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CHUCK BROERMAN

El Paso County, CO

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RESOLUTION NO. 15-059

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO**

RESOLUTION TO APPROVE A MEMORANDUM OF AGREEMENT AND TO APPROVE AND ACCEPT TEMPORARY CONSTRUCTION EASEMENTS (TE-10 AND TE-10A), SPECIAL WARRANTY DEED (PARCEL 10) AND ADMINISTRATIVE DETERMINATION DATED DECEMBER 10, 2014 ASSOCIATED WITH THE STAPLETON ROAD EXTENSION PROJECT

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1)(c)-(d), 30-11-102, 30-11-103, and 30-11-107(1)(a), the Board of County Commissioners of El Paso County, Colorado (hereinafter "Board") has the legislative authority to purchase and hold real and personal property for the use of the County when deemed by the Board to be in the best interests of the County; and

WHEREAS, the Public Services Department (hereinafter "PSD") has identified a need to enter into a Memorandum of Agreement to memorialize the agreement, and to accept the Temporary Construction Easements (TE-10 and TE-10A), and Special Warranty Deed (Parcel 10), copies of which are attached hereto respectively as Exhibits 1, 2, 3, and 4 and incorporated herein by reference, from property owned by John R. Jennings and Linda B. Jennings (hereinafter "Grantors"), said property identified on map attached as Exhibit 5 and incorporated herein, for the Stapleton Road Extension Project, to include construction, drainage, slope, maintenance, repair, replacement, operation, ingress, and egress; and

WHEREAS, Grantors agree to convey and grant to El Paso County, Temporary Construction Easements (TE-10 and TE-10A), and Special Warranty Deed (Parcel 10) all for the sum of \$7,550.00, and an administrative settlement of \$7,450.00 for a total sum of \$15,000.00 payable to Grantors; and

WHEREAS, §7.2.2.E.6.d., Land Development Code indicates that where right-of-way is established and any nonconforming lot determination is necessary to document the rights associated with any nonconforming lot or parcel created, the Board needs to formally accept the determination; and

WHEREAS, the Board has determined that it would serve the best interests of the public to approve the Memorandum of Agreement, to approve and accept the Temporary Construction Easements, and the Special Warranty Deed, and to accept the nonconforming lot determination to effectuate the hereinabove described transaction for purposes, which include, but are not limited to, construction, drainage, slope, maintenance, repair, replacement, operation, ingress, and egress, related to the Stapleton Road Extension Project.

NOW THEREFORE, BE IT RESOLVED the Board of County Commissioners hereby approves the Memorandum of Agreement, and hereby approves and accepts Temporary Construction Easements (TE-10 and TE-10A), and Special Warranty Deed (Parcel 10) from Grantors and authorizes payment to Grantors, subject to the terms and conditions cited therein.

BE IT FURTHER RESOLVED, pursuant to §7.2.2.E.6.d., Land Development Code, the Board formally accepts the nonconforming lot determination created by the establishment of right-of-way as


set forth in that Administrative Determination dated December 10, 2014, attached hereto at Exhibit 6 and incorporated herein by this reference.

BE IT FURTHER RESOLVED that Dennis Hisey, duly elected, qualified member and Chair of the Board of County Commissioners, or Amy Lathen, duly elected, qualified member and Vice Chair of the Board of County Commissioners, be and is hereby authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

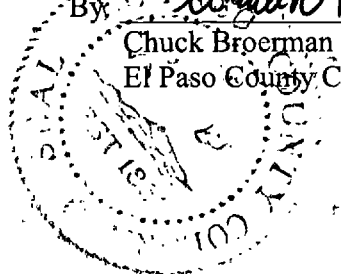
DONE THIS 10th day of February, 2015, at Colorado Springs, Colorado.


ATTEST:

BOARD OF COUNTY COMMISSIONERS
EL PASO COUNTY, COLORADO

By: 

Chuck Broerman
El Paso County Clerk and Recorder



By: 

Amy Lathen, Vice Chair

**El Paso County Public Services Department
MEMORANDUM OF AGREEMENT**

Project No : 229036

Location : Stapleton Road Improvements Project

Parcel # : 10, TE-10, TE-10A

County : El Paso

This Agreement made on _____, 20____ is between El Paso County by and through the Board of County Commissioners of El Paso County, Colorado, by its Public Services Department (GRANTEE), for the purchase of the parcel(s) listed above from the Owner, John R. Jennings and Linda B. Jennings (GRANTOR).

Just compensation was determined by an appraisal prepared in accordance with Colorado state laws and regulations. The amount of money and/or compensation listed below is full consideration for the following land, easements, improvements, claims, and damages of any kind.

Land: Parcel 10 (described in attached exhibits A and B)	90,197.60 sq ft <input checked="" type="checkbox"/> / acres <input type="checkbox"/>	\$7,216.00
Non-Exclusive Permanent Easements : None	sq ft <input type="checkbox"/> /acres <input type="checkbox"/>	\$ -0-
Temporary Easements: TE-10 and TE-10A (described in attached exhibits C, D, E and F)	36,893.32 sq ft <input checked="" type="checkbox"/> / acres <input type="checkbox"/>	\$ 295.00
Non-Exclusive Permanent Utility Easement : None	sq ft <input type="checkbox"/> /acres <input type="checkbox"/>	\$ -0-
Improvements		\$ -0-
Damages		\$ -0-
	Gross Total	\$ 7,550.00 (Rounded)
	Administrative Settlement	\$ 7,450.00
	Net Total	\$15,000.00

Other conditions:

- Where impacted by the Project, the Property Owner's permanent fence shall be removed by the GRANTEE during the construction period and reinstalled at the end of the project, at the right-of-way line, by the GRANTEE. Pursuant to the GRANTOR's request, the permanent fencing will be barbed wire fencing similar to what currently exists on the property.
- A temporary fence will not be installed during the construction period.
- The GRANTEE will re-seed the affected areas until adequate growth has been achieved and approved by the County or their assigns.

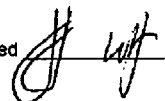
Notwithstanding anything to the contrary herein, the Agreement is contingent upon the El Paso County Board of County Commissioner's (hereinafter "Board") consideration and approval, and the GRANTEE will only make payment after receiving an acceptable conveyance instrument from the GRANTOR as indicated below and after formal approval by the Board.

The GRANTOR and GRANTEE agree that:

- there are no promises, terms, conditions, or obligations other than those listed on this Agreement.
- this Agreement is binding on both the GRANTOR and GRANTEE and their heirs, devisees, executors, administrators, legal representatives, successors, assigns, and designees.
- the compensation shown on this Agreement is for the applicable fee simple estate, permanent easement interest(s), or temporary easement interest(s) of the parcels described and any claims and/or damages of any kind, unless otherwise indicated.
- this Agreement is expressly subject to the execution of releases or subordinations pertaining to any interests relating to the property.
- failure of the GRANTOR to secure release or subordination of all outstanding interests in the Property to the GRANTEE'S satisfaction prior to closing may, at GRANTEE'S sole option, render this Contract null and void.
- GRANTEE may elect to waive GRANTOR'S requirement to obtain release, partial release, or subordination of any lien(s) or mortgage interest(s) in the Property, and will notify GRANTOR in writing of said waiver. Waiver of such by GRANTEE shall not absolve GRANTOR of GRANTOR'S obligations to lienholder(s), including, but not limited to, any requirements under a Due on Sale provision.
- agree that the closing date may be extended at the GRANTEE'S sole option to resolve any matter necessary to obtaining merchantable title to the Property.
- this Agreement shall be deemed a contract binding upon the GRANTEE and GRANTOR and the GRANTOR'S successors, assigns, designees, heirs, devisees, executors, administrators, and legal representatives.

The GRANTOR:

- will at the closing pay all taxes (including prorated taxes for the current year) and special assessments for the current year.
- understands, acknowledges and agrees that the beneficiaries of any unpaid mortgage(s), deed(s) of trust, taxes and/or other financial indebtedness secured by the GRANTOR'S Property may claim all or any portion of the compensation paid pursuant to this Agreement.
- has entered into this Agreement only because the GRANTEE has the power of eminent domain and requires the property for public purposes.
- will execute and deliver to GRANTEE those documents indicated below.
- hereby agrees to provide merchantable title to the Property.
- agrees to take all required actions and execute all documents necessary to secure releases or subordinations of any outstanding liens, leases, mortgages, or other encumbrances against, or affecting, the Property by all outstanding lienors, lessees, mortgagees, or any others with legal or equitable interests.
- agrees that the GRANTEE will be entitled to specific performance of this Agreement.
- agrees that the GRANTEE shall be entitled to take immediate possession of the Property upon the signing of this Agreement by the Parties and tender of payment either (a) directly to the GRANTOR, or (b) by depositing the agreed upon compensation into escrow with the GRANTEE'S closing agent unless other specific arrangements are agreed to by the Parties. This grant of possession of the Property to the GRANTEE shall serve as an irrevocable license to occupy and use said Property for the purposes of the Project until the GRANTOR executes and delivers to the County the necessary documents as stated below, and until the beneficiaries of any unpaid mortgage(s), deed(s) of trust or other financial indebtedness secured by the Owner's Property execute any and all required releases or subordinations, including, but not limited to, Requests for Partial Releases.

Initialed 

The GRANTEE:
 -will be entitled to specific performance of this Agreement upon tender of the agreed consideration.
 -will be held harmless from any claims against the property or to any interest in the property, except for any benefits due under relocation law.
 -will prepare the following documents:

- | | | |
|--|--------------------------------------|---|
| <input checked="" type="checkbox"/> Special Warranty Deed | <input type="checkbox"/> w/Min Resv. | <input type="checkbox"/> Non-Exclusive Permanent Utility Easement |
| <input type="checkbox"/> Access Deed | | <input type="checkbox"/> Non-Exclusive Permanent Easement |
| <input type="checkbox"/> Full Release(s) Book/Page/Reception # | | <input type="checkbox"/> Slope Easement |
| <input type="checkbox"/> Partial Release(s) Book/Page/Reception # | | <input checked="" type="checkbox"/> Temporary Easements (2) |
| <input type="checkbox"/> Other (specify) | | |
| <input type="checkbox"/> Title Company to prepare documents except | | |

Order Warrant \$15,000.00	Payable to: Land Title Guarantee Company as Escrow Agent for: John R. Jennings and Linda B. Jennings
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Board of County Commissioners of El Paso County, Colorado

ATTEST:

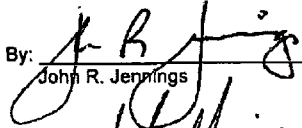
Chair of the Board of County Commissioners of El Paso County

County Clerk and Recorder

Reference: BoCC resolution # _____

GRANTOR signature Attach W-9 form(s)

John R. Jennings and Linda B. Jennings

By:  _____
 John R. Jennings

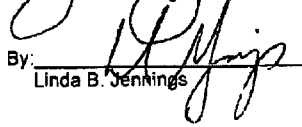
By:  _____
 Linda B. Jennings

EXHIBIT A

EL PASO COUNTY PROJECT NUMBER 229036

PARCEL 10

SITUATE

THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6th P.M.,
EL PASO COUNTY, COLORADO

