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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

TO: El Paso County Planning Commission
Brian Risley, Chair

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

RE: Project File #: MS-19-004
Project Name: Walker Reserve Minor Subdivision
Parcel No.: 61110-00-019

| OWNER: | REPRESENTATIVE: |
|--|--|
| G3 Investments, Inc. 1710 Jet Stream Drive #200 Colorado Springs, CO 80921 | Alessi and Associates 2989 Broadmoor Valley Road, Suite C Colorado Springs, CO 80906 |

Commissioner District: 1

| | |
|--|-----------|
| Planning Commission Hearing Date: | 1/7/2020 |
| Board of County Commissioners Hearing Date | 1/28/2020 |

EXECUTIVE SUMMARY

A request by Alessi and Associates, on behalf of G3 Investments, Inc., for approval of a minor subdivision to create three (3) lots. The 40.77 acre property is zoned RR-5 (Residential Rural) and is located approximately one mile east of Highway 83 and one-quarter (1/4) of a mile north of Walker Road and is within Section 11, Township 11 South, Range 66 West of the 6th P.M. If approved, the minor subdivision application will result in the creation of a 5.10 acre lot (Lot 1), a 5.12 acre lot (Lot 2) and a 28.52 acre lot (Lot 3)



and the dedication of 1.81 acres of right-of-way. The property is located within the Black Forest Preservation Plan (1987).

A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION

Request: A request by G3 Investments, Inc., for approval of a minor subdivision to create three (3) single-family residential lots.

Waiver(s)/Deviation(s):

Waiver

The applicant is requesting a waiver of Section 8.4.3.D.5, Minimum Frontage, of the Land Development Code (2019) requiring lots to have a minimum of 30 feet of frontage and have access on a public road. The Code defines a Public Road as “A road located in a public right-of-way or easement and open to the public for travel and accepted for maintenance by El Paso County or another governmental jurisdiction.”

The applicant is proposing to dedicate half of the necessary right-of-way for Walker Road along the southern boundary of their property. The applicant is not proposing to upgrade the existing gravel road to current County standards (see deviation request and approval below). El Paso County does not maintain roadways which have not been constructed to County standards, therefore, the roadway will not be considered a “Public Roadway”. Staff recommends approval of the waiver request as it would not be equitable to require the applicant to dedicate the full right-of-way and upgrade the roadway to County standards in association with a three (3) lot minor subdivision.

Deviations

The following deviations from the standards of the El Paso County Engineering Criteria Manual have been administratively approved by the County Engineer:

1. Section 2.3.8.A: Cul-de-sacs shall have a maximum length of 1,600 feet for rural conditions. The applicant has submitted a deviation requesting an approximately 2,875-foot-long private cul-de-sac road as this is an existing private road that currently services approximately 13 single family residences and has been functioning in this capacity since 1973. A written endorsement from the Tri-Lakes Fire Protection District has been provided with a condition that future driveways meet Appendix D of the adopted 2009 IFC for Fire Department access. This request has been approved based on the endorsement from the Tri-Lakes Fire Protection District and this existing gravel road is the only means of access for these lots to the County’s transportation network. The approval of this request is not anticipated to create safety concerns.

2. Section 2.3.2: The typical rural local road cross section indicates a 60-foot right-of-way width with 32 feet of drivable surface. The applicant has submitted a deviation request to allow for the continued use of an existing 20-foot-wide private gravel road that currently provides access to approximately 13 single family residences. The existing gravel road is the only means of access to the County's transportation network for these lots. The request has been approved since the creation of two (2) additional lots will only have a minimal impact on the road and does not warrant upgrading the road since only 19 additional daily trips will be added.

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

B. PLANNING COMMISSION SUMMARY

Request Heard:

Recommendation:

Waiver Recommendation:

Vote:

Vote Rationale:

Summary of Hearing:

Legal Notice:

C. APPROVAL CRITERIA

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

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

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

D. LOCATION

| | |
|---------------------------------|--------------|
| North: RR-5 (Residential Rural) | Residential |
| South: RR-5 (Residential Rural) | Residential |
| East: RR-5 (Residential Rural) | Residential |
| West: RR-5 (Residential Rural) | Agricultural |

E. BACKGROUND

The subject property was zoned A-5 (Farming) on January 4, 1955, via a County initiated zoning of this area of unincorporated El Paso County (Resolution No. 94669). Due to changes in nomenclature, the A-5 zoning district has been renamed as the RR-5 (Residential Rural) zoning district. The 40.77 acre property has only been developed with the existing single-family residence, which is anticipated to remain on the proposed 28.52 acre lot to be known as Lot 3. The parcel is located among other unplatteed parcels ranging from five (5) acres to over 35 acres along a shared private road.

F. ANALYSIS

1. Land Development Code Compliance

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

2. Zoning Compliance

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

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

The applicant is requesting approval of a minor subdivision to split the parcel into three (3) lots and to dedicate 1.81 acres of right-of-way. The proposed lots will meet the dimensional standards of the RR-5 zoning district. The existing home, which is anticipated to remain on Lot 3, will meet the setback requirements of the RR-5 zoning district should the minor subdivision be approved.

