

DELTA COUNTY PLANNING COMMISSION

**Delta County Administration Building
560 Dodge St, Delta, CO 81416
Wednesday, August 25, 2021 @ 5:30 p.m.**

**Tom Kay, Chair
Tate Locke, Vice-Chair
Carl Holm, Director**

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<https://www.deltacounty.com/725/Agendas-and-Minutes>

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Instructions for Public Participation via Zoom:

The public can join the meeting remotely by registering in advance of the meeting at:

<https://us02web.zoom.us/join/tZUpfuiugDgsEtDfRLf9jxoLnISzt9Y4S0lP>

After registering, you will receive a confirmation email containing information about joining the meeting.

REGULAR AGENDA

5:30 P.M. – CALL TO ORDER

ROLL CALL

DISTRICT 1

Dick Gilmore

Steve Schrock

Steve Shea

Cindy Watson, Associate

DISTRICT 2

Layne Brones

Tate Locke, Vice Chair

Hardy Hutto

Vacant, Associate

DISTRICT 3

Jacob Gray

Tom Kay, Chair

Eli Wolcott

Kate Darlington, Associate

PUBLIC COMMENTS

This is time set aside for the public to comment on matters not on the agenda. The Chair may set a time limit for speakers.

AGENDA ADDITIONS, DELETIONS, AND CORRECTIONS

The Planning Commission Secretary will announce if there are any changes to the agenda that arose after posting of the agenda.

SCHEDULED ITEMS

1. Meeting Minutes for June 9, 2021 & June 23, 2021

RECOMMENDATION: Approve the minutes.

2. MJ03-010 Smith Major Subdivision

Continued from June 23, 2021. Consider a Revised Preliminary Plat of MJ03-010 Smith Major Subdivision: reducing the number of previously approved lots from 7

CERTIFICATION OF POSTING

On 08/18/2021 at 4:45 PM, Kate Kelly did post the above AGENDA as public notice of the 08/25/2021 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.

to 5. The project is located 2 ½ miles west of Cedaredge, CO off of 2125 Rd. aka Happy Hollow Rd.

RECOMMENDATION: Staff recommends that the Planning Commission:

- a. Recommend Approval of the Revised Preliminary Plat subdividing a 41.506 acre parcel into five (5) lots (MJ03-010/Smith Major Subdivision (attached) to the Board of County Commissioners subject to seventeen (17) conditions laid out herein.

3. PLN21-002/TKO Minor Plat

Consider Director's referral of a Minor Plat to subdivide a 4-acre parcel into two lots of 3.138 acres (Lot 1) and 0.863 acres (Lot 2). The property is located at 1751 F50 Road, Delta (Parcel # 345520100010)

RECOMMENDATION: Staff recommends that the Planning Commission adopt a resolution:

- a. Finding PLN21-002 meets requirements for a Minor Plat in the UGA zoning district pursuant to the 2021 Land Use Code; and
- b. Recommending approval of PLN21-002 to the Board of County Commissioners, subject to 11 conditions found in Exhibit A of the resolution (**Attached**).

4. Consider "Innovative Affordable Housing Strategies" identified in Colorado Housing Bill 1271.

RECOMMENDATION: Provide a recommendation to the Board of County Commissioners.

COMMISSIONER COMMENTS, REQUESTS AND REFERRALS

This is time set aside for the Commission to comment, request, or refer a matter that is not on the agenda for future consideration.

DEPARTMENT REPORT

This is time set aside for the Director to report on matters affecting the Department.

ADJOURNMENT

Next Meeting: Wednesday, September 8, 2021 at 5:30 pm, Hotchkiss Town Hall, Hotchkiss, CO

CERTIFICATION OF POSTING

On 08/18/2021 at 4:45 PM, Kate Kelly did post the above AGENDA as public notice of the 08/25/2021 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.



REGULAR PLANNING COMMISSION MEETING MINUTES
DELTA COUNTY
276 WEST MAIN ST, HOTCHKISS, CO 81419
June 9, 2021

Planning Commission Members in Attendance:

Tate Locke
Layne Brones
Eli Wolcott
Steve Schrock

Tom Kay
Dick Gilmore
Hardy Hutto
Steve Shea

Members Absent:

Kate Darlington
Jacob Gray

Planning Staff in Attendance:

Delta County Community Development & Natural Resource Director, Carl Holm
Delta County Planning & Community Development Technician II, Kate Kelly

Chairman Tom Kay called the meeting to order at 5:30 p.m. in the Administration Building Commissioner's Meeting Room.

Item #1:

Meeting Minutes

- a. April 14, 2021
- b. April 28, 2021
- c. May 12, 2021

RECOMMENDATION: Approve the action minutes as presented.

Motion/Second:

Layne Brones moves to approve the minutes. Dick Gilmore seconds the motion.

Action:

Motion carried unanimously.

Item #2:

SD20-002 Weber Industries, Ltd

RECOMMENDATION: Recommend that the Board of County Commissioners approve SD20-002 Weber Industries, Ltd. with conditions.

Motion/Second:

Steve Schrock moves to approve the Specific Development SD20-002 Weber Industries with staff recommendations and the performance standards under Article 6 of the Specific Development Regulations effective date January 2012 as well as the additional recommendations: 1) approved landscape plan, 2) setback for the entry gate (if there is one), 3) hours of operation, 4) Vehicles need to be able to be moved without a tow truck. 5) primary purpose is for servicing vehicles. 6) free standing signage will need to be approved by CDOT and placed along the CDOT Right of Way, 7) Screening for safety. Tate Locke seconds the motion.

Action:

Motion carried unanimously.

Item #3:

2018 Delta County Master Plan

RECOMMENDATION: 1) Consider Housing Goals and Strategies, and 2) Receive a report on the Delta County Hazard Mitigation Plan.

Motion/Second:

Eli Wolcott moves to approve the Goals and Strategies including the written goals to establish affordable housing within Delta County and incorporating the strategy into that goal. Dick Gilmore seconds the motion.

Action:

Motion carried unanimously.



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

295 W 6th Street
Delta, Colorado 81416
planning@deltacounty.com
970.874.2110

Meeting adjourned at 7:03 p.m.

Respectfully submitted by:
Administrative Assistant, Kim Henderson

DRAFT



REGULAR PLANNING COMMISSION MEETING MINUTES
DELTA COUNTY
560 DODGE ST, DELTA, CO 81416
June 23, 2021

Planning Commission Members in Attendance:

Hardy Hutto
Cindy Watson
Jacob Gray
Kate Darlington

Tom Kay
Steve Schrock
Tate Locke
Dick Gilmore

Absent Members:

Layne Brones
Eli Wolcott
Steve Shea

Planning Staff in Attendance:

Delta County Community Development & Natural Resource Director, Carl Holm
Delta County Planning & Community Development Technician II, Kate Kelly
Delta County Planning & Community Development Administrative Assistant, Kim Henderson

Chairman Tom Kay called the meeting to order at 5:30 p.m. in the Administration Building Commissioner's Meeting Room.

Item #1:

MJ03-010 Smith Major Subdivision

Consider a Revised Sketch Plan of MJ03-010 Smith Major Subdivision: reducing the number of previously approved lots from 7 to 5. The project is located 2 ½ miles west of Cedaredge, CO off 2125 Rd. aka Happy Hollow Rd.

RECOMMENDATION: Staff recommends that the Planning Commission:

- a. Recommend Approval of the Revised Sketch Plan subdividing a 41.506 acre parcel into five (5) lots (MJ03-010/Smith Major Subdivision) to the Board of County Commissioners subject to nineteen (19) conditions.

Motion/Second:

Tate Locke moves to table MJ03-010 Smith Major Subdivision so that the Planning Commission can hear from the developers to address some of the concerns they have and conditions. Steve Schrock seconds the motion.

Action:

Motion carried unanimously.

Meeting adjourned at 7:31 p.m.

Respectfully submitted by:

Administrative Assistant, Kim Henderson



STAFF REPORT

Delta County Planning Commission

**Delta County Administration Building
560 Dodge Street, Delta, CO 81416**

Wednesday, August 25, 2021 @ 5:30 p.m.

MJ03-010/Smith Major Subdivision

Continued from June 23, 2021. Consider a Revised Preliminary Plat of MJ03-010 Smith Major Subdivision: reducing the number of previously approved lots from 7 to 5. The project is located on 2125 Road (aka Happy Hollow Road) between SW 11th Avenue and Hamilton Road, Cedaredge.

PROJECT INFORMATION:

Property Owner: Delbert & Melinda Smith

Applicant: Delbert & Melinda Smith

Representative: Kris Crawford, Wilmore and Company

Site Address: 2 ½ miles west of Cedaredge, CO off 2125 Rd. aka Happy Hollow Rd.

Location: Sections 31 & 36, Township 13S, Range 95W, 6thPM

Parcel ID/Acct: 319331200025/R021139

Parcel Size: 41.506 Acres

Zoning: A-35

RECOMMENDATION:

Staff recommends that the Planning Commission:

- a. Recommend Approval of the Revised Preliminary Plat subdividing a 41.506 acre parcel into five (5) lots (MJ03-010/Smith Major Subdivision (attached) to the Board of County Commissioners subject to seventeen (17) conditions laid out herein.



SUMMARY:

The Smith Resource Preservation Subdivision was initiated in 2003 to subdivide two parcels totaling about 60 acres into fifteen (15) lots (MS03-010): Parcel #319536100032 (18.10 acres), and parcel #319331200025 (40.41 acres). Ultimately, a Preliminary Plat to subdivide about 60 acres into seven (7) lots was approved by the Board of County Commissioners on September 16, 2020.

In February 2021, the applicant processed a Lot Line Adjustment (LLA) that enables them to remove about 18 acres fronting on Happy Hollow Road from the project (lower portion). Subsequently, the revised subdivision design consists of subdividing about 41.5 acres into five (5) lots with a shared access off of Happy Hollow Road (upper portion).

On June 23, 2021, the Planning Commission held a public hearing to consider a revised plat subdividing 41.506 acres into five (5) lots (MJ03-010/Smith Major Subdivision). Numerous neighbors attended the meeting to express concerns with water rights and the Cougar Pond System located within the Smith Major Subdivision. The Planning Commission voted to table MJ03-010/Smith Major Subdivision with direction for staff to address the water concerns. The PC also expressed a desire for the applicant to attend the hearing to answer Commissioner's questions about the project, and asked staff if the Water Commissioner could/would attend the hearing since water rights was the main issue.

Staff conveyed the PC direction to the applicant in a letter dated July 7, 2021 (Attached). On July 22, 2021, the applicant met with County staff to discuss and submit documentation intended to address the conditions laid out in said letter.

Staff re-noticed the proposed project for this hearing. The PC recommendation will be presented to the Board of County Commissioner at a noticed public hearing.

DISCUSSION:

On July 22, 2003, Melinda Smith submitted an application (Smith Resource Preservation Subdivision) to subdivide about 60 acres into fifteen (15) lots. The existing configuration consisted of: Parcel A (18.10 acres, Parcel #319536100032, Happy Hollow Rd., Delbert L. Smith Living Trust) and Parcel B (40.41 acres, Parcel #319331200025, Happy Hollow Rd., Melinda C. Smith Living Trust). There were multiple meetings, revisions and extensions granted. In July, 2020, the Board of County Commissioners (BoCC) granted a variance to increase the density from 3.75 lots to seven (7) lots, and approved a Preliminary Plat for a 7-lot subdivision (MJ03-010) on September 16, 2020. The design included two portions: 1) Upper 40+ acres divided into five (5) lots with shared



access from Happy Hollow Road and a well (water system); and 2) Lower 18+ acres divided into two (2) lots with shared access from Happy Hollow Road and a well (water system).

In February 2021, the applicant expressed a desire to sell the lower portion located along Happy Hollow Road, shown as Lots 1 & 2 on the subdivision (Parcel A). On March 22, 2021, a conference was held with the applicant, County Staff, and Kris Crawford, Wilmore & Company. This conference was to discuss the approved Preliminary Plat for MJ03-010 Smith Resource Preservation, changing the proposed subdivision design from 7-Lots to 5-Lots, separating out the lower portion (Parcel A, Lots 1 & 2). The intent was to continue processing MS03-010, but only consisting of the upper portion (Parcel B, Lots 3-7).

On April 12, 2021, a Lot Line Adjustment was submitted to the Delta County Planning Department. The purpose was to adjust the lot lines between Parcel #319536100032 (Parcel A) and Parcel #319331200025 (Parcel B) to:

- Allow selling Parcel #319536100032 (Parcel A); this parcel consisted of Lot 1 & 2 of the previously approved MJ03-010 Smith Subdivision; and
- Continue processing Lots 3-7 (Parcel B) of the previously approved Sketch Plan for MJ03-010 without encumbering Parcel A.

On May 21, 2021, this Lot Line Adjustment was approved, which resulted in a configuration consisting of: Parcel A (17.285 acres, Happy Hollow Rd.) and Parcel B (41.506 acres, Happy Hollow Rd.).

On June 23, 2021, the Planning Commission held a public hearing for MJ03-010/Smith Major Subdivision. Numerous neighbors attended the meeting as they had a concern with the water rights and the Cougar Pond System that would run down the draw of the Smith Major Subdivision. The Planning Commission voted to table MJ03-010/Smith Major Subdivision due to a number of concerns they had for the water and to have a public hearing where the applicant was present to answer questions. The Planning Commission asked that staff inform the Water Commissioner for this district of the next meeting so that they may attend to help answer any questions that neighbors or PC members might have in regards to the water.

In a letter dated 7/7/21, staff identified the following items to be addressed before returning to the PC (Letter Attached):

- 1) maintenance of irrigation water in the Smith Draw and Cougar Pond System (in such a manner that no downstream water users are deprived of the water to which she/he is entitled);
- 2) Responsibility of a Homeowners Association to correct any impediment to the delivery of the water (rights);
- 3) Access/easements to enter into the open space area along the Cougar Pond System for maintenance and/or constructing of a pipeline system in order to ensure the access of the water rights without interruption;



- 4) distribution and maintenance, and an implementation schedule, of a water company to manage the delivery of the domestic water to the lots and responsibility for any piping of water – providing records showing the water company corporation is approved by the State of Colorado, and the Water Commissioner;
- 5) easements for any and all underground piping for the water, to avoid the ponds and control evaporation absorption;
- 6) easement for the ditch that receives runoff and tail water through the culvert at the access road at Happy Hollow Road (Puma Rd), and Smith Draw;
- 7) location of wells, with information about permit numbers and adequate water quality & quantity for the lots they serve; and
- 8) The amount and distribution of any ditch/waste water allocated to each lot.

On July 22, 2021, Mel Smith met with County Administrator, Robbie LeValley, and Planning Tech, Kate Kelly, to submit documentation in response to Staff's letter. Ms. Smith stated that she obtained all the documents from Water Commissioner, James Holiman. She explained that Mr. Holiman would be willing to attend the next meeting to answer any and all questions about the water for the Smith Major Subdivision.

The applicant submitted the following documents:

- 1) response letter to staff,
- 2) Decree for Hamilton Seepage Ditch (dated 1891, Priority #26),
- 3) Concerning Water Rights, Case No. 00CW98,
- 4) Concerning Water Rights, Case No. 02CW61,
- 5) Well Permit No. 239134,
- 6) Well Permit No. 242862,
- 7) Concerning Water Rights, Case No. 05CW178,
- 8) Letter from the Division of Water Resources concerning the administration of the augmentation water for the applicants lots (Parcel #319536100032 & Parcel #319331200025),
- 9) Copy of the Police Report from the Delta County Sheriff's Office, dated May 20, 2021.

Staff has reviewed the documents submitted by the applicant and finds the submitted documents have sufficed a majority of the questions presented by the Planning Commission. Any questions still left unanswered can be addressed with the Water Commissioner at the hearing. These nine (9) documents have been attached to this staff report.

PROJECT REFERRAL (no change from June 23rd staff report):

Following completion of the Lot Line Adjustment, the applicants submitted a revised plat subdividing 41.506 acres (Parcel B) into five (5) lots.



Public Notice was sent on May 21, 2021 to Review Agencies and adjoining property owners within a ½ mile radius from Parcel #319331200025. Comments received were as follows:

DMEA: DMEA's previous comments from September 9, 2020, required that the developers submit the latest and most up to date approved preliminary plat before a DMEA System Engineer can meet to design electric service to each lot.

Comments received by DMEA (Attached) note that subdivisions with five or more lots, must be designed with an appropriate number of phase conductors to be installed within the development to enable balancing the feeder load. The primary electrical system will be designed with the ability to feed each lot with an alternate phase or feeder connection to DMEA's primary system. Exceptions to those standards will require written approval by DMEA's Engineering and Operation Managers. They have requested that the developer submit an updated plat in an AutoCAD (.dwg) format. They require all developers to submit to DMEA the latest and most updated (Approved Preliminary Plat) version before a DMEA System Designer can meet with the developer.

Staff noted that the applicants have already worked with DMEA and that power was already installed to each lot.

Due to the change in lots, DMEA will need to see an updated Approved Preliminary Plat submitted by the applicants before a DMEA System Designer can meet with their developer.

County Engineering/District #2 Road & Bridge: The Revised Sketch Plan illustrates a road (Puma Road) to be dedicated to the County and privately maintained. At one point, the design included a cul-de-sac at the upper road terminus. Current plans illustrate a road continuing to the east boundary of the property. However, Road & Bridge stated that there are no plans to extend a road east (through other properties) to Highway 65. As such, staff recommends that Puma Road be a private road, not dedicated to the County. In addition, the plat includes a pond encroaching on the road right-of-way and the 25' setback. Due to potential impact of the structural integrity of the roadway, Staff recommends the following:

- A. Realign Puma Road to avoid Cougar Pond #4 encroachment of the 25' setback and right-of-way.
 - I. Move cistern and easement with the Puma Road realignment.
 - II. Alternatively, Cougar Pond #4 can be reshaped to avoid encroachment of the 25' setback and right-of-way.
 - III. Move dry hydrant out of the 25' setback and place it in an easement.

Staff recommends that the proposed access to each lot in the subdivision be shown on the final plat, to the satisfaction of the County. The applicant will need



to provide an engineered driveway for Lot 1 to avoid a potential safety hazard for placement. An option is to adjust the lot lines to provide better access and sight distance for the lot. Another option would be to create a shared driveway for Lots 1 & 2.

Staffs further recommends replacing the hammerhead turn-a-round at the end of Puma Road with the originally designed cul-de-sac; and terminate the 60' access and utility easement at this cul-de-sac. It is suggested that the 25' utility easement north of the match line be removed from the final plat.

The final plat will also need to include all signature blocks, including the Planning Department Approval signature block, along with all plat notes – revised to reflect current standards.

All adjacent landowners and reception numbers/subdivisions will need to be shown on the final plat. (See attached plat review)

Cedaredge Fire District: Fire District #3 had no additional comments to add at this time.

Keith V Loucks (neighbor): On June 10, 2021, written comment was hand-delivered by Mr. Keith V Loucks (21777 Hamilton Rd.) (Attached) Mr. Loucks stated that he did not receive notice but all the neighbors surrounding his property did. After checking our notification system, it was determined that the address that was on file was for a PO Box for Mr. Loucks, which is where the notice was sent.

Mr. Loucks is asking that the Planning Commission table this subdivision until there is a Water Management Plan put into place; this will need to be agreed upon by all neighbors who get water delivered through the Smith property. Staff agrees that there should be a plan for the ponds, irrigation water and wells included with the covenants; however, it would not subject to agreement by the neighbors. There was some language recommended by a former County attorney to be placed on the Final Plat. If a neighbor takes issue, they can voice their concerns when the Final Plat is presented for acceptance.

PROJECT CONDITIONS:

The 2012 Sketch Plan identified several conditions of approval. These conditions were also carried forward for the September 16, 2020 BoCC approval of the 7-Lot Preliminary Plat.

Attached is a matrix summarizing the conditions as adopted and status of each condition ("Condition Transition Matrix"). In addition, staff has assessed if the conditions, as drafted, are still applicable or should be amended for this current action. A summary of the conditions is as follows:



- Subdivision Improvement Agreement
- Access permits for each new lot
- Update on the geotechnical report requirements
- Road Name application for Puma Road
- Updated Restrictive Covenants
- Easements (existing, proposed, utility, ditch, etc.)
- Water Management Plan
- Fire improvements (dry hydrant, cul-de-sac)
- Homeowners Association (Smith Draw, irrigation water)
- Water company to manage deliver of domestic water
- Review from the State Water Engineer
- Augmentation plan
- Encroachment of Cougar Pond #4
- Realignment of Puma Road
- ROW Dedication
- Floodplain Elevations
- Plat Notes

A clean list of conditions, as recommended by staff, is also attached (Recommended Conditions). This matrix and conditions are the same as what was presented at the June 23rd hearing.

OTHER AGENCIES INVOLVED:

Review agencies were sent the application for this proposed Subdivision on May 21, 2021. Comments have been received by DMEA, the Delta County Engineering Department, District #2 R&B Foreman, Dan Sickles, and Cedaredge Fire District. Our department has not received any additional feedback from any other review agencies.

On August 11, 2021, the project was re-noticed for the August 25 PC hearing date.

Prepared by: Kate Kelly, Planning & Community Development Technician II
970.874.2107
kkelly@deltacounty.com
August 18, 2021

Attachment(s): (All attachments are new documents. No previous attachments, except the Preliminary Plat, are attached to this staff report)

- Revised Subdivision Plat (2021)
- Notice of PC Action Letter (7/7/2021)
- 9 Documents submitted by Applicant (7/22/2021)
- Condition Transition Matrix



-
- Recommended Conditions (Final)

Conditions of Approval

1. Prior to accepting a Final Plat:
 - a. A Subdivision Improvement Agreement (SIA) is required to guarantee installation of in-home water treatment systems improvements (as required by County Health).
 - b. The road serving the revised lots 1-5 (Puma Road) must either be installed or included in the SIA financially guaranteeing installation prior to the sale of any lots.
 - c. Access permit(s) for each new lot must be installed and built to the Road Standards and approved by Road & Bridge.
2. Prior to accepting a Final Plat, provide a geotechnical report that addresses stability of the road base and side slopes the satisfaction of the County Engineering and Health Departments.
3. Prior to accepting a Final Plat, restrictive covenants, shall be reviewed and approved by the Planning Department. Include within the covenants:
 - a. how dogs will be handled;
 - b. a plan for ongoing maintenance of the septic systems;
 - c. shared maintenance of the shared infrastructure (e.g. private road);
 - d. The irrigation water in the Smith Draw and Cougar Pond System are under the administration of the State of Colorado, Division of Water Resources. Owners of the lots shall have the responsibility to maintain the Draw in such a manner that no downstream water users are deprived of the water to which she/he is entitled;
 - e. If any party with flow rights in the Draw discovers an impediment to the delivery of the water, the lot owners' association will correct the impediment as soon as possible under direction of the State of Colorado, division of Water Resources;
 - f. Maintenance of the Dry Hydrant;
 - g. A mosquito abatement plan;
 - h. The mineral rights have been severed from the property. The owners of the mineral rights have the right to enter and remove the minerals from the property;
 - i. Individual lot owners within a subdivision, or future owners of a parcel on which a new development has been approved in a Development Agreement are advised that an irrigation ditch owner has the right to enter the designated irrigation ditch maintenance easement, maintain the ditch, and may leave natural debris on the bank;
 - j. This site has potentially high water table, slow soil permeability and steep slopes that will limit the installation of new systems. Careful planning will be required for the installation of new systems. Systems that are designated by a registered professional engineer may be required for this subdivision;
 - k. If any party with flow rights in the Draw discovers an impediment to the delivery of the water, the lot owner's association will correct the impediment as soon as possible under the direction of the State of Colorado, Division of Water Resources; and
 - l. Potential property owners are advised that a water storage right exists for the Cougar Pond System. Senior water right owners, whose water is transported through the Cougar Pond System and the Smith Draw, have the right to enter into the open space area along the Cougar Pond System to construct and maintain a ditch and/or pipeline

system in order to ensure that the appropriate senior water rights may be accessed without interruption.

4. Prior to accepting a Final Plat, illustrate all existing and proposed easements and encumbrances, including, but not limited to (where/if applicable to the revised plat): existing and proposed utility easements, an easement for the ditch that receives runoff and tail water through the culvert at the access road at Happy Hollow Road (Puma Rd), and through Smith Draw.
5. Prior to accepting the Final Plat, submit a Water Management Plan, including but not limited to:
 - a. location of all wells, with information about permit numbers and the Lots they serve; and
 - b. Amount and distribution of any ditch/waste water allocated to each lot.
6. Prior to accepting the Final Plat, fire improvements (dry hydrant, cul-de-sac) must either be installed to the satisfaction of the Fire Department or included in the SIA financially guaranteeing installation prior to the sale of any lots.
7. Prior to accepting the Final Plat, submit a design for the irrigation water system including wastewater for the lots within the subdivision (Irrigation Plan). Establish a homeowners association to administer the irrigation water (Irrigation Plan), collection of fees and provide for maintenance of irrigation ditches and/or pipelines. The applicant shall initially manage said HOA, and transfer a share of ownership/membership when each lot is sold.
8. Provide a water distribution and maintenance plan and implementation schedule and form a water company to manage the delivery of the domestic water to the lots – providing records showing the water company corporation approved by the State of Colorado, prior to final plat approval.
9. Provide an Engineer's Water Supply Report and a completed Water Supply Information Summary that assures quantity, quality and dependability of the wells.
10. Prior to accepting the final plat, address engineering comments expressing concern for the alignment of the proposed Puma Road, including adjustment of Cougar Pond #4 so that it is not encroaching into the road easement. Adjust the cistern and/or dry hydrant as needed with any revision.
11. Provide a plan for constructing/re-constructing the interior road and turn around area to the Delta County Engineering Department for approval prior to submitting a final plat.
12. A Subdivision Improvements Agreement shall be required to financially guarantee any required improvement that is not completed prior to accepting the final plat. Once County has approved improvement plans, the applicant shall obtain a construction bid estimating the cost that needs to be guaranteed. New water test results, if required by the Health Department, will be submitted with the final plat.
13. Puma Road shall be constructed and maintained as a private road, privately maintained. Puma Road will be required to be constructed to County Road Standards. The County Engineer will need to sign off that the road meets County Standards. The applicant's Engineer will also be required to certify the road construction, per Delta County Road Standards.
14. Obtain County access permits or approved and signed access permits for the interior road and the existing accesses onto the County road as well as access for each newly proposed 5 Lots

(previously Lots 3-7). Said access requires approval by the Road & Bridge Foreman prior to accepting the final plat.

15. Include in the covenants and on the final plat that the lots may not be further subdivided and only one single-family dwelling per lot is allowed. Restriction deeds will be required with final plat submittal.
16. Augmentation plan requirements (reflecting the 5-Lot subdivision) must be fully met prior to accepting a final plat. Per the subdivision standards and Colorado State Statutes, the applicant must demonstrate a water supply that is adequate in terms of quantity, quality, and dependability.
 - a. Quantity: The applicant must show that all requirements of the water augmentation plan have been met prior to final plat approval.
 - b. Quality: The applicant must repeat water quality tests, and provide current estimates for the cost of appropriate in home water treatment systems, prior to final plat approval. The applicant must have a bond or a Letter of Credit for financial guarantee of the home treatment systems, prior to final plat approval.
 - c. Dependability: Perform pump tests demonstrating that the wells are able to provide adequate water volume to serve the proposed lots. Provide the Engineer's Water Supply Report and a completed Water Supply Information Summary that assures quantity, quality, and dependability of the well. This is required before final plat approval.
17. A maintenance agreement will be required for Puma Road to address cost sharing for the maintenance of the road between Lots 1-5, prior to final plat approval.