LEGAL DESCRIPTION

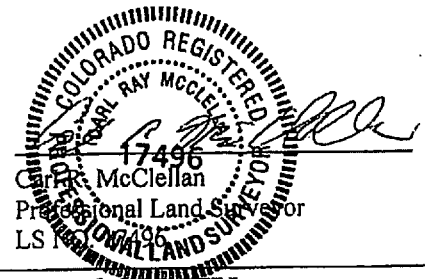
A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, BEING A PORTION OF THE EL PASO COUNTY, COLORADO ASSESSOR'S PARCEL NUMBER 4233000015, C/O JOHN R. JENNINGS & LINDA B. JENNINGS, 2030 TABOR COURT, COLORADO SPRINGS, COLORADO 80919-4843, SAID TRACT BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, THENCE;

1. SOUTH 89°57'40" EAST ALONG THE NORTH LINE THEREOF A DISTANCE OF 362.13 FEET FOR THE **POINT OF BEGINNING**, THENCE;
2. CONTINUING ALONG SAID NORTH LINE SOUTH 89°57'40" EAST A DISTANCE OF 230.70 FEET, THENCE;
3. SOUTH 18°01'48" WEST A DISTANCE OF 28.42 FEET, THENCE;
4. SOUTH 43°33'49" EAST A DISTANCE OF 483.13 FEET, THENCE;
5. ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 12°56'15", A RADIUS OF 1,555.00 FEET, AN ARC LENGTH OF 351.12 FEET, A CHORD BEARING OF SOUTH 37°05'41" EAST AND A CHORD LENGTH OF 350.38 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER, THENCE;
6. NORTH 89°58'49" WEST ALONG SAID SOUTH LINE A DISTANCE OF 117.67 FEET, THENCE;
7. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 10°34'30", A RADIUS OF 1,455.00 FEET, AN ARC LENGTH OF 268.55 FEET, A CHORD BEARING OF NORTH 38°16'34" WEST AND A CHORD LENGTH OF 268.17 FEET, THENCE;
8. NORTH 43°33'49" WEST A DISTANCE OF 539.12 FEET, THENCE;
9. NORTH 66°02'38" WEST A DISTANCE OF 110.00 FEET, THENCE;
10. NORTH 43°33'49" WEST A DISTANCE OF 15.00 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 90,197.60 SQUARE FEET, (2.071 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, MONUMENTED WITH A FOUND 3/2" ALUMINUM CAP STAMPED CDOT PLS 22103, DATED 2001 ON THE EAST AND WITH A FOUND 2 1/2" ALUMINUM CAP STAMPED P.L.S. 31548, DATED 2005 ON THE WEST AND WHICH WAS ASSUMED TO BEAR SOUTH 89°57'40" EAST A DISTANCE OF 1,321.47 FEET.



SCALE: NONE DATE: 12/18/13
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EL PASO COUNTY
PUBLIC SERVICES DEPARTMENT

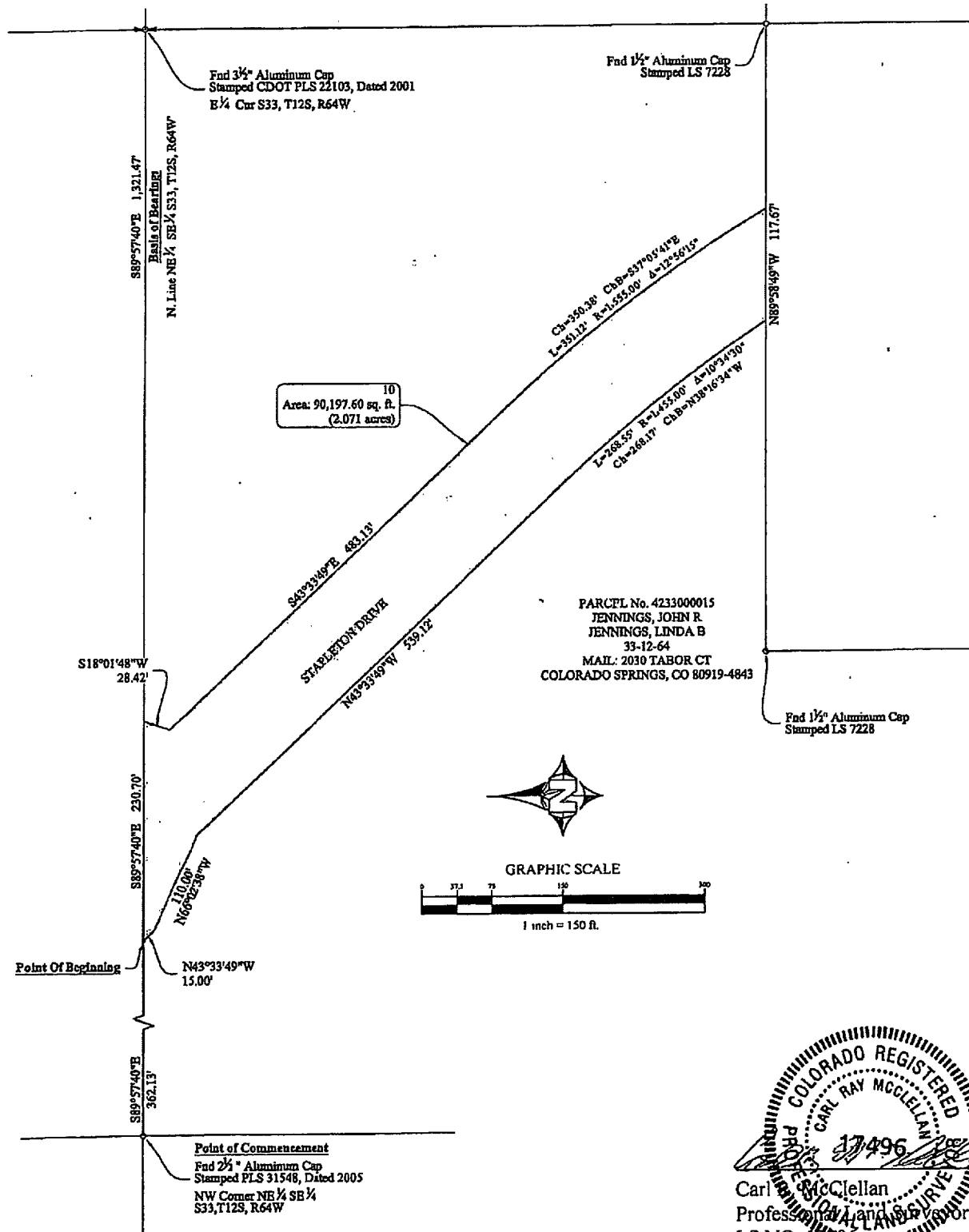
EXHIBIT B

EL PASO COUNTY PROJECT NUMBER 229036

PARCEL 10

SITUATE

THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6th P.M., EL PASO COUNTY, COLORADO



COLORADO REGISTERED
 CARL RAY MCCLELLAN
 17496
 Carl Ray McClellan
 Professional Land Surveyor
 LS NO. 17496

SCALE: 1"=150' DATE: 12/18/13
 DRAWING: StapletonEastLegals&Exhibits.dwg BY: NH

EL PASO COUNTY
 PUBLIC SERVICES DEPARTMENT

EXHIBIT C

EL PASO COUNTY PROJECT NUMBER 229036
TEMPORARY EASEMENT TE-10

SITUATE
THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6th P.M.,
EL PASO COUNTY, COLORADO

LEGAL DESCRIPTION

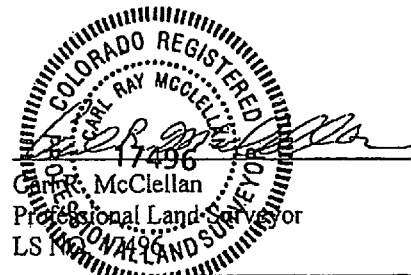
A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, BEING A PORTION OF THE EL PASO COUNTY, COLORADO ASSESSOR'S PARCEL NUMBER 4233000015, C/O JOHN R. JENNINGS & LINDA B. JENNINGS, 2030 TABOR COURT, COLORADO SPRINGS, COLORADO 80919-4843, SAID TRACT BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, THENCE;

1. SOUTH 89°57'40" EAST ALONG THE NORTH LINE THEREOF A DISTANCE OF 592.83 FEET FOR THE POINT OF BEGINNING, THENCE;
2. SOUTH 18°01'48" WEST A DISTANCE OF 28.42 FEET, THENCE;
3. SOUTH 43°33'49" EAST A DISTANCE OF 483.13 FEET, THENCE;
4. ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 12°56'15", A RADIUS OF 1,555.00 FEET, AN ARC LENGTH OF 351.12 FEET, A CHORD BEARING OF SOUTH 37°05'41" EAST AND A CHORD LENGTH OF 350.38 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER, THENCE;
5. SOUTH 89°58'49" EAST ALONG SAID SOUTH LINE A DISTANCE OF 17.41 FEET, THENCE;
6. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 11°41'20", A RADIUS OF 2,501.49 FEET, AN ARC LENGTH OF 510.33 FEET, A CHORD BEARING OF NORTH 37°43'13" WEST AND A CHORD LENGTH OF 509.45 FEET, THENCE;
7. NORTH 43°33'49" WEST A DISTANCE OF 350.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 17,482.18 SQUARE FEET, (0.401 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, MONUMENTED WITH A FOUND 3/4" ALUMINUM CAP STAMPED CDOT PLS 22103, DATED 2001 ON THE EAST AND WITH A FOUND 2 1/2" ALUMINUM CAP STAMPED P.L.S. 31548, DATED 2005 ON THE WEST AND WHICH WAS ASSUMED TO BEAR SOUTH 89°57'40" EAST A DISTANCE OF 1,321.47 FEET.