3. Policy Plan Analysis

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

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

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

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

The subject property is zoned RR-5 (Residential Rural) and is surrounded by RR-5 zoned properties on all sides. Parcels located south of Walker Road have been developed and are part of the Shamrock Hills subdivision, which includes lots of approximately five (5) acres in size. Parcels located immediately adjacent to the north, east, and west are undeveloped, but each property could be subdivided in the future into lots with a minimum lot size of five (5) acres pursuant to the current RR-5 zoning. The Walker Private Ranchettes development, located approximately 650 feet to the east of the subject parcel, includes four (4) lots with lot sizes of approximately five (5) acres each. The proposed subdivision is contiguous to and compatible with previously developed areas.

With the minor subdivision, the applicant will dedicate 1.81 acres of right-of-way to El Paso County for the future construction of Walker Road as well as future right-of-way to allow for access to the parcel to the north, should it be further developed in the future. Staff recommends that a finding of general consistency with the Plan can be made.

4. Small Area Plan Analysis

The property is located within the Spruce Hill/Highway 83 Corridor of the Black Forest Preservation Plan (1988), which recommends development occur within the timbered portion of the sub-area at densities at or below those of existing developments. The site is located primarily within the grassland area but also partially within the timbered area. The Board of County Commissioners approved the Walker Private Ranchettes subdivision (PCD file no. MS-14-001) in 2014 which created three (3) lots all at approximately five (5) acres in size. The zoning of the property which allows the creation of five (5) acre lots established the base density of the area, with which the proposed minor subdivision is compatible.

6. Water Master Plan Analysis

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

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

Goal 1.2 – Integrate water and land use planning.

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

Section 1.10.5 of the Land Development Code states the following:

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

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

6. Other Master Plan Elements

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a moderate wildlife impact potential. Colorado Parks and Wildlife, Colorado State Forest, El Paso County Conservation, and El Paso County Environmental Services were each sent a referral and have no outstanding comments.

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

G. PHYSICAL SITE CHARACTERISTICS

1. Hazards

The soils and geology report prepared by Groundwater Investigations, LLC, identified groundwater and surface water on the subject parcel. Although these areas are not floodplain, they do contain wetlands and are not suitable building sites. As such, they have been identified as no-build areas on the final plat. The Colorado Geologic Survey (CGS) was sent a referral for the minor subdivision and had no objection.

2. Wildlife

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

3. Floodplain

The property is not located within a defined floodplain as determined from FEMA Flood Insurance Rate Map panel number 08041C0305G, dated December 7, 2018.

4. Drainage and Erosion

The property is located within the West Cherry Creek (CYC0400) drainage basin, which is an unstudied basin with no associated drainage and bridge fees.

The site generally drains to the southwest with the majority of the stormwater runoff entering a broad drainageway that traverses the property from south to north. A permanent water quality facility is not required for development areas of low density (rural) single family residential development (2.5 acre or larger lots) per Appendix I of the El Paso County Engineering Criteria Manual (2019).

Furthermore, on-site detention was not required due to the minimal increase in imperviousness created by the additional residential lots. Per the associated drainage report the proposed minor subdivision has no impact on the downstream facilities.

5. Transportation

The property is accessed via an existing private gravel road that extends north and then east from the public road known as Kerry Run. No internal roadways are proposed with this development. A traffic impact study was not required as the proposed minor subdivision is not expected to generate 100 daily vehicle trips more than the property would be expected to generate currently. The proposed minor subdivision will have a minimal impact to the County's transportation network.

The subdivision is subject to the El Paso County Road Impact Fee Program (Resolution 18-471), as amended. Traffic impact fees shall be paid in full at the time of building permit issuance.

H. SERVICES

1. Water

Sufficiency:

Quality: Presumed

Quantity: Sufficient
Dependability: Sufficient

Attorney's summary: The State Water Engineer's Office has made a finding of adequacy and has stated water can be provided without causing injury to decreed water rights. The County Attorney's Office recommended a finding of sufficiency with regard to water quantity and dependability. El Paso County Public Health has made a favorable recommendation regarding an assumed water quality.

2. Sanitation

The existing residence on the subject property is served by an onsite wastewater treatment system (OWTS) which will remain entirely on the proposed Lot 3 and will not require an easement to be created on one of the other proposed lots. Homes constructed in the future are also proposed to be served by individual OWTSs. El Paso County Public Health and Environment Department had no objection to the proposed minor subdivision.

3. Emergency Services

The property is within the Tri-Lakes-Monument Fire Protection District. In addition to the Fire District providing a letter of support for the approved deviations, the Fire District was also sent a referral.

4. Utilities

Mountain View Electric Association and Black Hills Energy will provide electrical and gas service to the subdivision, respectively.

5. Metropolitan Districts

The property is not within the service area of a metropolitan district.

6. Parks/Trails

Fees in lieu of park land dedication in the amount of \$1,368 for regional fees and \$0.0 for urban park fees will be due at the time of recording the final plat.

7. Schools

Fees in lieu of school land dedication in the amount of \$924.00 shall be paid to El Paso County for the benefit of Lewis Palmer School District No. 38 at the time of final plat recording

I. APPLICABLE RESOLUTIONS

| | |
|-------------|---------|
| Approval | Page 19 |
| Disapproval | Page 20 |

J. STATUS OF MAJOR ISSUES

There are no major outstanding issues.