**MJ03-010/Smith Major Subdivision
Conditions of Approval**

	CONDITION	STATUS	STAFF COMMENT	RECOMMENDED CONDITION
1	Provide a detailed description of the general development plan and proposed financing for the development. Include with the preliminary plat a draft of any items requiring a subdivision improvement agreement, proposed method of financial assurance and submit it with the preliminary plat.	The applicant has provided sufficient detail on the development plan. - All infrastructure improvements will be self-financed. Domestic water, irrigation water, power, and fencing have already been installed to all Lots. - The project will be phased with Lot 1 & 2 as Phase 1. Lots 3-7 will be completed in Phase 2. - Access to Happy Hollow Road for Lots 1 & 2 has been installed, but requires final permit approval by Road & Bridge prior to final plat approval. - Shared access for Lot 1 & 2 will need to be installed prior to final plat approval. This access needs to include a hammerhead turnaround to accommodate	Lots 1 & 2 have been removed from this subdivision. The access for that parcel has been built. Access and Addressing will need to be done through the Planning Department to obtain an approved access permit for that parcel, separate from the subdivision. Following the prior (approved) phasing plan, Lots 1-5 (on the upper portion) would be prepared at one time, meaning there is no phasing proposed for this revised subdivision. The plat needs to be revised to include a cul-de-sac (per County standards) at the terminus of Puma Road, not to be extended beyond the subject project area and not to be dedicated to the County. Access permit(s) for each new lot must be approved by Road	Prior to accepting a Final Plat: - A Subdivision Improvement Agreement (SIA) is required to guarantee installation of in-home water treatment systems improvements (as required by County Health). - The road serving the revised lots 1-5 (Puma Road) must either be installed or included in the SIA financially guaranteeing installation prior to the sale of any lots. - Access permit(s) for each new lot must be installed and built to the Road Standards and approved by Road & Bridge.

**MJ03-010/Smith Major Subdivision
Conditions of Approval**

		emergency service vehicles. No subdivision agreement is necessary for these improvements as they will be completed prior to final plat approval. - The road serving Lots 3-7 must be installed and the final access permit signed off on by Road & Bridge prior to final plat approval. The County's Engineering Division must sign off that the roadway was built to County Standards, subject to the waivers and variances previously approved for this project (See attached letters from County Engineering). - In-home water treatment systems improvements, as required by Delta County Health, will require a subdivision improvements agreement with a financial guarantee (bond, letter of credit) in order to approve a Final	& Bridge. An Access /Address application can be found online at www.deltacounty.com or in the Planning Department. This condition is applicable to the project, so it remains in place with some modification.	
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		Plat without being installed.		
N/A	If phasing of the subdivision is anticipated, provide the proposed plan for phasing of the subdivision with preliminary plat submittal.	The applicants do anticipate phasing of the subdivision. Lots 1 & 2 will be Phase 1. Lots 3-7 will be Phase 2	Lots 1&2 of the approved Preliminary Plat are no longer part of this revised project. As such, Lots 3-7 will become Lots 1-5 in the revised subdivision. Lots 1-5 (revised project) would be prepared at one time, meaning there is no phasing proposed for this revised subdivision. As such, a condition relative to phasing is no longer applicable.	N/A
2	Provide a geotechnical report that addresses the Engineering Dept. and Health Dept. concerns/requirements including stability of the road base and side slopes.	The applicants provided an updated geotechnical report, and addressed all requirements to ensure slope stability of the proposed road to Lots 3-7. A no build zone exists for Lots 1, 2, and 7. Staff met onsite with the applicant and applicant's Engineer, and anticipates a letter prior to the Planning Commission meeting, from the Engineer, that provides an update on the applicant's implementation of requirements to satisfy the geotechnical report.	The applicant has made significant progress, with all plans and reports submitted as required. This condition is applicable to the project, so it remains in place with some modification.	Prior to accepting a Final Plat, provide a geotechnical report that addresses stability of the road base and side slopes the satisfaction of the County Engineering and Health Departments.
N/A	Apply for a road name for the interior road from the County GIS Dept. and show on the	The applicants were approved for "Romeo Road" several years ago. The County	This has been completed. GIS has confirmed that the road name meets all requirements.	Approved

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	preliminary and final plats	GIS department has requested the applicants submitted a different name to better comply with the County's newer road naming requirements. The applicants have submitted for the road to be named "Puma Road".		
3	Provide a copy of the restrictive covenants, if proposed, with preliminary plat submittal. Include within the covenants how dogs will be handled. It is recommended that the covenants include a plan for ongoing maintenance of the septic systems	The applicants have submitted a copy of the restrictive covenants (aka Covenants, conditions and restrictions or CC&Rs)	This condition is applicable to the project, so it remains in place with some modification. Staff will review the draft submitted and address any issues prior to presenting a Final Plat for acceptance.	Prior to accepting a Final Plat, restrictive covenants, shall be reviewed and approved by the Planning Department. Include within the covenants: 1) how dogs will be handled; 2) a plan for ongoing maintenance of the septic systems; 3) shared maintenance of the shared infrastructure (e.g. private road); 4) the irrigation water in the Smith Draw and Cougar Pond System are under the administration of the State of Colorado, Division of Water Resources. Owners of the lots shall have the responsibility to maintain the Draw in such a manner that no downstream water users are deprived of the water to which she/he is entitled. 5) If any party with flow rights in the Draw discovers an impediment to the delivery of the water, the lot owners' association will correct the impediment as

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				soon as possible under direction of the State of Colorado, division of Water Resources; 6) Maintenance of the Dry Hydrant; 7) a mosquito abatement plan; 8) the mineral rights have been severed from the property. The owners of the mineral rights have the right to enter and remove the minerals from the property; 9) Individual lot owners with a subdivision, or future owners of a parcel on which a new development has been approved in a Development Agreement are advised that an irrigation ditch owner has the right to enter the designated irrigation ditch maintenance easement, maintain the ditch, and may leave natural decries on the bank; 10) This site has potentially high water table, slow soil permeability and steep slopes that will limit the installation of new systems. Careful planning will be required for the installation of new systems. Systems that are designated by a registered professional engineer may be required for this subdivision; 12) If any party with the flow rights in the Draw discovers an impediment to the delivery of the
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				water, the lot owner's association will correct the impediment as soon as possible under the direction of the State of Colorado, Division of Water Resources; 13) Potential property owners are advised that a water storage right exists for the Cougar Pond System. Senior water right owners, whose water is transported through the Cougar Pond System and the Smith Draw, have the right to enter into the open space area along the Cougar Pond System to construct and maintain a ditch and/or pipeline system in order to ensure that the appropriate senior water rights may be accessed without interruption.
N/A	Provide a copy of the approved Stormwater Discharge Permit with preliminary plat submittal and as each phase is submitted	No stormwater discharge permit is required. See attached email from the Army Corps of Engineers (USACE)	Pre USACE, a condition relative to a Discharge Permit is no longer applicable.	N/A
N/A	Show all existing and proposed utility easements on the preliminary and final plats	Utility easements need to be identified on the final plat to align with the actual location of all the utilities already installed including domestic water and power	This condition is applicable to the project, so it remains in place with some modification.	Combined with the following condition
4	Provide and show the existing and proposed ditch easements on the preliminary plat. The final	The preliminary plat should be updated to identify an easement through Happy	This condition is applicable to the project, so it remains in place with some modification.	Prior to accepting a Final Plat, illustrate all existing and proposed easements and

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	plat will include the finalized easements.	Hollow Creek, an easement for the ditch that receives runoff and tail water through the culvert at the access road at Happy Hollow Road (Puma Rd), and through Smith Draw.		encumbrances, including, but not limited to (where/if applicable to the revised plat): existing and proposed utility easements, an easement for the ditch that receives runoff and tail water through the culvert at the access road at Happy Hollow Road (Puma Rd), and through Smith Draw.
5	Show the location of the wells, with permit numbers, on the preliminary and final plats	This has been completed	This has been completed. This condition is applicable to the project, so it remains in place with some modification.	Prior to accepting the Final Plat, submit a Water Management Plan, including but not limited to: 1) location of all wells, with information about permit numbers and the Lots they serve; and 2) Amount and distribution of any ditch/waste water allocated to each lot.
6	Show the location of the fire hydrant(s) or cistern(s), if proposed, with distribution lines approved by Fire District #3 on the preliminary and final plats.	There is a dry hydrant proposed for Phase 1 and Phase 2. There are no distribution lines.	This subdivision is no longer being phased. There is a dry hydrant shown on the plat for Lots 1-5 of the revised subdivision.	Prior to accepting the Final Plat, fire improvements (dry hydrant, cul-de-sac) must either be installed to the satisfaction of the Fire Department or included in the SIA financially guaranteeing installation prior to the sale of any lots.
7	Submit, with the preliminary plat, a design for the irrigation water system including wastewater for the lots within the subdivision. Create a homeowners association to administer the irrigation water,	This has been completed. See attached irrigation plan and maps.	This has not been completed. This condition is applicable to the project, so it remains in place with some modification. The homeowners association will need to be created for the	Prior to accepting the Final Plat, submit a design for the irrigation water system including wastewater for the lots within the subdivision (Irrigation Plan). Establish a homeowners association to administer the

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	collection of fees and provide for maintenance of irrigation ditches and/or pipelines and show easements on the preliminary plat. As part of the irrigation plan, the homeowners association shall be required to create a plan to maintain the Smith Draw and Happy Hollow Creek to ensure proper flow is maintained for downstream users. The Colorado State Water Commissioner shall have access to both the Smith Draw and Happy Hollow Creek to administer irrigation water and water rights.		Smith Draw ONLY; the Happy Hollow Creek is no longer part of this subdivision.	irrigation water (Irrigation Plan), collection of fees and provide for maintenance of irrigation ditches and/or pipelines. The applicant shall initially manage said HOA, and transfer a share of ownership/membership when each lot is sold.
8	Provide a water distribution and maintenance plan and implementation schedule for a water company for each well and records showing the water company corporation approved by the State of Colorado, prior to final plat approval.	Water has been installed from each well to each lot. The applicants still need to form a water company for the water to manage domestic water delivery. This remains a condition of final plat.	The water system has been installed from each well to each lot. This condition is applicable to the project, so it remains in place with some modification.	Provide a water distribution and maintenance plan and implementation schedule and form a water company to manage the delivery of the domestic water to the lots – providing records showing the water company corporation approved by the State of Colorado, prior to final plat approval.
9	Provide an Engineer's Water Supply Report and a completed Water Supply Information Summary that assures quantity, quality and dependability of the wells. See attached Form# GWS-78	The applicants have a court decree and augmentation plan for up to 15 lots. The project has been sent to the State Water Engineer for review. This will remain a condition of approval for final	The project still requires the review from the State Water Engineer. This review will need to be completed before the final plat submittal.	Provide an Engineer's Water Supply Report and a completed Water Supply Information Summary that assures quantity, quality and dependability of the wells.

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		plat.	This condition is applicable to the project, so it remains in place with some modification.	
N/A	Provide a plan for compliance with the augmentation plan decree requirements with preliminary plat submittal.	The applicant continues to work towards compliance with the augmentation plan. The applicant will be prepared to provide a complete update on the augmentation plan implementation at the meeting. The augmentation plan requirements must be fully met prior to final plat approval.	The applicant has submitted a letter from the State of Colorado Division of water resources that describes the augmentation plan on file for both properties owned by the applicant.	This condition has been met by the applicant.
10	If a storage facility is proposed for fire protection, i.e. cistern(s) show the location(s) on the preliminary and final plat.	There are no cisterns proposed specific to fire protection, however; a cistern will be installed adjacent to each domestic well to help manage water demand. These cisterns will be accessible for fire protection purposes in addition to the dry hydrants. These are identified on the preliminary plat.	There is concern for the alignment of the proposed Puma Road; comment was made that the cistern could be moved to accommodate a realignment of Puma Road, this being to address encroachment of Cougar Pond #4. If the road is realigned, the cistern will need to be moved. The dry hydrant will need to be listed in the restrictive covenants to be maintained.	Prior to accepting the final plat, address engineering comments expressing concern for the alignment of the proposed Puma Road, including adjustment of Cougar Pond #4 so that it is not encroaching into the road easement. Adjust the cistern and/or dry hydrant as needed with any revision.

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			The cistern and the dry hydrant have been identified on the preliminary plat. This condition is applicable to the project, so it remains in place with some modification. Also see Condition #4.	
N/A	A deed to Delta County will be required with the final plat for an 80' road right-of-way (40' centerline) for Happy Hollow Road. Additional right-of-way may be required based on the traffic study recommendations.	This is a final plat requirement. No additional right-of-way is required.	This condition is no longer applicable as the previous Lots 1 & 2 is no longer being proposed with this subdivision.	N/A
11	Provide a plan for constructing/re-constructing the interior road and turn around area. Include the cost estimates with preliminary plat submittal.	See attached plans.	This condition is still applicable to the project, so it remains in place.	Provide a plan for constructing/re-constructing the interior road and turn around area to the Delta County Engineering Department for approval prior to submitting a final plat.
N/A	Provide a plan/profile of the road that includes the turn-around area(s) that addresses the County Engineers concerns for slope, turning radius, etc. with preliminary plat submittal.	See attached plans.	N/A	N/A
12	A Subdivision Improvements Agreement will be required with each phase, if phasing is proposed, for water treatment systems for the well water in each home if a treatment system is required. New water	This is a final plat requirement.	This condition is still applicable to the project, so it remains in place. Condition #1 addresses water treatment systems for the well water in each home if a	A Subdivision Improvements Agreement shall be required to financially guarantee any required improvement that is not completed prior to accepting the final plat. Once County has approved improvement plans,

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	test results, if required by the Health Department, will be submitted with the final plat.		treatment system is required.	the applicant shall obtain a construction bid estimating the cost that needs to be guaranteed. New water test results, if required by the Health Department, will be submitted with the final plat.
N/A	Provide a plan and implementation schedule for fencing the outside perimeter of the property adjacent to the agricultural lands with preliminary plat submittal.	The fencing for the perimeter has already been completed.	This condition has been completed and does not require further action.	N/A
N/A	Provide a plan for public safety measures for the areas around the ponds, a mosquito abatement plan for the ponds and maintenance of the ditches and the ponds.	See attached plan for mosquito abatement. No public access will be allowed to the ponds. Each pond will be privately owned by the property owners.	A mosquito abatement plan has been completed and shall be part of the restrictive covenants. Refer to Condition #4	N/A
N/A	Provide a preliminary wildlife protection plan with the preliminary plat submittal.	See attached wildlife protection plan.	This condition has been completed.	N/A
N/A	Submit drainage and erosion reports with preliminary plat submittal.	See the letter from the applicant's engineer. The existing drainage and erosion plans, along with updated geotechnical report address all drainage and erosion concerns identified during sketch plan.	Refer to condition #2	N/A
13	The road rights-of-way on the sketch plan plat must be modified on the preliminary plat	The access road to lots 3-7 is shown as right-of-way. This road needs to be deeded to	This condition is no longer applicable to the project.	Puma Road shall be constructed and maintained as a private road, privately maintained. Puma Road

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	to exclude the road rights of way from the lots. The public dedication must be used instead of the private dedication shown on the sketch plan.	Delta County, and a plat note added that the road is publicly deeded, but privately maintained.	Engineering and R & B would like to recommend that Puma Road remain a private road, privately maintained.	will be required to be constructed to County Road Standards. The County Engineer will need to sign off that the road meets County Standards. The applicant's Engineer will also be required to certify the road construction, per Delta County Road Standards.
N/A	Provide approved floodplain permits for the well and roadway serving the western lots with preliminary plat submittal	This has been completed. See attached permits.	This condition no longer applies as the western lots (Lots 1 & 2) are no longer part of this project.	N/A
N/A	Show the 100-year floodplain elevation (base flood elevation) on the preliminary and final plats.	This has been completed.	This condition no longer applies to this project, as Lots 1 & 2 is no longer part of the subdivision proposal.	N/A
14	Obtain County access permits or approve and signed access permits for the interior road and the existing accesses onto the County road with preliminary plat submittal.	The applicant has applied for the permits and installed the access. Final approval of the permit is still needed by Road & Bridge prior to final plat approval.	This condition is still applicable to the project, so it remains in place with modifications. The applicants applied for access permits for all 7-lots through access off of Happy Hollow Rd and Puma Road on March 9, 2004. The access for the previously approved Lots 1 & 2 has been built but has not received final approval from the Road & Bridge Foreman. Previous Lots 1 & 2 is no longer part of the proposed subdivision; however, they	Obtain County access permits or approved and signed access permits for the interior road and the existing accesses onto the County road as well as access for each newly proposed 5 Lots (previously Lots 3-7). Said access requires approval by the Road & Bridge Foreman prior to accepting the final plat.

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			can still proceed with the final approval of the access. If the access is not signed off on for the previously approved Lots 1 & 2 within one year from the date of this report, the applications will expire. The applicant will need to submit a New Road Name application for Puma Road, to get final approval from the GIS Department. The access for the newly proposed 5 Lots (previously Lots 3-7) will need to be applied for and approved by the Road & Bridge Foreman before final plat approval.	
15	Include in the covenants and on the preliminary plat that the lots may not be further subdivided and only one single-family dwelling per lot is allowed. Restriction deeds will be required with final plat submittal.	This is identified in the covenants, as a plat note, and will be required on the deeds at final plat.	This condition is still applicable to the project, so it remains in place. This will need to be listed in the restrictive covenants, placed on the final plat, and listed as a restriction on the deeds before final plat approval. See Condition #4.	Include in the covenants and on the final plat that the lots may not be further subdivided and only one single-family dwelling per lot is allowed. Restriction deeds will be required with final plat submittal.
N/A	Place the following statement(s) on the preliminary and final plats.			

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	(1) The mineral rights have been severed from the property. The owners of the mineral rights have the right to enter and remove the minerals from the property. (2) Portions of Lot 1 & 2 lie within the 100 year floodplain. A floodplain permit will be required from the Delta County Health Department for any development with that designated area. (3) Portions of Lots 1 & 2 lie within the jurisdiction of the Army Corps of Engineers (ID#SPK-2011-00375). Development within that area may require permits from the Army Corps of Engineers. (4) The lots may not be further subdivided and only one single family dwelling per lot is allowed. (5) Individual lot owners within a subdivision, or future owners of a parcel on which a new development has been	(1) Completed (2) Completed (3) Completed (4) Completed (5) Outstanding. See Final Plat Conditions of Approval recommended by Staff.	(1) This will need to be listed in the restrictive covenants. See Condition #4.(2)Lots 1 & 2 are no longer part of this project, so this note is not needed. (3) This plat note is no longer applicable to the project; Lots 1 & 2 is no longer part of this project, therefore, it does not need to be placed on the final plat. (4) This plat note is still applicable to the project, and will remain as a plat note on the final plat. See Condition #17 (5) Outstanding. This plat note is not required on the final plat but rather have it as part of the restrictive covenants. See Condition #4.	The mineral rights have been severed from the property. The owners of the mineral rights have the right to enter and remove the minerals from the property. N/A N/A The lots may not be further subdivided and only one single family dwelling per lot is allowed. Individual lot owners within a subdivision, or future owners of a parcel on which a new development has been approved in a Development Agreement are
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	approved in a Development Agreement are advised that an irrigation ditch owner has the right to enter the designated irrigation ditch maintenance easement, maintain the ditch, and may leave natural debris on the bank. (6) This site has potentially high water table, slow soil permeability and steep slopes that will limit the installation of new systems. Careful planning will be required for the installation of new systems. Systems that are designated by a registered professional engineer may be required for this Subdivision.	(6) Completed	(6) This is not required as a plat note, but rather listed in the restrictive covenants. See Condition #4.	advised that an irrigation ditch owner has the right to enter the designated irrigation ditch maintenance easement, maintain the ditch, and may leave natural debris on the bank. This site has potentially high water table, slow soil permeability and steep slopes that will limit the installation of new systems. Careful planning will be required for the installation of new systems. Systems that are designated by a registered professional engineer may be required for this subdivision.
Review Comments				
N/A	Road & Bridge: Hope they have engineered an acceptable intersection on that curve that meets specs with grade.	The intersection has been engineered and approved by the Delta County Engineering. See attached letter.	A Meeting was held with Road & Bridge and the County Engineer to discuss Puma Road. There are concerns for safety and alignment, based on access points to the lot, as well as, encroachment issues.	See Staff Report

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			County Engineering is suggesting realignment be done of the proposed Puma Road.	
N/A	DMEA: DMEA requires that developers submit the latest and most up to date approved preliminary plat before a DMEA system engineer can meet to design service to each lot.	The applicants have already worked with DMEA. Power is already installed to each lot.	DMEA has reviewed the proposed 5-Lot subdivision and have stated they would like an updated approved preliminary plat before a DMEA System Designer can meet with their developer.	See Staff Report
N/A	Fire District #3: The fire district would like to see a fire plug installed at the end of the cul-de-sac at the end of the road. We would like a second installed at the intersection of Happy Hollow and Romeo (Puma) Road if the water lines allow it. A dry hydrant is ok but most of the time they silt in and don't work and can't be counted on as fire protection.	The previous fire chief signed off on the applicant's fire plan and use of dry hydrants. The applicant has been asked to meet with the fire chief to review plans. Water lines are designed to accommodate a hydrant at Happy Hollow and Rome (Puma) Road.	County Staff would like to have the dry hydrant listed in the restrictive covenants so that maintenance can be done on the hydrant. Count Staff would also like to see the fire plug installed at the end of the cul-de-sac, per the previous comments from fire.	See Staff Report
N/A	GIS: Requests a different road name be selected.	The applicants have submitted Puma Road for review and approval.	This condition is still applicable. See Condition #3.	N/A
N/A	Health: No new comments. See previous comments.	See attached comments from previous reviews. All health department comments have been addressed.	This condition has been completed.	N/A
Staff Review & Recommendations				
16	Water Supply: Per the subdivision standards and Colorado State Statues, the	Quantity: The applicants have a court decree for enough water to	Phase 1 of this project no longer exists as the previously approved Lots 1 & 2 is no	The applicant must show that all requirements of the water augmentation plan have been

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	applicant must demonstrate a water supply that is adequate in terms of quantity, quality, and dependability.	serve up to fifteen lots. This court decree includes an augmentation plan with several requirements that must be met. The applicant is actively working to implement the water augmentation plan. This plan was designed to address potential impacts to other water users in the area. Prior to final plat approval for Phase 1, the applicants must show that all requirements of the water augmentation plan have been met. Quality: The applicants completed water quality test. The Health Department has determined that in home water treatment systems will be required. Prior to final plat, the applicant will need to repeat water quality tests, and provide current estimates for the cost of appropriate in home water treatment systems. A subdivision Improvement Agreement, with the cost of the home treatment systems escrowed, will be required prior to final plat approval for	longer being proposed for this subdivision. However, the applicant will still need to meet the requirement of the augmentation plan. This condition is still applicable to the project, so it remains in place with modifications.	met prior to final plat approval. The applicant must repeat water quality tests, and provide current estimates for the cost of appropriate in home water treatment systems, prior to final plat approval. The applicant must have a bond or a Letter of Credit for financial guarantee of the home treatment systems, prior to final plat approval. Perform pump tests demonstrating that the wells are
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		each phase of development. Dependability: Prior to final plat approval, the applicant will perform pump tests demonstrating that the wells are able to provide adequate water volume to serve the proposed lot. The applicant shall provide the Engineer's Water Supply Report and a completed Water Supply Information Summary that assures quantity, quality, and dependability of the wells.	This condition is still applicable to this project, so it remains in place.	able to provide adequate water volume to serve the proposed lots. Provide the Engineer's Water Supply Report and a completed Water Supply Information Summary that assures quantity, quality, and dependability of the well. This is required before final plat approval.
	Plat Notes: The County Attorney at the time of sketch plan approval recommended specific language is put on the plat to address the complexities of the irrigation water system, and previous discussions with other water rights within the area. These plat notes are on the plat, but need to be updated to use the exact language recommended by the previous County Attorney. See attached with the recommended language.		These plat notes are not on the final plat. They are still applicable to the project, so they will remain in place with modification.	See Below
N/A	Puma Road Construction: Prior to final plat for the phase that includes Lots 3-7, Puma Road will need to be		Puma Road will still be required to be constructed to County Road Standards. The County Engineer will need to	N/A

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	constructed to County Road standards, with the variances and waivers previously granted by the County. The County Engineer will need to sign off that the road meets County Standards. The applicant's Engineer will also need to certify that the road was constructed in compliance with County road standards and all engineering plans and design.		sign off that the road meets County standards. The applicant's Engineer will also need to certify the road was constructed per Delta County Road Standards. See Condition #15.	
N/A	Subdivision Improvements Agreement: A subdivision Improvement Agreement, with the cost of the home treatment systems escrowed, will be required prior to final plat approval for each phase of development.		This condition is still applicable to the project, and will remain in place with modification. See Condition #18	N/A
17	Deeds for Puma Road and Happy Hollow right-of-way: Puma Road will be required to be publicly dedicated, privately maintained road. The applicant needs to provide a deed dedicating the right-of-way to Delta County for both Puma Road, and for the required right-of-way prior to final plat recordation. A road maintenance agreement will also be required for Puma Road that addresses cost sharing for		Happy Hollow Road is no longer being considered as part of this subdivision proposal. Therefore, no right-of-way will be required for dedication to the County. Puma Road will need to have a maintenance agreement that addresses cost sharing for the road maintenance between Lots 1-5, prior to final plat approval. The County is recommending Puma Road	A maintenance agreement will be required for Puma Road to address cost sharing for the maintenance of the road between Lots 1-5, prior to final plat approval.