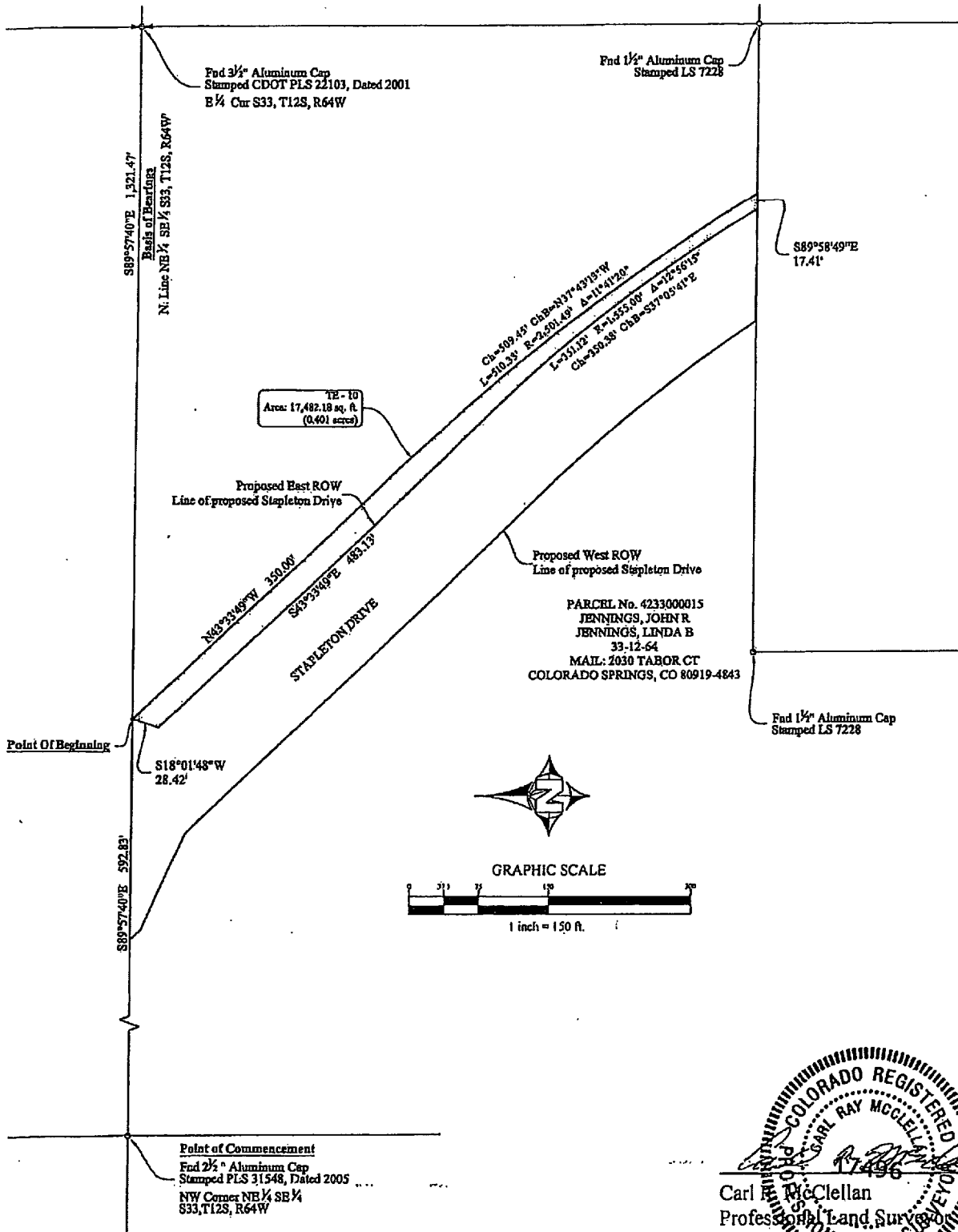
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EL PASO COUNTY
PUBLIC SERVICES DEPARTMENT

EXHIBIT D

**EL PASO COUNTY PROJECT NUMBER 229036
TEMPORARY EASEMENT TE-10**

SITUATE
THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6th P.M., EL PASO COUNTY, COLORADO



SCALE: 1"=150' DATE: 12/18/13
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EL PASO COUNTY
PUBLIC SERVICES DEPARTMENT

EXHIBIT E

EL PASO COUNTY PROJECT NUMBER 229036
TEMPORARY EASEMENT TE-10A

SITUATE
THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH P.M.,
EL PASO COUNTY, COLORADO

LEGAL DESCRIPTION

A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, BEING A PORTION OF THE EL PASO COUNTY, COLORADO ASSESSOR'S PARCEL NUMBER 4233000015, C/O JOHN R. JENNINGS & LINDA B. JENNINGS, 2030 TABOR COURT, COLORADO SPRINGS, COLORADO 80919-4843, SAID TRACT BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, THENCE;

1. SOUTH 89°57'40" EAST ALONG THE NORTH LINE THEREOF A DISTANCE OF 335.33 FEET FOR THE POINT OF BEGINNING, THENCE;
2. SOUTH 21°05'00" EAST A DISTANCE OF 14.63 FEET, THENCE;
3. SOUTH 43°33'49" EAST A DISTANCE OF 24.94 FEET, THENCE;
4. SOUTH 66°02'38" EAST A DISTANCE OF 123.08 FEET, THENCE;
5. SOUTH 43°33'49" EAST A DISTANCE OF 522.07 FEET, THENCE;
6. ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 10°03'17", A RADIUS OF 1,435.00 FEET, AN ARC LENGTH OF 251.82 FEET, A CHORD BEARING OF SOUTH 38°32'10" EAST AND A CHORD LENGTH OF 251.50 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER, THENCE;
7. SOUTH 89°58'49" EAST ALONG SAID SOUTH LINE A DISTANCE OF 23.92 FEET, THENCE;
8. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 10°34'30", A RADIUS OF 1,455.00 FEET, AN ARC LENGTH OF 268.55 FEET, A CHORD BEARING OF NORTH 38°16'34" WEST AND A CHORD LENGTH OF 268.17 FEET, THENCE;
9. NORTH 43°33'49" WEST A DISTANCE OF 539.12 FEET, THENCE;
10. NORTH 66°02'38" WEST A DISTANCE OF 110.00 FEET, THENCE;
11. NORTH 43°33'49" WEST A DISTANCE OF 15.00 FEET TO THE NORTH LINE OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SAID SECTION 33, THENCE
12. NORTH 89°57'40" WEST ALONG SAID NORTH LINE A DISTANCE OF 26.80 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 19,411.14 SQUARE FEET, (0.446 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, MONUMENTED WITH A FOUND 3/8" ALUMINUM CAP STAMPED CDOT PLS 22103, DATED 2001 ON THE EAST AND WITH A FOUND 2 1/2" ALUMINUM CAP STAMPED P.L.S. 31548, DATED 2005 ON THE WEST AND WHICH WAS ASSUMED TO BEAR SOUTH 89°57'40" EAST A DISTANCE OF 1,321.47 FEET.



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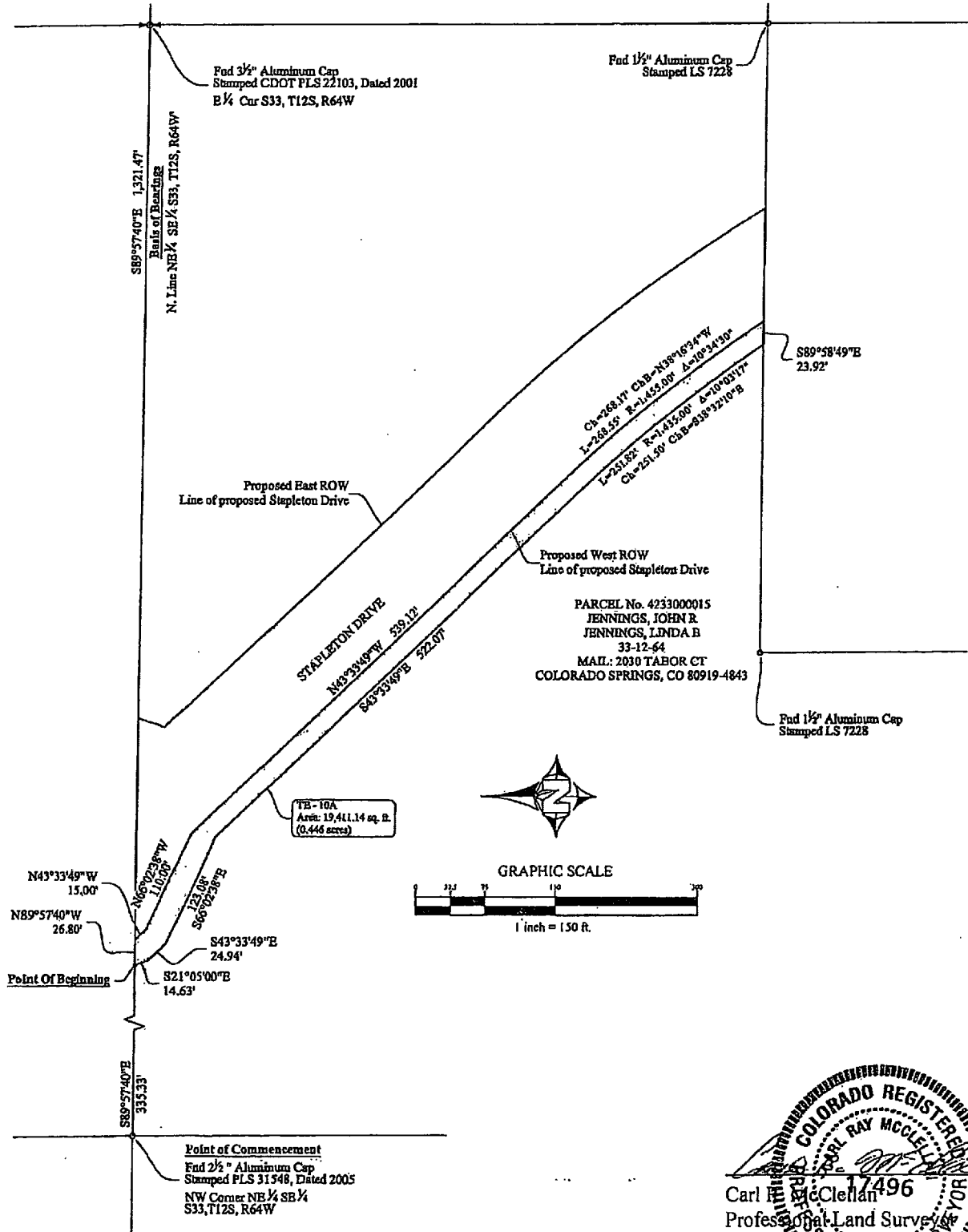
EL PASO COUNTY
PUBLIC SERVICES DEPARTMENT

EXHIBIT F

EL PASO COUNTY PROJECT NUMBER 229036
 TEMPORARY EASEMENT TE-10A

SITUATE

THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6th P.M., EL PASO COUNTY, COLORADO



Carl H. McClellan
 Professional Land Surveyor
 LS NO. 17496

SCALE: 1"=150' DATE: 12/18/13
 DRAWING: StapletonEastLegals&Exhibits.dwg BY: NH

EL PASO COUNTY
 PUBLIC SERVICES DEPARTMENT

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
TE-10**

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("AGREEMENT") is made this _____ day of _____, 20____, between JOHN R. JENNINGS AND LINDA B. JENNINGS, whose mailing address is 2030 Tabor Court, Colorado Springs, CO 80919-4843, hereinafter called the Grantor(s), for and in consideration of the sum of One Hundred Forty Dollars and No Cents (\$140.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in hand paid by EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO, whose address is 200 S. Cascade Avenue, Colorado Springs, CO 80903 (hereinafter "Grantee"), have given and granted and by these presents do hereby give and grant unto the said Grantee, a TEMPORARY CONSTRUCTION EASEMENT. This Easement shall be in force for one year from the date of the issuance of the Notice to Proceed or until the end of the project, whichever comes first. The following is the described premises:

See attached Exhibit A, Land Description Temporary Construction Easement
Exhibit B, Sketch

This temporary construction easement is for the following purposes, which include but are not limited to: road construction, drainage, slope, maintenance, repair, replacement, operation, ingress and egress.

That portion of the easement that pertains to slope control is subject to the following conditions: at no time hereafter shall the Grantors, or anyone claiming by, through, or under the Grantors, perform any act or thing which is or may be detrimental to, or has any adverse effect upon the stability of said excavated slopes or embankment, or which shall interfere with the flow of drainage.

Grantee does hereby agree to construct slopes in a neat and workmanlike manner, to avoid damage to any existing structures and to rework any existing approach entrances affected by said construction. At the end of the project Grantee shall smooth, re-seed, and blanket, as may be recommended by the Natural Resources Conservation Service, any disturbed area.