K. RECOMMENDED CONDITIONS AND NOTATIONS

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

CONDITIONS

1. All Deed of Trust holders shall ratify the plat. The applicant shall provide a current title commitment at the time of submittal of the Mylar for recording.
2. Colorado statute requires that at the time of the approval of platting, the subdivider provides the certification of the County Treasurer's Office that all ad valorem taxes applicable to such subdivided land, or years prior to that year in which approval is granted, have been paid. Therefore, this plat is approved by the Board of County Commissioners on the condition that the subdivider or developer must provide to the Planning and Community Development Department, at the time of recording the plat, a certification from the County Treasurer's Office that all prior years' taxes have been paid in full.
3. The subdivider or developer must pay, for each parcel of property, the fee for tax certification in effect at the time of recording the final plat.
4. The Applicant shall submit the Mylar to Enumerations for addressing.
5. Developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed species.
6. Driveway permits will be required for each access to an El Paso County owned and maintained roadway. Driveway permits are obtained from the El Paso County Planning and Community Development Department.
7. The Subdivider(s) agrees on behalf of him/herself and any developer or builder successors and assignees that Subdivider and/or said successors and assigns shall

be required to pay traffic impact fees in accordance with the El Paso County Road Impact Fee Program Resolution (Resolution No. 18-471), or any amendments thereto, at or prior to the time of building permit submittals. The fee obligation, if not paid at final plat recording, shall be documented on all sales documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.

8. Park fees in lieu of land dedication for regional parks (Area 2) in the amount of \$1368 and urban park (Area 1) fees in the amount of \$0.0 shall be paid at the time of plat recordation.
9. Fees in lieu of school land dedication in the amount of \$924 shall be paid to El Paso County for the benefit of Lewis Palmer School District No. 38 at the time of plat recording.
10. The County Attorney's Conditions of Compliance shall be adhered to at the appropriate time.
11. All driveways shall comply with Appendix D of the adopted 2009 IFC for Fire Department access.

NOTATION

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

L. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified seven (7) adjoining property owners on December 17, 2019, for the Planning Commission meeting. Responses will be provided at the hearing.

M. ATTACHMENTS

Vicinity Map
Letter of Intent
Plat Drawing
State Engineer's Letter
County Attorney's Letter