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	road maintenance between Lots 3-7 prior to final plat approval. Alternatively, the covenants can be updated to address road maintenance.		remain private road, privately maintained.	
Staff recommends approval with the following conditions and requirements on the final plat checklist:				
N/A	N/A	The access to Happy Hollow Road for Lots 1 & 2 has been installed, but requires final permit approval by Road & Bridge prior to final plat approval. The shared access for Lot 1 & 2 will need to be installed prior to final plat approval. The access needs to include a hammerhead turnaround to accommodate emergency service vehicles. No subdivision agreement is necessary for these improvements as they will be completed prior to final plat approval. In the event they are not completed prior to final plat, a subdivision improvements agreement shall be required.	This is no longer applicable to the project as Lots 1 & 2 is no longer part of this subdivision proposal.	N/A
N/A	N/A	The road serving Lots 3-7 will need to be installed and the final access permit signed off on by Road & Bridge prior to final plat approval. The County's Engineering Division must sign off that the	See Condition #15	N/A

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		roadway was built to County standards, subject to the waivers and variances previously approved for this project.		
N/A	N/A	Provide updated restrictive covenants for final review. The covenants should address management of domestic dogs, maintenance recommendations for individual sewage disposal systems, and shared road maintenance responsibilities and costs unless a separate road maintenance agreement is included.	The applicant has not provided these documents yet to the Planning Department since Sketch Plan approval in September of 2020. This is still applicable to the project, and remains in place and a condition of approval. See Condition #4.	N/A
N/A	N/A	Update all easements on the plat including easement for all power lines, domestic water, and for irrigation along Smith Draw and Happy Hollow.	This is still applicable to the project and will remain in place. See Condition #5.	N/A
N/A	N/A	Demonstrate a water supply that is sufficient in terms of quantity, quality, and dependability by submitting an Engineer's Water Supply Report and a completed Water Supply Information Summary that assures quantity, quality, and dependability of the wells, well pump test, and updated	This is still applicable to the project and remains in place. See Condition #10.	N/A

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		water quality testing if required by Delta County Health.		
N/A	N/A	Demonstration of a water supply that is sufficient in terms of quantity, quality, and dependability includes demonstrating compliance with implementation of the augmentation plan, and development of a subdivision improvement agreement with escrow for in home water quality treatment systems.	See previous conditions.	N/A
N/A	N/A	Right-of-way for Happy Hollow row shall be deeded to Delta County prior to final plat recordation.	The right-of-way for Happy Hollow road is no longer part of this subdivision.	N/A
N/A	N/A	Puma Road shall be deeded to Delta County prior to final plat recordation. A plat note indicating that Puma Road is publicly deeded, privately maintained shall be added to the final plat.	This is no longer applicable to the project.	N/A
N/A	N/A	The access permit for Lot 1 & 2 shall be finalized and approved by Road & Bridge prior to final plat recordation. The access permit for Puma Road shall be finalized and approved by Road & Bridge prior to final plat recordation.	See Condition #1	N/A

**MJ03-010/Smith Major Subdivision
Conditions of Approval**

N/A	Plat notes regarding irrigation shall be updated and use the exact language recommended by the previous County Attorney:	The irrigation water in the Smith Draw and Cougar Pond System is under the administration of the State of Colorado, Division of Water Resources. Owners of the lots shall have the responsibility to maintain the Draw in such a manner that no downstream water user is deprived of the water to which she/he is entitled. If any party with flow rights in the Draw discovers an impediment to the delivery of the water, the lot owner's association will correct the impediment as soon as possible under the direction of the State of Colorado, Division of Water Resources. Potential property owners are advised that a water storage right exists for the Cougar Pond System, but that a dispute presently exists with a senior water right owner, whose water is transported through the Cougar Pond System and the Smith Draw, as shown on the	This condition is still applicable to the project, and remains in place. This plat note should not be included as a plat note, but rather be added to the restrictive covenants. See Condition #4. This is still applicable to the project; however, this too should be listed in the restrictive covenants and not as a plat note on the final plat. See Condition #4. County Staff stated that language should be adjusted because there is not an actual dispute but there is a plat note that is intended to put the future property owners on notice that because water rights run through the ponds those water right owners have the right to come in and make changes especially if the courts ever dictate they are allowed to do so. This was intended to be a future property owner notice note	N/A
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**MJ03-010/Smith Major Subdivision
Conditions of Approval**

		plat. This dispute involves claims by the senior water rights owner for the right to enter into the open space area along the Cougar Pond System to construct and maintain a ditch and/or pipeline system in order to ensure that the appropriate senior water right may be accessed without interruption. The current owner of the subject property believes that those claims are without merit. Such activities, however, may ultimately interfere with the use and enjoyment of the open space set aside within this subdivision.	and there is no dispute which came out at the Planning Commission Meeting on September 9, 2020. There is no longer concern for a dispute. The covenants will need to reflect that there are water rights that run through the ponds and that those water right owners will have the right to come in and make changes. See Condition #4.	
--	--	--	--	--

WITHIN THE SE1/4 NE1/4 OF SEC. 36, T.13S., R.95W., 6TH P.M.
AND WITHIN LOT 2 (SW1/4 NW1/4) OF SEC. 31, T.13S., R.94W., 6TH P.M.
DELTA COUNTY, COLORADO

C19	40.00'	34.30'	33.26'	N 24°03'00" W
C20	40.00'	115.58'	79.36'	S 79°26'53" E
C21	100.00'	102.97'	98.48'	S 60°23'36" W
C22	100.00'	113.78'	107.74'	N 57°30'46" W

TOTAL ACREAGE
1808014.5 Sq. Fe
41.506 Acres

L39	S 88°07'20" E	136.20'
L40	N 88°47'50" E	204.60'
L41	N 88°49'31" E	238.60'
L49	S 68°31'30" E	42.14'

Point	Latitude	Longitude
C14	70.00°	68.94° W
C15	65.00°	128.78° E
C16	100.00°	5 39 13.38° E

L14	S 24°30'07" E	27.36
L15	N 84°54'08" E	152.45
L16	S 00°12'07" W	12.97
L17	S 89°30'26" W	33.97

A map of the area around Cedar Ridge. The map shows several roads: Bull Mesa Rd at the top, Happy Hollow Rd running diagonally, and Cedar Ridge running vertically. Other roads include Hamilton Rd, R Rd, South Ave, and Elm Rd. A large circular area is labeled 'CEDAR RIDGE' and 'SITE 9'. A building is shown near the intersection of Cedar Ridge and Elm Rd. The map is oriented with North at the top.

- Set Mag Hall in Asphalt
- Set 5/6" "base 30" long with 2" aluminum cap PL359255
- Set 5/6" "base with 2" aluminum cap as Witness corner or in temp PL359255
- Set 3/4" "base 30" long with 3-1/4" aluminum cap PL359256
- Found 2" aluminum cap PL312766 or as noted
- Found 5/6" "base with 1-1/2" aluminum cap PL359465 or as noted
- Found 2-1/2" USGO Brass cap
- Ditch/Draw/Creek
- 100 Year Flood Boundary

S. 89° 56' 16" W. FROM THE CW1/16
COR. OF SEC. 31 TO THE 1/4
COR. COMMON TO SECTIONS
31 AND 36
DELTA COUNTY LOCAL
ACQUADRE VEST

SCALE 1"=100 U.S. SURVEY FEET

County Surveyor

Date _____

COLORADO PROFESSIONAL LAND SURVEYOR #38255

SURVEYORS CERTIFICATION
I, Kris Crawford, do hereby certify that the above described parcel has been surveyed by me and under my direct supervision and that such survey is accurately represented hereon, and is based upon my knowledge, information and belief, and is in accordance with applicable standards of practice and is not a warranty or warranty, either expressed or implied.

NOTE: According to Colorado law any legal action based upon a defect in survey must be commenced within three years after such defect is discovered. In no event may any action based upon any defect in this survey be commenced more than ten years from the date shown on the certification hereon.

WILMORE & COMPANY
PROFESSIONAL LAND SURETYING, INC.



406 Grand Avenue
P.O. Box 1652
Paoma, Colorado 81428

970.527-4200 PHONE
970.527-4202 FAX
www.wilmorelandsurveying.com

EMAIL: kris@wilmorelandsurveying.com

Defining Boundaries

KC
DRAFTER:
KC
CHECKED BY:
RAW

SMITH MAJOR SUBDIVISION
 WITHIN THE SE1/4 NE1/4 OF SEC. 36, T.13S, R.95W, 6TH P.M.
 AND WITHIN LOT 2, SW1/4 NW1/4 OF SEC. 31, T.13S, R.94W, 6TH P.M.
 DELTA COUNTY, COLORADO

J18097 SHEET 1 OF 2

6 MAY 2021



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

Kate Kelly
Planning & Economic Development
Technician II

July 7, 2021

Melinda and Delbert Smith
1498 SW Melinda Rd.
Cedaredge, CO 81413

SUBJECT: MJ03-010/Smith Major Subdivision
Proposal of a 5-Lot Subdivision located on the east side of Happy Hollow Rd.,
Cedaredge, CO.

Mrs. Smith:

On June 23, 2021 the Delta County Planning Commission held a public hearing to discuss MJ03-010/Smith Major Subdivision. Notice for this public hearing was sent on May 21, 2021 to all adjoining property owners within a half mile radius from the location of the proposed subdivision. Notice was also sent to you, the applicant. Staff made numerous attempts to contact you prior to this public hearing, but was unsuccessful.

The Planning Commission made a motion to table MJ03-010 Smith Major Subdivision in order to have the applicant/developer present to address concerns that the commission has and to discuss the conditions required for the subdivision, including access, water and agricultural use. The Commission noted questions/concerns relative to where Puma Road intersects with Pond #4 (hydrant, cistern, etc.) and access to what is now Lot 1.

There was neighbor concern for the Trickle Ditch (historic) and what has been constructed in regards to the ditch and the ponds. The Trickle Ditch runs through the Cougar Pond system. Adjoining property owners that were present at the meeting had concern for the road and how it might affect the water coming through that area as there are water rights there for neighbors. There was also concern that no Water Plan had been presented to the County for the subdivision since its 2020 Sketch Plan Approval. Neighbors stated that they have been in contact with the Division of Water Resources because of the constant conflict that has occurred with the disbursement of their water. The Planning Commission asked about a point of diversion for the neighbor's water. It was explained that there is a diversion pipe at the end of Cougar Pond #4, but the valve was buried by you.

It was explained that the Water Commissioner stated that they have the right to pipe their water as their right exists at the bottom of the draw; the draw goes through the center of the Cougar Pond System.

As a result, the Planning Commission has asked that an irrigation/water management plan be submitted **before** presenting this application back to the Planning Commission for consideration. The Water Plan needs to address the following: 1) maintenance of irrigation water in the Smith Draw and Cougar Pond System (in such a manner that no downstream water users are deprived

of the water to which she/he is entitled); 2) Responsibility of a Homeowners Association to correct any impediment to the delivery of the water (rights); 3) Access/easements to enter into the open space area along the Cougar Pond System for maintenance and/or constructing of a pipeline system in order to ensure the access of the water rights without interruption; 4) distribution and maintenance, and an implementation schedule, of a water company to manage the delivery of the domestic water to the lots and responsibility for any piping of water – providing records showing the water company corporation is approved by the State of Colorado, and the Water Commissioner; 5) easements for any and all underground piping for the water, to avoid the ponds and control evaporation absorption; 6) easement for the ditch that receives runoff and tail water through the culvert at the access road at Happy Hollow Road (Puma Rd), and Smith Draw; 7) location of wells, with information about permit numbers and adequate water quality & quantity for the lots they serve; and 8) the amount and distribution of any ditch/waste water allocated to each lot.

Staff will schedule your application to appear for another Public Hearing with the Planning Commission once we receive a completed Water Management Plan. Once you are placed on the schedule, staff will re-notice the subdivision.

As a reminder, the Board of County Commissioners adopted the 2021 Land Use Code January 5, 2021. The resolution that was adopted identified that projects that were approved under the previous regulation, or that had applied under the previous regulations, have to be completed within 12 months of the adoption. The Final Plat will need to be completed by January 5, 2022, unless the Board of County Commissioners approves an extension of timeline.

If you have any questions or concerns, please feel free to contact me directly.

Sincerely,

Kate Kelly
Planning & Community Development Technician II
kkelly@deltacounty.com
970-874-2107

To Whom this may Concern,

07/22/2021

The Delta County planning Commission has requested 8 points to be confirmed. The following written explanation and documentation will answer the bullet points requested.

- - #1 – CW 98 – Referring to Court Case

The maintenance of irrigation water in the Smith Draw and Cougar Pond system is the responsibility of the State of Colorado Water Commission. Case # CW 98 – (Please find the supporting documents that have been included.) State to moderate and resolve issues.

- -#2 – The individual land owners and the down stream water users are responsible for correcting any impediments. The State is responsible for assuring delivery. Verified in recent meeting that there has been 8 visits by water office in 2021.
- -#3 – Any and all down stream water users have a prescriptive right to walk within prescribed reasonable distances. There are no open spaces through out the Draw. All will be private land owners.
- -#4 – There is no water company. (Refer to planning record) They have been reviewed and approved by State Commissioners. There are no plans or considerations for additional piping in the Draw. The State is responsible for delivery.
- -#5 – There is only one overflow pipe in the Draw at Cougar #4. The overflow when utilized is lower than the pond. When flowing water the user can open up the pipe. They are not utilizing to insure delivery, only speed of flow. They are removing approximately 2 foot on the water in #4. If at the completion of their water flow, they have refused to close the pipe and replace the water to the pond owners. Four times in 2021. At the time of the dispute the officers and State Commissioners both reported no loss of delivery.
- -#6 -There are no separate easements. The Draw is fully designated by – (CW 98 Court Case) – As each lot is a separate private property we assume there will be no waste water. If there is waste water only after it is fully utilized by land owners it's filled on. Case 02 CW 61 Filed on November 14th 2002.
- - #7 – All pertinent information on water wells is part of our filings with Delta County Planning Commission!
- - #8 – None until it leaves Smith Draw. No waste water assigned to each lot. But there is no water until it leaves the Smith Draw.
- DOCUMENTATION as follows:

- Decree for Hamilton Seepage Ditch – Dated 1891 priority # 29
- *CW 98 / May 2001
- *CW 98 / Date of Appropriation – June 1st 1992
- Court Case 02CW61 – Filing on the Melba Jones application for waste water leaving the Smith Draw.
- Well Permits
- # 239134
- # 242862

The approved usages of well water and well testing Approved by State on April 18th 2002 & September 3rd 2002.

- Smith Wells are ground water. Tributary to Happy Hollow Creek – Tributary to Tongue Creek to the Gunnison River
- Also included is the police report on 03/20/2021

James Holiman - 970-856-3527 will talk to anyone on the planning commission or the planner.

Kind Regards,

NUMBER TWENTY-SIX.

✓ THE HAMILTON SEEPAGE DITCH.

This ditch is claimed by George W. Gipe, whose P.O. address is Cedaredge, Delta County, Colorado.

Work was commenced on said ditch on the 1st day of March, A.D., 1891 and due diligence used in its construction, and it has a carrying capacity of 2 cubic feet of water per second of time.

This ditch is used in the irrigation of the lands of the claimant, 15 acres of which have been with due diligence cultivated and irrigated by means of water from this ditch.

It derives and diverts its supply of water from Pickett Gulch, a tributary to Happy Hollow which in turn is tributary to Forked Tongue Creek, and the said ditch extends in a general southerly direction from the headgate.

By reason of appropriation by original construction this ditch is entitled to priority number twenty-nine in the Forked Tongue Creek System of Decrees.

It is therefore ORDERED, ADJUDGED and DECREED that there be allowed and permitted to flow into said ditch from the said Pickett Gulch, for the use and benefit of the parties lawfully entitled thereto, under and by virtue of appropriation, by original construction, (.37) thirty-seven-hundredths of one cubic foot of water per second of time, designated as priority NUMBER TWENTY-NINE, and dating from the 1st day of March, A.D., 1891.

#1

:00

District Court Water Division No. 4 1200 No. Grand Avenue, Bin A Montrose, CO 81401 Telephone: (970) 252-4335	40 A COURT USE ONLY A
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: MELINDA PROVO SMITH, In Delta County:	Case No.: 00CW98 Div.: 2
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

This matter came before the Water Court in and for Water Division No. 4 for trial on January 27, upon the Application for Water Rights filed by Melinda Provo Smith (the "Applicant"). Applicant appeared at trial in person and through her attorney, Mark A. Hermundstad of the law firm of Williams, Turner & Holmes, P.C. Objectors Bruce E. Carlson and Joseph E. Carlson appeared at trial *pro se*. The Court, having considered the testimony and evidence presented at trial, the pleadings, and the Court file, and being fully advised in the premises, enters the following Findings of Fact, Conclusions of Law, Judgment and Decree:

FINDINGS OF FACT

1. An Application for Water Rights was filed herein on July 26, 2000 by Applicant, and was referred to the Water Referee for Water Division No. 4, State of Colorado, by the Water Judge of said Court in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969. This matter was subsequently re-referred to the Water Judge by Order of the Referee dated May 2, 2001. The Application was thereafter amended by Order dated December 27, 2001. The Application for Water Rights, as amended, shall be referred to herein as the "Application".

2. The name and address of the Applicant is:

Melinda Provo Smith
 1599 2250 Lane
 Cedaredge, CO 81413

3. Timely and proper notice of the Application was given in the manner required by law. The time for filing statements of opposition has expired.

16/bs

4. Timely statements of opposition were filed by:

- A. Dr. Bruce E. Carlson and Joseph E. Carlson ("Carlsons").
- B. Melva Jones, 2171 P. Road, Eckert, CO 81418 ("Jones").

5. The Statement of Opposition filed by Melva Jones was subsequently withdrawn. Accordingly, the only objectors remaining in this case are the Carlsons.

6. The name of the structures involved in the Application is the Cougar Pond System, consisting of Cougar Ponds Nos. 1, 2, 3, 4, 5, and 6. The ponds in the Cougar Pond System are filled, in part, through a structure known as the Hamilton Seepage Ditch.

7. The ponds in the Cougar Pond System are located in Sections 30 and 31, T. 13 S., R. 94 W., 6th P.M., at the following locations:

Cougar Pond #1: Approximately 53 feet north of the south line and 1,109 feet east of the west line of Section 30, T. 13 S., R. 94 W., 6th P.M. UTM Coordinates: 244284mE, 4308282mN.

Cougar Pond #2: Approximately 1,267 feet south of the north line and 1,320 feet east of the west line of Section 31, T. 13 S., R. 94 W., 6th P.M. UTM Coordinates: 244324mE, 4307872mN.

Cougar Pond #3: Approximately 1,531 feet south of the north line and 1,162 feet east of the west line of Section 31, T. 13 S., R. 94 W., 6th P.M. UTM Coordinates: 244272mE, 4307785mN.

Cougar Pond #4: Approximately 2,006 feet south of the north line and 792 feet east of the west line of Section 31, T. 13 S., R. 94 W., 6th P.M. UTM Coordinates: 244156mE, 4307653mN.

Cougar Pond #5: Approximately 2,323 feet south of the north line and 528 feet east of the west line of Section 31, T. 13 S., R. 94 W., 6th P.M. UTM Coordinates: 244074mE, 4307560mN.

#2

Cougar Pond #6: Approximately 2,482 feet south of the north line and 422 feet east of the west line of Section 31, T. 13 S., R. 94 W., 6th P.M. UTM Coordinates: 244035mE, 4307504mN.

8. The sources of the Cougar Pond System are the following:

A. The Cougar Pond System derives a portion of its supply from Hamilton Seep, also known as Pickett Gulch, tributary to Happy Hollow, tributary to Forked Tongue Creek, tributary to the Gunnison River. Water is diverted from Hamilton Seep at the headgate of the Hamilton Seepage Ditch, the decreed location for which is in the SE1/4 NE1/4 SW1/4 of Section 30, T. 13 S., R. 94 W., 6th P.M., approximately 1350 feet north of the south line and 2350 feet east of the west line of said Section 30. The maximum diversion rate through the Hamilton Seepage Ditch for filling the ponds in the Cougar Pond System is 1.0 c.f.s.

B. In addition, waste water, seep water, and/or return flow water from lands above and adjacent to the ponds flow into and are sources for each of the ponds. Furthermore, overflow from upper ponds on Applicant's Property flows into and through and is a source for Cougar Ponds Nos. 2 through 6. Such waste, seep, return flow and overflow water is tributary to Happy Hollow, tributary to Forked Tongue Creek, tributary to the Gunnison River.

9. The date of initiation of appropriation is June 1, 1992.

10. The total amount of water claimed for the Cougar Pond System is 9.92 acre feet, absolute, including the right to fill and refill the ponds when water is available in priority, in order to keep the ponds full, with the following amounts claimed for each component:

Cougar Pond No. 1: 8.0 acre feet

Cougar Pond No. 2: 0.75 acre feet

Cougar Pond No. 3: 0.06 acre feet

Cougar Pond No. 4: 0.19 acre feet

Cougar Pond No. 5: 0.12 acre feet

Cougar Pond No. 6: 0.80 acre feet

11. The water stored in each of the ponds of the Cougar Pond System is used for irrigation, wildlife, stockwatering, and piscatorial purposes. With respect to the irrigation use, the water stored in the Cougar Pond System is used for irrigation of up to 75 acres of land owned by Applicant and located in the NW1/4 of Section 31, T. 13 S., R. 94 W., 6th P.M. Such land shall be referred to herein as "Applicant's Property".

12. Cougar Ponds Nos. 2 through 6 are located on a natural draw that runs through Applicant's Property. Water diverted under water rights owned by third parties, including but not limited to the Carlsons, is transported through this natural draw from time to time. Applicant has installed two Parshall measuring flumes in the draw, one above Cougar Pond No. 2 and one below Cougar Pond No. 6 (the "Measuring Flumes"). The Measuring Flumes are in locations approved by the Division Engineer for Water Division 4 and have been leveled and set to the satisfaction of the Division Engineer. Applicant shall maintain the Measuring Flumes in their current locations (unless hereafter ordered to be moved by the Division Engineer) and in good, working condition, at Applicant's expense. The Division Engineer shall use the Measuring Flumes to administer the draw and the water stored in and running through the draw, including water stored in Cougar Ponds Nos. 2 through 6 and water lawfully transported through the draw by third parties. Nothing herein shall be construed to prevent the Division Engineer from requiring additional measuring or other devices to aid in the proper administration of the water stored in and running through the draw or any other measures reasonably necessary in the discretion of the Division Engineer to protect the interests of senior water rights.

13. Water is available for appropriation under the priorities claimed for the Cougar Pond System. Applicant has established that the waters for the Cougar Pond System have been diverted, stored, and/or otherwise captured, possessed, and controlled and have been applied to beneficial use for the purposes claimed, and that the water rights claimed in the Application can be properly administered. The terms and conditions set forth in Paragraph 12, above, adequately protect the Carlsons' water rights and other interests.

CONCLUSIONS OF LAW

14. The Application herein is one contemplated by law, and this Court has jurisdiction over the subject matter of this proceeding.

15. Timely and adequate notice of the filing and of the contents of this Application was given as required by law, and this Court has jurisdiction over all persons or entities affected hereby, whether they have appeared or not.

16. The Applicant has initiated a valid appropriation of the water rights for which application has been made herein, as of the date set forth in the Findings of Fact, above.

JUDGMENT AND DECREE

17. The Findings of Fact and Conclusions of Law set forth above are hereby approved and confirmed, and are incorporated into this Ruling by reference.

18. The Application filed herein is hereby approved. Absolute water rights are hereby awarded to the ponds in the Cougar Pond System in the amounts set forth in Paragraph 10, above (including the right to fill and refill the ponds when water is available in priority, in order to keep the ponds full), for the uses specified in Paragraph 11, above. The sources for the Cougar Pond System are those set forth in Paragraph 8, above, and Applicant is awarded an absolute water right to divert up to 1.0 c.f.s. from Hamilton Seep, at the headgate of the Hamilton Seepage Ditch, to fill the ponds in the Cougar Pond System. The terms and conditions set forth in Paragraph 12, above, shall apply to the exercise and use of the water rights for Cougar Ponds Nos. 2 through 6. The Cougar Pond System water rights are subject to all earlier priority rights of others.

19. The priority date awarded herein to the ponds in the Cougar Pond System and to the right to divert 1.0 c.f.s. from Hamilton Seep to fill the ponds in the Cougar Pond System is June 1, 1992. The Application was filed herein in the year 2000, and the water rights awarded herein shall be administered as having been awarded on an application filed in such year.

20. The Statement of Opposition of the Carlsons is hereby dismissed.

Dated: Feb 5, 2003.

BY THE COURT



Water Judge

DISTRICT COURT, WATER DIVISION 4, COLORADO		40
Court Address: 1200 N. Grand Ave., Bin A Montrose, CO 81401-3146		Filed in the District Court Water Division 4 NOV 14 2002
IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF		
ROBERT L. ADAMS, WILLIAM D. COPPERS, THE ESTATE OF MELVA JONES, and JOSEPH E. CARLSON		Case Number: 02CW61
IN THE GUNNISON RIVER, DELTA COUNTY		
RULING OF REFEREE AND DECREE		

Applicants, Robert L. Adams, William D. Coppers, The Estate of Melva Jones by Personal Representatives Della F. Womack and Joyce L. Reed, and Joseph E. Carlson, all c/o Robert L. Adams, 2187 P. Road, Eckert CO 81418, request a Surface Water Right by Application filed May 2, 2002.

FINDINGS OF FACT

1. All notices required by law of the filing of this Application have been given. The Referee has jurisdiction of this case. The time for filing of statements of opposition has expired and no such statements have been filed.

2. Applicants request an absolute water right for the MELVA JONES DITCH, which is located 250 feet east of the west section line and 2650 feet north of the south section line, SW1/4SW1/4NW1/4, Section 31, Township 13 South, Range 94 West, 6th P.M. This diversion collects seeps and springs tributary to Happy Hollow Creek and the Gunnison River. Applicants desire to have absolute flow rights for 1.0 c.f.s. for stockwater and supplemental irrigation. The Court finds that the MELVA JONES DITCH will produce 1.0 c.f.s., and that Applicants have placed this water to the beneficial uses requested.

RULING

Applicants are hereby GRANTED an absolute water right for 1.0 c.f.s. of water for stockwater and supplemental irrigation, from the MELVA JONES DITCH, located as above-described, with an appropriation date of March 1, 1887, adjudication date of 2002.

Dated this 14th day of Nov., 2002.
The foregoing ruling is confirmed and approved, and is made the judgment and decree of this court.

Attest:

12/7/02

[Signature]
Water Referee

[Signature]
Aaron R. Clay
Water Referee, Division 4

Mailed-A Copy of this Document
all parties in this case.

Dated

12-10-02

[Signature]
Water Clerk

jb/bas

Form No.
GWS-25

**OFFICE OF THE STATE ENGINEER
COLORADO DIVISION OF WATER RESOURCES**

818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581

LIC

WELL PERMIT NUMBER 239134
DIV. 4 WD 40 DES. BASIN MD

APPLICANT

JUDITH A JONES
8555 FAIRMOUNT DR UNIT 204 D
DENVER, CO 80231-

(303) 394-2971

APPROVED WELL LOCATION

DELTA COUNTY
SE 1/4 NE 1/4 Section 36
Township 13 S Range 95 W Sixth P.M.

DISTANCES FROM SECTION LINES

2700 Ft. from North Section Line
60 Ft. from East Section Line

UTM COORDINATES

Northing: Easting:

PERMIT TO CONSTRUCT A WELL

ISSUANCE OF THIS PERMIT DOES NOT CONFER A WATER RIGHT

CONDITIONS OF APPROVAL

- 1) This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of this permit does not assure the applicant that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.
- 2) The construction of this well shall be in compliance with the Water Well Construction Rules 2 CCR 402-2, unless approval of a variance has been granted by the State Board of Examiners of Water Well Construction and Pump Installation Contractors in accordance with Rule 18.
- 3) Approved pursuant to CRS 37-92-602(3)(b)(II)(A) as the only well on a residential site of 19.89 acre(s) described as that portion of the SE 1/4 of the NE 1/4, Sec. 36, Twp. 13 S, Rng. 95 W, Sixth P.M., Delta County, more particularly described on the attached exhibit A.
- 4) The use of ground water from this well is limited to ordinary household purposes inside one single family dwelling. The ground water shall not be used for irrigation or other purposes.
- 5) The maximum pumping rate of this well shall not exceed 15 GPM.
- 6) The return flow from the use of this well must be through an individual waste water disposal system of the non-evaporative type where the water is returned to the same stream system in which the well is located.
- 7) This well shall be constructed not more than 200 feet from the location specified on this permit.