IN WITNESS WHEREOF, the Grantor(s) have executed this Temporary Construction Easement Agreement.

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Signature Pages Follow

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
TE-10

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:

By: _____
County Clerk and Recorder

By: _____
Chair of the Board of County Commissioners
of El Paso County

State of Colorado)
) ss
County of El Paso)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as Chair of the Board of County Commissioners of El Paso County, Colorado, and as attested to by _____, County Clerk and Recorder.

Witness my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBIT A

EL PASO COUNTY PROJECT NUMBER 229036
TEMPORARY EASEMENT TE-10

SITUATE
THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6th P.M.,
EL PASO COUNTY, COLORADO

LEGAL DESCRIPTION

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COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, THENCE;

1. SOUTH 89°57'40" EAST ALONG THE NORTH LINE THEREOF A DISTANCE OF 592.83 FEET FOR THE **POINT OF BEGINNING**, THENCE;
2. SOUTH 18°01'48" WEST A DISTANCE OF 28.42 FEET, THENCE;
3. SOUTH 43°33'49" EAST A DISTANCE OF 483.13 FEET, THENCE;
4. ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 12°56'15", A RADIUS OF 1,555.00 FEET, AN ARC LENGTH OF 351.12 FEET, A CHORD BEARING OF SOUTH 37°05'41" EAST AND A CHORD LENGTH OF 350.38 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER, THENCE;
5. SOUTH 89°58'49" EAST ALONG SAID SOUTH LINE A DISTANCE OF 17.41 FEET, THENCE;
6. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 11°41'20", A RADIUS OF 2,501.49 FEET, AN ARC LENGTH OF 510.33 FEET, A CHORD BEARING OF NORTH 37°43'13" WEST AND A CHORD LENGTH OF 509.45 FEET, THENCE;
7. NORTH 43°33'49" WEST A DISTANCE OF 350.00 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINS 17,482.18 SQUARE FEET, (0.401 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, MONUMENTED WITH A FOUND 3/4" ALUMINUM CAP STAMPED CDOT PLS 22103, DATED 2001 ON THE EAST AND WITH A FOUND 2 1/2" ALUMINUM CAP STAMPED P.L.S. 31548, DATED 2005 ON THE WEST AND WHICH WAS ASSUMED TO BEAR SOUTH 89°57'40" EAST A DISTANCE OF 1,321.47 FEET.

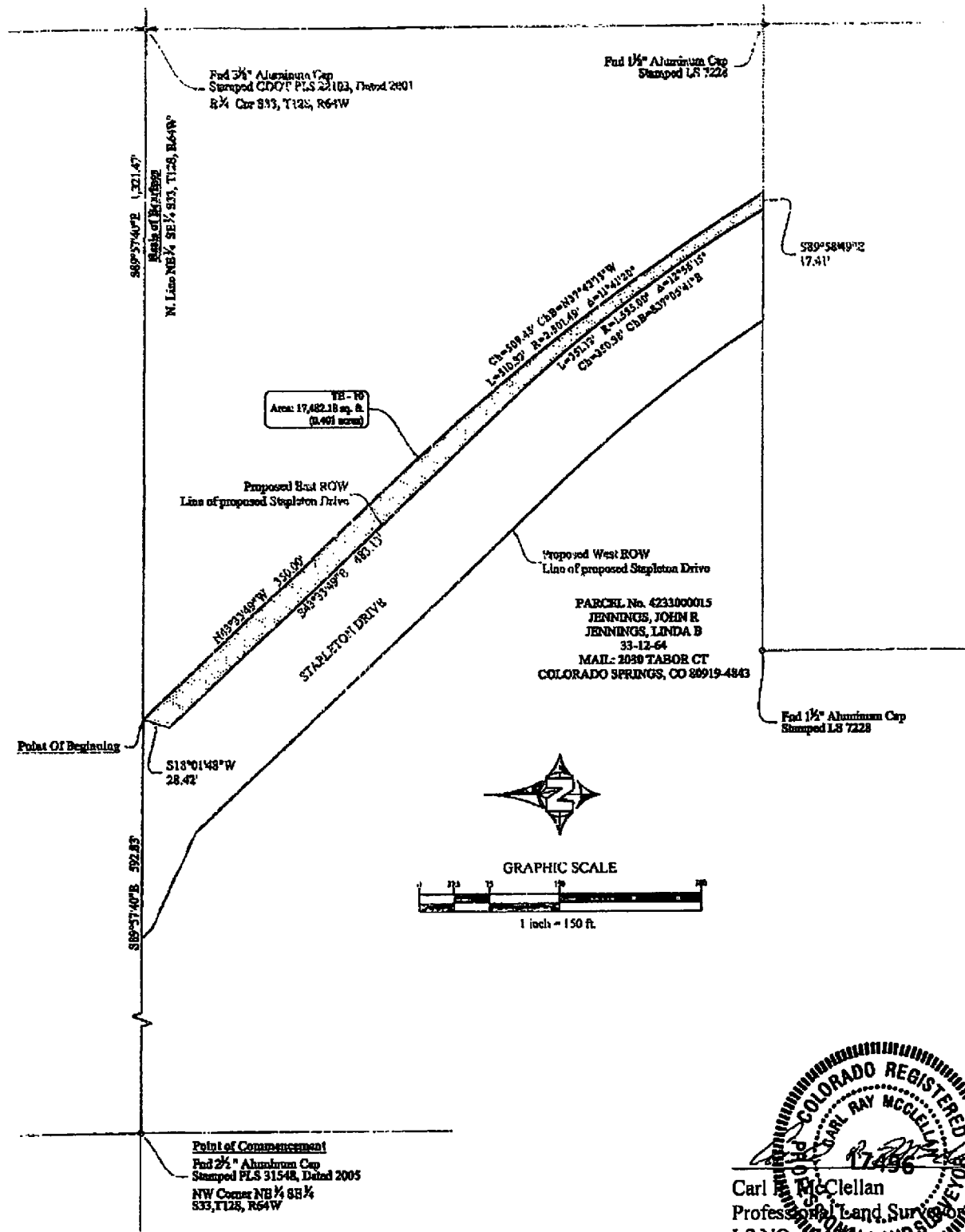


SCALE: NONE DATE: 12/18/13
DRAWING: StapletonEastLegals&Exhibits.dwg BY: NH

EL PASO COUNTY
PUBLIC SERVICES DEPARTMENT

EXHIBIT B
EL PASO COUNTY PROJECT NUMBER 229036
TEMPORARY EASEMENT TE-10

SITUATE
 THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6th P.M., EL PASO COUNTY, COLORADO



Carl R. McClellan
 Professional Land Surveyor
 LS NO. 17496

SCALE: 1"=150' DATE: 12/18/13
 DRAWING: StapletonEastLegals&Exhibits.dwg BY: NH

EL PASO COUNTY
PUBLIC SERVICES DEPARTMENT

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
TE-10A**

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("AGREEMENT") is made this ____ day of _____, 20__, between JOHN R. JENNINGS AND LINDA B. JENNINGS, whose mailing address is 2030 Tabor Court, Colorado Springs, CO 80919-4843, hereinafter called the Grantor(s), for and in consideration of the sum of One Hundred Fifty Five Dollars and No Cents (\$155.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in hand paid by EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO, whose address is 200 S. Cascade Avenue, Colorado Springs, CO 80903 (hereinafter "Grantee"), have given and granted and by these presents do hereby give and grant unto the said Grantee, a TEMPORARY CONSTRUCTION EASEMENT. This Easement shall be in force for one year from the date of the issuance of the Notice to Proceed or until the end of the project, whichever comes first. The following is the described premises:

See attached Exhibit A, Land Description Temporary Construction Easement
Exhibit B, Sketch

This temporary construction easement is for the following purposes, which include but are not limited to: road construction, drainage, slope, maintenance, repair, replacement, operation, ingress and egress.

That portion of the easement that pertains to slope control is subject to the following conditions: at no time hereafter shall the Grantors, or anyone claiming by, through, or under the Grantors, perform any act or thing which is or may be detrimental to, or has any adverse effect upon the stability of said excavated slopes or embankment, or which shall interfere with the flow of drainage.

Grantee does hereby agree to construct slopes in a neat and workmanlike manner, to avoid damage to any existing structures and to rework any existing approach entrances affected by said construction. At the end of the project Grantee shall smooth, re-seed, and blanket, as may be recommended by the Natural Resources Conservation Service, any disturbed area.

IN WITNESS WHEREOF, the Grantor(s) have executed this Temporary Construction Easement Agreement.

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Signature Pages Follow

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
TE-10A

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:

By: _____
County Clerk and Recorder

By: _____
Chair of the Board of County Commissioners
of El Paso County

State of Colorado)
) ss
County of El Paso)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as Chair of the Board of County Commissioners of El Paso County, Colorado, and as attested to by _____, County Clerk and Recorder

Witness my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBIT A

EL PASO COUNTY PROJECT NUMBER 229036
TEMPORARY EASEMENT TE-10A

SITUATE
THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6th P.M.,
EL PASO COUNTY, COLORADO

LEGAL DESCRIPTION

A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, BEING A PORTION OF THE EL PASO COUNTY, COLORADO ASSESSOR'S PARCEL NUMBER 4233000015, C/O JOHN R. JENNINGS & LINDA B. JENNINGS, 2030 TABOR COURT, COLORADO SPRINGS, COLORADO 80919-4843, SAID TRACT BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, THENCE;

1. SOUTH 89°57'40" EAST ALONG THE NORTH LINE THEREOF A DISTANCE OF 335.33 FEET FOR THE POINT OF BEGINNING, THENCE;
2. SOUTH 21°05'00" EAST A DISTANCE OF 14.63 FEET, THENCE;
3. SOUTH 43°33'49" EAST A DISTANCE OF 24.94 FEET, THENCE;
4. SOUTH 66°02'38" EAST A DISTANCE OF 123.08 FEET, THENCE;
5. SOUTH 43°33'49" EAST A DISTANCE OF 522.07 FEET, THENCE;
6. ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 10°03'17", A RADIUS OF 1,435.00 FEET, AN ARC LENGTH OF 251.82 FEET, A CHORD BEARING OF SOUTH 38°32'10" EAST AND A CHORD LENGTH OF 251.50 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER, THENCE;
7. SOUTH 89°58'49" EAST ALONG SAID SOUTH LINE A DISTANCE OF 23.92 FEET, THENCE;
8. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 10°34'30", A RADIUS OF 1,455.00 FEET, AN ARC LENGTH OF 268.55 FEET, A CHORD BEARING OF NORTH 38°16'34" WEST AND A CHORD LENGTH OF 268.17 FEET, THENCE;
9. NORTH 43°33'49" WEST A DISTANCE OF 539.12 FEET, THENCE;
10. NORTH 66°02'38" WEST A DISTANCE OF 110.00 FEET, THENCE;
11. NORTH 43°33'49" WEST A DISTANCE OF 15.00 FEET TO THE NORTH LINE OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SAID SECTION 33, THENCE
12. NORTH 89°57'40" WEST ALONG SAID NORTH LINE A DISTANCE OF 26.80 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 19,411.14 SQUARE FEET, (0.446 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, MONUMENTED WITH A FOUND 3½" ALUMINUM CAP STAMPED CDOT PLS 22103, DATED 2001 ON THE EAST AND WITH A FOUND 2½" ALUMINUM CAP STAMPED P.L.S. 31548, DATED 2005 ON THE WEST AND WHICH WAS ASSUMED TO BEAR SOUTH 89°57'40" EAST A DISTANCE OF 1,321.47 FEET.



