearing Procedure

The hearing shall be de novo. At the hearing, the DSD, the requestor subdivider, and any benefited property owner shall be entitled to present evidence or comments to the BoCC. The BoCC shall make its findings and determinations on the public record. No later than 30 calendar days after the hearing, the BoCC shall issue its written findings and determinations as found on the record. In making its determination, the BoCC shall generally consider the factors set forth in the review of cost recovery statement.

(4) Notice of BoCC Determination

The DSD shall send a copy of the BoCC's final determination to the requestor subdivider and each property owner who was originally noticed.

(5) Review of BoCC Determination

The benefited property owner and the requestor subdivider's sole and exclusive remedy concerning the BoCC's final determination shall be to seek a judicial review of the decision.

(6) Limit of Effect of Request for Judicial Review

Although a regulation enacted by the BoCC cannot generally bind a court of competent jurisdiction, it is the intent of the BoCC in the adoption of this Section that disputes concerning the amount of fair share reimbursement should not result in an order prohibiting final plat approval or recording of the final plat; disputes should only result in the applicant subdivider depositing a sum certain or other security in the registry of the relevant court in the approximate amount of the disputed fair share reimbursement. The purpose of these provisions is to assure that the applicant subdivider receives the protections guaranteed to it by the United States Constitution, and specifically the protections guaranteed by the decisions of the United States Supreme Court.

(G) Payments, Interest and Duration of Cost Recovery Obligations

(1) Reimbursement Limited to 15 years

A requestor subdivider is only entitled to receive a fair share reimbursement from an applicant subdivider for a period not to exceed 15 years from the date of completion of the improvement.

(2) Amount Due for Fair Share Reimbursement

(a) Calculation of Fair Share Reimbursement

In the final plat approval process for the applicant subdivider's subdivision, the extent of the applicant subdivider's usage of the relevant improvement shall be determined. The extent of this usage shall be multiplied by the rate determined and stated in the Notice of Fair Share Reimbursement. The requestor subdivider shall be entitled to simple interest on this amount at the rate of 8% per annum, calculated from the date of recording of the Notice of Fair Share Reimbursement.

(b) Studies Required to Determine Usage of Improvement

As a condition of allowing an applicant subdivider's subdivision to proceed to a hearing on final plat approval, the DSD Director shall require the applicant subdivider to submit a statement, report, or study, including data in support thereof, which should be prepared or certified by a professional engineer or other professional in the relevant field, concerning the applicant subdivider's subdivision's anticipated use of the improvement, which proposed use shall be stated in a quantity consistent with the rate established in the Notice of Fair Share Reimbursement for the relevant Improvement.

(3) BoCC May Limit Obligation

If supported by the evidence provided by the applicant subdivider, the BoCC shall have the right to make a determination that the applicant subdivider's subdivision does not make use of the improvements and is therefore not under an obligation to pay a fair share reimbursement to the requestor subdivider,.

(4) Hearing Concerning Requestor Subdivider's Request for Reimbursement

(a) Notice of Hearing

At least 14 days before the date of the hearing before the Planning Commission and the BoCC, the DSD shall send notice of the hearing to the requestor subdivider.

(b) DSD Director's Recommendation Presented

At the hearing, the DSD shall present the DSD Director's recommendation pursuant to the fair share reimbursement obligation of the applicant subdivider. The applicant subdivider and the requestor subdivider shall also have an opportunity to

present evidence and comment concerning the proposed subdivision's anticipated use of the relevant improvement.

(c) BoCC Findings and Determination

The BoCC shall make a findings and determination concerning the applicant subdivider's subdivision's anticipated use of the improvement and the applicant subdivider's fair share assessment at the hearing on the applicant subdivider's final plat. The BoCC findings and determination shall be final on the matter. The applicant subdivider's and the requestor subdivider's sole and exclusive remedy concerning the BoCC's final determination shall be to seek a judicial review of the decision.

(5) DSD Director Actions Upon Receipt of Funds

Upon receipt of the funds, the DSD Director shall record a Notice of Release of Claim for Fair Share Reimbursement in the chain of title for each relevant benefited property. The DSD Director shall send a copy of the recorded Notice of Release to the applicant subdivider and the requestor subdivider. The DSD Director shall then mail the amount received to the requestor subdivider. After mailing the amount received, the DSD shall record in the chain of title for the relevant property a Release of Notice of Fair Share Reimbursement. In the event that the release is only for a partial release of a property, the DSD Director shall consult with the OCA before preparing or recording a release. In the event that a title company, etc. requests a different release than as set forth in the Procedures Manual, the DSD Director shall consult with the OCA before preparing, executing, or recording any other release. The DSD Director shall provide a copy of the recorded release to the requestor subdivider and the applicant subdivider.

(6) Return of Funds

In the event the mailing is returned to the DSD, the DSD Director shall have the discretion to either deposit the funds to the Great Colorado Payback Program, C.R.S. §§30-13-110, et seq., as amended, or to interplead the funds in the Registry of the El Paso County District Court.

(H) Release of Notice of Fair Share Reimbursement After Expiration of 15-Year Period

(1) Filing of Release

Upon the expiration of the 15-year period following the date of completion of a particular improvement, the DSD Director shall prepare and record in the chain of title for the relevant property a Release of Notice of Fair Share Reimbursement. The DSD Director shall mail a copy of the recorded release to the requester subdivider and any benefited property owner not previously released from any obligation related to that improvement.

(2) Erroneously Recorded Release

In the event a Release of Notice of Fair Share Reimbursement is erroneously recorded, erroneous release shall not exempt the property from performance of its obligations. The property shall perform its obligations as the recording of the Notice of Fair Share Reimbursement is merely a statement that a unique government land use regulation may apply to a property; the Notice is thus not a lien or any other type of encumbrance on the chain of title for the property.

(3) Effect of Release Upon Re-Subdivision/More Intensive Development

The Notice of Fair Share Reimbursement recorded in the chain of title is not an encumbrance upon real estate; it is merely a notice that the property may be subject to a local land use regulation. Accordingly, the fact that a Release of Notice of Fair Share Reimbursement may have been recorded for a particular property, shall not preclude the particular property from being subject to obligation to participate in a fair share reimbursement upon a re-subdivision of the particular property to a higher density or more intensive development.