NOTE: Expired permit no. 194710, was previously issued for this lot.

[Handwritten signature]
4/18/02

APPROVED
LMB

State Engineer

Receipt No. 9400854

DATE ISSUED **APR 18 2002**

By *[Signature]*
EXPIRATION DATE **APR 18 2004**

Form No.
GWS-25

OFFICE OF THE STATE ENGINEER
COLORADO DIVISION OF WATER RESOURCES
818 Centennial Bldg., 1313 Sherman St., Denver, Colorado 80203
(303) 866-3581

LIC

WELL PERMIT NUMBER 242862
DIV. 4 WD 40 DES. BASIN MD

APPLICANT

DELBERT OR MELINDA SMITH
1599 2250 LANE
CEDAREDGE, CO 81413-

(970) 856-7109

APPROVED WELL LOCATION

DELTA COUNTY
SW 1/4 NW 1/4 Section 31
Township 13 S Range 94 W Sixth P.M.

DISTANCES FROM SECTION LINES

2100 Ft. from North Section Line
750 Ft. from West Section Line

UTM COORDINATES

Northing: Easting:

PERMIT TO CONSTRUCT A WELL

ISSUANCE OF THIS PERMIT DOES NOT CONFER A WATER RIGHT

CONDITIONS OF APPROVAL

- 1) This well shall be used in such a way as to cause no material injury to existing water rights. The issuance of this permit does not assure the applicant that no injury will occur to another vested water right or preclude another owner of a vested water right from seeking relief in a civil court action.
- 2) The construction of this well shall be in compliance with the Water Well Construction Rules 2 CCR 402-2, unless approval of a variance has been granted by the State Board of Examiners of Water Well Construction and Pump Installation Contractors in accordance with Rule 18.
- 3) Approved pursuant to CRS 37-92-602(3)(b)(II)(A) as the only well on a tract of land of 41.46 acres described as that portion of the SW 1/4 of the NW 1/4, Sec. 31, Twp. 13 S, Rng. 94 W, Sixth P.M., Delta County, more particularly described on the attached exhibit A.
- 4) 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 irrigation of not more than one (1) acre of home gardens and lawns, and the watering of domestic animals.
- 5) The maximum pumping rate of this well shall not exceed 15 GPM.
- 6) The return flow from the use of this well must be through an individual waste water disposal system of the non-evaporative type where the water is returned to the same stream system in which the well is located.
- 7) This well shall be constructed not more than 200 feet from the location specified on this permit.

[Handwritten signature]
9/3/02

APPROVED
LMB

[Handwritten signature]
State Engineer

DATE ISSUED SEP 3 2002

[Handwritten signature]
By

EXPIRATION DATE SEP 8 2004

Receipt No. 9401079A

FILED Document
CO Montrose County District Court 7th JD
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Review Clerk: Darleen Campannokkep
Filed in the District Court
Water Division 4

APR 10 2008
COURT USE ONLY

DISTRICT COURT, WATER DIVISION NO. 4 DELTA COUNTY, STATE OF COLORADO 1200 North Grand Avenue, Bin A Montrose, CO 81401-3146 (970) 252-4335	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: DELBERT and MELINDA SMITH in Delta County	Case Number: 05 CW 178 Div.: Ctrm.:
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE	

The Application for Underground Water Rights and for Approval of Plan for Augmentation was filed on October 28, 2005, and was referred to the Water Referee for Water Division No. 4, State of Colorado, in accordance with Article 92 of Chapter 37, Colorado Revised Statutes 1973, known as The Water Right Determination and Administration Act of 1969. The Application filed in this case was subsequently amended pursuant to an Amended Application for Underground Water Rights and for Approval of Plan for Augmentation, With Exchange, filed herein on May 18, 2006. The Application filed in this case, as amended, shall be referred to as the "Application."

On May 9, 2007, the Water Referee entered a Findings of Fact and Ruling of Referee approving the Application ("Ruling"). On May 25, 2007, the Opposers Joseph E. Carlson, Deborah L. Carlson and Bruce E. Carlson ("Carlson Opposers") filed a timely Protest to Ruling of the Referee. This matter was set for trial to begin May 5, 2008.

The Applicants and the Carlson Opposers have exchanged discovery in preparation for trial in this matter and have entered into a Stipulation dated April 3, 2008 ("Stipulation"), agreeing to the terms of a proposed Decree, which requests the Court enter a Findings of Fact, Conclusions of Law, Judgment and Decree consistent with their Stipulation. The parties have filed a Stipulated Motion for Entry of Decree ("Motion").

The Court, having made such investigations as are necessary to determine whether the statements in the Application are true, having reviewed the summary of consultation report from the Division Engineer for Water Division No. 4 filed herein, having reviewed and approved the Stipulation, having reviewed the Motion and having become fully advised with respect to the subject matter of the Application, hereby enters and makes the following Findings of Fact, Conclusions of Law, Judgment and Decree in this matter:

FINDINGS OF FACT

General Findings

1. Name, Address, Telephone Number of Applicants:
Delbert and Melinda Smith
1498 S. W. Melinda Road
Cedaredge, CO 81413
Phone: (970) 856-7109
2. Statements of Opposition were filed to the Application by the Carlson Opposers, Darrel and Betty Geyer, Darren and Corrie Geyer, and John Alward. Despite proper notice and service, Darrel and Betty Geyer, Darren and Corrie Geyer and John Alward have not filed a Protest to the Ruling, have not submitted Rule 26(a)(1) Disclosures, have not responded to Applicants' discovery requests or otherwise participated in this matter since the filing of their Statement of Opposition.
3. The two underground water rights claimed in the Application will provide domestic, irrigation, fire protection, and stock water as an integrated water system for the Smith Resource Preservation Major Subdivision in Delta County, Colorado. Figure 1 shows the location of the subdivision.

Findings Re: First Claim: Application for Underground Water Right

(Smith Resource West Well)

4. The Smith Resource West Well (Permit Number 239134) is located in the SE1/4 NE1/4 of Section 36, Township 13 South, Range 95 West, Sixth P.M., at a point approximately 622 feet from the east section line and 2314 feet from the north section line of said Section 36. A map illustrating the location of the Smith Resource West Well is attached as Exhibit A. The well is approximately 110 feet deep.
5. The source for the Smith Resource West Well is groundwater tributary to Happy Hollow Creek, also known as Happy Hollow Gulch (hereinafter referred to as "Happy Hollow Creek"), tributary to Tongue Creek, tributary to the Gunnison River.
6. The date of appropriation for the Smith Resource West Well is April 18, 2002 as evidenced by the Applicants obtaining a well permit, developing a plan for utilizing the well, and field inspection of the well site, together with the formation of the intent to appropriate water and other acts in furtherance of the appropriation.
7. The amount claimed for the Smith Resource West Well is 0.033 c.f.s. (15 g.p.m.), with a maximum diversion of 2.6275 acre-feet per year, conditional.

8. The water from the Smith Resource West Well will be used for domestic, irrigation, fire protection, and stock watering. The total number of acres proposed to be irrigated is approximately 5,000 square feet of lawns, trees, and gardens (approximately 1,000 square feet per lot served by the well). The land to be irrigated is located in the SE1/4 NE1/4, Sec. 36, T.13S., R.95W., as shown on Exhibit A.
9. The Smith Resource West Well is located upon land owned by the Applicants.
10. There are no other wells located within six hundred (600) feet of the Smith Resource West Well.
11. The combined use of groundwater from Smith Resource West Well and the Smith Resource East Well described below, shall not exceed 7.88 acre-feet annually. The total irrigated land from the combined use of both water rights described herein is approximately 15,000 square feet.
12. Water is available for appropriation under this priority. Applicants have established that water can and will be diverted, stored, and/or otherwise captured, possessed, and controlled and will be applied to beneficial use within a reasonable period of time.

Findings Re: Second Claim: Application for Underground Water Right

(Smith Resource East Well)

13. The Smith Resource East Well (Permit Number 242862) is located in the SW1/4 NW1/4 of Section 31, Township 13 South, Range 94 West, Sixth P.M., at a point approximately 746 feet from the west section line and 2171 feet from the north section line of said Section 31. The location of Smith Resource East Well is shown on Exhibit A. The well is approximately 90 feet deep.
14. The source for the Smith Resource East Well is groundwater tributary to Happy Hollow Creek, tributary to Tongue Creek, tributary to the Gunnison River.
15. The date of appropriation for the Smith Resource East Well is September 3, 2002 as evidenced by the Applicants obtaining well a permit, developing a plan for utilizing the well, and field inspection of the well site, together with the formation of the intent to appropriate water and other acts in furtherance of the appropriation.
16. The amount claimed for the Smith Resource East Well is 0.033 c.f.s. (15 g.p.m.), with a maximum diversion of 5.2550 acre-feet per year; conditional.
17. The water from the Smith Resource East Well will be used for domestic, irrigation, fire protection, and stock watering. The total number of acres proposed to be irrigated is approximately 10,000 square feet of lawns, trees, and gardens (approximately 1,000 square

feet per lot served by the well). The land to be irrigated is located in the SE1/4 NE1/4, Sec. 36, T.13S., R.95W., and Lot 2 (SW1/4 NW1/4), Sec. 31, T.13S., R.94W, 6th P.M., as shown on Exhibit A.

18. The Smith Resource East Well is located upon land owned by the Melinda C. Smith Living Trust and the Delbert L. Smith Living Trust, c/o Applicants, 1498 S. W. Melinda Road, Cedaredge, CO 81413.
19. There are no other wells located within six hundred (600) feet of the Smith Resource East Well.
20. The combined use of groundwater from Smith Resource East Well and the Smith Resource West Well described above shall not exceed 7.88 acre-feet annually. The total irrigated land from the combined use of both water rights described herein is approximately 15,000 square feet.
21. Water is available for appropriation under this priority. Applicants have established that water can and will be diverted, stored, and/or otherwise captured, possessed, and controlled and will be applied to beneficial use within a reasonable period of time.

Findings Re: Third Claim: Application for Approval of Plan for Augmentation, with Exchange

22. The structures to be augmented are the Smith Resource West Well, as described above, and the Smith Resource East Well, as described above (collectively referred as the "Smith Resource Wells"). There are no other water rights diverted from these structures.
23. Statement of Plan for Augmentation ("Plan"):
 - A. General Description: Applicants and trusts created by the Applicants own the land described in Paragraphs 4, 8, 13 and 17, above, and shown on Exhibit A, which consists of approximately 58.63 acres and is located within the Happy Hollow Creek drainage. The Applicants are in the process of completing a major subdivision of the land. The subdivision will be known as the Smith Resource Preservation Major Subdivision, and will be referred to herein as the "Subdivision." Exhibit A shows the planned lot lines as proposed, but the final Subdivision plat may change before the Subdivision is given final approval. This Plan is to provide an integrated water supply system for the development of the Subdivision.

The proposed layout for the Subdivision is shown on Exhibit A. As currently configured, the Subdivision will consist of 15 lots, ranging in size from 2.93 acres to 4.66 acres. The Subdivision consists of two separate areas, referred to herein as the eastern and western portions of the Subdivision.

The western portion of the Subdivision, containing five lots (designated Lots 1 through 5), covers a portion of the valley floor and hillside formed by Happy Hollow Creek, a perennial

stream. The lots will be constructed on 18.23 acres; a resource preservation area of approximately four acres will be maintained within the eastern portions of Lots 1, 2, 3, and 5. Water will be supplied to the lots comprising the western portion of the Subdivision by the Smith Resource West Well located within proposed Lot 3.

The eastern portion of the Subdivision, containing ten lots (designated Lots 6 through 15), is located on the terrace above Happy Hollow Creek; however, the western part of Lot 11 covers a portion of the hillside extending to the Happy Hollow Creek valley. The lots will be constructed on 32.66 acres; a resource preservation area of approximately eight acres will be maintained along the alignment of interconnected small ponds that crosses the area. Water will be supplied to the lots comprising the eastern portion of the subdivision by the Smith Resource East Well located within the resource preservation area.

This Plan will provide a potable water supply system to serve domestic needs, livestock watering, fire protection and limited irrigation for lawns, trees and gardens with each lot. The water from the Smith Resource Wells will be collected into cisterns or small storage tanks, from which the water will be distributed throughout the Subdivision.

The Smith Resource Wells are tributary to Happy Hollow Creek which is tributary to Tongue Creek. Tongue Creek is over-appropriated during the irrigation season from April 1 through October 31. Tongue Creek is tributary to the Gunnison River, which is considered to be over-appropriated year-round. The Plan has been developed to replace out-of-priority depletions from the Smith Resource Wells.

B. Water Demands and Depletions:

- (1) Domestic Uses: The demand for each residence is estimated to be one hundred gallons per day (100 gpd) per person for a three and one-half person household. Table 1 attached hereto sets forth the monthly domestic water demand per lot. The total annual demand for fifteen homes will be 5.88 acre-feet.
- (2) Livestock Watering Use: Applicants estimate that up to four horses or other large animals may be kept on each lot. The demand for livestock or large animals is estimated to be eleven gallons per day (11 gpd) per animal. Table 1 attached hereto sets forth the monthly stock watering demand per lot. The total annual demand for fifteen lots will be 0.744 acre-feet.
- (3) Irrigation Use: Water will be used to irrigate up to 1000 square feet of lawn (including grass, trees and gardens) at each lot. The estimated growing season is April 5 through October 29 and a 70% efficiency rate for a typical sprinkler system is assumed. The monthly irrigation water demand per lot is shown on Table 1 attached hereto. The total demand for the fifteen lots will be 1.2585 acre-feet per year.

- (4) Total Demand: The total demand per lot, for all of the uses described above, will be 0.5255 acre-feet per year. Thus, the total demand for the entire Subdivision for these uses, with fifteen homes will be 7.88 acre-feet per year.
- (5) 100% Replacement: The Plan is conservative as it is designed to replace 100% of the diversions from the wells (the total demand), not just the depletions. The Plan assumes all the uses are 100% consumptive and does not account for the actual return flows that will occur.
- (6) Fire Protection: Water from each well may be pumped and used for fire fighting. In the event Applicants are required as part of their subdivision approval process or otherwise to have storage tanks for fire suppression, such tanks may be filled from the wells when in priority. If the water is used and the tanks need to be filled when the wells are out of priority, then the tanks will be refilled from another source such as the purchase of municipal water delivered via a water truck.

C. Delayed Impacts:

- (1) West Well: The consumptive use of water pumped from the West Well will result in depletions to Happy Hollow Creek. Happy Hollow Creek discharges into Tongue Creek approximately three miles downstream of the Subdivision. Tongue Creek discharges into the Gunnison River approximately 6.5 miles downstream of its confluence with Happy Hollow Creek.

In accordance with the Colorado Division of Water Resources guidelines, depletions to Happy Hollow Creek resulting from the diversion of water from the Smith Resource West Well are considered to occur instantaneously because the well is located within 100 feet of the stream. Therefore, no delayed impact analysis was required for the Smith Resource West Well.

- (2) East Well: The consumptive use of water pumped from the East Well will also result in depletions to Happy Hollow Creek and may periodically cause depletions to Smith Draw which runs through the Subdivision. Figure 2 shows the relative locations of the wells, Happy Hollow Creek and Smith Draw. Depletions to Smith Draw may periodically occur during the irrigation season when higher water levels are expected in the underlying aquifer due to deep percolation of upgradient irrigation returns. Depletions to Smith Draw as a result of pumping the East Well are expected to diminish when water levels in the underlying aquifer fall below Smith Draw due to decreased percolation of upgradient irrigation returns at which time vertical flow from the stream to the water table occur under a unit gradient. These conditions may periodically occur during the irrigation season and are expected to occur during the non-irrigation season.

The Smith Resource East Well is located more than 100 feet from the stream but within 100 feet of Smith Draw. Therefore, depletions to Happy Hollow Creek are not expected to occur instantaneously, while periodic depletions to Smith Draw during the irrigation season are expected to occur instantaneously. Table 2 presents monthly demand and depletions to Smith Draw and Happy Hollow Creek during the irrigation season assuming instantaneous depletions to Smith Draw. Table 3 presents monthly demand and depletions to Happy Hollow Creek assuming no depletions to Smith Draw. A comparison of Tables 2 and 3 shows that, except for the month of October, monthly depletions during the irrigation season would be slightly higher when pumping the East Well results in instantaneous depletions to Smith Draw.

- D. Operation of Augmentation Plan: A call may occur on Happy Hollow Creek, Tongue Creek, or the Gunnison River downstream of the proposed subdivision anytime during the irrigation season of April 1 through October 31 of each year. In addition, delivery of water to downstream water users relying on the conveyance of irrigation water through Smith Draw may be impacted during the periods when the use of the East Well results in instantaneous depletions to Smith Draw. With respect to the Gunnison River, a call may occur at anytime during the year to satisfy water requirements at the Redlands Power Canal in Grand Junction. Because of the potential for a call by the Redlands Power Canal, Water Division 4 is requiring that all augmentation plans include the provision for replacement water on a year-round basis. Accordingly the Plan provides year-round replacement for Gunnison River depletions attributed to the use of water from the two existing wells on the property.

As previously discussed, the use of water from the East Well may periodically cause instantaneous depletions to Smith Draw during the irrigation season. Because water levels beneath the property may vary during the irrigation season from month to month as well as from year to year, it is difficult to predict the specific periods when Smith Draw may be impacted by the well. To ensure senior downstream water users are not injured by operation of the wells, replacement water will be available to cover the maximum monthly irrigation season depletions shown in Tables 2 and 3 and the monthly non-irrigation season depletions shown in Table 3.

The resulting water balance for the Plan is presented in Table 4. The maximum depletions to Happy Hollow Gulch and Smith Draw shown on Table 4 are the maximum monthly depletions for each month as shown on Table 2 or Table 3.

In accordance with the water balance shown in Table 4, Applicants shall obtain a water contact with the Grand Mesa Water Conservancy District ("GMWCD") in the amount of 6.5 acre-feet per year, which includes the amount for the 20 percent transit loss required by the Water Commissioner for the conveyance of the water from the GMWCD reservoirs to Happy Hollow Creek. In the event of a valid call during the irrigation season, out-of-priority depletions at the Subdivision will be replaced by releases made from any of the reservoirs owned and operated by GMWCD. There are sufficient structures in place to deliver

water from the reservoirs to Happy Hollow Creek upstream of the Subdivision. These GMWCD releases will fully augment and replace out-of-priority depletions from the Smith Resource Wells during the irrigation season regardless of whether the call comes from downstream senior rights on the Smith Draw, Happy Hollow Creek, Tongue Creek or the Gunnison River.

Applicants shall also obtain a contract for Blue Mesa Reservoir water in the amount of 4.0 acre-feet per year, which includes the amount for the 7.8 percent transit loss required by the applicable Water Division 4 Guidelines. In the event of a valid call from downstream senior rights on the Gunnison River during the non-irrigation season, out-of-priority depletions at the Subdivision will be fully augmented and replaced by releases from Blue Mesa Reservoir to the Gunnison River.

- E. Delivery of Augmentation Water: Augmentation water supplied by GMWCD, more completely described in Paragraph 24.A, below, will be administered according to Water Commissioner Boyd's letter to Mel Smith dated July 16, 2007, which is attached hereto as Exhibit B and incorporated herein by reference. According to the detailed account provided in the letter, augmentation water will be released from one of the three reservoirs and conveyed through a series of existing structures to the Cougar #1 pond. For replacements to Happy Hollow Creek, the water will be released from Cougar #1 pond through an existing headgate and discharge pipe and conveyed through a Parshall Flume (to be installed) and pipe (to be installed) and discharged to a live tributary that flows into Happy Hollow Creek. Figure 2 shows the relevant structures for the delivery of the augmentation water.

According to the State of Colorado, replacement to Smith Draw can be made by releasing augmentation water from Cougar No. 1 Pond along the route used by the Applicants to fill and refill Cougar Ponds Nos. 2 through 6 (Case No. 00CW98). Accordingly, augmentation water can be released from Cougar No. 1 Pond to an existing ditch leading to Gloria Reservoir and measured into and discharged out to Smith Draw through an existing Parshall Flume to the Opposers' headgate on the Omega Ditch. This is shown in Figure 2. Applicants claim ownership, or the right to use, or the State of Colorado administers all ditches and structures used to deliver this augmentation water.

- F. Adjustment of Transit Losses: Pursuant to Sections 37-83-101, 37-83-104 and 37-87-102(4), C.R.S., the Division Engineer may adjust the transit losses for water released by GMWCD or from Blue Mesa Reservoir if necessary to prevent injury to vested senior water rights. However, because the appropriate transit loss factor for water released by GMWCD was determined by the Water Commissioner for the Happy Hollow Creek and approved by the Division Engineer under present conditions, an adjustment to the transit loss shall not be made unless there is a subsequent change in stream conditions, or unless a substantial transit loss study determines that a different transit loss factor should be used. Likewise, the transit loss factor for water released from Blue Mesa Reservoir is in accordance with the current Division 4 Guidelines for Transit Losses on the Gunnison River, so an adjustment to the

transit loss shall not be made unless there is a substantial change in stream conditions, or unless a subsequent transit loss study determines that a different transit loss factor should be used. Prior to adjusting the transit losses, the Division Engineer shall notify the Applicants and the Carlson Opposers and provide the Applicants and the Carlson Opposers the opportunity to offer data and other input regarding whether the transit loss factor should be adjusted.

- G. Water Accounting and Reporting: Water accounting and reporting sheets will be developed by the Applicants and submitted to and approved by the Division Engineer. Once approved, such accounting and reporting sheets shall be filled out and submitted to the Division Engineer annually by November 15. The Applicants shall also file an annual report with the Division Engineer by November 15 of each year, summarizing diversions and replacements made under this Plan.

24. Because of the location of the Smith Resource Wells, two separate sources of augmentation water will be necessary to replace out-of-priority depletions associated with the use of the water from the Smith Resource Wells.

- A. Prior to the operation of the Plan approved herein, Applicants shall contract from GMWCD for the delivery of reservoir storage water in the amount of six and one-half (6.5) acre-feet per year to replace out-of-priority depletions (and 20% transit losses) associated with use of water from the Smith Resource Wells in the event of a valid call during the irrigation season, April 1 through October 31. Prior to the operation of this Plan, Applicants will provide evidence to the Division Engineer of such a contract. The GMWCD's augmentation water supply sources are described below.

The GMWCD is the co-owner of a conditional water right for the storage of 29,000 acre-feet of water in the Cactus Park Reservoir, originally decreed on January 31, 1964 in Case No. 4808, Delta County District Court, and amended by decree entered on December 13, 1972 in the Case No. W-586, District Court, Water Division 4. The water right was originally decreed for irrigation, fishing, recreation, municipal, domestic, stock water and storage uses.

In Cases Nos. 97CW131, 01CW23 and 02CW09, District Court, Water Division 4, the GMWCD obtained changes of water rights to store a portion of its Cactus Park Reservoir rights at alternate places of storage and for additional uses as follows:

- (1) Upper Eggleston Lake: In Case No. 97CW131, the GMWCD obtained a change of water right to store up to 375.84 acre-feet in the Upper Eggleston Lake from an alternate source of supply. In Case No. 01CW23, the decreed uses for the water rights stored in the Upper Eggleston Lake were changed to allow direct use for all of the decreed uses or to allow such uses by augmentation, replacement and exchange.

- (a) Location: The center of the dam for Upper Eggleston Lake is located approximately 4200 feet east of the east section line of Section 36, Township

11 South, Range 95 West, 6th P.M., and 1600 feet north of the north section line of Section 6, Township 12 South, Range 94 West, 6th P.M.

(b) **Source of Supply:** Natural runoff occurring above Upper Eggleston Lake, and Kiser Creek, tributary to Tongue Creek, tributary to the Gunnison River.

(2) **Arch Slough:** In Case No. 97CW131, the GMWCD obtained a change of water right to store up to 97.6 acre-feet in the Arch Slough from an alternate source of supply. In Case No. 01CW23, the decreed uses for the water rights stored in the Arch Slough were changed to allow direct use for all of the decreed uses or to allow such uses by augmentation, replacement and exchange.

(a) **Location:** The center of the dam for Arch slough is located approximately 1350 feet west of the east section line and 1250 feet south of the north section line of Section 2, Township 12 South, Range 95 West, 6th P.M.

(b) **Source of Supply:** Natural runoff occurring above Arch Slough, and Ward Creek, tributary to Tongue Creek, tributary to the Gunnison River.

(3) **Skinny Horse Reservoir:** In Case No. 02CW09, the GMWCD obtained a change of water right to store up to 92.7 acre-feet in the Skinned Horse Reservoir from a new source of supply. In the same case, the decreed uses for the water rights changed to the Skinned Horse Reservoir were changed to allow direct use for all of the decreed uses or to allow such uses by augmentation, replacement and exchange.

(a) **Location:** The center of the dam for Skinned Horse Reservoir is located approximately 750 feet west of the east section line and 1300 feet north of the south section line of Section 2, Township 12 South, Range 95 West, 6th P.M.

(b) **Source of Supply:** Natural runoff occurring above Skinned Horse Reservoir, which water is tributary to Ward Creek, tributary to Tongue Creek, tributary to the Gunnison River.

B. Prior to the operation of the Plan, Applicants shall contract for water from the Blue Mesa Reservoir for the delivery of reservoir storage water in the amount of four (4) acre-feet per year to replace out-of-priority depletions (and 7.8% transit losses) associated with the use of the Smith Resource Wells during the non-irrigation season, November 1 through March 31. Prior to the operation of this Plan, Applicants will provide evidence to the Division Engineer of such a contract. The Blue Mesa Reservoir augmentation water supply source is described:

Blue Mesa Reservoir (Wayne N. Aspinall Unit of the Colorado River Storage Project) 939,204 acre feet was decreed in C.A. Nos. 5590 and 6981, Gunnison County District Court, with a November 13, 1957 appropriation date. An additional

124,253 acre feet, with the same appropriation date, was transferred to the Reservoir in C.A. No. 10045.

- (a) Location: The initial point of survey of Blue Mesa Dam is located at a point on the right abutment being the intersection of the center line of the axis of the dam and the center line of the outlet works tunnel, whence the SW corner of Section 31, Township 49 North, Range 4 West, N.M.P.M. bears North $78^{\circ}36'44''$ West a distance of 3,207.07 feet.
25. Applicants claim a conditional appropriative right of exchange associated with the use of their Blue Mesa Reservoir contract water. The downstream terminus of the exchange is the confluence of Tongue Creek with the Gunnison River. The upstream terminus of the exchange is the points of diversion for the Smith Resource Wells. The appropriation date of the exchange is March 1, 2006. The amount of the exchange is 0.066 c.f.s. Applicants have established that water can and will be diverted, stored, and/or otherwise captured, possessed, and controlled and will be beneficially used under such conditional right of exchange, and that the appropriative right of exchange can and will be completed with diligence and within a reasonable time.
26. The Plan and conditional right of exchange will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right.
27. The names and addresses of owners of land on which structures are located are as follows:
- A. Smith Resource Wells: Applicants and the Melinda C. Smith Living Trust and the Delbert L. Smith Living Trust, 1498 S. W. Melinda Road, Cedaredge, CO 81413.
- B. Upper Eggleston Lake:
- (1) Grand Mesa Water Conservancy District, P. O. Box 129, Cedaredge, CO 81413
- (2) United States of America, Department of Agriculture, Forest Service, 2250 Highway 50, Delta, CO 81416
- C. Arch Slough:
- (1) Grand Mesa Water Conservancy District, P. O. Box 129, Cedaredge, CO 81413
- (2) United States of America, Department of Agriculture, Forest Service, 2250 Highway 50, Delta, CO 81416
- D. Skinned Horse Reservoir:

- (1) Grand Mesa Water Conservancy District, P. O. Box 129, Cedaredge, CO 81413
- (2) United States of America, Department of Agriculture, Forest Service, 2250 Highway 50, Delta, CO 81416

E. Blue Mesa Reservoir:

- (1) Blue Mesa is located on land owned by the United States of America, Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, UT 84138-1102.