SCALE: NONE DATE: 12/18/13
DRAWING: StapletonEastLegals&Exhibits.dwg BY: NH

EL PASO COUNTY
PUBLIC SERVICES DEPARTMENT

COPY

SPECIAL WARRANTY DEED

THIS DEED, made this ____ day of _____, 20____, between JOHN R. JENNINGS AND LINDA B. JENNINGS, whose mailing address is 2030 Tabor Court, Colorado Springs, CO 80919-4843 ("Grantor"), and EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO, whose street address is 200 S. Cascade Avenue, Colorado Springs, CO 80903 ("Grantee" or "County").

WITNESSETH, that Grantor, for and in consideration of the sum of Seven Thousand Two Hundred Sixteen Dollars and No Cents (\$7,216.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto Grantee, and Grantee's heirs, successors and assigns forever, all the real property, together with all improvements, if any, situate, lying and being in the County of El Paso, State of Colorado described as follows:

See Exhibits A and B for Parcel No. 10, attached hereto and incorporated herein by reference

also known by El Paso County tax schedule number 42330-00-015.

TOGETHER WITH all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described with the appurtenances, unto Grantee, and Grantee's heirs, successors and assigns forever. Grantor, for Grantor and Grantor's heirs, successors and assigns, does covenant and agree that Grantor shall and will WARRANT AND FOREVER DEFEND the above bargained premises in the quiet and peaceable possession of Grantee, and Grantee's heirs, successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under Grantor and hereby warrants that the Property is free and clear of any lien or encumbrances, of whatever kind or nature soever, including taxes for 2013 and 2014 tax prorations, except any easements, rights-of-way, and restrictions of record and taxes for subsequent years.

IN WITNESS WHEREOF, Grantor has executed this deed on the date set forth above.

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Signature Page Follows

EXHIBIT A

EL PASO COUNTY PROJECT NUMBER 229036

PARCEL 10

SITUATE

THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6th P.M.,
EL PASO COUNTY, COLORADO

LEGAL DESCRIPTION

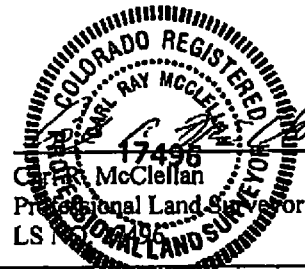
A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6th P.M., EL PASO COUNTY, COLORADO, BEING A PORTION OF THE EL PASO COUNTY, COLORADO ASSESSOR'S PARCEL NUMBER 4233000015, C/O JOHN R. JENNINGS & LINDA B. JENNINGS, 2030 TABOR COURT, COLORADO SPRINGS, COLORADO 80919-4843, SAID TRACT BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, THENCE;

1. SOUTH 89°57'40" EAST ALONG THE NORTH LINE THEREOF A DISTANCE OF 362.13 FEET FOR THE POINT OF BEGINNING, THENCE;
2. CONTINUING ALONG SAID NORTH LINE SOUTH 89°57'40" EAST A DISTANCE OF 230.70 FEET, THENCE;
3. SOUTH 18°01'48" WEST A DISTANCE OF 28.42 FEET, THENCE;
4. SOUTH 43°33'49" EAST A DISTANCE OF 483.13 FEET, THENCE;
5. ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 12°56'15", A RADIUS OF 1,555.00 FEET, AN ARC LENGTH OF 351.12 FEET, A CHORD BEARING OF SOUTH 37°05'41" EAST AND A CHORD LENGTH OF 350.38 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER, THENCE;
6. NORTH 89°58'49" WEST ALONG SAID SOUTH LINE A DISTANCE OF 117.67 FEET, THENCE;
7. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 10°34'30", A RADIUS OF 1,455.00 FEET, AN ARC LENGTH OF 268.55 FEET, A CHORD BEARING OF NORTH 38°16'34" WEST AND A CHORD LENGTH OF 268.17 FEET, THENCE;
8. NORTH 43°33'49" WEST A DISTANCE OF 539.12 FEET, THENCE;
9. NORTH 66°02'38" WEST A DISTANCE OF 110.00 FEET, THENCE;
10. NORTH 43°33'49" WEST A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 90,197.60 SQUARE FEET, (2.071 ACRES), MORE OR LESS.

ALL BEARINGS ARE BASED ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF SAID SOUTHEAST QUARTER OF SECTION 33, MONUMENTED WITH A FOUND 3/4" ALUMINUM CAP STAMPED CDOT PLS 22103, DATED 2001 ON THE EAST AND WITH A FOUND 2 1/2" ALUMINUM CAP STAMPED P.L.S. 31548, DATED 2005 ON THE WEST AND WHICH WAS ASSUMED TO BEAR SOUTH 89°57'40" EAST A DISTANCE OF 1,321.47 FEET.





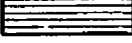
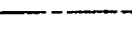



SCALE: NONE DATE: 12/18/13
DRAWING: StapletonEastLegals&Exhibits.dwg BY: NH

EL PASO COUNTY
PUBLIC SERVICES DEPARTMENT

Stapleton Drive Extension Parcel 10, TE-10, TE-10A

Legend

-  Affected Properties
-  Subject Property
-  ROW Acquisition
-  Permanent Easement
-  Temporary Easement
-  GIS Parcel Lines
-  Roadways

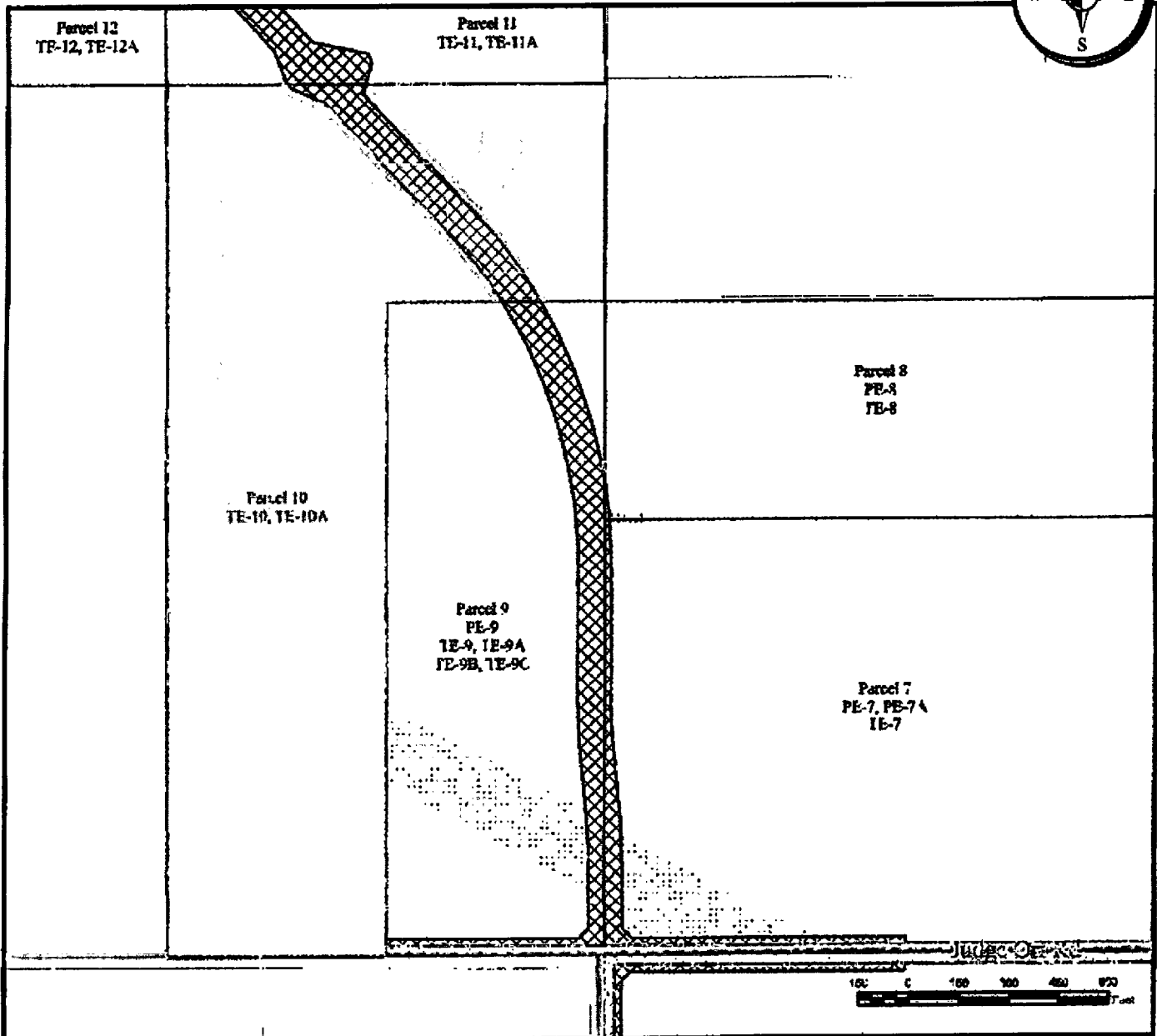
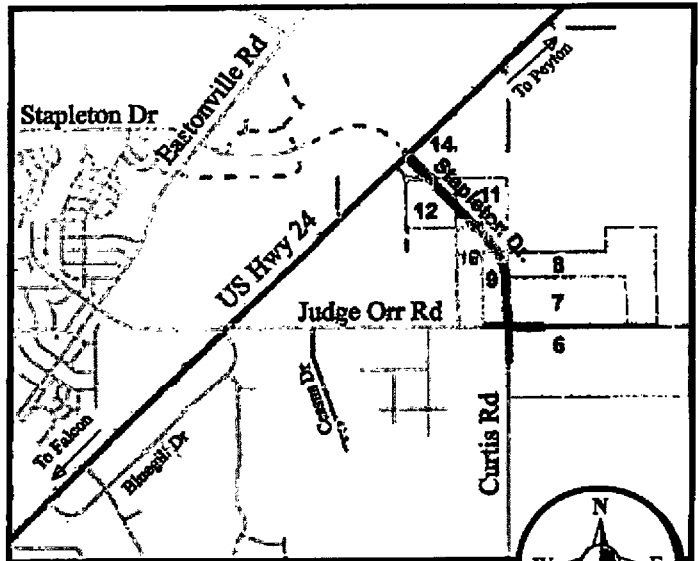


Exhibit 5

EL PASO



COUNTY

COMMISSIONERS:
DENNIS HISEY (CHAIR)
AMY LATHEN (VICECHAIR)

SALLIE CLARK
DARRYL GLENN
PEGGY LITTLETON

DEVELOPMENT SERVICES DEPARTMENT
MAX L. ROTHSCHILD P.E. EXECUTIVE DIRECTOR

January 13, 2015

Andrew G. Maniatis Trust
c/o Effie Cerrone, Successor Trustee
4895 S. Picadilly Court
Aurora, CO 80015

George and Linda Tasoulis
227 W. Sylvester PL
Littleton, CO 80129-6202

Re: Tax Parcel No. 4233000008; Stapleton Road Extension Project Parcel No. 11

Dear Ms. Cerrone and Mr. and Mrs. Tasoulis:

INTRODUCTION

This is an administrative determination of the Director, Development Services Department ("DSD"). "The DSD Director may render interpretations of all provisions of this Code." § 2.2.4.B.1, El Paso County Land Development Code ("LDC"). "The DSD Director may issue written administrative decisions concerning the application of this Code to specific property or development applications, including any grant of relief allowed by this LDC." *Id.*, at § 2.2.4.B.8.