El Paso County Parcel Information

File Name: MS-19-004

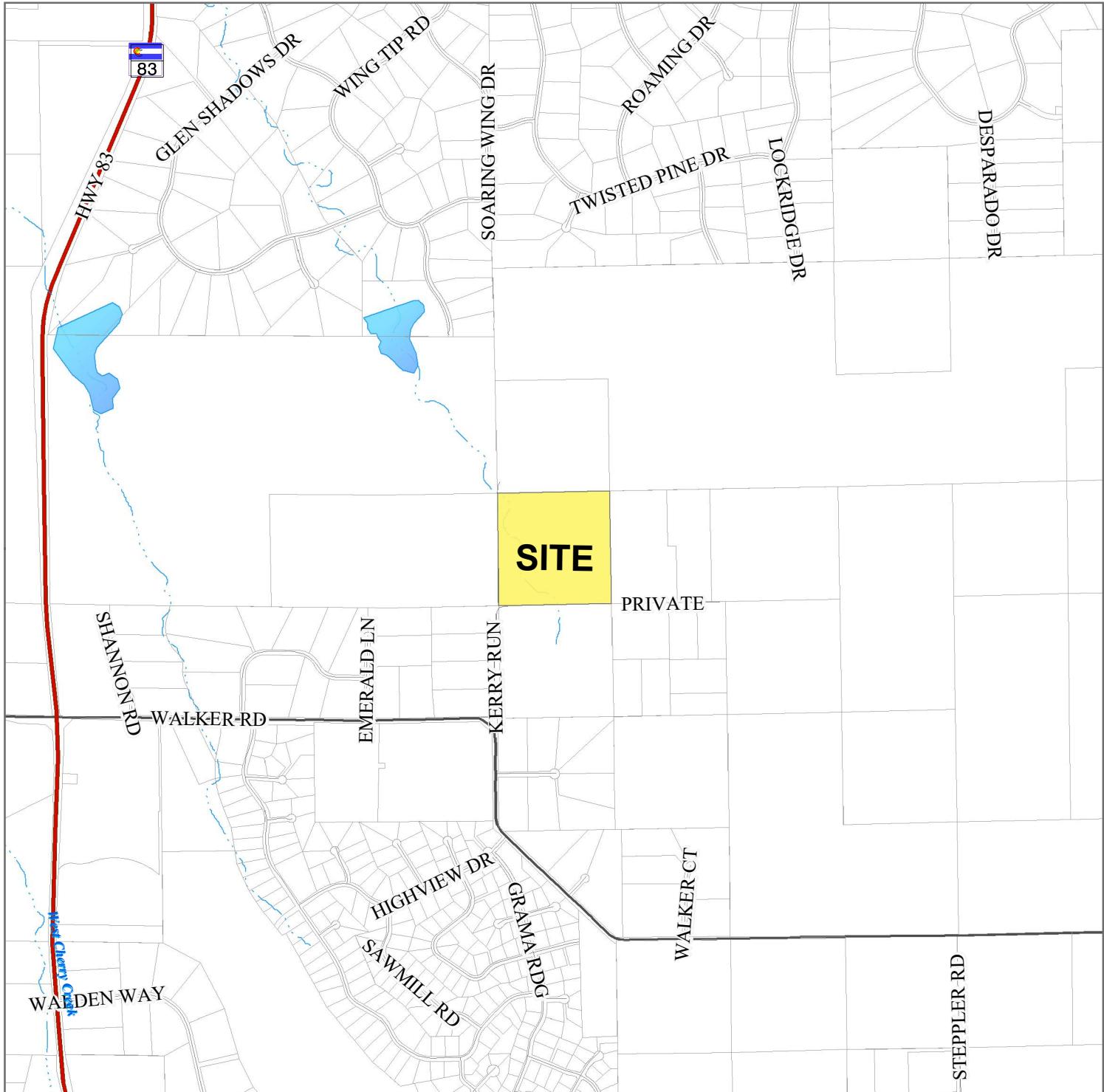
Zone Map No. --

| PARCEL | NAME |
|------------|--------------------|
| 6111000019 | G3 INVESTMENTS INC |

| ADDRESS | CITY | STATE |
|-------------------------|------------------|-------|
| 1710 JET STREAM DR #200 | COLORADO SPRINGS | CO |

ZIP ZIPPLUS
80921 3937

Date: December 18, 2019



Please report any parcel discrepancies to:

El Paso County Assessor
1675 W. Garden of the Gods Rd.
Colorado Springs, CO 80907
719 520-6600



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August 18, 2019

Letter of Intent

**Minor Subdivision
3980 Walker Road**

OWNER: *George Hess*
G3 Investments, Inc.
1710 Jet Stream Dr. Ste. 200
Colorado Springs, CO 80921-3937

CONSULTANT: Joseph Alessi PLS
Alessi and Associates, Inc.
2989 Broadmoor Valley Road, Suite C
Colorado Springs, CO 80906
Tele: 719-540-8832 fax# 719-540-2781

SITE LOCATION: Property Address: 3980 Walker Road, Colo. Springs, CO
Property currently has a single family dwelling...
The existing land uses in the area are of rural residential/agriculture sites. The Three Lot subdivision proposes the use of wells and septic systems. Walker Road provides legal access to the site along the South boundary line. The site is comprised of 40 Acres more or less. One mile East of the intersection of Highway 83 and Walker Road, thence North a quarter mile to the site.

Legal description – The Northeast Quarter Southwest Quarter of Section 11, Township 11 South, Range 66 West of the 6th P.M., El Paso County, Colorado.

ZONING: Parcel # 6111000019 is currently zoned RR-5 – Rural Residential District.

ALESSI and ASSOCIATES, Inc.

Letter of Intent

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3980 Walker Road

REQUEST:

1. Request to subdivide into three Lots comprised of proposed Lot 1 = 5.10 Acres, Lot 2 = 5.12 Acres, and Lot 3 = 28.52 Acres. Water wells and individual septic systems are proposed for rural/residential use on Lots 1 and 2. Lot 3 currently is occupied with an existing dwelling with well and septic system. Access is provided by the private road portion of Walker Road with a maintenance agreement. Utility facilities are available along Walker Road.

JUSTIFICATION:

2. The property is Zoned RR-5. The request complies with the current zoning and the Tri-Lakes Comprehensive Plan. The plan identifies future land use and a major transportation corridor plan. Residential/rural properties are desirable for future growth within the current employment opportunities, schools and shopping available within the area. Utility services, transportation, availability to dependable ground water supply, soil types acceptable for septic system and structural foundations fits within the guidelines and implementation of the Comprehensive Plan.
The proposed Lots will have individual wells and septic systems. No open space is planned for the project.

The Preliminary and Final Plats have been revised.

Traffic Memo: Additional request for a waiver of both subdivision and lot frontage on a private owned and maintained road. The current Private Walker Road is an extension of the main Walker Road. Access has been provided by a 30 ft. Right of Way and Easement for Road Purposes as recorded in Book 2469 at Page 771. Maintenance has been a shared responsibility by the property owners that access their respective home sites.

Transportation Impact Fees will be paid by applicant at building permit stage and not join a PID.

ALESSI and ASSOCIATES, Inc.

Letter of Intent

Page 3

3980 Walker Road

MASTER PLAN:

Tri-Lakes Comprehensive Plan

Minor Subdivision is consistent with the El Paso County Master Plan. The proposed property is a rural residential development with a non-urban nature. Including individual wells and septic systems with unpaved private roads. The proposed project meets the goals and policies as the site development will be consistent with the following:

- i. The project will protect the natural systems and resources including air, ecosystems, wildlife and water quality.
- ii. The project is designed to emphasize the natural drainage features and collect runoff greater than historic storm flows.
- iii. The project will protect the quality and quantity of water supply on site.
- iv. The project will retain the rural residential character of the area.
- v. The project will utilize existing utilities and transportation facilities.

Master Plan for Mineral Extraction

The aggregate Resource evaluation for the proposed project is located in the Tomah-Crowfoot loamy sands: Gentle to moderate sloping soils on alluvial fans, hills, and ridges in the uplands. Tomah-Crowfoot soil is deep to well drained with moderately rapid permeability. These soils have good potential for use of home sites. Maintaining the existing vegetation on building sites during construction helps to control erosion. Excavation on the proposed site will be limited to the dwelling and driveway construction.