CONCLUSIONS OF LAW

28. The Application herein is one contemplated by law, and this Court has jurisdiction over the subject matter of this proceeding.
29. Timely and adequate notice of the filing and of the contents of the Application was given as required by law, and this Court has jurisdiction over all persons or entities affected hereby, whether they have appeared or not.
30. The Applicant has initiated valid appropriations of the water rights and conditional right of exchange for which application has been made herein, as of the dates claimed in the Application. Water is available for appropriation under these priorities. With respect to the conditional water rights claimed, water can and will be diverted, stored, and/or otherwise captured, possessed, and controlled and will be applied to beneficial use within a reasonable time. With respect to the conditional right of exchange claimed, water can and will be diverted, stored, and/or otherwise captured, possessed, and controlled and will be beneficially used, and the exchange can and will be completed with diligence and within a reasonable time.
31. The plan for augmentation described in the Findings Re: Third Claim for Relief, above, meets the statutory criteria for a plan for augmentation as set forth in Sections 37 92-103(9), -302(1), and -305(8), C.R.S., and other applicable statutes, and is one contemplated by law. If the plan for augmentation is operated and administered in accordance with the conditions hereof, such plan and the water rights requested by Applicant will not cause material injury to any vested water rights or decreed conditional water rights on the Smith Draw, Happy Hollow Creek (also known as Happy Hollow Gulch), Tongue Creek, the Gunnison River, or their tributaries.

JUDGMENT AND DECREE

32. The Findings of Fact and Conclusions of Law set forth above are hereby approved and confirmed, and are incorporated into this Judgment and Decree by reference.

33. The application for underground water rights for the Smith Resource West Well and the Smith Resource East Well set forth in the First Claim for Relief and the Second Claim for Relief, respectively, of the Application filed herein is hereby approved. Conditional water rights are hereby awarded to the Smith Resource West Well and the Smith Resource East Well in the amounts and for the uses specified in the Findings Re: First Claim for Relief and the Findings Re: Second Claim for Relief, above.
34. Prior to the operation of the Smith Resource Wells, Applicants shall file an application for an amended well permit for such wells with the State Engineer's office, pursuant to Section 37-90-137(2), C.R.S., which application shall be consistent with the terms of this Decree. The State Engineer is ordered to issue an amended well permit for each such well for which application is made, pursuant to Section 37-90-137(2), C.R.S., within sixty days after Applicants file the amended well permit application with the State Engineer's office.
35. The application for approval of the plan for augmentation set forth in the Findings Re: Third Claim for Relief of the Application filed herein is hereby approved. The structures and water rights to be augmented, as described in Paragraph 22, above, may divert, store and use water in accordance with this Judgment and Decree and may be operated in accordance with this Judgment and Decree. Applicants shall have the right to divert and store water out of priority from and at the structures described in Paragraph 22, above, so long as adequate water is available and provided to augment depletions from such diversions and storage, as set forth in the Plan described above. Pursuant to Section 37-92-305(8), C.R.S., the Division Engineer for Water Division 4 shall curtail all out of priority diversions from the water rights described in Paragraph 22, the depletions from which are not so replaced as to prevent injury to vested water rights. Pursuant to Paragraph 23.F., above, the Division Engineer may adjust the transit loss factor applied to releases of water by GMWCD or from Blue Mesa Reservoir. Applicants shall have the right to challenge any such adjustments in further proceedings in this case, and jurisdiction is hereby retained for such purpose. Notice of any such further proceedings shall be given by Applicants to the Division Engineer, who shall have the opportunity to participate in such proceedings.
36. The Applicants shall establish a homeowners association which shall be responsible for ensuring that the terms and conditions of this Judgment and Decree are met. The restrictive covenants of the homeowners association will incorporate the terms of the Plan and will include the limitation that water from the Smith Resource West Well and the Smith Resource East Well shall not be used for yards in excess of 1000 square feet on each lot in accordance with paragraphs 11 and 20, above. This restriction shall not preclude larger yards on lots which have other sources of irrigation water. The restrictive covenants shall also restrict the use of the lots to single family residences and preclude guest homes. The restrictive covenants shall limit the number of livestock kept on each lot to four large animals. The Applicants shall provide the Carlson Opposers a copy of the homeowners association restrictive covenants once adopted.

37. The application for a conditional right of exchange set forth in the Findings Re: Third Claim for Relief of the Application filed herein is hereby approved. A conditional right of exchange associated with the use of Blue Mesa Reservoir contract water, as set forth in the plan for augmentation described above, is hereby awarded to Applicants. The exchange shall be known as the "Smith-Blue Mesa Exchange." The downstream terminus of the exchange is the confluence of Tongue Creek with the Gunnison River. The upstream terminus of the exchange is the points of diversion for the Smith Resource Wells. The appropriation date of the exchange is March 1, 2006. The amount of the exchange is 0.066 c.f.s.
38. The priority dates awarded to the water rights decreed herein are April 18, 2002 for the Smith Resource West Well, and September 3, 2002 for the Smith Resource East Well. The original Application was filed herein in 2005, and the water rights awarded herein for the Smith Resource West Well and Smith Resource East Well shall be administered as having been awarded on an application filed in 2005. The priority date awarded to the water right decreed herein as the Smith-Blue Mesa Exchange is March 1, 2006. The original Application was amended on May 18, 2006, adding the Smith-Blue Mesa Exchange and the water right awarded herein to the Smith-Blue Mesa Exchange shall be administered as having been awarded on an application filed in 2006.
39. Applications for reasonable diligence for the conditional water rights and conditional rights of exchange decreed herein shall be filed by the owner or user of such rights, at the times and in the manner specified by Section 37-92-301(4)(a), C.R.S., if such owner or user desires to maintain the same, or until a determination has been made that such conditional rights are made absolute by reason of the completion of the appropriation. The date for filing the first application for a finding of reasonable diligence is set forth below.
40. Pursuant to Rule 9 of the Uniform Local Rules for All State Water Court Divisions, upon the sale or other transfer of the conditional water rights awarded herein, the transferee shall file with the water court having jurisdiction a notice of transfer which shall state:
 - A. The title and case number of the case in which the conditional decree was issued;
 - B. The description of the conditional water right transferred;
 - C. The name of the transferor;
 - D. The name and mailing address of the transferee; and
 - E. A copy of the recorded deed.

The owner of said conditional water right shall also notify the Clerk of the Division 4 Water Court of any change in mailing address. The Clerk shall also place any notice of Transfer or change of address in the case file for this case (Case No. 05CW178).

41. The homeowners association created in accordance with paragraph 36 shall notify the Court and the Division Engineer when twelve (12) of the fifteen (15) single-family residences are in use in the subdivision. The Court shall retain jurisdiction with respect to the approval of the plan for augmentation for five years from the date this notice is received by the Court. In setting forth this period, the Court finds that such period is necessary to assure that no injury shall occur to vested rights of others by the operation of the plan for augmentation.
42. Applicants and their successors and assigns shall install, operate, and maintain any and all such adequate measuring devices as may be required by the Division Engineer to facilitate the administration of the plan for augmentation decreed herein and to ensure compliance therewith. A continuous recording meter shall be installed on each well and meters shall be installed on each lot.
43. A copy of this Judgment and Decree shall be mailed by the Water Clerk by certified or registered mail to the Applicants, to any objectors, to the State Engineer, and to the Division Engineer for Water Division No. 4.

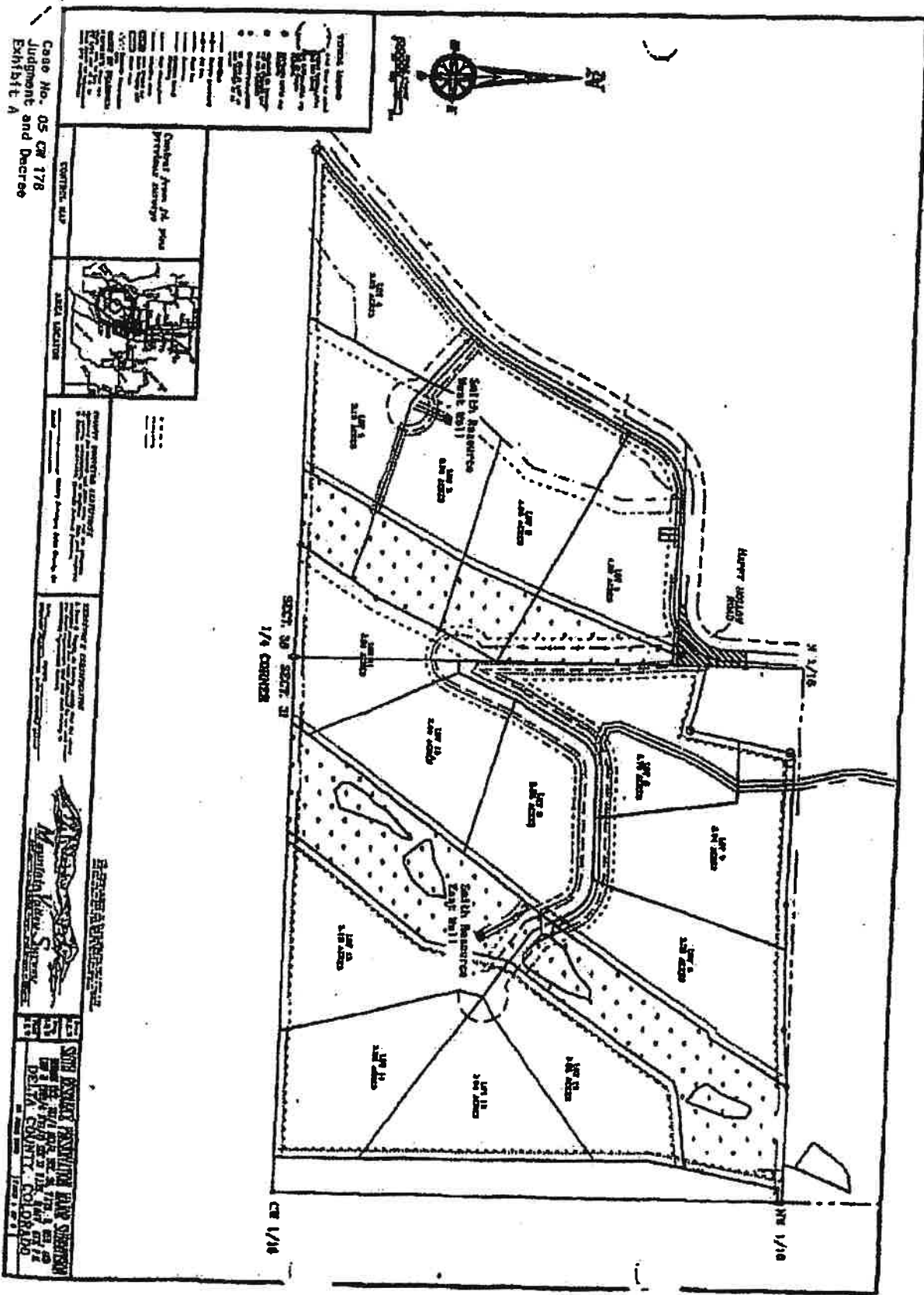
THE MONTH AND CALENDAR YEAR FOR FILING AN APPLICATION FOR A
FINDING OF REASONABLE DILIGENCE SHALL BE April, 2014.

Dated: 4/10, 2008.

BY THE COURT:


Water Judge, Water Division No. 4

Case No. 05 CM 178
Judgment and Decree
Exhibit A



STATE OF COLORADO

DIVISION OF WATER RESOURCES
WATER DIVISION FOUR
Office of the State Engineer
Department of Natural Resources

1471 East Main Street
P.O. Box 456
Monte Vista, Colorado 81412
Phone (970) 349-6622
Fax (970) 349-6728

<http://water.state.co.us/default.htm>

July 16, 2007

Mel Smith
1598 SW Melinda Rd
Cedaredge, CO 81413

Mel,

Today you asked our office to clear up a few points about the administration of the augmentation water for your two wells. Below is a detailed account of how the water will be administered.

1. The summer augmentation water is supplied by the Grand Mesa Water Conservancy District from one of their three reservoirs on Grand Mesa. This water will be turned by a state water commissioner into Ward Creek or Kiser Creek. From these natural streams, the water is diverted into the Big Ditch. Since you own Surface Creek Ditch and Reservoir stock, this stock gives you the right to run water in the Big Ditch. From the Big Ditch, the augmentation water will be turned and measured in to the Trickle Ditch (AKA Hamilton Extension). From the Hamilton Extension, the water will be turned and measured into the Trickle West lateral. Since you own shares in both of these ditches, you have a right to put water in either or both ditches. This Trickle West lateral takes the water to the Cougar #1 pond. The Cougar #1 pond has a controllable head gate with discharge pipe which delivers water to about 50 feet of open ditch. This ditch will have a 3 inch measuring device and a controllable head gate. The water will be delivered into 2 or 3 sections of 8 inch heavy walled pipe. Then a thin walled pipe will carry the water to a ditch 10 feet in length that will deliver the water into a live tributary that flows into Happy Hollow Creek. The augmentation water will then flow down Happy Hollow to the injured party.

2. We will work with the injured parties at the time a call is placed to determine the most beneficial delivery of the augmentation water. This augmentation water will be delivered through the Hamilton Extension at times when there is other reservoir water in the ditch in order to minimize transit losses. I hope this will clear up the points that you were concerned about. If you have other questions, please call myself or Doug and we will be happy to answer them.

Sincerely,

Jimmie D. Boyd
Jimmie D. Boyd
Lead Water Commissioner

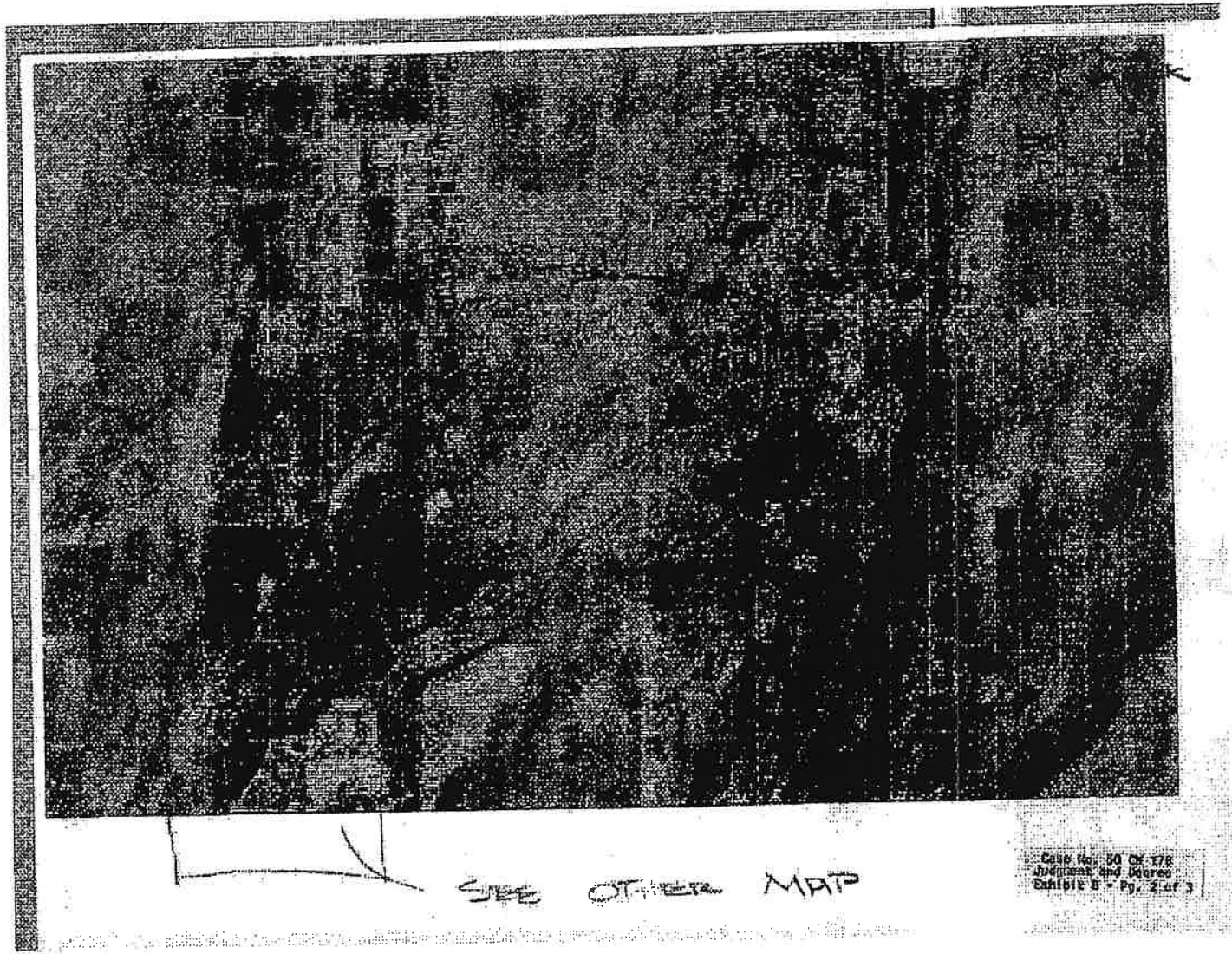


Bill Owens
Governor

Ronald George
Executive Director

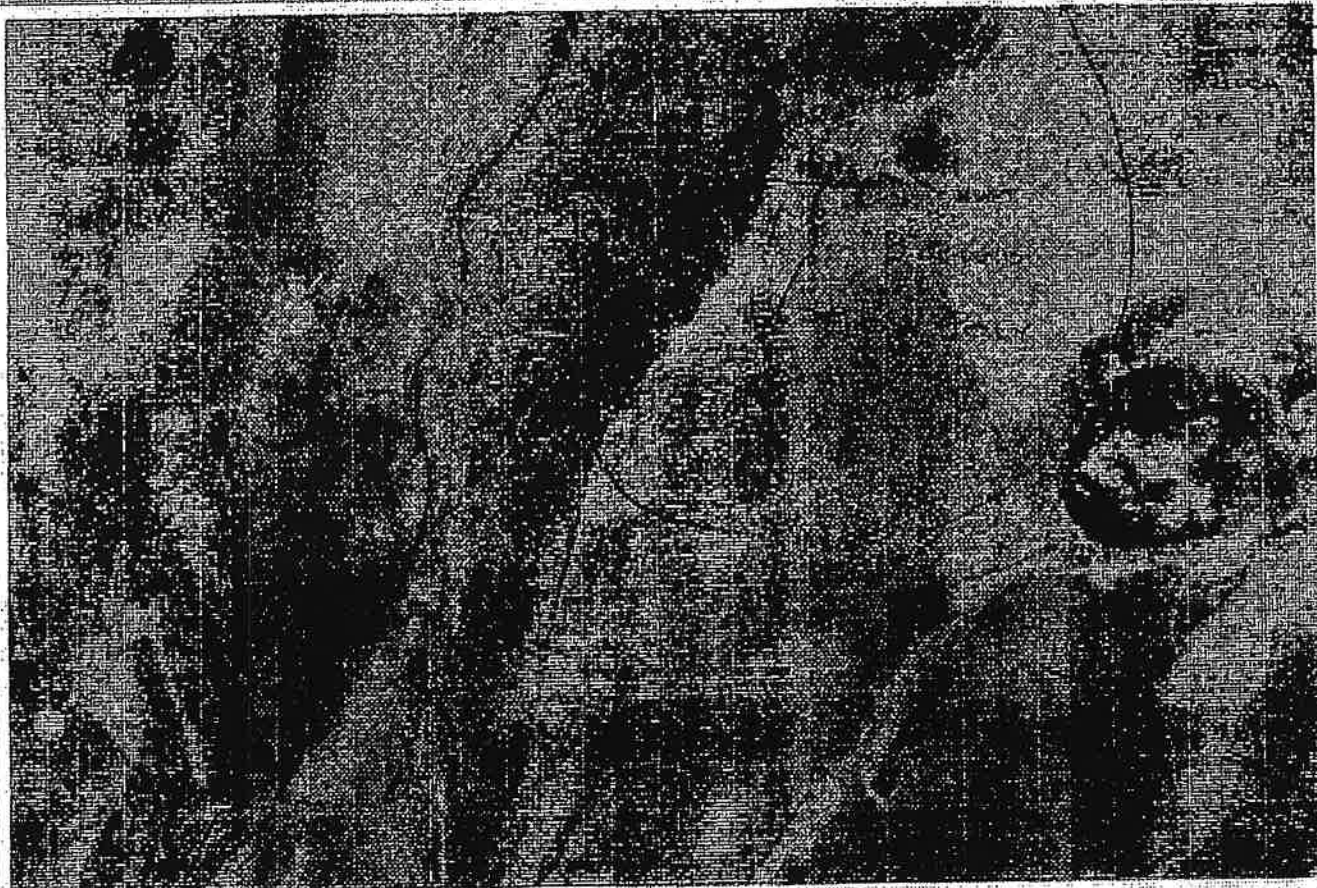
Neil D. Simpson, P.E.
State Engineer

Frank J. Kugel
Division Engineer



SEE OTHER MAP

CASE NO. 50 OF 178
JUDGMENT AND DECREE
EXHIBIT 8 - Pg. 2 of 3



HAPPY HOLLOW ROAD

← NEW LOCATION

Case No. 05 Cr 170
Judgment and Decree
Exhibit B - Pg. 1 of 3

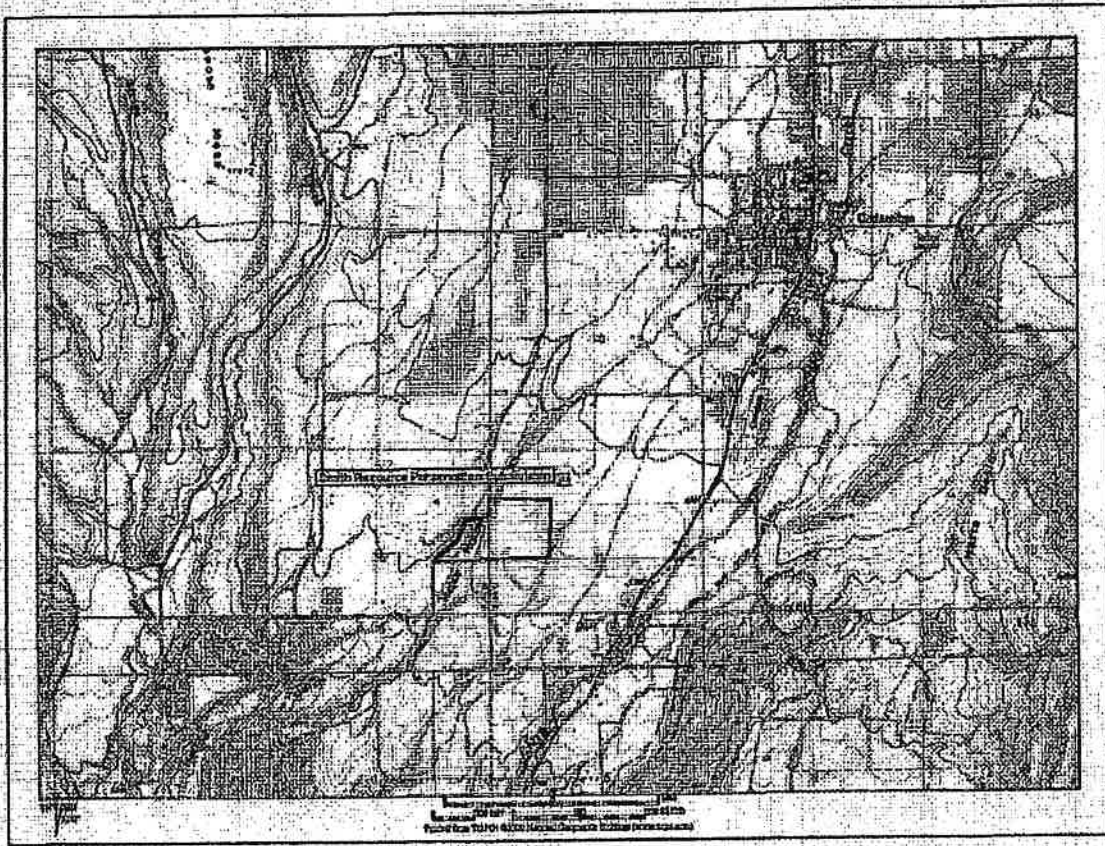


Figure 1: Property Location
Smith Resource Preservation Subdivision
Delta County, Colorado

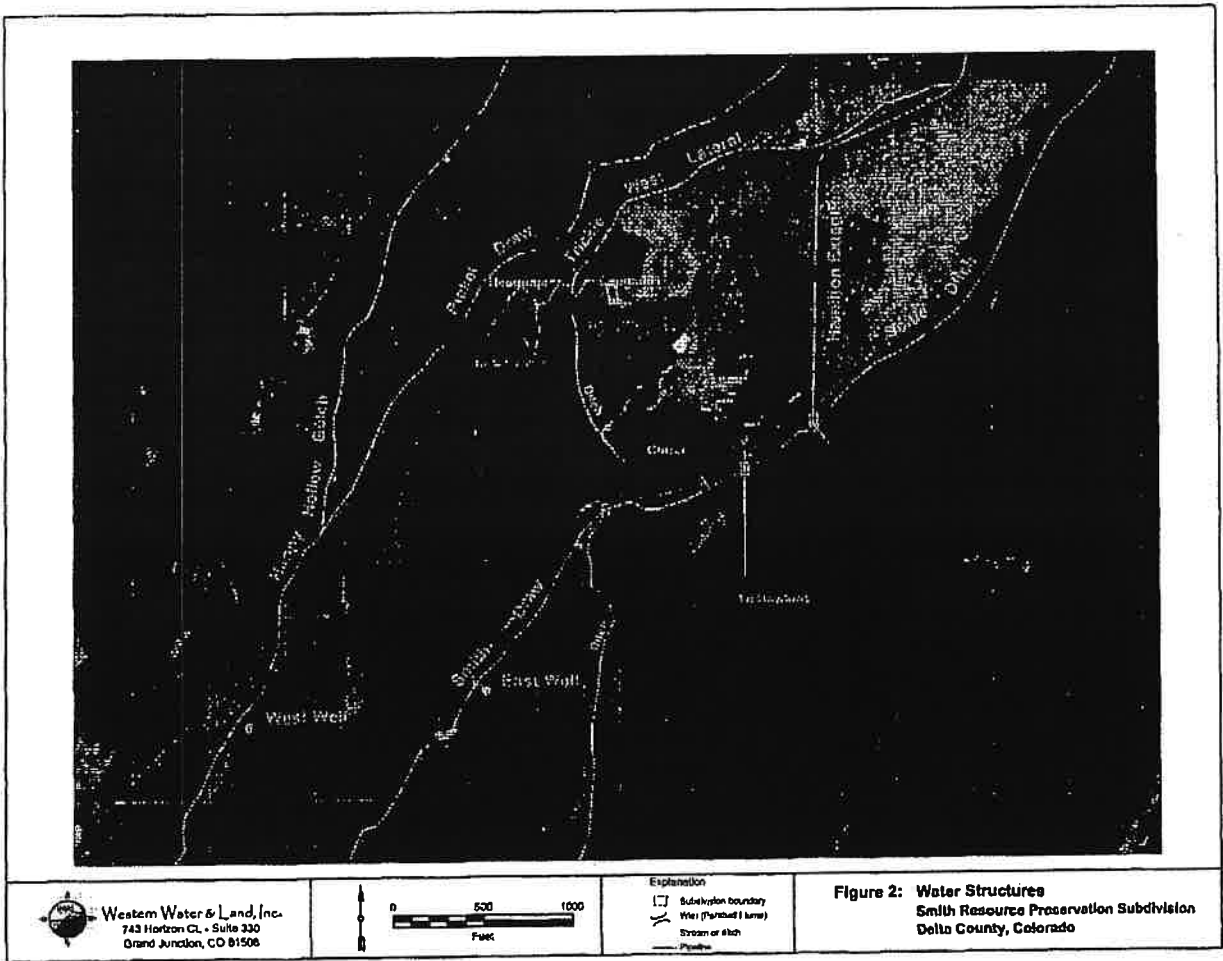


Table 1: Monthly Water Demand and Depletions Per Lot
Smith Resource Preservation Subdivision

Month	Demand				Depletions			
	Domestic / Household (1)	Stock Watering (2)	Lawn Watering (3)	Total Water Demand (4)	Domestic / Household (5)	Stock Watering (6)	Lawn Watering (7)	Total Water Depletion (8)
January	0.0333	0.0042	0.0000	0.0375	0.0333	0.0042	0.0000	0.0375
February	0.0301	0.0038	0.0000	0.0339	0.0301	0.0038	0.0000	0.0339
March	0.0333	0.0042	0.0000	0.0375	0.0333	0.0042	0.0000	0.0375
April	0.0322	0.0041	0.0073	0.0436	0.0322	0.0041	0.0073	0.0436
May	0.0333	0.0042	0.0117	0.0492	0.0333	0.0042	0.0117	0.0492
June	0.0322	0.0041	0.0167	0.0530	0.0322	0.0041	0.0167	0.0530
July	0.0333	0.0042	0.0180	0.0555	0.0333	0.0042	0.0180	0.0555
August	0.0333	0.0042	0.0144	0.0519	0.0333	0.0042	0.0144	0.0519
September	0.0322	0.0041	0.0101	0.0464	0.0322	0.0041	0.0101	0.0464
October	0.0333	0.0042	0.0057	0.0432	0.0333	0.0042	0.0057	0.0432
November	0.0322	0.0041	0.0000	0.0363	0.0322	0.0041	0.0000	0.0363
December	0.0333	0.0042	0.0000	0.0375	0.0333	0.0042	0.0000	0.0375
Total	0.3920	0.0496	0.0839	0.5255	0.3920	0.0496	0.0839	0.5255

(1) Based on daily demand of 100 gallons per person and 3.5 persons per lot.