Our information indicates that the property, identified as Tax Parcel No. 4233000008 (see Legal Description attached hereto as Exhibit 1 and incorporated herein by this reference)("the Property"), is currently owned by the Andrew G. Maniatis Trust dated October 3, 2008 ("the Trust") and George and Linda Tasoulis. Our information indicates that Ms. Cerrone is the Successor Trustee of the Trust; therefore, this letter is addressed to you in your capacity as the Successor Trustee, and will refer to the Trust as the holder of that ownership interest in the subject Property. The County records indicate that the Trust and the Tasoulis's have an ownership interest in the Property by virtue of that Warranty Deed dated January 2, 1986, and recorded on January 3, 1986, at Reception No. 1342060, whereby Andrew and Kalliope Maniatis obtained title in Joint Tenancy to an undivided ½ interest in the Property and George and Linda Tasoulis obtained title in Joint Tenancy to an undivided ½ interest in the Property. Upon Kalliope's death, her interest would have gone to Andrew, and pursuant to a Quitclaim Deed in 2009, Andrew conveyed his remaining ownership interest in the Property to the Trust. This determination will hereinafter refer to the Andrew G. Maniatis Trust dated October 3, 2008, and George and Linda Tasoulis collectively as the "Owners."

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

WWW.ELPASOCO.COM

Exhibit 6

The El Paso County Public Services Department, Transportation Division, is undertaking the administration and construction of the Pikes Peak Rural Transportation Authority ("PPRTA") Stapleton Road extension project ("the Project"). The County's understanding is that the Owners have been in discussions with the right-of-way agent, TRS Corp., working on behalf of the County to obtain property interests for the Project. The Project will affect the Property because the new road alignment will require acquisition of portions of the Property for right-of-way ("ROW") and easement purposes, and the ROW acquisition will result in splitting the Property into two parcels that will then lie on either side of the new road. The Property is approximately 40 acres in size. The ROW acquisition will be approximately 2 acres and will leave resulting parcels of approximately 36 acres and 2 acres.

This division triggers provisions of the LDC related to subdivision, exemption from subdivision, the creation of legal conforming and nonconforming parcels, and exemption from minimum lot area requirements. Typically such a division of property would require application of the County's subdivision regulations, but the LDC provides for an exemption from subdivision requirements when parcels are created as a result of acquisition of property for highway ROW purposes. The LDC indicates that subdivision standards and requirements regarding water supply and subdivision exactions and fees shall not apply to an exemption, but that does not mean that such standards and requirements would not apply if or when either or both of the resulting parcels are developed in the future for uses other than those allowed under the current A-35 zoning. The LDC has minimum lot area requirements for building permit purposes that will affect the resulting 2 acre parcel. How these provisions apply to the Property need to be considered and explained, which is a purpose of this letter. The other purposes of this letter are to acknowledge that the division of the Property is in accordance with the LDC, to document for the public record the resulting conforming and nonconforming parcel areas and the resulting development rights associated with the Property, and make determinations regarding subdivision exemption and conformance with minimum lot area requirements. This determination is specific to the property identified in this letter, and to no other properties.

ISSUE

Is it appropriate to apply § 7.2.2.B.1 of the LDC to the division of the Property by County ROW acquisition for the Project and thereby recognize the creation of legal parcels by subdivision exemption?

BRIEF ANSWER

Yes, because acquisition of ROW for the Project results in dividing the Property into two resulting parcels, because orderly development of the Property is not placed at risk due to recognizing a subdivision exemption in this case, and because recognizing an exemption would not give the Owners of this Property a windfall that other owners and developers would not enjoy, it is appropriate to apply the subdivision exemption allowed in § 7.2.2.B.1 and § 7.2.2.E.6, LDC in this case and thereby recognize the creation of legal parcels. As a matter of equity, it is also appropriate to make an administrative determination that the resulting 2 acre parcel is in

conformance with the minimum lot area requirement, but not from setback or other zoning requirements, for purposes of obtaining building permits for uses allowed in the A-35 zone district.

FACTS

The Stapleton Road/Curtis Road corridor alignment plan that included this extension of Stapleton Road was adopted as a specific element of the El Paso County Master Plan in April 2003, and the Major Transportation Corridors Plan included this general alignment through the Property. The Stapleton Road Extension Project was approved by the voters in 2004 as a Priority "A" PPRTA Project. Based on the ownership information discussed above, the Maniatis's and the Tasoulis's acquired title to the Property in 1986, the Trust acquired the Property in 2009, and the Property has remained as vacant land. Therefore, the Owners would have had notice that the Property would be affected by the extension of Stapleton Road as contemplated by the Project as a result of the public notices for the Master Plan and Major Transportation Corridors Plan public hearing processes, and would have had opportunity to comment on potential impacts to the Property during that public process. They also would have had notice as a result of the public process related to the voter approval of the PPRTA Projects. The Trust as Owner, during the course of due diligence when the Property was conveyed to it in 2009, would have found in the public records of the County that the Property would be affected by the extension of Stapleton Road.

The Falcon/Peyton Comprehensive Plan was updated and approved by the Planning Commission on August 5, 2008. The importance of the Stapleton Road/Curtis Road corridor did not change. The Planning Area Transportation Map shows this extension as "New Arterial or Larger Road." The timeline for the extension was stated as 2010. The Stapleton-Curtis Corridor Area Specific Policy at § 4.4.7.1 (see copy of this Policy attached as **Exhibit 2**) indicates that the corridor includes areas within ¼ mile of the road, and that the Stapleton-Curtis extension is to develop as a "commercial and mixed use." Therefore, the projection for the development of the Property in this planning area in the 2008 Master Plan update remains consistent with the original Master Plan.

The Property is currently zoned A-35 (Agricultural District), the purpose of which is primarily to accommodate rural communities and lifestyles including conservation of farming, ranching, and agricultural resources.

ANALYSIS

A. The Board Has Broad Land Use Authority

The Legislature declared ". . . that in order to provide for planned and orderly development within Colorado" it gave boards of county commissioners ". . . broad authority . . . to plan for and regulate the use of land within their respective jurisdictions." § 29-20-102(1), C.R.S. (Local Government Land Use Control Enabling Act). Specifically, the Legislature gave boards of county commissioners authority to plan for and regulate use of land by "(f) Providing

for phased development of services and facilities; (g) Regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and (h) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights." § 29-20-104(1)(f-h), C.R.S.

The Legislature defined "subdivision" to apply to divisions of land of two or more parcels unless exempted. *See*, § 30-28-101(10)(a), C.R.S. Exemptions include divisions of land resulting in parcels ". . . each of which comprises thirty-five or more acres of land," § 30-28-101(10)(b), C.R.S., and those divisions exempted by a board of county commissioners. *See*, § 30-28-101(10)(d), C.R.S. The state subdivision statute gives boards of county commissioners discretion to exempt divisions of land from the definition of "subdivision": "the board of county commissioners may, pursuant to rules and regulations or resolution, exempt from this definition of the terms 'subdivision' . . ." § 30-28-101 (10)(d), C.R.S. (Emphasis added).

The general definition of "subdivision" is a parcel of land in the unincorporated area of the County which is divided into 2 or more parcels. Divisions of land to which the definition of "subdivision" does not apply are defined by both the Colorado Revised Statutes and the LDC, and thus are referred to as being "exempt" from the definition of subdivision. The LDC states: "the term 'subdivision' shall not apply to any division of land which creates parcels of land each of which comprises 35 or more acres of land and none of which is intended for use by multiple owners." § 1.15, Definitions, Subdivision, LDC (see copy of complete definition of Subdivision attached hereto as **Exhibit 3**). The state statute uses the same language (see § 30-28-101(10)(b), C.R.S., a copy of which is attached hereto as **Exhibit 4**).

B. Acknowledgement of Creation of Parcels by Subdivision Exemption

Based on the above statutory authority, the Board enacted land use regulations that give the Board discretion to exempt certain divisions of land from the strict application of the State's and the County's subdivision regulations and identifies certain specific exemptions the Board can recognize. The pertinent provisions of the LDC related to this case are as follows:

Purpose Provision:

"The purpose of establishing standards for exemptions is to provide framework whereby the BoCC may grant exemptions from the definition of the term subdivision for any division of land the BoCC determines is not within the purpose of C.R.S. § 30-28-101." § 7.2.2.A, LDC. (Emphasis added).

Applicability Provision (First clause):

"The BoCC may, pursuant to this Code, exempt from the definition of 'subdivision' any division of land the BoCC determines is not within the purposes of the definition of 'subdivision'. § 7.2.2.B, LDC. (Emphasis added).

Applicability Provision (Second clause):

“The BoCC has exempted certain divisions of land from the definition of ‘subdivision’ as set forth in C.R.S. 30-28-101, as amended through the adoption of this Code.” *Id*

(1) Highway Rights-of-Way Exemptions

Any parcel created by the division of a parcel of land which is the direct result of the acquisition, by condemnation or otherwise, of the state or County highway rights-of-way, and any parcel created by the right-of-way taken or acquired by federal, state or local government, shall be considered an exemption provided that the parcel being divided was not created illegally. § 7.2.2.B.1., LDC. (Emphasis added).

The state subdivision statute, the Purpose provision, and the first clause of the Applicability provision of the ROW subdivision exemption regulation of the LDC all clearly indicate that the Board has discretion to grant exemptions from subdivision. The second clause of the Applicability provision identifies divisions of land resulting from ROW acquisition as a type of exemption from subdivision the Board can recognize.

Acquisition of the portion of the Property for ROW for the Stapleton Road extension will result in dividing the Property into two separate parcels both of which are no longer greater than 35 acres in size (one of the resulting parcels is less than 35 acres). Applying the facts and the LDC provisions above, an exemption from the requirements of the subdivision regulations as provided for in § 7.2.2.B.1., LDC, is appropriate in this case. This administrative determination is to make sure that recognition of a subdivision exemption is appropriate in this case based on the above facts and LDC regulations, and to document the development rights of the Property as a result of the ROW acquisition and subdivision exemption:

The purpose of this Section [§ 7.2.2.E.6, LDC] is to establish a process for the DSD acknowledgement that the proposed or actual acquisition or conveyance action is in conformance with these regulations and to document the changes to the affected parcels to ensure that any resulting nonconformities are recognized and that the development rights of the lot or parcel owner is documented. § 7.2.2.E.6.a., LDC.

The acknowledgement provided by this Section shall be applicable to the division of a lot or parcel of land which is the direct result of the acquisition by condemnation or otherwise, of any federal, State or local government road rights-of-way, § 7.2.2.E.6.b., LDC.

As further support for why it is appropriate to recognize a subdivision exemption in this case, the Owners have not applied for, and the Board has not approved, a request to rezone and/or subdivide the Property for more intensive uses. There are no variances of use or special use permits that have been approved for the Property. The underlying A-35 zoning has not changed. There are no pending subdivision related development requirements and/or exactions for mitigating impacts of proposed development or anticipated fees that would be due to the

County as there would be if zoning had been upgraded or if there was an approved development plan for the Property. Therefore, orderly development of the Property is not placed at risk due to recognizing a subdivision exemption in this case, and recognizing an exemption would not give the Owners of this Property a windfall that other owners and developers would not enjoy.

By contrast, it would not be appropriate to recognize a subdivision exemption if an owner or developer had upgraded zoning and/or obtained approval of a development plan to develop property prior to the highway ROW acquisition. In that case, if an owner or developer had applied for and obtained a rezoning and/or subdivision approval of the Property from the County to enable the owner or developer to develop such property at a greater residential density and/or for commercial purposes not allowed in the A-35 district, then it would not be appropriate to recognize a subdivision exemption for ROW acquisition. In such a case, the rezoning and/or approval of a development plan would have set into motion an anticipated process for development, likely with conditions related to development requirements including mitigation requirements to address potential development impacts and a requirement that development related fees be paid at the appropriate time. If an exemption from subdivision as a result of ROW acquisition through such property were recognized, then the orderly development of that property authorized by the rezoning or subdivision approval would be placed at risk and the owner or developer of that property would reap a windfall that other owners and developers would not enjoy because the subdivision requirements and exactions would not be imposed on them pursuant to § 7.2.2.D¹ of the LDC, but such subdivision requirements and exactions would be imposed on all other owners or developers at the time of subdivision approval.

C. Results of Subdivision Exemption

The ROW acquisition and extension of Stapleton Road through the Property results in the creation of two separate parcels and the right-of-way. It must be determined whether these parcels are legal and whether they are conforming or nonconforming. A legal lot is defined in the LDC to include "a parcel exempted from subdivision by the BoCC or a parcel modified or reduced in size due to land acquisition by a governmental entity." § 1.15, Definitions, "Lot, Legal," LDC. Based on this definition, both of the resulting parcels are legal parcels. A nonconforming lot or parcel is defined in the LDC to include "a legally created lot or parcel of land which due to right-of-way acquisition by a government entity does not conform with the minimum lot area requirement of this Code." § 1.15, Definitions, "Lot, Nonconforming," LDC. Based on this definition, the resulting 36 acre parcel is greater than 35 acres and therefore would be a legal conforming parcel. The resulting 2 acre parcel (hereinafter "the remnant parcel") would be a legal parcel, but it no longer conforms to the minimum lot area requirement of the A-35 zone district, and therefore, would be a legal nonconforming parcel.

D. Owners' Rights in the Property as a Result of ROW Acquisition

¹. "Subdivision standards and requirements regarding water supply and subdivision exactions including drainage fees, park fees, and school fees shall not be applicable to an exemption." § 7.2.2.D., LDC.

1. Development of the Property For Uses Allowed in A-35 Zone; Determination of Exemption From Minimum Lot Area Requirements

a. Resulting 36 Acre Parcel

The Owners do not lose any property rights in the use of the resulting 36 acre parcel as a result of the ROW acquisition. For the 36 acre legal conforming parcel, the Owners can develop all uses—both principal and accessory—that are allowed in the A-35 zone district.

b. Resulting 2 Acre Remnant Parcel

For the 2 acre remnant legal nonconforming parcel, the Owners can develop most uses that are allowed in the A-35 zone district, including a single family residence; however, an additional determination is required in order for the Owners to be able to obtain building permits. **Also, the Owners are hereby advised that it may not be possible to obtain a separate exempt well permit from the Colorado State Engineer's Office under § 37-90-105, C.R.S., but it shall be Owners' responsibility to verify this possibility.**

If the Owners need a building permit to develop allowed uses under the A-35 zoning on the remnant parcel, the parcel initially would not be considered conforming as to minimum lot area for purposes of obtaining a building permit. "Lots conforming to the minimum lot area requirements of the zoning district that are subsequently reduced in land area due to land acquisition by a governmental entity shall be considered conforming to the minimum lot area requirements." § 5.4.3.F.2.d., LDC. "A lot or parcel that is nonconforming due to lot size shall be subject to the following provisions when a building permit for a dwelling or habitable addition is requested." § 5.6.7.B., LDC.

A legal lot or zoning lot that is nonconforming as a result of the minimum lot size requirement within the applicable zoning district shall be considered to be exempt from the minimum lot size requirement where:

- Central water and sewer are both provided and the area of the legal lot is at least 60% of the minimum lot area required by the applicable zoning district; or
- Central water is provided and the area of the legal lot is at least 20,000 square feet; or
- No central water or central sewer is provided and the area of the legal lot or zoning lot is at least 2.5 acres. § 5.6.7.B.1., LDC.

None of these provisions would apply in this case since there is no central water or sewer and the remnant parcel is less than 2.5 acres; therefore, the remnant parcel would not be considered exempt from the minimum lot area requirement of the A-35 zone district under § 5.6.7.B.1., LDC. In order for the Owners to be able to apply for and obtain building permits for the remnant parcel, because it is less than 2.5 acres in size, the Owners first would have to obtain from the County either a determination of merger by contiguity or a determination of exemption conformance with the minimum lot area requirement, whichever may be applicable, under § 5.6.7.B.2., LDC, which is set forth below:

(2) Nonconforming Lots Made Conforming

Where a legal lot does not meet the above requirements to be exempted from the minimum lot size requirements, contiguous legal lots under the same ownership shall be combined through a merger by contiguity process to create a zoning lot and the resulting parcel shall be considered conforming with respect to the minimum lot size requirement where:

- Central water is provided, but not central sewer, and the resulting zoning lot after any required merger is at least 10,000 square feet; or
- No central water or central sewer is provided and the resulting parcel after any required merger is one acre or more in area.

A remainder nonconforming lot or parcel not required to meet the minimum lot size requirement for the subject property to be considered a conforming zoning lot shall be considered conforming provided the owner requests and receives a zoning lot determination from the DSD Director, and files the determination for recording with the Clerk and Recorder within 30 days of the date of the determination.

Where nonconforming lots do not meet the requirements of § 5.6.7.B.1 to be exempted from minimum lot size requirements, one solution is to make a determination of merger by contiguity. Contiguity is based on the definition of "contiguous" as follows:

Contiguous

Sharing an edge or a lot, parcel or tract boundary line. The contiguity of land areas shall not be affected by the existence between them of a private road, road easement, driveway or alley; a private right-of-way; a public or private transportation or utility right-of-way; a river, creek, stream, or other natural or artificial waterway; or an intersecting mining claim. The contiguity of land areas shall be assumed to be disrupted by the existence of established public roads and by lands contained within the legal boundaries of any municipality unless otherwise provided by this Code.

§ 1.15, Definitions, "Contiguous," LDC. The question becomes, would the 2 acre remnant parcel be contiguous to the resulting 36 acre parcel? If only the ROW for Stapleton Road were conveyed, yes, it would be contiguous because under the definition, contiguity is not affected by the existence between them of a public transportation right-of-way; however, when the road is built, there is a presumption under the definition that contiguity is disrupted. Therefore, because Stapleton Road will be built in 2015, once it is built, merger by contiguity will not apply in this case and cannot be used to merge the 2 acre remnant parcel with the resulting 36 acre parcel.

The other solution is to make a determination that the 2 acre remnant parcel is exempt from the minimum lot area requirement. The process identified above in § 5.6.7.B.2., LDC, would apply. The resulting 2 acre remnant parcel is greater than 1 acre and there is no central

water or sewer, but merger is not available once Stapleton Road is built. Under § 5.6.7.B.2., LDC, a remainder nonconforming lot or parcel greater than 1 acre without central water or sewer is made conforming when there is no additional land subject to merger. Because the County needs Owners' Property for ROW for Stapleton Road and the Road will be built in 2015, equity or fairness dictates that the County provide relief to the Owners. Therefore, on behalf of the Owners, the DSD Director hereby makes the determination that because the 2 acre remnant parcel is greater than 1 acre, pursuant to § 5.6.7.B.2., LDC, said remnant parcel is considered conforming with the minimum lot area requirements for purposes of obtaining building permits for uses allowed in the A-35 zone district, provided the other zoning standards, including but not limited to setback requirements, are met and provided Owners are legally able to provide any necessary water supply.

2. Development of the Property For Other Than Uses Allowed in A-35 Zone Requires Compliance With Zoning and Subdivision Regulations

Creation of the two legal parcels by recognizing and applying the subdivision exemption of § 7.2.2.B.1 does not insulate the two parcels from zoning and subdivision regulations if the Owner or a successor intends to develop either or both parcels for uses other than those allowed in the A-35 zone district. The subdivision standards, requirements, exactions, and fees will not be required at the time these legal parcels are created by the subdivision exemption. "Subdivision standards and requirements regarding water supply and subdivision exactions including drainage fees, park fees, and school fees shall not be applicable to an exemption." § 7.2.2.D., LDC. But to develop the Property for other than uses allowed in the A-35 zone district, the Owners or successor will be required to go through applicable rezoning and subdivision processes. In order to approve any further subdivision of either or both parcels, all subdivision standards and requirements, including but not limited to, water, drainage, mitigation of impacts, and development fees would be required. Nonconforming lots or parcels are required to comply with subdivision regulations: "[r]ecognition of nonconforming lots shall not be a basis or justification for new subdivision development. New subdivisions shall comply with the applicable zoning requirements." § 5.6.7.A.3., LDC. The resulting lots or parcels shall comply with the LDC unless: (1) a waiver or variance of one or more of the provisions of the LDC has been approved; or (2) the lots or parcels are for community facilities including utilities. § 7.2.2.C.1., LDC.

CONCLUSION

Given the Board's broad land use authority, based on § 7.2.2 of the LDC, it is appropriate to recognize and apply subdivision exemption in this case because the Owners have not upgraded zoning from the underlying A-35 zoning and has not obtained an approval for development of the Property for any uses other than those allowed in the A-35 zone district. Therefore, orderly development of the Property is not placed at risk due to recognizing a subdivision exemption in this case, and recognizing an exemption would not give the Owners of this Property a windfall that other owners and developers would not enjoy. The subdivision exemption results in creation of two legal parcels—one conforming and one nonconforming. The rights of the Owners in the

use of the resulting 36 acre parcel to develop uses consistent with A-35 zoning are unchanged. Because the resulting 2 acre remnant parcel is less than 2.5 acres, the Owners need a determination of merger by contiguity or a determination of exemption from the minimum lot area requirement to exempt the remnant parcel from minimum lot area requirements for purposes of obtaining building permits for uses allowed in the A-35 zone district. Merger by contiguity is not available in this case because once Stapleton Road is constructed, contiguity will be disrupted. Therefore, as a matter of equity, a determination of conformity with the minimum lot area requirement for purposes of obtaining building permits for uses allowed in the A-35 zone district for the remnant parcel is made because the remnant parcel is greater than 1 acre and there is no land additional land subject to merger, provided the other zoning standards, including but not limited to setback requirements, are met and provided Owners are legally able to provide any necessary water supply. Finally, while subdivision standards, requirements, exactions, and fees are not required upon creation of these two parcels as a result of the subdivision exemption, the Owners or successors will have to comply with zoning and subdivision regulations if they want to develop either or both of the resulting parcels for uses other than those allowed in the A-35 zone district.

Criteria for Approval

“The DSD Director, in approving a right-of-way, utility or open space exemption, shall find:

- The request serves a legitimate government or utility purpose; and
 - There will be no impact on the status of the lot or parcel as a conforming lot or parcel, and if a nonconformity will result that the nonconforming lot or parcel will be deemed conforming with respect to lot size and will be eligible to apply for a variance in the event they do meet the development standards of the applicable zone district.”
- § 7.2.2.E.6.c., LDC.

DUE TO THE AFOREMENTIONED REASONS, IT IS THE DETERMINATION OF THE DSD DIRECTOR THAT:

The exemption from subdivision requirements allowed as a result of acquisition of property by the County for highway ROW purposes pursuant to § 7.2.2.B.1 of the LDC is hereby acknowledged as being in accordance with the provisions of the LDC, is recognized as appropriate, and is applied in this case. Such exemption serves a legitimate governmental purpose because it facilitates the Project that was approved by the voters when they approved the Stapleton Road Extension Project in 2004 as a Priority “A” PPRTA Project, and the exemption is protective of the Owners’ private property rights. In addition, recognition of exemption from subdivision requirements is appropriate because orderly development of the Property is not placed at risk due to recognizing a subdivision exemption in this case, and because recognizing an exemption would not give the Owners of this Property a windfall that other owners and developers would not enjoy. The acquisition of ROW for the Project results in dividing the Property into two resulting

parcels. Each is a legal parcel as defined by the LDC. The 36 acre resulting parcel is a legal conforming parcel. The 2 acre resulting remnant parcel is a legal nonconforming parcel. For purposes of obtaining a building permit for uses allowed in the A-35 zone district, the 2 acre remnant parcel requires a determination of exemption from the minimum lot area requirement because merger by contiguity is not available in this case. Therefore, as a matter of equity, the County, on behalf of the Owners, acting by and through the DSD Director, hereby makes the administrative determination that the resulting 2 acre remnant parcel is considered conforming with the minimum lot area requirements for purposes of obtaining building permits for uses allowed in the A-35 zone district and thus will be considered as conforming as to size and area for such purposes, provided the other zoning standards, including but not limited to setback requirements, are met and provided Owners are legally able to provide any necessary water supply. Should either or both of the resulting parcels be developed for uses other than those allowed in the A-35 zone district, the Owners or successors will be required to meet all applicable requirements of the zoning and subdivision regulations.

The LDC's procedure for completing this action for subdivision exemption as a result of highway ROW acquisition is as follows:

(d) Completed Action

The establishment of right-of-way, utilities easements, or open space parcels shall be considered completed and in effect when an approved deed or exemption plat, and any nonconforming lot determination necessary to document the rights associated with any nonconforming lot or parcel created are formally accepted by the BoCC. The documents shall be filed for recording with the Clerk and Recorder. § 7.2.2.E.6.d., LDC.

Therefore, at the appropriate time determined by the El Paso County Public Services Department, the Board will approve a deed accepting conveyance of the ROW from the Owners, at which time the Board also will formally accept this administrative determination if it has not been appealed by the Owners as indicated below.

This letter is an open and public record that will be recorded in the records of the El Paso County Clerk and Recorder's Office. You may disclose it to any person that you may deem appropriate. Furthermore, this letter shall permanently remain in the records of the Development Services Department; however, before any other person relies upon this letter in the process of determining whether to accept any instrument pertaining to the subject Property, it is advisable for all parties to consult with legal counsel. The reason for such consultation is that this letter may not be insulated from the effect of any changes to Colorado law as may be enacted from time to time by the Colorado General Assembly or from any subsequent changes to the El Paso County Land Development Code.

This determination constitutes an administrative decision of the Director of the Development Services Department and is a final determination. Accordingly, in the event that you desire to appeal all or part of this determination, the appeal will be directly to the Board of County Commissioners. You have 30 days from the receipt of this determination to file an

appeal. There is a fee for filing the appeal. The appeal procedures are pursuant to the Land Development Code, and you would file and process your appeal pursuant to the LDC and through the County's Development Services Department, whose address is 2880 International Circle, Colorado Springs, CO 80910, and telephone number is (719) 520-6300. If you desire to appeal, please make an appointment with the Development Services Department for a consultation as soon as possible after receipt of this determination.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

OFFICE OF THE COUNTY ATTORNEY

By: M. Cole Emmons
M. Cole Emmons
Senior Assistant County Attorney

I have read this letter and concur with the statements and conclusions set forth herein, and agree this letter, prepared by above-identified legal counsel, constitutes my administrative decision as the Development Services Department Deputy Director regarding the issues set forth herein.

DEVELOPMENT SERVICES DEPARTMENT

By: Mark Gebhart
Mark Gebhart, Deputy Director

cc: Max Rothschild, Director, Development Services Department
Andre Brackin, El Paso County Engineer
Kevin Diekelman, Engineer II, Public Services Department, Transportation
Division
Amy Folsom, El Paso County Attorney
Steven Klaffky, Assistant County Attorney

Exhibit 1
Legal Description
42330-00-008

PARCEL A:

THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO.

PARCEL B:

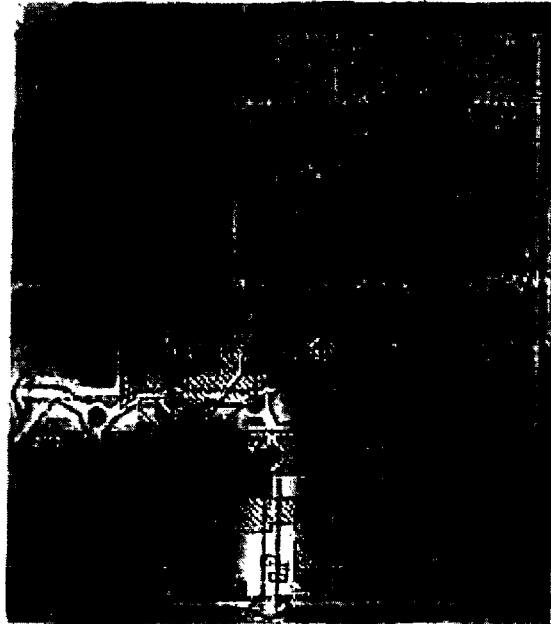
A NON-EXCLUSIVE RIGHT OF WAY FOR INGRESS AND EGRESS AND UTILITY PURPOSES AS DESCRIBED IN RIGHT OF WAY NO. 2 IN DESIGNATION OF RIGHT OF WAY RECORDED FEBRUARY 1, 1965 IN BOOK 2055 AT PAGE 502, AS AMENDED BY ENGINEER'S STATEMENT RECORDED DECEMBER 15, 1971 IN BOOK 2455 AT PAGE 448, COUNTY OF EL PASO, STATE OF COLORADO.

EXHIBIT 2

FUTURE LAND USE PLAN

4.4.7 Stapleton-Curtis Corridor

The Stapleton-Curtis corridor includes several existing and proposed road extensions that form a unified corridor through the Planning Area. Curtis Road enters the Planning Area on the southern end and extends up to Judge Orr Road. A planned extension of Curtis will bend westward, intersect with US Highway 24, and connect with Stapleton Road. The existing stretch of Stapleton Road extends west from Eastonville Road to Goodson Road, where a planned extension will eventually lead westward where it exits the Planning Area on the western edge. Stapleton is planned to eventually connect with Briargate Blvd. and eventually, Interstate 25. Generally, the corridor would include areas within 1/4 mile of the road, but could include other areas influenced by road noise, traffic impacts, or access controls.



Stapleton-Curtis Corridor

- 4.4.7.1 Allow for the Stapleton/Curtis corridor to develop as a focus for commercial and mixed use development
- 4.4.7.2 Recognize the greater Falcon Town Center as the primary commercial center in the planning area, and allow for reasonable expansion with integrated compatible mixed uses. Allow for some logical extension of this commercial area, consistent with approved plans and consistent planning.
- 4.4.7.3 Recognize the planned commercial center at the intersection of Meridian Road and Stapleton and the identified commercial center in Santa Fe Springs.

EXHIBIT 3

Subdivision

Any parcel of land in unincorporated El Paso County which is divided into 2 or more parcels, separate interests, or interests in common, including land to be used for condominium, apartments or any multiple dwelling units, unless the land when previously subdivided was accompanied by a filing which complied with the provisions of this Code with substantially the same density. The term "subdivision" shall not apply to any division of land which creates parcels of land each of which comprises 35 or more acres of land and none of which is intended for use by multiple owners, C.R.S. §30-28-1 01 (1 O)(b). Unless the method of disposition is adopted for the purpose of evading C.R.S. §§30-28-101, et. seq., the term "subdivision", as defined above, shall not apply to (1) any division of land the BoCC determines is not within the purposes of C.R.S. §§30-28-1 01, et. seq.; or (2) any division of land which (a) creates parcels of land, such that the land area of each of the parcels, when divided by the number of interests in any parcel, results in 35 or more acres per interest; (b) is created by a lien, mortgage, deed of trust or any other security instrument; (c) could be created by any court in this State pursuant to the law of eminent domain, or by operation of law, or by order of any court in this State if the BoCC is given timely notice of any such pending action by the court and given opportunity to join as a party in interest in such proceeding for the purpose of raising the issue of evasion of provisions of this Code prior to entry of the court order; and, if the Board does not file an appropriate pleading within 20 days after receipt of such notice by the court, then such action may proceed before the court; (d) is created by a security or unit of interest in any investment trust regulated under the laws of this State or any other interest in any investment entity; (e) creates cemetery lots; (f) creates an interest or interests in oil, gas, minerals, or water which are now or hereafter severed from the surface ownership of real property; (f) is created by the acquisition of an interest in land in the name of a husband and wife or other persons in joint tenancy, or as tenants in common and any such interest shall be deemed for the purposes of this Section as only one interest; (g) is created by a contract concerning the sale of land which is contingent upon the purchaser's obtaining approval to subdivide, pursuant to this Code and any applicable County regulations, the land which is to be acquired pursuant to the contract; (h) is created by the combination of contiguous parcels of land into one larger parcel. Easements and rights-of-way shall not be considered interests for purposes of this definition.

§ 1.15, Definitions, Subdivision, LDC

EXHIBIT 4

(10)(a) "Subdivision" or "subdivided land" means any parcel of land in the state which is to be used for condominiums, apartments, or any other multiple-dwelling units, unless such land when previously subdivided was accompanied by a filing which complied with the provisions of this part 1 with substantially the same density, or which is divided into two or more parcels, separate interests, or interests in common, unless exempted under paragraph (b), (c), or (d) of this subsection (10). As used in this section, "interests" includes any and all interests in the surface of land but excludes any and all subsurface interests.

(b) The terms "subdivision" and "subdivided land", as defined in paragraph (a) of this subsection (10), shall not apply to any division of land which creates parcels of land each of which comprises thirty-five or more acres of land and none of which is intended for use by multiple owners.

§ 30-28-101(10)(a) & (b), C.R.S.