COLORADO

Division of Water Resources

Department of Natural Resources

May 2, 2019

Nina Ruiz
El Paso County Development Services Department
Transmission via email: NinaRuiz@elpasoco.com

RE: **Walker Minor Subdivision (aka Walker Reserve)**
Case No. MS194
NE1/4 of the SW1/4 of Section 11, T11S, R66W, 6th P.M.
Water Division 1, Water District 8

Dear Ms. Ruiz:

We have reviewed your referral of April 23, 2019 concerning the above referenced proposal to subdivide a 40-acre parcel into three residential single-family lots of 5.10 acres (Lot 1), 5.10 acres (Lot 2) and 28.52 acres (Lot 3). The residential lots will be served by individual on-lot wells and septic systems. The Applicant obtained a decree for underground water rights and an augmentation plan for Dawson aquifer wells in Division 1 Water Court case no. 2018CW3004.

Water Supply Demand

According to a letter dated January 17, 2018 from the Applicants' water attorney Mr. James J. Petrock (water supply letter) each of the three lots with withdraw 0.75 acre-feet/year for 300 years for the in-house use (0.35 acre-feet/year), irrigation of 6,000 square-feet of home lawn, garden and trees (0.35 acre-feet/year) and the watering of four large domestic animals (0.05 acre-feet/year).

Source of Water Supply

The proposed source of water for this subdivision is on lot wells producing from the not nontributary Dawson aquifer. The decree granted in case nos. 2018CW3004 quantified the amount of water underlying the subject 40-acre parcel. According to the decree the following amounts of water were determined to be available underlying the 40-acre parcel:

| Aquifer | Annual amount available for 40-acre parcel based on 100 year allocation approach (acre-feet) |
|-------------------|--|
| Dawson | 29.6* |
| Denver | 36.4 |
| Arapahoe | 17.7 |
| Laramie-Fox Hills | 12.6 |

*Annual amount reduces by 4 acre-feet annually for well permit no. 174104

The plan for augmentation decreed in case no. 2018CW3004 allows for an average diversion of 2.25 acre-feet/year for 300 years. The decree allows the withdrawal from up to 3 wells (including the well currently operated under well permit no. 174104) in the Dawson aquifer pursuant to the decreed augmentation plan. According to the decree, the allowed withdrawal from each Dawson aquifer well will be limited to 0.75 acre-feet/year/lot for in-house use (0.35 acre-feet/year), irrigation of 6,000 square-feet of home lawn, garden and trees (0.35 acre-feet/year) and the watering of four large domestic animals (0.05 acre-feet/year).



The proposed source of water for this subdivision is a bedrock aquifer in the Denver Basin. The State Engineer's Office does not have evidence regarding the length of time for which this source will be a physically and economically viable source of water. According to 37-90-137(4)(b)(I), C.R.S., "Permits issued pursuant to this subsection (4) shall allow withdrawals on the basis of an aquifer life of one hundred years." Based on this allocation approach, the annual amounts of water decreed in case nos. 2018CW3004 are equal to one percent of the total amount, as determined by rules 8.A and 8.B of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7. Therefore, the water may be withdrawn in those annual amounts for a maximum of 100 years.

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

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

The State Engineer's Office does not have evidence regarding the length of time for which this source will "meet the average annual demand of the proposed subdivision." However, treating El Paso County's requirement as an allocation approach based on three hundred years, the annual demand for the subdivision is the same as the allowed average annual amount of withdrawal of 2.25 acre-feet/year, allowed by the augmentation plan. As a result, the water may be withdrawn in that annual amount for a maximum of 300 years.

Records in this office indicate that there is an existing well, operating under well permit no. 174104, located on the subject property. Well permit no. 174104 was issued on November 1, 1993 as the only well on a tract of land of 45.54 acres described as the NE1/4 of the SW1/4 and the South 165 feet of the SE1/4 of the NW1/4 of Section 11, Township 11 South, Range 66 West of the 6th P.M. The use of ground water from this well is limited to fire protection, ordinary household purposes inside not more than three (3) single family dwellings, the watering of poultry, domestic animals and livestock on a farm or ranch and the irrigation of not more than one (1) acre of home gardens and lawns. The well was constructed on May 24, 1994, into the nontributary Dawson aquifer. Section 37-92-602(3)(b)(III), C.R.S., requires that the cumulative effect of all wells in a subdivision be considered when evaluating material injury to decreed water rights. **The well must either be re-permitted pursuant to the augmentation plan in case no. 2018CW3004 or else be plugged and abandoned in accordance with the Water Well Construction Rules prior to subdivision approval.** Information in the augmentation plan, indicates that well permit no. 174104 will be re-permitted pursuant to the augmentation plan in case no. 2018CW3004.

Applications for on lot well permits submitted by entities other than the current water right holder in case no. 2018CW3004 (Scott and Susan Mikulecky) must include evidence that the Applicant has acquired the right to the portion of the water being requested on the application.