(2) Based on daily demand of 11 gallons per horse and 4 horses per lot.

(3) Based on combined results of NWR program and Water Division 4 spreadsheet (see Appendix B), 1000 square feet of lawn per lot, and 70 percent efficiency of typical sprinkler system.

(4) Sum of Columns 1, 2, and 3.

(5) Although ISDS used, depletions assume 100 percent consumption.

(6) 100 percent consumption.

(7) Assumes 100% consumption of applied water.

(8) Sum of Columns 5, 6, and 7.

**Table 2: Monthly Water Demand and Timing of Depletions Assuming Smith Draw Depletions during Irrigation Season
Smith Resource Preservation Subdivision**

Month	Demand			Depletions		Total (6)
	Per Lot (1)	West Well (2)	East Well (3)	West Well (4)	East Well (5)	
April	0.0438	0.2180	0.4380	0.2180	0.4380	0.8540
May	0.0492	0.2460	0.4920	0.2480	0.4920	0.7380
June	0.0530	0.2650	0.5300	0.2650	0.5300	0.7850
July	0.0555	0.2775	0.5550	0.2775	0.5550	0.8325
August	0.0519	0.2595	0.5190	0.2595	0.5190	0.7785
September	0.0484	0.2320	0.4640	0.2320	0.4640	0.8960
October	0.0432	0.2180	0.4320	0.2180	0.4320	0.8480
Total	0.3428	1.714	3.428	1.714	3.428	5.142

All values in acre-feet

(1) From Table 1

(2) Based on a total of 5 lots in the western portion of subdivision.

(3) Based on a total of 10 lots in the eastern portion of subdivision.

(4) From Table 1, depletions considered to be instantaneous to Happy Hollow Creek

(5) From Table 1, depletions considered to be instantaneous to Smith Draw

(6) Total of Columns 4 and 5

Table 3: Monthly Water Demand and Timing of Depletions When No Depletions Occur to Smith Draw during Irrigation Season
Smith Resource Preservation Subdivision

Month	Demand			Depletions		Total (8)
	Per Lot (1)	West Well (2)	East Well (3)	West Well (4)	East Well (5)	
January	0.0375	0.1875	0.3750	0.1875	0.4317	0.6192
February	0.0338	0.1695	0.3390	0.1695	0.4246	0.5941
March	0.0375	0.1875	0.3750	0.1875	0.4163	0.6038
April	0.0436	0.2180	0.4360	0.2180	0.4136	0.6316
May	0.0492	0.2480	0.4920	0.2460	0.4192	0.6692
June	0.0530	0.2850	0.5300	0.2650	0.4308	0.6958
July	0.0555	0.2775	0.5550	0.2775	0.4447	0.7222
August	0.0519	0.2595	0.5190	0.2595	0.4575	0.7170
September	0.0484	0.2320	0.4640	0.2320	0.4626	0.6946
October	0.0432	0.2160	0.4320	0.2160	0.4603	0.6763
November	0.0363	0.1815	0.3630	0.1815	0.4529	0.6344
December	0.0375	0.1875	0.3750	0.1875	0.4407	0.6282
Total	0.5255	2.628	5.255	2.628	5.255	7.882

All values in acre-feet

(1) From Table 1

(2) Based on a total of 5 lots in the eastern portion of subdivision

(3) Based on a total of 10 lots in the western portion of subdivision

(4) From Table 1, depletions to Happy Hollow Creek considered to be instantaneous

(5) From Table 1, timing of depletions to Happy Hollow Creek evaluated with the use of the Colorado Division of Water Resources' Analytical Stream Depletion Model (Schroeder, 1987)

(6) Total of Columns 4 and 5

**Table 4: Water Balance
Smith Resource Preservation Subdivision**

Month	Maximum Depletions Happy Hollow Gulch and Smith Draw (1)	Purchased Replacement Water		Water Balance (4)
		Grand Mesa Reservoir(s) ³ (2)	Blue Mesa Reservoir ⁴ (3)	
January	0.8192	0.00	0.87	0.00
February	0.6941	0.00	0.64	0.00
March	0.8038	0.00	0.85	0.00
April	0.6540	0.82	0.00	0.00
May	0.7380	0.92	0.00	0.00
June	0.7950	0.99	0.00	0.00
July	0.8325	1.04	0.00	0.00
August	0.7785	0.97	0.00	0.00
September	0.6960	0.87	0.00	0.00
October	0.6763	0.85	0.00	0.00
November	0.6344	0.00	0.69	0.00
December	0.6282	0.00	0.68	0.00
Total	8.25	6.46	3.34	0.00

(1) From Table 3 Column 6 for non-irrigation season (November through March)

Maximum of values shown in Table 2 Column 6 and Table 3 Column 6 for the irrigation season (April through October)

(2) Potential reservoirs include Upper Eggleston, Arch Slough, and Skinned Horse; values shown includes 20 percent to account for conveyance loss as recommended by Division 4 Water Commissioner.

(3) Values shown include transit loss of 7.8% in accordance with Division 4 Guidelines for Transit Losses Accessed on the Gunnison River (February 2004); .15%/mile for 30.5 miles and .25%/mile for 13 miles.

(4) Difference between total replacement water (accounting for transit losses) and maximum depletion



Delta County Sheriff's Office

Deputy Report for Incident S21-1943

Nature: WATER PROBLEM
Location: DIST2

Address: 15760 HAPPY HOLLOW RD
Cedaredge CO 81413

Offense Codes: WATE

Received By: C Johnson

How Received: T

Agency: DCSO

Responding Officers: J Hernandez, S Clymer

Responsible Officer: J Hernandez

Disposition: CLO 05/23/21

When Reported: 11:23:39 05/20/21

Occurred Between: 11:23:34 05/20/21 and 11:23:34 05/20/21

Assigned To:

Detail:

Date Assigned: **/**/**

Status:

Status Date: **/**/**

Due Date: **/**/**

Complainant: 9472

Last: LOUCKS

First: KEITH

Mid: VERN

DOB: 01/13/48

Dr Lic: 921376048

Address: 21777 HAMILTON RD

Race: W

Sex: M

Phone: () -

City: Eckert, CO 81418

Offense Codes

Reported: WATE Irrigation Problem

Observed: WATE Irrigation Problem

Additional Offense: WATE Irrigation Problem

Circumstances

LT10 Field or Woods

DAY Day (6 a.m. - 6 p.m.)

BM99 Unknown Bias

Responding Officers:

Unit :

J Hernandez

SO14

S Clymer

SO13

Responsible Officer: J Hernandez

Agency: DCSO

Received By: C Johnson

Last Radio Log: **:*,*: **/**/**

How Received: T Telephone

Clearance: CRO CLEARED BY

RESPONDING OFFICER

When Reported: 11:23:39 05/20/21

Disposition: CLO Date: 05/23/21

Judicial Status:

Occurred between: 11:23:34 05/20/21

Misc Entry:

and: 11:23:34 05/20/21

Modus Operandi:

Description :

Method :

Involvements

Date	Type	Description	Relationship
-------------	-------------	--------------------	---------------------

Narrative

Delta County Sheriff's Office
Synopsis | S21-1943 | Water Problem | Irrigation

** This incident was captured on my department issued Axon Body Camera, Serial #X12345678. The following report is a synopsis of my involvement in this incident. **

On May 20, 2021, at approximately 1123 hours, the Delta County Sheriff's Office responded to 15760 Happy Hollow Road for an irrigation dispute between neighbors. This area is located near the Town of Cedaredge, in the County of Delta, and State of Colorado. The issue was resolved peacefully.

Deputy Jake Hernandez (SO-14)

Responsible LEO:

Approved by:

Date

Supplement

Incident Narrative

INVESTIGATION:

On May 20, 2021, at approximately 1123 hours, I, Deputy Jake Hernandez, responded to 15760 Happy Hollow Road for an irrigation dispute between neighbors. This area is located near the Town of Cedaredge, in the County of Delta, and State of Colorado.

Keith Loucks (DOB 01/13/1948) called dispatch to report that Delbert Smith (DOB 11/15/1939) had blocked water flow for irrigation after he placed mud on and in front of a head gate that supplies water to him and multiple other individuals downstream of Smith's property. I arrived on scene and contacted Loucks, Smith, and Randall Willis (DOB 01/25/1955). Willis is another individual affected by Smith's actions.

Loucks and Willis claimed that they have rights to the water and Smith claimed that he owned all rights to all water flowing through his property. Both sides claimed that there were court cases to support their claim. I did view the head gate in question and did see that there had been a large amount of mud placed on and in front of the head gate. Smith did admit that he had placed the mud there.

Smith told me that some time in the past he had verbally agreed to let Loucks use some of the water for irrigation, as long as the head gate was closed when Loucks was done, so that his pond would fill back up. Smith said that this was not occurring and that he was tired of his pond not being full, so he blocked the water flow through the head gate. Smith claimed that when his pond is full the neighbors downstream from him receive water that runs through the overflow pipe.

I explained to all parties involved that it would be in their best interest to contact the water commissioner as soon as possible to rectify their situation, since both sides were claiming ownership of the water. All parties agreed that contacting the water commissioner was the best route to take. Water flow through the overflow pipe had increased significantly from the time I arrived on scene and was making its way downstream. All parties were satisfied with contacting the water commissioner to have him decide who has what rights to the water flowing through Smith's property. Smith stated that he would abide by what the water commissioner told him.

CONCLUSION:

A water rights issue between the above parties was handled peacefully. The parties involved in this incident all had different opinions on who owned rights to water flowing through the property. All parties agreed to settle the issue by contacting the water commissioner.

** This incident was captured on my department issued Axon Body Camera, Serial #X12345678. The following report is a synopsis of my involvement in this incident. **

Deputy Jake Hernandez (SO-14)



STAFF REPORT

Delta County Planning Commission

Delta County Administration Building
560 Dodge Street, Delta, CO 81416

Wednesday, August 25, 2021 @ 5:30 p.m.

PLN21-002/TKO Minor Plat (Thomas)

Consider Director's referral of a Minor Plat to subdivide a 4-acre parcel into two lots of 3.138 acres (Lot 1) and 0.863 acres (Lot 2). The property is located at 1751 F50 Road, Delta (Parcel: 345520100010).

RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution:

- a. Finding PLN21-002 meets requirements for a Minor Plat in the UGA zoning district pursuant to the 2021 Land Use Code; and
- b. Recommending approval of PLN21-002 to the Board of County Commissioners, subject to 11 conditions found in Exhibit A of the resolution (**Attached**).

SUMMARY:

The application is a Minor Plat to subdivide approximately 4.0 acres (Parcel: 345520100010) into two (2) lots. The project site abuts the City of Delta to the north and F50 road to the south. The project site is zoned Urban Growth Area ("UGA"), which allows lots that are at least 7,500 square feet (0.17 acres) in area with at least 30 feet of frontage.

Lot 1 (3.138 acres) has an existing residence with access from F50 Road along a 30-foot wide access trip (aka "flag lot"). Lot 2 (0.863 acres) would be vacant with about 200 feet of frontage on F50 Road. The applicants have demonstrated ability for Lot 2 to install an engineered septic system plus have its own access and water tap if the Minor Plat is approved.

Under the 2021 Land Use Code, a Minor Plat is subject to Administrative Review (Director Approval). However, in response to comments, the Director referred this application to the Planning Commission (PC) to



make a recommendation to the Board of County Commissioners (BoCC). Staff requests that the Planning Commission consider if the Director followed the correct procedure and that the project complies with applicant regulations of the Land Use Code.

Staff finds that the project complies with applicable requirements of the Land Use Code based on what has been submitted to date. Recommended conditions of approval, based on comments received from reviewing agencies, are listed in Exhibit A of the draft resolution (**Attached**). The agency listed in the parenthesis following the condition is the responsible agency to clear that condition prior to recording the Final Plat.

DISCUSSION:

On 8/2/2021, staff received a letter with comments signed by seven (7) neighbors (**attached**). This letter presents three contentions, summarized by staff as follows, including staff's response:

1. That the process did not follow the rules, and that these neighbors wanted a say [beyond submitting a letter].

STAFF RESPONSE: Chapter 8, Section 3 of the 2021 Land Use Code establishes that a Minor Plat is subject to Administrative Review (Director Approval) upon finding compliance with applicable requirements. In that case no public hearing is required. However, Table 7.c of the Land Use Code requires notice via Posting and Mail 1 (adjacent property owners) for "Final Plat, Minor". Since the Directors action is final (unless appealed to the Board of Adjustment), the Director interpreted that notice be provided prior to making an Administrative decision. As part of the public notice, staff noted that the project was found to comply with applicable requirements of the Land Use Code *based on what has been submitted to date*. In other words, the project could be approved as presented.

2. Expressing an unwritten understanding about standards for the neighborhood, not met by the proposed project, but recognizing there are no covenants placing restriction on any parcels.

STAFF RESPONSE: Staff finds that the project complies with applicable requirements of the Land Use Code as discussed in the report and associated resolution for this project.

3. Contesting F50 being identified by staff as a public road.

STAFF RESPONSE: County Engineering determined that F50 Road is a private road with a 33-foot easement per Book 730 Page 214 (Reception #: 481381).

The LUC affords the Director discretion to refer an application to the Planning Commission (PC) to make a recommendation to the Board of County Commissioners (BoCC). Basis for a referral includes:

- Material Impacts on the neighborhood that are unusual in kind or degree; or
- Reasonable disagreement regarding compliance or application with applicable Codes.

The Director does not find there would be material impact; however, there is disagreement about how the Land Use Code should be applied. As such, the Director referred this matter to the PC for recommendation to the BoCC. Where a project is referred, then public notice is required similar to a conditional use permit.

As part of the pre-application meeting, staff noted that County Onsite Wastewater Treatment System (OWTS), aka septic, regulations require a new lot to connect to sewer if a main line is located within 400 feet. However, the Growth Management Agreement (recorded 1/21/2000) with the City of Delta calls for connecting to sewer if within 1,000 feet. In addition the OWTS regulations require a minimum of one (1 acre) for each unit where installing septic and the lot is connected to public water.

Staff finds that the closest sewer connection is over 1,000 feet away so septic would be allowed. The proposed Lot 2 would be connecting to public water but is less than the 1 acre minimum (0.863acres). Therefore, the

owners were presented with options, including: 1) revise the design to create at least one acre, 2) connect to sewer, 3) apply for a variance from the septic regulations, or 4) no subdivision. The applicants chose to pursue option 3, which required investing in engineering and applying to Environmental Health for a septic variance. If a variance is not approved, then a different option is required. Staff required this effort up front to assess if septic is a viable option for this subdivision.

An Access/Address application was submitted in order to initiate a septic permit (variance) application on the proposed lot. It was determined that the new lot would/could take access directly from F50 Road. The remaining parcel (Lot 1) would become a flag lot that must retain frontage of at least 30 feet.

The plat illustrates a pond straddling the west property line of Lot 1. Staff has inquired who owns/maintains the pond and suggested creating an easement. Even though conditions between the property to the west and Lot 1 do not change, and the applicant initially owned the property west of Lot 1, staff recommends that this be addressed as part of this subdivision to avoid potential conflicts in the future (condition).

OTHER AGENCY INVOLVEMENT:

A pre-application conference was held with the owner on April 5, 2021. At that meeting, representatives from multiple County departments were present to identify applicable regulations and address potential issues. The purpose of a pre-application conference (meeting) is to inform the applicant of pertinent regulations and identify any potential issues.

County Surveyor: A Plat Review Checklist, reviewing the map for technical accuracy will be performed if the subdivision is approved.

City of Delta: Participated in the pre-application meeting and submitted a comment that the proposed subdivision looked good to the City.

CDOT: Responded with “No comment”.

DMEA: Commented that Lot 1 has electrical service. Service is available along F50 Road for Lot 2.

Uncompahgre Valley Water Users Association (UVWUA): The Water Users “H” lateral (Garnet Canal) flows along the northern boundary of the proposed subdivision. Irrigation water for these tracts of land will be delivered through the existing head gate. UVWUA requires a 100-foot wide easement (50 feet on both sides) for operation and maintenance (Condition). They also request that the proposed subdivision remain in the F50 Road Homeowners Association (HOA) for payment of assessments. UVWUA recommends the use of UVWUA water for all irrigation purposes (condition).

Environmental Health: Existing septic on Lot 1 has been verified to meet the required setback with the new property line configuration. In addition, the applicants submitted an engineered septic plan and applied for a septic variance. The Director of Environmental Health indicated that he could support a septic variance if the subdivision is approved.

County Engineering/Road and Bridge: An Access/Address Application was submitted for a separate access to Lot 2 from F50 Road with Road & Bridge recommendations. Staff determined that the existing access would



be a reasonable location, but installation/construction will require approval by Road & Bridge prior to GIS assigning an address (condition). In a memorandum dated August 5, 2021, County Engineering identified a few technical points to be addressed as part of the Final Plat (conditions). Lot 2 will require an easement affording them access to the concrete irrigation water divider box.

County GIS: An address application was processed for Lot 2 in order to initiate a septic permit (variance) application.

WATER PURVEYOR: Planning Staff contacted Tri-County Water to establish that water can/will be provided to Lot 2 (prior to recording a final plat).

Mitigation/Impact Fees: There is one existing developed lot (Lot 1) and one new lot (Lot 2). Staff finds that there is no impact related to the existing lot, so the fee would be applied to the new lot only. The Fire Mitigation fee of \$500 for each new lot will be assessed for distribution to the appropriate agency (\$500). The Open Space Mitigation fee of \$300 for each new lot will also be assessed (\$300).

Attached material: List, in order as attached

- Minor Plat
- PC Resolution
- Letter of Protest (8/2/21)

**RESOLUTION
OF THE
PLANNING COMMISSION
OF THE COUNTY OF DELTA,
STATE OF COLORADO**

PLN21-002/TKO MINOR PLAT

**APPROVING A MINOR PLAT SUBDIVIDING A 4.0 ACRE PARCEL
(PARCEL: 345520100010, 1751 F50 ROAD, DELTA) INTO TWO LOTS:
LOT 1 (3.138 ACRES), AND LOT 2 (0.863 ACRES).**

RECITALS

WHEREAS, TKO Services, LLC, a Colorado Limited Liability Company, consisting of Dan Thomas (Manager) and Jennifer Thomas (Member), collectively referred to as “Owner” or “Owners(s)” are the property owners of record of the real property consisting of 4.0 acres located at 1751 F50 Road, Delta (Parcel 3455-201-00-010, Account: R012755); and

WHEREAS, on January 5, 2021, Delta County Board of County Commissioners adopted the Delta County Land Use Code (LUC). Resolution No 2021-R-001 repealed regulations regarding land use and subdivision and adopted a new land use code (including zoning maps); and

WHEREAS, the property is zoned Urban Growth Area (“UGA”); and

WHEREAS, on January 21, 2000, a Growth Management Agreement between Delta County and the City of Delta was recorded (Reception #: 531701) to establish conditions for development near municipalities (subject property is Tier 1); and

WHEREAS, on March 29, 2021, a pre-application was submitted with a sketch plan requesting a 2-Lot subdivision with one parcel being less than one acre; and

WHEREAS, on April 5, 2021, a pre-application conference was held between the applicants and staff from Delta County and City of Delta to review preliminary materials to help identify potential issues and applicable review procedures; and

WHEREAS, on April 13, 2021, a letter was sent to the owners summarizing the pre-application conference, an application form and checklists identifying materials required with the application; and

WHEREAS, on July 22, 2021, a Plat was submitted to the Planning Department; and

WHEREAS, on August 12, 2021, the application package was determined to be complete by the Planning Department; and

WHEREAS, the application (PLN21-002) is a Minor Plat subdividing a 4.0 acre parcel into two lots: Lot 1 (3.138 acres), and Lot 2 (0.863 acres); and

WHEREAS, the subject property fronts F-50 Road, which is a private road with a 33-foot wide easement per Book 730, Page 214 (Reception Number 481381); and

WHEREAS, applications for a Minor Plat are subject to consideration by the Director of Community Development and Natural Resources; and

WHEREAS, the proposed Minor Plat is designed to meet applicable development standards relative to land use (setbacks, etc.) roads and bridges (access), water, and septic; and

WHEREAS, the proposed Minor Plat has been reviewed to ensure proper access to utilities and services (water, electricity, septic, etc.), including easements where necessary; and

WHEREAS, on July 22, 2021, notice was sent to adjacent property owners and notice was posted on the property informing the public that on August 16, 2021 the Delta County Director of Community Development and Natural Resources (Director) would consider this matter; and

WHEREAS, the Director referred this matter to the Planning Commission to address public comments asserting material impact to neighboring properties and disagreeing with staff's assessment that the project complies with the standards of the Land Use Code; and

WHEREAS, on August 11, 2021, notice was sent to adjacent property owners and posted on the property informing the public of the dates, times and place for the Delta County Planning Commission and Board of County Commissioners would consider this matter; and

WHEREAS, on August 25, 2021, the Planning Commission held a duly noticed public hearing to consider the application for a 2-Lot subdivision (PLN21-002/TKO Minor Plat).

DECISION

NOW, THEREFORE, BE IT RESOLVED, having considered all the written and documentary evidence, the administrative record, and other evidence presented, the Delta County Planning Commission does hereby:

- A. Find that the proposed TKO Minor Plat, as designed and conditioned, meets all applicable standards of the 2021 Delta County Land Use Code:
 1. The UGA zoning district requires a minimum parcel size of 7,500 square feet, lot width of 75 feet, and lot frontage of 30 feet. Lot 1 has 3.138 acres with an existing residence and septic system. Lot 1 would become a flag lot with a width of 230 feet and frontage on F50 Road that is 30 feet wide. Lot 2 has 0.863 acres (37,500+ square feet) and would be vacant. The lot would front on F50 Road with a frontage/width of about 200 feet.
 2. County Road & Bridge determined that the access for both lots would be reasonable, subject to approval of a permit and assignment of an address.
 3. Parcels under 1-acre in size require a variance from the septic regulations, and the parcel is located more than 400 feet from a sewer main so is not required to connect to sewer. County Environmental Health has approved an engineered onsite wastewater treatment plan to be installed for Lot 2.
 4. Proof of adequate (domestic) water is required to create a new lot. Planning Staff contacted Tri-County Water to establish that water can/will be provided to Lot 2 (prior to recording a final plat).
 5. A letter from neighbors opposing the project was submitted on August, 2, 2021 to the County Planning Department. The Planning Commission finds that the Director properly followed the procedure set forth in the Land Use Code, and that the project complies with standards of the Land Use Code.
- B. Recommend that the Board of County Commissioners APPROVE PLN21-002/TKO Minor Plat located within SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T.15S, R.95, 6th P.M. adjacent to Delta, Colorado (Parcel: 345520100010), subdividing a 4.0-acre parcel into two lots (Lot 1=3.138 acres, Lot 2=0.863 acres), subject to conditions of approval attached hereto and incorporated herein by reference as Exhibit A.

ADOPTED AS SET FORTH ABOVE on this 25th day of August, 2021 upon motion of _____, seconded by _____, by the following vote:

AYES:

NOES:

ABESNT:

ABSTAIN:

COUNTY OF DELTA
STATE OF COLORADO

Carl P. Holm, AICP
Planning Commission Secretary

Dated: _____

EXHIBIT A
Conditions of Approval
TKO Minor Plat (PLN21-002)

1. Lot owners shall be responsible for any necessary easements or water delivery systems and for the removal of tail/wastewater back to UVWUA water delivery system for each lot. (County Planning/UVWUA)
2. The Water Users "H" lateral (Garnet Canal) flows along the northern boundary of the proposed subdivision and UVWUA requires a 100-foot wide easement for operation and maintenance. The Final Plat shall include a 50 foot wide on both sides of this lateral, as applicable to this property. (County Planning/UVWUA)
3. A note shall be placed on the Final Plat that proposed subdivision (Lot 1 and Lot 2) remain in the F50 Road Homeowners Association (Account #6033) that provides for the collection and payment of UVWUA assessments. (County Planning/UVWUA)
4. A note shall be placed on the Final Plat that proposed subdivision (Lot 1 and Lot 2) shall use UVWUA water for all irrigation purposes. (County Planning/UVWUA)
5. Prior to recording the Final Plat, the applicant shall provide proof of installing a water meter for Lot 2, and provide the water purveyor and tap number on the Final Plat. (County Planning)
6. Show Book and Page or Reception Number for existing power line easements on the Final Plat (County Engineering)
7. Address the pond straddling the property line between Lot 1 and the property to the west. Either adjust the boundary line where the pond is on one lot or create an easement for properties with rights/access to the pond. (County Engineering)
8. Prior to recording a Final Plat, provide an easement for Lot 2 to be able to access the concrete irrigation water divider box. (County Engineering)
9. Signature Blocks, Plat Notes and Legal Descriptions for proposed lots need to be labeled on the Final Plat. (County Engineering)
10. Label F50 Road Easement on the Final Plat with Book and Page or Reception Number. (County Engineering)
11. Prior to recording the Final Plat, Lot 2 access installed and approved to the satisfaction of County Road and Bridge? (County Road & Bridge Foreman, District 1)

8-2-21

By: KH

August 1, 2021

Attention: Kate Kelly

Delta County Planning & Community Development Dept.

295 W. 6th St.

Delta, CO 81416

Case # PLN21-002/TKO Minor Plat

Project location: 1751 F50 Rd

Delta, CO 81416

We, the individuals that own property on F50 Rd, east from County Rd. 1740 are protesting this land split for the following reasons.

- 1) It wasn't until Bill Jensen and Sonja Anders received notice July 26, 2021 that we learned of what was happening. You held preliminary meetings and approved it without notifying any of the adjoining neighbors. The land was never posted with times or dates for the meeting so any of us could attend. It makes it very easy to push a sub-standard lot through the process when you have no opposition. The fact is there are rules concerning the posting of the property and notification of adjoining property owners. Not following the rules and guidelines governing this land split should cancel it immediately. Most of us have lived in this neighborhood for 20+years and we should have a say. This all should have taken place at the preliminary meeting, however, not one of us was notified.
- 2) Everyone on F50 Rd has 3-8 acres and we all live here because we like the privacy and the room it offers over living in a subdivision. Not only the residences on F50 Rd but all the surrounding properties are larger acreage that will never be broken up. Lot 2 at .863 acres does not meet the County Health Dept. requirements of a 1acre plot for a single-family septic system. Since there isn't a chance of ever getting sewer in this area the lot is too small and this does not fit into this neighborhood. Even if a nice new home is built there it won't be worth what the surrounding properties are worth. It just doesn't fit! There are no covenants to control the type of home that can come into the neighborhood. A new home or a tiny home? This was our mistake in not having covenants in place, however, it was always understood that everyone on F50 Rd built here because of the privacy and larger lot size.

- 3) In your public notice, twice you stated that F50 Rd is a private road. The fact is that when Rob and Judi Schmalz split this property the county had the final say on accepting the road for the final plat. That would be Schmalz Estates minor sub-division. #95-004. We have the green county road signs on F50 road and if the county accepted only part of this road, now is the time to get the last section brought up to County standards, at their cost. The road has no road base and has a drainage problem. The residents of F50 Rd have maintained this road themselves. If the proper procedures had been followed we could have solved this in the preliminary meeting.

We want an opportunity to have a say in this decision since it concerns everyone that lives on F50 Rd.

No notification and pushing a sub-standard lot into a neighborhood of homeowners with 3 and more acreage is underhanded.

Please let us know when we can come and express our concerns. Time, date and location.

Thank you,

Bill Jensen



Below are the neighbors that are protesting this land split.

Name	Address	Date
Stacey Brown	1765 F50 Rd	Aug 1, 2021
William Jensen	1754 F50 Rd.	Aug. 1, 2021
Colleen Jensen	1754 F50 Rd	Aug. 1, 2021
Carla Brown	1758 F50 Rd	Aug 1, 2021
Deb Brunner	1758 F50 Rd.	Aug. 1, 2021
Sandy Anders	1757- F50 Rd	Aug. 02-2021



STAFF REPORT

Delta County Planning Commission

**Delta County Administration Building
560 Dodge Street, Delta, CO 81416**

Wednesday, August 25, 2021 @ 5:30 p.m.

AFFORDABLE HOUSING STRATEGIES

**Consider “Innovative Affordable Housing Strategies” identified
in Colorado Housing Bill 1271.**

RECOMMENDATION:

Staff recommends that the Planning Commission:

- a. Receive a report on HB1271; and
- b. Provide direction to staff on strategies to recommend to the Board of County Commissioners.

SUMMARY:

On June 27, 2021, Colorado Governor signed House Bill 1271 (HB1271) titled; “Department of Local Affairs Innovative Affordable Housing Strategies” concerning the establishment of programs offering state assistance to local governments to promote the development of innovative affordable housing strategies in a manner that is compatible with best local land use practices, and, in connection therewith, making an appropriation. Through this bill, \$9.3M would be made available for the Local Government Affordable Housing Development Incentives Grant Program, \$2.1M for the Local Government Planning Grant Program, and \$1.6M for the Affordable Housing Guided Toolkit and Local Officials Guide Program (aka Housing Toolkit Program).

A copy of HB1271 is **Attached**. Staff is seeking a recommendation from the Planning Commission to include with Housing Goals for the Master Plan (**Attached**) that staff will be presenting to the Board of County Commissioners (BoCC).

DISCUSSION:

There are three programs created through this legislation:

- 1) *Local Government Affordable Housing Development Incentives Grant Program*. To qualify, local governments must adopt at least three (3) strategies from the following list:
 - (A) The use of vacant publicly owned real property within the local government for the development of affordable housing;



- (B) The creation of a program to subsidize or otherwise reduce local development review or fees, including but not limited to building permit fees, planning waivers, and water and sewer tap fees, for affordable housing development;
- (C) The creation of an expedited development review process for affordable housing aimed at households the annual income of which is at or below one hundred twenty percent of the area median income of households of that size in the county in which the housing is located;
- (D) The creation of an expedited development review process for acquiring or repurposing underutilized commercial property that can be rezoned to include affordable housing units, including the preservation of existing affordable housing units;
- (E) The establishment of a density bonus program to increase the construction of units that meet critical housing needs in the local community;
- (F) With respect to water utility charges, the creation of processes to promote the use of sub-metering of utility charges for affordable housing projects and the creation of expertise in water utility matters dedicated to affordable housing projects;
- (G) With respect to infrastructure, the creation of a dedicated funding source to subsidize infrastructure costs and associated fees related to publicly owned water, sanitary sewer, storm sewers, and roadways infrastructure;
- (H) Granting duplexes, triplexes, or other appropriate multi-family housing options as a use by right in single-family residential zoning districts;
- (I) The classification of a proposed affordable housing development as a use by right when it meets the building density and design standards of a given zoning district;
- (J) Authorizing accessory dwelling units as a use by right on parcels in single family zoning districts that meet the safety and infrastructure capacity considerations of local governments;
- (K) Allowing planned unit developments with integrated affordable housing units;
- (L) Allowing the development of small square footage residential unit sizes;
- (M) Lessened minimum parking requirements for new affordable housing developments; and
- (N) The creation of a land donation, land acquisition, or land banking program.

In addition to the listed strategies, DOLA can consider additional policy or regulatory tools that provide novel, creative, or innovative incentives to the development of affordable housing

- 2) *Local Government Planning Grant Program.* For those that do not meet the criteria above, the planning grant program will be available to retain professional services to assess the housing needs or to make changes to land use regulations to become an eligible recipient of a grant under the housing development incentives grant program.
- 3) *Housing Toolkit Program.* The purpose of this program is to award funding to qualified counties and municipalities selected in a competitive process who commit to the adoption of best land use practices with demonstrated success in the development of affordable housing. Technical assistance would be provided to local governments who demonstrate an understanding of the housing needs of their communities, take steps to engage their entire communities in this process, make changes to their land use codes and related processes that provide incentives and reduce barriers to the development of affordable housing, obtain and support viable sites in their communities for the development of affordable housing, and attract developers committed to making such investments in their communities.



On June 9, 2021, the Planning Commission identified the following Goal and Strategies for the BoCC to incorporate into the Delta County Master Plan.

Goal:

Establish an Affordable Housing Plan within Delta County.

Strategies:

1. Convene an Affordable Housing Task Force consisting of stakeholders within Delta County (municipalities, developers, contractors, etc.).
2. Identify and map County-owned land for potential development of affordable housing.
3. Consider fee reductions and other incentives that help encourage development of Affordable Housing (AH).
4. Meet with current Housing Authorities to discuss the potential for expansion into unincorporated Delta County.
5. Identify infrastructure (transportation, water, sewer) needed to support development of AH and map where existing infrastructure could support such development.
6. Identify federal or state funds available to assist development of AH in Delta County.
7. Identify tools such as rent control, deed restrictions, variance applications, and land swaps to help assist in the development of AH.

Attached material: List, in order as attached

- HB1271

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 21-1271

BY REPRESENTATIVE(S) McCluskie and Jodeh, Bacon, Benavidez, Bennett, Bird, Boesenecker, Caraveo, Cutter, Duran, Esgar, Exum, Froelich, Gonzales-Gutierrez, Herod, Hooton, Jackson, Kennedy, Kipp, Lontine, McCormick, McLachlan, Michaelson Jenet, Mullica, Ortiz, Ricks, Roberts, Tipper, Titone, Valdez A., Valdez D., Weissman, Woodrow, Young, Amabile, Sirota, Sullivan;
also SENATOR(S) Gonzales, Bridges, Buckner, Danielson, Donovan, Fenberg, Hansen, Jaquez Lewis, Kolker, Lee, Moreno, Pettersen, Story, Winter, Garcia.

CONCERNING THE ESTABLISHMENT OF PROGRAMS OFFERING STATE ASSISTANCE TO LOCAL GOVERNMENTS TO PROMOTE THE DEVELOPMENT OF INNOVATIVE AFFORDABLE HOUSING STRATEGIES IN A MANNER THAT IS COMPATIBLE WITH BEST LOCAL LAND USE PRACTICES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(a) Coloradans have identified housing affordability as the biggest issue facing the state as one in every seven Colorado households is spending more than half of its income on housing according to a study by Shift Research Lab;

(b) The median home price to median income ratio has increased across markets all across the nation. As of 2019, the price-to-income ratio was considerably larger for renters than owners, with the gap most significant in major metropolitan areas with a population greater than three million people. Across large metropolitan areas with a population greater than one million but less than three million, the gap in price-to-income ratio for renters was largest in Providence, Denver, and Salt Lake City.

(c) The same measurement on a statewide scale puts Colorado among just five states with a greater than sixty percent gap between home price and income growth between 2009 and 2019. Between 2012 and 2019, Colorado fell from being one of the most affordable states to one of the least affordable states in the country based on median income to median pricing.

(d) Currently, Colorado has a shortage of nearly 121,000 affordable rental units, and the Colorado housing and finance authority reports that nearly half of all Colorado renters are considered cost burdened, with an additional twenty-four percent being severely cost burdened;

(e) By this act, the general assembly is focusing a portion of the stimulus dollars it has received from the federal government to begin to remedy this affordable housing crisis in Colorado with innovative legislation that will jumpstart the production of housing statewide in the next three years through three programs detailed in the act. In combination, these programs focus on removing regulatory barriers to affordable housing development and offering incentives to local governments to make policy changes, as well as a mechanism for local governments to receive expertise or financial assistance from the state.

(f) The general assembly recognizes that local governments throughout the state vary in their stages of meeting the housing needs of their communities. In order to help local governments respond to these needs and to encourage them to extend their ability to create housing and more liveable and vibrant communities, the divisions of local government

and housing within the department of local affairs will focus on three programs.

(g) When a local government is at the nascent phase of addressing affordable housing needs, it may require additional help to develop an overall strategy. The housing toolkit program grant would offer local governments comprehensive support to make effective change by assessing housing needs, building effective communication strategies around the need for affordable housing, understanding which actions might have the biggest impact, and supporting the local government through the steps preparatory to taking action to address these housing needs.

(h) When a local government is at an intermediate phase of addressing affordable housing needs, it may require particular expertise to help it refine and advance its housing strategy. The planning grant program awards local governments funding to hire assistance to adopt qualifying land use strategies that prepare the local government to meet this phase of its housing needs by conducting a needs assessment, reviewing model land use codes, or making investments in its community that would enable the local government to be competitive in applying for a housing development incentives grant.

(i) If a local government is demonstrating an ongoing commitment to advancing its land use regulations and policies to address the affordable housing needs in its community, it may be eligible to apply for a housing development incentives grant. This grant is focused on allowing local governments to adopt effective tools to spur housing creation. The menu of strategy options is broad enough that any community can be successful in finding the right mix of strategies that fit its community, or the local government may introduce its own innovative or unique approach. Local governments would choose the strategies that best fits the character of their community to pursue the grant funding from the state whether they are in an urban, rural, mountain resort, or eastern plains location. Additionally, the department of local affairs would have the discretion to select novel, creative, or innovative proposals from communities that offer an additional approach to create affordable housing or would be able to consider how those local governments that have already taken steps to address housing affordability would be eligible to continue and advance their approaches if they have already undertaken some of the best practice approaches. The most competitive local governments will demonstrate a continued

commitment to removing barriers to affordable housing development.

(j) On March 11, 2021, the federal government enacted the "American Rescue Plan Act of 2021", Pub.L. 117-2, referred to in this section as the "federal act", pursuant to which Colorado will receive \$3,828,761,790 from the federal coronavirus state fiscal recovery fund to be used for certain specified purposes;

(k) These specified purposes include providing programs, services, or other assistance for populations disproportionately impacted by the COVID-19 public health emergency;

(l) More specifically, pursuant to 31 C.F.R. 35.6 (b), these specified purposes include programs or services that address housing insecurity, lack of affordable housing, or homelessness, including supportive housing or other programs or services to improve access to stable affordable housing among individuals who are homeless; the development of affordable housing to increase the supply of affordable housing developments that are livable, vibrant, and driven by community benefits; and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(m) The three grant programs funded by the bill will enable local governments across the state at various stages of development in their ability to provide affordable housing to create and implement the programs or services that address housing insecurity, lack of affordable housing, or homelessness to enable populations, households, or geographic areas disproportionally affected by the COVID-19 public health emergency to obtain affordable housing. Accordingly, pursuant to 31 C.F.R. 35.6 (b), the assistance that will be provided by the three grant programs funded by the bill is an eligible use of money received by the state under the federal act.

SECTION 2. In Colorado Revised Statutes, 24-32-104, **add** (4) and (5) as follows:

24-32-104. Functions of the division - definition. (4) THE DIVISION SHALL ADMINISTER THE LOCAL GOVERNMENT AFFORDABLE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM CREATED IN SECTION 24-32-130 (2) AND THE LOCAL GOVERNMENT PLANNING GRANT PROGRAM CREATED IN SECTION 24-32-130 (5).

(5) THE DIVISION SHALL CONSULT WITH THE DIVISION OF HOUSING CREATED IN SECTION 24-32-704 IN CONNECTION WITH THE CREATION AND ADMINISTRATION OF THE HOUSING TOOLKIT PROGRAM IN ACCORDANCE WITH SECTION 24-32-721.5 (2)(a).

SECTION 3. In Colorado Revised Statutes, **add** 24-32-130 as follows:

24-32-130. Local government affordable housing development incentives grant program - local government planning grant program - creation - report - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "AFFORDABLE HOUSING" MEANS:

(I) FOR A HOUSEHOLD RESIDING IN HOUSING ON A RENTAL BASIS, ANNUAL INCOME OF THE HOUSEHOLD IS AT OR BELOW EIGHTY PERCENT OF THE AREA MEDIAN INCOME OF HOUSEHOLDS OF THAT SIZE IN THE COUNTY IN WHICH THE HOUSING IS LOCATED;

(II) FOR A HOUSEHOLD RESIDING IN HOUSING ON A HOME OWNERSHIP BASIS, ANNUAL INCOME OF THE HOUSEHOLD IS AT OR BELOW ONE HUNDRED FORTY PERCENT OF THE AREA MEDIAN INCOME OF HOUSEHOLDS OF THAT SIZE IN THE COUNTY IN WHICH THE HOUSING IS LOCATED; OR

(III) HOUSING THAT INCORPORATES MIXED-INCOME DEVELOPMENT.

(b) "DEPARTMENT" MEANS THE DEPARTMENT OF LOCAL AFFAIRS.

(c) "ELIGIBLE RECIPIENT" MEANS A LOCAL GOVERNMENT THAT IS ELIGIBLE TO RECEIVE A GRANT THROUGH THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM OR THE PLANNING GRANT PROGRAM.

(d) "HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM" MEANS THE LOCAL GOVERNMENT AFFORDABLE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM CREATED IN SUBSECTION (2) OF THIS SECTION.

(e) "LOCAL GOVERNMENT" MEANS A COUNTY, A MUNICIPALITY, OR A CITY AND COUNTY.

(f) "MIXED INCOME DEVELOPMENT" MEANS HOUSING THAT INCORPORATES MIXED INCOME DEVELOPMENT IN THAT SOME, BUT NOT ALL, HOUSING UNITS WITHIN A PARTICULAR DEVELOPMENT HAVE RESTRICTED RATES AT OR BELOW THE INCOME LEVELS SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION IN ADDITION TO SOME UNITS THAT ARE ABOVE SUCH INCOME LEVELS WITH OR WITHOUT SUCH RESTRICTED RATES.

(g) "PLANNING GRANT PROGRAM" MEANS THE LOCAL GOVERNMENT PLANNING GRANT PROGRAM CREATED IN SUBSECTION (5) OF THIS SECTION.

(2) THERE IS HEREBY CREATED IN THE DEPARTMENT THE LOCAL GOVERNMENT AFFORDABLE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM TO PROVIDE GRANTS TO LOCAL GOVERNMENTS THAT ADOPT ONE OR MORE POLICY OR REGULATORY TOOLS THAT CREATE INCENTIVES TO PROMOTE THE DEVELOPMENT OF AFFORDABLE HOUSING. A LOCAL GOVERNMENT THAT ADOPTS SUCH TOOLS IN ACCORDANCE WITH THIS SECTION IS ELIGIBLE FOR A GRANT FROM THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM AS AN INCENTIVE TO DEVELOP ONE OR MORE AFFORDABLE HOUSING DEVELOPMENTS IN THEIR COMMUNITY OR REGION THAT ARE DRIVEN BY COMMUNITY BENEFITS AND THAT FOCUS ON CRITICAL HOUSING NEEDS AS IDENTIFIED BY THE LOCAL GOVERNMENT. THE DIVISION SHALL ADMINISTER THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM.

(3)(a) AS PART OF THE POLICIES, PROCEDURES, AND GUIDELINES THE DIVISION IS REQUIRED TO ADOPT FOR THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM PURSUANT TO SUBSECTION (6)(a) OF THIS SECTION, THE DIVISION SHALL DEVELOP A MENU OF DIFFERENT POLICY OR REGULATORY TOOLS THAT LOCAL GOVERNMENTS MAY ADOPT AS INCENTIVES TO PROMOTE AFFORDABLE HOUSING DEVELOPMENT WITHIN THEIR TERRITORIAL BOUNDARIES OR ACROSS THEIR REGION.

(b)(I) THE MENU OF TOOLS THE DIVISION MUST DEVELOP PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION MUST INCLUDE SUCH INCENTIVES TO PROMOTE AFFORDABLE HOUSING DEVELOPMENT INCLUDING BUT NOT LIMITED TO:

(A) THE USE OF VACANT PUBLICLY OWNED REAL PROPERTY WITHIN THE LOCAL GOVERNMENT FOR THE DEVELOPMENT OF AFFORDABLE HOUSING;

(B) THE CREATION OF A PROGRAM TO SUBSIDIZE OR OTHERWISE REDUCE LOCAL DEVELOPMENT REVIEW OR FEES, INCLUDING BUT NOT LIMITED TO BUILDING PERMIT FEES, PLANNING WAIVERS, AND WATER AND SEWER TAP FEES, FOR AFFORDABLE HOUSING DEVELOPMENT;

(C) THE CREATION OF AN EXPEDITED DEVELOPMENT REVIEW PROCESS FOR AFFORDABLE HOUSING AIMED AT HOUSEHOLDS THE ANNUAL INCOME OF WHICH IS AT OR BELOW ONE HUNDRED TWENTY PERCENT OF THE AREA MEDIAN INCOME OF HOUSEHOLDS OF THAT SIZE IN THE COUNTY IN WHICH THE HOUSING IS LOCATED;

(D) THE CREATION OF AN EXPEDITED DEVELOPMENT REVIEW PROCESS FOR ACQUIRING OR REPURPOSING UNDERUTILIZED COMMERCIAL PROPERTY THAT CAN BE REZONED TO INCLUDE AFFORDABLE HOUSING UNITS, INCLUDING THE PRESERVATION OF EXISTING AFFORDABLE HOUSING UNITS;

(E) THE ESTABLISHMENT OF A DENSITY BONUS PROGRAM TO INCREASE THE CONSTRUCTION OF UNITS THAT MEET CRITICAL HOUSING NEEDS IN THE LOCAL COMMUNITY;

(F) WITH RESPECT TO WATER UTILITY CHARGES, THE CREATION OF PROCESSES TO PROMOTE THE USE OF SUB-METERING OF UTILITY CHARGES FOR AFFORDABLE HOUSING PROJECTS AND THE CREATION OF EXPERTISE IN WATER UTILITY MATTERS DEDICATED TO AFFORDABLE HOUSING PROJECTS;

(G) WITH RESPECT TO INFRASTRUCTURE, THE CREATION OF A DEDICATED FUNDING SOURCE TO SUBSIDIZE INFRASTRUCTURE COSTS AND ASSOCIATED FEES RELATED TO PUBLICLY OWNED WATER, SANITARY SEWER, STORM SEWERS, AND ROADWAYS INFRASTRUCTURE;

(H) GRANTING DUPLEXES, TRIPLEXES, OR OTHER APPROPRIATE MULTI-FAMILY HOUSING OPTIONS AS A USE BY RIGHT IN SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS;

(I) THE CLASSIFICATION OF A PROPOSED AFFORDABLE HOUSING DEVELOPMENT AS A USE BY RIGHT WHEN IT MEETS THE BUILDING DENSITY AND DESIGN STANDARDS OF A GIVEN ZONING DISTRICT;

(J) AUTHORIZING ACCESSORY DWELLING UNITS AS A USE BY RIGHT ON PARCELS IN SINGLE FAMILY ZONING DISTRICTS THAT MEET THE SAFETY

AND INFRASTRUCTURE CAPACITY CONSIDERATIONS OF LOCAL GOVERNMENTS;

(K) ALLOWING PLANNED UNIT DEVELOPMENTS WITH INTEGRATED AFFORDABLE HOUSING UNITS;

(L) ALLOWING THE DEVELOPMENT OF SMALL SQUARE FOOTAGE RESIDENTIAL UNIT SIZES;

(M) LESSENERD MINIMUM PARKING REQUIREMENTS FOR NEW AFFORDABLE HOUSING DEVELOPMENTS; AND

(N) THE CREATION OF A LAND DONATION, LAND ACQUISITION, OR LAND BANKING PROGRAM.

(II) IN ADDITION TO THE ITEMS LISTED IN SUBSECTION (3)(b)(I) OF THIS SECTION, THE POLICIES, PROCEDURES, AND GUIDELINES ADOPTED BY THE DIVISION MUST ALSO ALLOW FOR THE ADOPTION BY A LOCAL GOVERNMENT OF ADDITIONAL POLICY OR REGULATORY TOOLS THAT PROVIDE NOVEL, CREATIVE, OR INNOVATIVE INCENTIVES TO THE DEVELOPMENT OF AFFORDABLE HOUSING.

(4)(a) IN THE POLICIES, PROCEDURES, AND GUIDELINES THE DIVISION IS REQUIRED TO ADOPT FOR THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM PURSUANT TO SUBSECTION (6)(a) OF THIS SECTION, THE DIVISION SHALL SPECIFY, WITHOUT LIMITATION:

(I) THE MANNER BY WHICH A LOCAL GOVERNMENT BECOMES AN ELIGIBLE RECIPIENT FOR THE GRANT PROGRAM AND THE CRITERIA USED TO DETERMINE ELIGIBILITY;

(II) THE MANNER IN WHICH A LOCAL GOVERNMENT'S ONGOING COMMITMENT TO REFINE AND EXPAND ITS LAND USE POLICIES AFFECTS THE COMPETITIVENESS OF ITS GRANT APPLICATION; AND

(III) A REQUIREMENT THAT A LOCAL GOVERNMENT SHALL SELECT NOT LESS THAN THREE OPTIONS FROM THE MENU OF POLICY OR REGULATORY TOOLS SPECIFIED IN SUBSECTION (3)(b) OF THIS SECTION.

(b) IN EVALUATING APPLICATIONS FOR GRANTS FROM THE HOUSING

DEVELOPMENT INCENTIVES GRANT PROGRAM, THE DIVISION SHALL PRIORITIZE PROPOSALS SUBMITTED BY LOCAL GOVERNMENTS BASED ON THE DEGREE TO WHICH THE GRANT AWARD, EITHER ON ITS OWN, OR AS PART OF OTHER INCENTIVES MADE AVAILABLE TO THE ELIGIBLE RECIPIENT:

(I) REPRESENTS GEOGRAPHIC DIVERSITY THROUGHOUT THE STATE WITH RESPECT TO THE DIFFERENT KINDS OF COMMUNITIES BEING AWARDED GRANTS;

(II) SATISFIES THE GOAL OF ACHIEVING BEST PRACTICES IN AFFORDABLE HOUSING DEVELOPMENT WHETHER WITH RESPECT TO THE MENU OF POLICY OR REGULATORY TOOLS ADOPTED BY THE LOCAL GOVERNMENT OR THAT REPRESENTS A NOVEL, CREATIVE, OR INNOVATIVE APPROACH TO THE DEVELOPMENT OF AFFORDABLE HOUSING;

(III) OFFERS MAXIMUM IMPACT IN INITIATING AFFORDABLE HOUSING CREATION WITHIN THE LOCAL COMMUNITY OR REGION THAT IS DRIVEN BY COMMUNITY BENEFITS AND THAT FOCUSES ON CRITICAL HOUSING NEEDS AS IDENTIFIED BY THE LOCAL GOVERNMENT;

(IV) EXTENDS OR ADVANCES EXISTING APPROACHES BY THE LOCAL GOVERNMENT TO INITIATE HOUSING CREATION WHETHER WITH RESPECT TO THE PRODUCTION OF HOUSING UNITS OR LONGER TERM POLICY CHANGES;

(V) REPRESENTS DIVERSITY IN THE TYPE OF AFFORDABLE HOUSING CREATED FOR RENTAL HOUSING IN ACCORDANCE WITH SUBSECTION (1)(a)(I) OF THIS SECTION AND FOR HOME OWNERSHIP IN ACCORDANCE WITH SUBSECTION (1)(a)(II) OF THIS SECTION;

(VI) INITIATES OR PRESERVES HOUSING AFFORDABILITY THAT CAN BE MAINTAINED FOR A LONG-TERM PERIOD OF AFFORDABILITY AS NEGOTIATED BY THE DEPARTMENT AND THE LOCAL GOVERNMENT AND THAT ALLOWS THE LOCAL GOVERNMENT TO DETERMINE THE METHOD FOR ACHIEVING AFFORDABILITY; AND

(VII) SUPPORTS SUSTAINABLE DEVELOPMENT PATTERNS SUCH AS INFILL AND THE REDEVELOPMENT OF EXISTING BUILDINGS.