State Engineer's Office Opinion

Based upon the above and pursuant to Section 30-28-136(1)(h)(I), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights, **provided the Applicant re-permits the existing well currently operated under well permit no. 174104, pursuant to the augmentation plan approved in case no. 2018CW3004, prior to subdivision approval.**

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

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

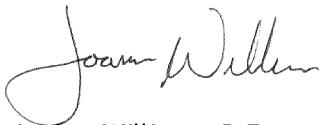
Our opinion is qualified by the following:

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

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

Should you or the applicant have any questions, please contact Ioana Comaniciu at (303) 866-3581 x8246.

Sincerely,



Joanna Williams, P.E.
Water Resource Engineer

Ec: Subdivision File 26468
Permit No. 174104

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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December 27, 2019

MS-19-4 Walker Reserve
(Minor Subdivision)

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

M.C.E.

FINDINGS AND CONCLUSIONS:

1. This is a proposal by G3 Investments, Inc. ("Applicant") for a 3 lot minor subdivision on 40.77 +/- acres ("Property"). The Applicant desires to replat the parcel into 3 lots. The 3 lots will have the following acreages: Lot 1 = 5.10 acres, Lot 2 = 5.12 acres, and Lot 3 = 28.52 acres. There is currently an existing single family residence and an existing well on what will be the newly created Lot 3. The Property is zoned RR-5 (Residential Rural).

2. The Applicant has provided for the source of water to derive from individual on-lot wells into the nontributary Dawson aquifer pursuant to the Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree of the Water Court regarding Scott and Susan Mikulecky (District Court Water Division 1, Case No. 18CW3004 ("Decree"). The Decree provides that the plan for augmentation permits pumping a total of 2.25 acre-feet annually for 300 years from 3 on-lot Dawson aquifer wells located on the Property, including an existing well.

3. Pursuant to a "Water Supply Letter" provided by the Applicant's attorney, the Applicant estimates its annual water needs to serve the 3 lot minor subdivision as follows: 0.35 acre-feet per lot for household use, 0.35 acre-feet per lot for irrigation of 6000 square feet of home lawn, garden and trees, and 0.05 acre-feet per lot for stock watering of 4 large domestic animals. The total water demand for the subdivision is 2.25 acre-feet per year (0.75 acre-feet per each lot). Based on Applicant's demand of 2.25 acre-feet per year for the subdivision, Applicant must be able to provide a supply of 675 acre-feet of water (2.25 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement.

4. In letters dated May 2, 2019, July 8, 2019, and October 21, 2019, the State Engineer's Office reviewed the submittal to plat the 40.77 +/- acre parcel into a 3 lot minor subdivision. The State Engineer reviewed the Decree and Water Supply Letter and confirmed that the proposed water source for the subdivision is a bedrock aquifer in the Denver Basin. The State Engineer further stated that the water demand encompasses "in-house use (0.35 acre-

feet/year), irrigation of 6,000 square-feet of home lawn, garden and trees (0.35 acre-feet/year) and the watering of four large domestic animals (0.05 acre-feet/year)." The Engineer noted the following amounts of water have been adjudicated and are available under the Property:

| Aquifer | Annual amount available for 40-acre parcel based on 100 year allocation approach (acre-feet) | <i>Annual Allocation based on the County's 300 year rule (acre-feet)</i> |
|-------------------|--|--|
| Dawson | 29.6* | 9.87 |
| Denver | 36.4 | 12.13 |
| Arapahoe | 17.7 | 5.9 |
| Laramie-Fox Hills | 12.6 | 4.2 |

* Annual amount reduces by 4 acre-feet annually for well permit no. 174104

The State Engineer stated that the "plan for augmentation decreed in case no. 2018CW3004 allows for an average diversion of 2.25 acre-feet/year for 300 years. The decree allows the withdrawal from up to 3 wells (including the well currently operated under well permit no. 174104) in the Dawson aquifer pursuant to the decreed augmentation plan."

In the State Engineer's letter dated July 8, 2019, the Engineer noted that Well Permit No. 174104 "was re-permitted to be operated under permit no. 83194-F pursuant to the terms and conditions of the augmentation plan. Permit no. 174104 was canceled upon issuance of well permit no. 83194-F. The use of ground water from well no. 83194-F is limited to in house use, irrigation of 6,000 square-feet of lawn, garden and trees and stockwatering of up to 4 large domestic animals." Finally, the State Engineer provided the opinion that "pursuant to Section 30-28-136(1)(h)(I), C.R.S., we reiterate that it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights." And further, it is our opinion "that the water supply is adequate is based on our determination that the amount of water required annually to serve the subdivision is currently physically available, based on current estimated aquifer conditions. Our opinion that the water supply can be provided without causing injury is based on our determination that the amount of water that is legally available on an annual basis, according to the statutory allocation approach, for the proposed uses is greater than the annual amount of water required to supply existing water commitments and the demands of the proposed subdivision."

5. Decree, Case No. 18CW3004. The Water Court Decree adjudicates water in all four Denver Basin aquifers underlying the Property in the respective amounts identified in the Table in Paragraph 4 above (as to the 100 year allocation). The Decree approves the plan for augmentation to allow withdrawal of the not nontributary Dawson aquifer water for this subdivision using non-evaporative septic system return flows to replace depletions to the stream system during 300 years of pumping the Dawson aquifer and using Laramie-Fox Hills water to replace post-pumping depletions.

The Decree provides for maximum withdrawal of the Dawson aquifer water through 3 wells for 300 years. The plan for augmentation, as applied to this 3 lot subdivision, allows for a maximum total withdrawal of 2.25 acre-feet annually from the Dawson aquifer or 0.75 acre-feet annually for each of the 3 lots. Indoor use will be 0.35 acre-feet annually per lot, 0.35 acre-feet for irrigation, and 0.05 acre-feet for stock watering of up to 4 large domestic animals. Beneficial uses include domestic, commercial, irrigation, livestock watering, fire protection, and augmentation purposes, including storage, both on and off the Property. The Decree indicates that a conservative estimate is 0.2 acre-feet per lot for residential or household use.

Replacement of Depletions During Pumping. The plan for augmentation provides for a pumping period of a minimum of 300 years. For any wells constructed into the not nontributary Dawson aquifer, the Applicant is required to replace actual stream depletions on an annual basis during the 300 years of pumping by residential return flows from non-evaporative septic systems. Depletions will accrue to the South Platte River system via Cherry Creek. The Decree indicates the consumptive use for non-evaporative septic systems is 10% per year per residence; therefore, at a household use rate of 0.2 acre-feet per lot per year, 0.18 acre-feet per lot is returned to the stream system per year. This would be a total of 0.54 acre-feet replaced from the 3 lots annually. The Decree states that the maximum annual stream depletions over the 300-year pumping period will be approximately 20.8% of pumping or 0.156 acre-feet for each well (0.468 acre-feet for all 3 lots); thus, the Decree concludes “[r]eturn flow associated with in house use on each lot (0.18 acre-feet per year) is sufficient to replace actual depletions associated with pumping of 0.75 acre-feet per year for 300 years.” Therefore, Applicants, their successors and assigns, must use nonevaporative septic systems and leach fields for each single-family dwelling to generate these return flows.

Replacement of Post-Pumping Depletions. The Decree requires the Applicant to replace any injurious post-pumping depletions by reserving up to 675 acre-feet of water (2.25 acre-feet per year for 300 years) from the nontributary Laramie-Fox Hills aquifer, but reserves the right to substitute the use of other nontributary groundwater, including return flows for replacement of post-pumping depletions. Any such substitution would constitute a substantial change in the water supply and would require prior approval by the County. Assuming pumping of 2.25 acre-feet per year for 300 years for a total of 675 acre-feet, the Decree notes that the “maximum total depletion to the affected stream systems is also 20.8% of the annual amount withdrawn in the 305th year.” The reserved Laramie-Fox Hills aquifer groundwater will be used to replace any injurious post-pumping depletions, and the Decree requires that these waters may not be severed from ownership of the overlying Property.

6. Analysis. Applicant's water demand for the Walker Reserve Minor Subdivision is 0.75 acre-feet per lot or 2.25 acre-feet annually using the full allotment of Dawson aquifer water allowed under the plan for augmentation for the 3 lot subdivision for a total demand of 675 acre-feet for the subdivision for 300 years. The Decree and augmentation plan in District Court Water Division 1, Case No. 18CW3004, authorizes withdrawal of 0.75 acre-feet/year/lot of Dawson aquifer water for a period of 300 years or a total of 675 acre-feet; therefore, the supply and the

demand are equal. Based on the foregoing, there appears to be a sufficient water supply to meet the water demands of the Walker Reserve Minor Subdivision.

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

8. Therefore, based upon the documentation provided with the proposal, based on the finding of sufficiency and no injury by the State Engineer, based on the Decree and augmentation plan in District Court Water Division 1, Case No. 18CW3004, and based on the requirements below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. There is a presumption of sufficient water quality.

REQUIREMENTS:

A. Applicant, its successors and assigns, shall comply with all requirements of District Court Water Division 1, Case No. 18CW3004, specifically, that water use shall not exceed 2.25 acre-feet annually for the 3 lot subdivision (the Decree limits withdrawal to 0.75 acre-feet annually for the subdivision based on 3 lots), and that all stream depletions will be replaced with non-evaporative septic system return flows for a period of 300 years, pursuant to the Court's augmentation plan.

B. The County prefers that when there is a plan for augmentation, that Applicant, its successors and assigns, create a homeowners' association ("HOA"); however, alternatively to establishing an HOA, especially for minor subdivisions such as this, Applicant, its successors and assigns, shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision, their successors and assigns, regarding all applicable requirements of District Court Water Division 1, Case No. 18CW3004, as well as their obligations to comply with the plan for augmentation, including, but not limited to, ensuring that return flows by the use of non-evaporative septic systems are made to the stream systems, and that such return flows shall only be used to replace depletions and shall not be sold, traded, or assigned in whole or in part for any other purpose. The Covenants more specifically shall require the Dawson aquifer wells to serve on each lot an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the wells. In addition, the Covenants shall advise future lot owners of this subdivision, their successors and assigns, of their obligations regarding costs of operating the plan for augmentation, which will include pumping of the Dawson wells in a manner to replace depletions during pumping and the cost of drilling a Laramie-Fox Hills aquifer well in the future to replace post-pumping depletions. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the plan for augmentation, and shall protect the viability of the water supply by placing limitations in the Covenants as to amendments and termination as applied to said water supply.

The covenants shall address the following:

- 1) Identify the water rights associated with the property. The Covenants shall reserve 675 acre-feet of not-nontributary Dawson aquifer water pursuant to the plan for augmentation in District Court Water Division 1, Case No. 18CW3004, to satisfy El Paso County's 300 year water supply requirement for the 3 lots of the Walker Reserve Minor Subdivision.
- 2) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace depletions during pumping, shall reserve said return flows to replace depletions during pumping, and shall state that said return flows shall not be sold, traded or used for any other purpose. The Covenants more specifically shall require the Dawson aquifer well on each lot to be serving an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. The Covenants shall also include the following or similar language to ensure that such return flows shall only be used for replacement purposes: "Return flows shall only be used for replacement purposes, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose."
- 3) The following or similar language shall be included in the Covenants to address future conveyances of the lots subsequent to the initial conveyance made by Applicant/Declarant: "The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not the plan for augmentation in District Court Water Division 1, Case No. 18CW3004, and the water rights are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."
- 4) The Covenants shall advise future lot owners of this subdivision, their successors and assigns, of their responsibility for any metering and data collecting that may be required regarding water withdrawals from the existing Dawson aquifer well and future wells which may be constructed in the Dawson and/or Laramie-Fox Hills aquifer.
- 5) The Covenants shall address amendments using the following or similar language:

"Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which

would alter, impair, or in any manner compromise the water supply for the Walker Reserve Minor Subdivision pursuant to the plan for augmentation in District Court Water Division 1, Case No. 18CW3004. Further, written approval of the proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioners, after review by the County Attorney's Office. Any amendments must be pursuant to a Determination from the Division 1 Water Court approving such amendment, with prior notice to El Paso County Planning and Community Development for an opportunity for the County to participate in any such adjudication."

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

"These Covenants shall not terminate unless the requirements of the plan for augmentation in District Court Water Division 1, Case No. 18CW3004, are also terminated by order of the Division 1 Water Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County."

C. Applicant, its successors and assigns, shall reserve in the Covenants and in any deeds of the Property the decreed amount of at least 0.75 acre-feet per lot annually and shall reserve a total decreed amount of at least 2.25 acre-feet of Dawson aquifer water for the 3 lots in the subdivision for 300 years for a total of 675 acre-feet for the 3 lot subdivision for 300 years. Said reservation shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for primary and replacement supply. Applicant shall convey by recorded warranty deed these reserved Dawson aquifer water rights to the individual lot owners. Applicant, its successors and assigns, at the time of lot sales, shall convey by warranty deed to individual lot owner(s) sufficient water rights in the Dawson aquifer, pursuant to District Court Water Division 1, Case No. 18CW3004, underlying the respective lots to satisfy El Paso County's 300 year water supply requirement. Dawson aquifer requirements for each lot are as follows: 225 acre-feet for each lot (0.75 acre-feet/year x 300 yrs.). Said conveyance instruments shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for the primary supply and replacement during pumping for the respective lots. Applicant shall provide said Covenants or other such reservation instrument and form deeds for such conveyances that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording of the minor subdivision plat.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson aquifer): "These water rights conveyed, and the return flows therefrom, are intended to provide a 300 year supply, and replacement during pumping, for each of the 3 lots of the Walker Reserve Minor Subdivision. The water rights so conveyed, and the return flows

therefrom, shall be appurtenant to each of the respective lots with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."

D. Applicant shall reserve in the Covenants and/or in any deeds of the Property at least 675 acre-feet of water in the Laramie-Fox Hills aquifer for use in the augmentation plan to replace post-pumping depletions. Pursuant to the Decree and plan for augmentation, Applicant shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for augmentation supply. Applicant shall convey by recorded warranty deed these reserved Laramie-Fox Hills aquifer water rights to the HOA or to the individual lot owners (with appropriate deed restrictions) for use in the augmentation plan. Applicant shall provide copies of such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.

E. Applicant, its successors and assigns, shall submit Declaration of Covenants, Conditions, and Restrictions and any plat notes required herein to the Planning and Community Development Department and the County Attorney's Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. Said Declaration shall cross-reference District Court Water Division 1, Case No. 18CW3004 (including plan for augmentation) and shall identify the obligations of the individual lot owners thereunder.

F. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, the decree in District Court Water Division 1, Case No. 18CW3004 (including plan for augmentation) and agreements, assignments, and warranty deeds regarding the water rights, and Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

G. As noted by the State Engineer's Office, the Applicant must obtain well permits pursuant to C.R.S. § 37-90-137(10) and pursuant to the Decree and plan for augmentation in District Court Water Division 1, Case No. 18CW3004. Permit applications submitted by entities other than the holder of the water rights in Case No. 18CW3004, must include evidence that the permit applicant has acquired the right to the portion of the water being requested in the application.

H. Prior to recording the final plat, Applicant must provide evidence of ownership of the water rights decreed in District Court Water Division 1, Case No. 18CW3004, to the Planning and Community Development Department and the County Attorney's Office. In other words, the Applicant must provide proof acceptable to the County of a chain of title of the water rights from Scott and Susan Mikulecky to G3 Investments, Inc.

I. As further noted by the State Engineer's Office, the following plat note shall be added that addresses the State Engineer's admonition to advise landowners of potential limited water supplies in the Denver Basin:

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

cc: Nina Ruiz, Planner III