(c) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WITH RESPECT TO THE AWARDED OF GRANTS UNDER THE HOUSING DEVELOPMENT

INCENTIVES GRANT PROGRAM, THE DIVISION SHALL PRIORITIZE ITS FUNDING IN FAVOR OF THOSE LOCAL GOVERNMENTS THAT DEMONSTRATE THE SUFFICIENT USE OF LOCAL INCENTIVES FOR AFFORDABLE HOUSING DEVELOPMENT IN SUCH MANNER AS TO BE ABLE TO LEVERAGE FUNDING FOR THE MAXIMUM IMPACT ON THE NUMBER OF AFFORDABLE HOUSING UNITS BUILT OVER TIME AND THAT ARE AFFORDABLE AS NEGOTIATED BY THE DEPARTMENT AND LOCAL GOVERNMENTS.

(5) THERE IS HEREBY CREATED IN THE DEPARTMENT THE LOCAL GOVERNMENT PLANNING GRANT PROGRAM TO PROVIDE GRANTS TO LOCAL GOVERNMENTS THAT LACK ONE OR MORE OF THE POLICY AND REGULATORY TOOLS THAT PROVIDE INCENTIVES TO PROMOTE THE DEVELOPMENT OF AFFORDABLE HOUSING AS DESCRIBED IN SUBSECTION (3) OF THIS SECTION AND THAT COULD BENEFIT FROM ADDITIONAL FUNDING TO BE ABLE TO CREATE AND MAKE USE OF THESE POLICY AND REGULATORY TOOLS. MONEY UNDER THE PLANNING GRANT PROGRAM WILL BE AVAILABLE TO A LOCAL GOVERNMENT TO ENABLE THE GOVERNMENT TO RETAIN A CONSULTANT OR A RELATED PROFESSIONAL SERVICE TO ASSESS THE HOUSING NEEDS OF ITS COMMUNITY, INCLUDING CONSIDERATIONS OF EQUITY, OR TO MAKE CHANGES TO ITS POLICIES, PROGRAMS, DEVELOPMENT REVIEW PROCESSES, LAND USE CODES, AND RELATED RULES TO BECOME AN ELIGIBLE RECIPIENT OF A GRANT UNDER THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM. THE PLANNING GRANT PROGRAM WILL BE ADMINISTERED BY THE DIVISION. AS PART OF ITS ADMINISTRATION OF THE PLANNING GRANT PROGRAM, THE DIVISION SHALL PROVIDE ASSISTANCE TO LOCAL GOVERNMENTS ON BEST LAND USE PRACTICES AND TOOLS AND SHALL UPDATE AND PUBLISH MODEL COUNTY AND MUNICIPAL LAND USE CODES FOR THE BENEFIT OF LOCAL GOVERNMENTS ACROSS THE STATE.

(6) (a) ON OR BEFORE SEPTEMBER 1, 2021, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL ADOPT POLICIES, PROCEDURES, AND GUIDELINES FOR THE HOUSING INCENTIVES GRANT PROGRAM AND PLANNING GRANT PROGRAM THAT INCLUDE, WITHOUT LIMITATION:

(I) PROCEDURES AND TIMELINES BY WHICH AN ELIGIBLE RECIPIENT MAY APPLY FOR A GRANT;

(II) CRITERIA FOR DETERMINING THE AMOUNT OF GRANT AWARDS;

(III) PERFORMANCE CRITERIA FOR GRANT RECIPIENTS' PROJECTS; AND

(IV) REPORTING REQUIREMENTS FOR GRANT RECIPIENTS.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE AMOUNT OF ANY GRANT AWARD UNDER EITHER THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM OR THE PLANNING GRANT PROGRAM AND ANY RESTRICTIONS OR CONDITIONS PLACED UPON THE USE OF GRANT MONEY AWARDED IS WITHIN THE DISCRETION OF THE DIVISION IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

(c) TO THE EXTENT APPLICABLE, AND UNLESS OTHERWISE REQUIRED BY THIS SECTION, REQUIREMENTS GOVERNING THE PROCESS OF AWARDING A COLORADO HERITAGE PLANNING GRANT UNDER PART 32 OF THIS TITLE 24 GOVERN THE PROCESS FOR OBTAINING A GRANT FROM THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM OR THE PLANNING GRANT PROGRAM UNDER THIS SECTION.

(7) ALL FUNDING OF ANY GRANTS AWARDED UNDER EITHER THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM OR THE PLANNING GRANT PROGRAM MUST BE MADE ENTIRELY OUT OF THE MONEY TRANSFERRED FROM THE GENERAL FUND AND THE AFFORDABLE HOUSING AND HOME OWNERSHIP CASH FUND CREATED IN SECTION 24-75-229 (3)(a), THAT ORIGINATES FROM MONEY THE STATE RECEIVED FROM THE FEDERAL CORONAVIRUS STATE FISCAL RECOVERY FUND, TO THE COLORADO HERITAGE COMMUNITIES FUND CREATED IN SECTION 24-32-3207 (1) IN ACCORDANCE WITH SECTION 24-32-3207 (6). ALL COSTS INCURRED BY THE DIVISION IN ADMINISTERING EITHER THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM OR THE PLANNING GRANT PROGRAM MUST BE PAID OUT OF THE MONEY TRANSFERRED UNDER SECTION 24-32-3207 (6). THE DIVISION MAY USE UP TO FOUR PERCENT OF ANY MONEY TRANSFERRED TO IT UNDER THIS SECTION TO COVER ITS ADMINISTRATIVE COSTS IN ADMINISTERING OR EVALUATING EITHER THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM OR THE PLANNING GRANT PROGRAM. ALL MONEY TRANSFERRED INTO THE COLORADO HERITAGE COMMUNITIES FUND IN ACCORDANCE WITH SECTION 24-32-3207 (6) MUST BE EXPENDED BY JULY 1, 2024. ANY MONEY TRANSFERRED INTO THE FUND IN ACCORDANCE WITH THIS SUBSECTION (7) THAT IS NOT EXPENDED OR ENCUMBERED FROM ANY APPROPRIATION AT THE END OF ANY FISCAL YEAR IS AVAILABLE FOR EXPENDITURE BY JULY 1, 2024, WITHOUT FURTHER APPROPRIATION.

(8) (a) ON OR BEFORE NOVEMBER 1, 2022, AND ON OR BEFORE NOVEMBER 1, 2023, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL PUBLISH A REPORT SUMMARIZING THE USE OF ALL MONEY THAT WAS AWARDED AS GRANTS FROM THE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM IN THE PRECEDING FISCAL YEAR. AT A MINIMUM, THE REPORT MUST SPECIFY THE NUMBER OF LOCAL GOVERNMENTS THAT APPLIED FOR A GRANT AWARD, INCLUDING THE NUMBER OF LOCAL GOVERNMENTS THAT WERE NOT AWARDED A GRANT; THE POLICY OR REGULATORY TOOLS ADOPTED BY THE LOCAL GOVERNMENTS THAT QUALIFIED FOR A GRANT AWARD; THE AMOUNT OF GRANT MONEY DISTRIBUTED TO EACH GRANT RECIPIENT; AND A DESCRIPTION OF EACH GRANT RECIPIENT'S USE OF THE GRANT MONEY. IN THE REPORT, THE DIVISION SHALL ALSO PROVIDE ITS RECOMMENDATIONS CONCERNING FUTURE ADMINISTRATION OF THE GRANT PROGRAM. THE REPORT MUST BE SHARED WITH THE GENERAL ASSEMBLY AND POSTED ON THE DEPARTMENT'S WEBSITE.

(b) ON OR BEFORE NOVEMBER 1, 2022, AND ON OR BEFORE NOVEMBER 1, 2023, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL PUBLISH A REPORT SUMMARIZING THE USE OF ALL MONEY THAT WAS AWARDED AS GRANTS FROM THE PLANNING GRANT PROGRAM IN THE PRECEDING FISCAL YEAR. AT A MINIMUM, THE REPORT MUST SPECIFY THE AMOUNT OF GRANT MONEY DISTRIBUTED TO EACH GRANT RECIPIENT AND A DESCRIPTION OF EACH GRANT RECIPIENT'S USE OF THE GRANT MONEY. IN THE REPORT, THE DIVISION SHALL ALSO PROVIDE ITS RECOMMENDATIONS CONCERNING FUTURE ADMINISTRATION OF THE GRANT PROGRAM. THE REPORT MUST BE SHARED WITH THE GENERAL ASSEMBLY AND POSTED ON THE DEPARTMENT'S WEBSITE.

SECTION 4. In Colorado Revised Statutes, 24-32-705, **add** (7) as follows:

24-32-705. Functions of division. (7) THE DIVISION SHALL ADMINISTER THE AFFORDABLE HOUSING GUIDED TOOLKIT AND LOCAL OFFICIALS GUIDE PROGRAM IN ACCORDANCE WITH SECTION 24-32-721.5.

SECTION 5. In Colorado Revised Statutes, 24-32-721, **amend** (1); and **add** (6) as follows:

24-32-721. Colorado affordable housing construction grants and loans - housing development grant fund - creation - housing assistance

for persons with behavioral, mental health, or substance use disorders - cash fund - appropriation - report to general assembly - rules - definitions - repeal. (1) There is hereby created in the state treasury the housing development grant fund, which fund is administered by the division and is referred to in this section as the "fund". The fund consists of money credited to the fund in accordance with section 39-26-123 (3)(b); money transferred to the fund in accordance with section 24-22-118 (2); money appropriated to the fund by the general assembly; all money transferred to the fund from the marijuana tax cash fund created in section 39-28.8-501 (1) and any other cash fund maintained by the state; ALL MONEY TRANSFERRED TO THE FUND FROM THE GENERAL FUND PURSUANT TO SUBSECTION (6) OF THIS SECTION; all money collected by the division for purposes of this section from federal grants, from other contributions, gifts, grants, and donations received from any other organization, entity, or individual, public or private; and from any fees or interest earned on such money. The division is hereby authorized and directed to solicit, accept, expend, and disburse all money collected for the fund from the sources specified in this subsection (1) for the purpose of making grants, ~~or~~ loans, OR OTHER FORMS OF ASSISTANCE THAT MAY BE AWARDED UNDER SECTION 24-32-721.5 and for program administration as provided in this section. All such money must be transmitted to the state treasurer to be credited to the fund. The money in the fund is continuously appropriated to the division for the purposes of this section.

(6) ON THE EFFECTIVE DATE OF THIS SUBSECTION (6), THE STATE TREASURER SHALL TRANSFER ONE MILLION SIX HUNDRED THOUSAND DOLLARS FROM THE GENERAL FUND TO THE HOUSING DEVELOPMENT GRANT FUND CREATED IN SUBSECTION (1) OF THIS SECTION. THE DIVISION SHALL USE THE MONEY TRANSFERRED PURSUANT TO THIS SUBSECTION (6) FOR THE AFFORDABLE HOUSING GUIDED TOOLKIT AND LOCAL OFFICIALS GUIDE PROGRAM CREATED IN SECTION 24-32-721.5.

SECTION 6. In Colorado Revised Statutes, **add** 24-32-721.5 as follows:

24-32-721.5. Affordable housing guided toolkit and local officials guide program - creation. (1) (a) THERE IS HEREBY CREATED WITHIN THE DIVISION THE AFFORDABLE HOUSING GUIDED TOOLKIT AND LOCAL OFFICIALS GUIDE PROGRAM, REFERRED TO IN THIS SECTION AS THE "HOUSING TOOLKIT PROGRAM". THE PURPOSE OF THE HOUSING TOOLKIT PROGRAM IS TO AWARD

FUNDING TO QUALIFIED COUNTIES, MUNICIPALITIES, AND FEDERALLY RECOGNIZED TRIBES WITHIN THE STATE SELECTED IN A COMPETITIVE PROCESS WHO COMMIT TO THE ADOPTION OF BEST LAND USE PRACTICES WITH DEMONSTRATED SUCCESS IN THE DEVELOPMENT OF AFFORDABLE HOUSING. UNDER THE HOUSING TOOLKIT PROGRAM, TECHNICAL ASSISTANCE WILL BE PROVIDED BY CONSULTANTS AND RELATED PROFESSIONALS TO ENABLE LOCAL GOVERNMENTS TO ACHIEVE AN UNDERSTANDING OF THE HOUSING NEEDS OF THEIR COMMUNITIES, INCLUDING THE EQUITY IMPACTS OF THEIR LAND USE POLICIES AND REGULATIONS, TAKE STEPS TO ENGAGE THEIR ENTIRE COMMUNITIES IN THIS PROCESS, MAKE CHANGES TO THEIR LAND USE CODES AND RELATED PROCESSES THAT PROVIDE INCENTIVES AND REDUCE BARRIERS TO THE DEVELOPMENT OF AFFORDABLE HOUSING, OBTAIN AND SUPPORT VIABLE SITES IN THEIR COMMUNITIES FOR THE DEVELOPMENT OF AFFORDABLE HOUSING, AND ATTRACT DEVELOPERS COMMITTED TO MAKING SUCH INVESTMENTS IN THEIR COMMUNITIES. THE DIVISION SHALL ADMINISTER THE HOUSING TOOLKIT PROGRAM.

(b) ALL FUNDING OF ANY ASSISTANCE AWARDED UNDER THE HOUSING TOOLKIT PROGRAM MUST BE MADE ENTIRELY OUT OF THE MONEY TRANSFERRED FROM THE GENERAL FUND TO THE HOUSING DEVELOPMENT GRANT FUND CREATED IN SECTION 24-32-721 (1) IN ACCORDANCE WITH SECTION 24-32-721 (6). ALL COSTS INCURRED BY THE DIVISION IN ADMINISTERING THE HOUSING TOOLKIT PROGRAM MUST BE PAID OUT OF THE MONEY TRANSFERRED IN ACCORDANCE WITH SECTION 24-32-721 (6). THE DIVISION MAY USE UP TO EIGHT PERCENT OF ANY MONEY APPROPRIATED TO IT UNDER THIS SECTION TO COVER ITS ADMINISTRATIVE COSTS IN ADMINISTERING THE HOUSING TOOLKIT PROGRAM. ALL MONEY TRANSFERRED TO THE HOUSING DEVELOPMENT GRANT FUND IN ACCORDANCE WITH SECTION 24-32-721 (6) MUST BE EXPENDED OVER THE SUBSEQUENT THREE STATE FISCAL YEARS.

(2) (a) IN EVALUATING APPLICATIONS FOR TECHNICAL ASSISTANCE UNDER THE HOUSING TOOLKIT PROGRAM, THE DIVISION SHALL PRIORITIZE PROJECTS BASED UPON WHETHER THE APPLICATION WILL, IN THE DISCRETION OF THE DIVISION, CREATE THE MAXIMUM IMPACT ON THE DEVELOPMENT OF AFFORDABLE HOUSING IN THE AREAS OF GREATEST NEED ACROSS THE STATE AND WILL SATISFY ONE OR MORE OF THE FACTORS SPECIFIED IN SUBSECTION (1) OF THIS SECTION. THE DIVISION SHALL CONSULT WITH THE DIVISION OF LOCAL GOVERNMENT IN CONNECTION WITH THE CREATION AND ADMINISTRATION OF THE HOUSING TOOLKIT PROGRAM.

(b) ON OR BEFORE SEPTEMBER 1, 2021, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LOCAL AFFAIRS OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL ADOPT POLICIES AND PROCEDURES FOR THE HOUSING TOOLKIT PROGRAM THAT INCLUDE, WITHOUT LIMITATION:

(I) PROCEDURES AND TIME LINES BY WHICH AN ELIGIBLE RECIPIENT MAY APPLY FOR ASSISTANCE UNDER THE HOUSING TOOLKIT PROGRAM;

(II) CRITERIA FOR DETERMINING THE AMOUNT OR NATURE OF THE ASSISTANCE AWARDED;

(III) PERFORMANCE CRITERIA FOR GRANT RECIPIENTS' PROJECTS; AND

(IV) REPORTING REQUIREMENTS FOR GRANT RECIPIENTS.

(c) ON OR BEFORE NOVEMBER 1, 2022, AND ON OR BEFORE NOVEMBER 1, 2023, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL PUBLISH A REPORT SUMMARIZING THE USE OF ALL ASSISTANCE THAT WAS AWARDED FROM THE HOUSING TOOLKIT PROGRAM IN THE PRECEDING FISCAL YEAR. IN THE REPORT, THE DIVISION SHALL ALSO PROVIDE ITS RECOMMENDATIONS CONCERNING FUTURE ADMINISTRATION OF THE HOUSING TOOLKIT PROGRAM. THE REPORT MUST BE SHARED WITH THE GENERAL ASSEMBLY AND POSTED ON THE DEPARTMENT'S WEBSITE.

SECTION 7. In Colorado Revised Statutes, 24-32-3202, **amend** (7); and **repeal** (6) as follows:

24-32-3202. Definitions. As used in this part 32, unless the context otherwise requires:

(6) ~~"Growth" means changes in population that impact land use, infrastructure development, and the surrounding environment.~~

(7) "Local government" means any county, city and county, city, town, or special district created pursuant to article 1 of title 32. ~~C.R.S. except that, for purposes of this part 32 in connection with section 24-32-3203 (3)(c)(I), "local government" shall be deemed to include an irrigation district, ditch company, or conservancy district.~~

SECTION 8. In Colorado Revised Statutes, 24-32-3203, **amend** (3)(c) and (3)(d); and **repeal** (3)(a) as follows:

24-32-3203. Office of smart growth - creation - powers and duties of executive director. (3) The executive director shall have the following powers and duties in administering this part 32:

(a) ~~To designate areas within Colorado as Colorado heritage communities. Areas designated as Colorado heritage communities shall be eligible for a Colorado heritage planning grant by the office out of moneys in the fund created by section 24-32-3207 in accordance with the provisions of this part 32.~~

(c) To review and approve applications for Colorado heritage planning grants awarded by the office out of ~~moneys~~ MONEY in the fund in accordance with the requirements of this part 32, and to determine the amount of money to be awarded under each such grant. An application for such a grant ~~shall~~ MUST:

(I) ~~Be submitted jointly by the governing bodies of at least two local governments; except that applications regarding water banking pursuant to subparagraph (II) of this paragraph (c) may also be submitted singly or in combination by the governing body of a local government or by an irrigation district, ditch company, or conservancy district; and~~

(II) Address critical planning issues, including, without limitation, land use and development patterns, AFFORDABLE HOUSING, transportation planning, mitigation of environmental hazards, water banking pursuant to article 80.5 of title 37, ~~C.R.S.~~, and energy use.

(d) To review and approve applications for grants awarded by the office out of ~~moneys~~ MONEY in the fund to assist a local government, as applicable, in developing a master plan in conformity with section 30-28-106 or 31-23-206; ~~C.R.S.~~, and to determine the amount of money to be awarded under each such grant pursuant to section 24-32-3207 (2);

SECTION 9. In Colorado Revised Statutes, 24-32-3207, **amend** (1); **repeal** (2); and **add** (6) as follows:

24-32-3207. Colorado heritage communities fund - creation -

source of funds. (1) There is hereby created in the state treasury the Colorado heritage communities fund, which fund ~~shall be~~ IS administered by the director and which ~~shall consist~~ CONSISTS of all ~~moneys~~ MONEY appropriated to ~~said~~ THE fund by the general assembly, MONEY TRANSFERRED FROM THE GENERAL FUND AND THE AFFORDABLE HOUSING AND HOME OWNERSHIP CASH FUND CREATED IN SECTION 24-75-229 (3)(a), THAT ORIGINATES FROM MONEY THE STATE RECEIVED FROM THE FEDERAL CORONAVIRUS STATE FISCAL RECOVERY FUND, TO THE FUND PURSUANT TO SUBSECTION (6) OF THIS SECTION, and all other ~~moneys~~ MONEY collected by the office for the fund from federal grants or other contributions, grants, gifts, bequests, or donations received from other agencies of state government, individuals, private organizations, or foundations. Such ~~moneys~~ MONEY shall be transmitted to the state treasurer to be credited to the fund.

(2) ~~Not more than an amount equal to thirty percent of any moneys in the fund as of the beginning of any given fiscal year shall be made available before the end of that same fiscal year to local governments in grant moneys for the development of master plans pursuant to section 24-32-3203 (3)(d).~~

(6) (a) ON THE EFFECTIVE DATE OF THIS SUBSECTION (6), OR AS SOON AS PRACTICABLE THEREAFTER, THE STATE TREASURER SHALL TRANSFER:

(I) THIRTY MILLION DOLLARS FROM THE AFFORDABLE HOUSING AND HOME OWNERSHIP CASH FUND CREATED IN SECTION 24-75-229 (3)(a), THAT ORIGINATES FROM MONEY THE STATE RECEIVED FROM THE FEDERAL CORONAVIRUS STATE FISCAL RECOVERY FUND, TO THE COLORADO HERITAGE COMMUNITIES FUND CREATED IN SUBSECTION (1) OF THIS SECTION; AND

(II) NINE MILLION THREE HUNDRED THOUSAND DOLLARS FROM THE GENERAL FUND TO THE COLORADO HERITAGE COMMUNITIES FUND CREATED IN SUBSECTION (1) OF THIS SECTION.

(b) THE DIVISION OF LOCAL GOVERNMENT IN THE DEPARTMENT SHALL USE THE MONEY TRANSFERRED PURSUANT TO SUBSECTION (6)(a) OF THIS SECTION FOR THE CREATION, IMPLEMENTATION, AND ADMINISTRATION OF THE LOCAL GOVERNMENT AFFORDABLE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM CREATED IN SECTION 24-32-130 (2) IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 24-32-130.

(c) ON THE EFFECTIVE DATE OF THIS SUBSECTION (6), OR AS SOON AS PRACTICABLE THEREAFTER, THE STATE TREASURER SHALL TRANSFER:

(I) FIVE MILLION DOLLARS FROM THE AFFORDABLE HOUSING AND HOME OWNERSHIP CASH FUND CREATED IN SECTION 24-75-229 (3)(a), THAT ORIGINATES FROM MONEY THE STATE RECEIVED FROM THE FEDERAL CORONAVIRUS STATE FISCAL RECOVERY FUND, TO THE COLORADO HERITAGE COMMUNITIES FUND CREATED IN SUBSECTION (1) OF THIS SECTION; AND

(II) TWO MILLION ONE HUNDRED THOUSAND DOLLARS FROM THE GENERAL FUND TO THE COLORADO HERITAGE COMMUNITIES FUND CREATED IN SUBSECTION (1) OF THIS SECTION.

(d) THE DIVISION OF LOCAL GOVERNMENT IN THE DEPARTMENT SHALL USE THE MONEY TRANSFERRED PURSUANT TO SUBSECTION (6)(c) OF THIS SECTION FOR THE CREATION, IMPLEMENTATION, AND ADMINISTRATION OF THE LOCAL GOVERNMENT PLANNING GRANT PROGRAM CREATED IN SECTION 24-32-130 (5) IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 24-32-130. WITH RESPECT TO ANY MONEY TRANSFERRED INTO THE COLORADO HERITAGE COMMUNITIES FUND PURSUANT TO SUBSECTION (6)(c) OF THIS SECTION, THE DIVISION MAY USE ANY MONEY THAT IS UNEXPENDED OR UNENCUMBERED AS OF JUNE 30, 2024 FOR PURPOSES OF THE LOCAL GOVERNMENT AFFORDABLE HOUSING DEVELOPMENT INCENTIVES GRANT PROGRAM CREATED IN SECTION 24-32-130 (2) AS NEEDED IN ACCORDANCE WITH SECTION 24-32-130.

SECTION 10. In Colorado Revised Statutes, 24-32-3208, **add** (3) as follows:

24-32-3208. Additional sources of funding. (3) AS MONEY BECOMES AVAILABLE, THE OFFICE OF SMART GROWTH CREATED IN SECTION 24-32-3203 (1) MAY PROVIDE GRANTS OR OTHER FORMS OF ASSISTANCE TO COUNTIES AND MUNICIPALITIES FOR PURPOSES CONSISTENT WITH SECTION 24-32-3203 (3)(c)(II), INCLUDING, WITHOUT LIMITATION, THE HIRING OF CONSULTANTS AND RELATED FORMS OF PROFESSIONAL EXPERTISE; UPDATING PLANS, POLICIES, CODES, AND RELATED LAND DEVELOPMENT REVIEW PROCESSES; AND OFFERING GRANTS, LOANS, OR OTHER FORMS OF ASSISTANCE AS INCENTIVES FOR THE DEVELOPMENT OF AFFORDABLE HOUSING, WHICH FORMS OF ASSISTANCE MAY INCLUDE THE ACQUISITION OF PROPERTY, THE PROVISION OF INFRASTRUCTURE, OR THE DEVELOPMENT OF

COMMUNITY AMENITIES. THE OFFICE SHALL CREATE GUIDELINES TO SPECIFY THE ACTIVITIES ON THE PART OF LOCAL GOVERNMENTS THAT WILL QUALIFY FOR GRANT FUNDING OR OTHER FORMS OF ASSISTANCE UNDER THIS SUBSECTION (3). THE OFFICE MAY ALSO USE AVAILABLE MONEY TO IMPLEMENT OR FACILITATE GRANT AND OTHER INCENTIVE PROGRAMS BY HIRING STAFF, CREATING TECHNICAL RESOURCES FOR LOCAL GOVERNMENTS, HIRING CONSULTANTS AND RELATED FORMS OF PROFESSIONAL EXPERTISE, AND OTHERWISE ADMINISTERING THE COLORADO HERITAGE GRANT PROGRAM IN ACCORDANCE WITH THIS PART 32. THE OFFICE MAY USE A PORTION OF ANY SUCH MONEY FOR HIRING AND MAINTAINING STAFF, DEFRAYING OPERATIONAL EXPENSES, AND ADMINISTRATION ASSOCIATED WITH THE PROVISION OF GRANTS AND OTHER FORMS OF INCENTIVES UNDER THIS SUBSECTION (3).

SECTION 11. In Colorado Revised Statutes, **repeal** 24-32-3206.

SECTION 12. Appropriation. (1) For the 2021-22 state fiscal year, \$39,300,000 is appropriated to the department of local affairs for use by the division of local government. This appropriation is from the Colorado heritage communities fund created in section 24-32-3207 (1), C.R.S., and is based on an assumption that the division will require an additional 0.9 FTE. To implement this act, the division shall use this appropriation for the affordable housing development incentives grant program created in section 24-32-130 (2), C.R.S.

(2) For the 2021-22 state fiscal year, \$7,100,000 is appropriated to the department of local affairs for use by the division of local government. This appropriation is from the Colorado heritage communities fund created in section 24-32-3207 (1), C.R.S., and is based on an assumption that the division will require an additional 1.7 FTE. To implement this act, the division shall use this appropriation for the local government planning grant program created in section 24-32-130 (5), C.R.S.

SECTION 13. Effective date. This act takes effect on passage; except that section 24-32-3207 (6)(a)(I) and (6)(c)(I) in section 9 of this act requiring transfers from the affordable housing and home ownership cash fund created in section 24-75-229 (3)(a) take effect only if House Bill 21-1329 becomes law, and, in which case, section 24-32-3207 (6) (a)(I) and (6)(c)(I) take effect either upon the effective date of this act or one day after the effective date of House Bill 21-1329, whichever is later.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO