

MEMORANDUM

TO: Board of County Commissioners
Regular Meeting – September 8, 2010

THRU: Cindy Houben, ^{LCJwCH} Community Development Director

FROM: Suzanne Wolff, Senior Planner

RE: Brush Creek Ranch Airport Parcel Subdivision Exemption for Open Space Parcel

REQUEST: The Applicant requests approval of a subdivision exemption to create the Airport Parcel out of Parcels 1, 2, 4, 5 and 6 of the Brush Creek Ranch LIR PUD (as amended). The 108.45 acre parcel will be conveyed to Pitkin County as its Phase I purchase of open space from the Droste Family.

APPLICANT: Pitkin County

REPRESENTATIVE: Alan Richman

LOCATION: Brush Creek Road. The proposed Airport Parcel is located along the eastern boundary of the Brush Creek Ranch, and is adjacent to the airport, Cozy Point South Open Space and Owl Creek Ranch.

ZONING: The property is zoned LIR.

BACKGROUND: The BOCC approved the Low Impact Residential (LIR) PUD Plan for the Brush Creek Ranch, pursuant to Resolution No. 051-2009. The PUD Plan was recorded in Plat Book 93 at Page 7. Approximately 600 acres of the property are encumbered by conservation easements that run to the benefit of Pitkin County and the Town of Snowmass Village. Pitkin County is under contract to purchase large portions of the ranch to preserve it as open space. The Applicant has submitted a companion land use application to amend the configuration of Parcels 1-9 to facilitate the conveyance. The open space parcel will be created from the amended Parcels 1, 2, 4, 5 and 6.

PROCESS: A Subdivision Exemption to create an open space parcel is a one-step process with review by the BOCC.

STAFF COMMENTS:

SUBDIVISION EXEMPTION FOR CREATION OF AN OPEN SPACE PARCEL: Section 2-30-30(h) of the Land Use Code provides an exemption from subdivision for the creation of parcels for community or public facilities or open space subject to compliance with the following standards.

(a) *The subdivision of land for community and public facilities and open space, including parcels for conveyance to public entities for public purposes, is exempt from subdivision subject to compliance with the standards in Sec. 6-30-120.*

Response: The 108.45 acre parcel will be conveyed to the County and will be used solely as open space.

(b) An applicant will be required to prepare and record with the County Clerk and Recorder a subdivision exemption plat approved by the Community Development Director meeting the requirements of the Pitkin County Land Use Application Manual.

Response: A proposed plat is included with the application.

(c) For applications that comply with applicable criteria, a GMQS exemption is available pursuant to Sec. 6-30-120.

Response: No development is contemplated on the open space parcel that will be conveyed to the County. A growth management exemption is not necessary or required.

RECOMMENDATION: Staff recommends that the BOCC approve the Brush Creek Ranch Airport Parcel Subdivision Exemption, subject to the attached Resolution.

Application provided separately

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PITKIN
COUNTY, COLORADO, APPROVING THE BRUSH CREEK RANCH AIRPORT PARCEL
SUBDIVISION EXEMPTION TO CREATE AN OPEN SPACE PARCEL**

Resolution No. ____-2010

RECITALS

1. Pitkin County, ("Applicant") has applied to the Board of County Commissioners of Pitkin County, Colorado ("BOCC") for a subdivision exemption to create the 108.45 acre Airport Parcel out of Parcels 1, 2, 4, 5 and 6 of the Brush Creek Ranch LIR PUD (as amended). The 108.45 acre parcel will be conveyed to Pitkin County as its Phase I purchase of open space from the Droste Family.
2. The property is located on Brush Creek Road. The proposed Airport Parcel is located along the eastern boundary of the Brush Creek Ranch, and is adjacent to the airport, Cozy Point South Open Space and Owl Creek Ranch.
3. The property is zoned Low Impact Residential (LIR). Amended Parcel 1 contains 81.512 acres; Amended Parcel 2 contains 82.253 acres; Amended Parcel 4 contains 80.687 acres; Amended Parcel 5 contains 83.144 acres; and Amended Parcel 6 contains 81.161 acres.
4. The BOCC approved the Low Impact Residential (LIR) PUD Plan for the Brush Creek Ranch, pursuant to Resolution No. 051-2009. The PUD Plan was recorded in Plat Book 93 at Page 7. Approximately 600 acres of the property are encumbered by conservation easements that run to the benefit of Pitkin County and the Town of Snowmass Village. Pitkin County is under contract to purchase large portions of the ranch to preserve it as open space. The Applicant has submitted a companion land use application to amend the configuration of Parcels 1-9 to facilitate the conveyance. The open space parcel will be created from the amended Parcels 1, 2, 4, 5 and 6.
5. The BOCC reviewed the application at a duly noticed public hearing on September 8, 2010, at which time evidence and testimony were presented with respect to this application.
6. The BOCC finds that the application is consistent with the applicable provisions of the Pitkin County Land Use Code.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Pitkin County, Colorado, that it does hereby approve the Brush Creek Ranch Airport Parcel Subdivision Exemption to create an open space parcel, subject to the following conditions, which shall run with the land and be binding on all successors in interest:

1. The Applicant shall adhere to all conditions and material representations made in the application and public meetings except as amended herein.
2. All conditions of BOCC Resolution No. 51-2009 shall remain in full force and effect, except as amended herein.

3. Within 60 days of the date of this approval, the applicant shall submit a Subdivision Exemption Plat to the Community Development Department for approval and recording.

PUBLISHED IN THE ASPEN TIMES on the 8th day of August, 2010.

APPROVED AND ADOPTED this 8th day of September, 2010.

BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO

By _____
George Newman, Chair

Date _____

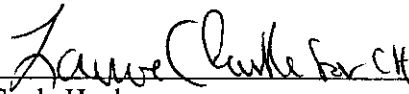
ATTEST:

Jeanette Jones, Clerk to the BOCC

APPROVED AS TO FORM:

John Ely, County Attorney

APPROVED AS TO CONTENT:



Cindy Houben,
Community Development Director

August 23, 2010

Ms. Suzanne Wolff, Senior Planner
Pitkin County Community Development Department
130 South Galena Street
Aspen, Colorado 81611

**RE: OPEN SPACE SUBDIVISION EXEMPTION FOR THE AIRPORT PARCEL OF
THE BRUSH CREEK RANCH LIR-80 PUD**

Dear Suzanne,

This letter constitutes an application for a subdivision exemption to create the Airport Parcel out of Parcels 1, 2, 4, 5, and 6 of the Brush Creek Ranch LIR-80 PUD. The purpose of the application is to create a 108.45 acre parcel of land which will be conveyed to Pitkin County as its Phase I purchase of open space from the Droste Family, the owners of the Brush Creek Ranch.

Attached to this application letter is a subdivision exemption plat depicting the configuration of the Airport Parcel that is to be conveyed to Pitkin County and the remainder lands of Parcels 1, 2, 4, 5, and 6.

This application is being submitted by Pitkin County, which is under contract to purchase the Airport Parcel. A letter signed by the Droste Family, the current owners of the lands within the Brush Creek Ranch LIR-80 PUD, authorizing Pitkin County to submit this application, is attached as Exhibit #1. Proof that the Droste Family is the owner of these properties is provided by Exhibit #2, the Commitment for Title Insurance.

We held a pre-application conference with you prior to the submission of this application. The Pre-Application Conference Summary you issued (see Exhibit #3) lists the following review procedure that is applicable to this proposal:

Subdivision Exemption to Create Parcels for Open Space (Sec. 2-30-30.h.4).

The following sections of this application identify the provisions of the Land Use Code applicable to this procedure and provide responses to the applicable County standards. First, however, a brief description of the property and an explanation of the proposed amendment are presented below.

Ms. Suzanne Wolff
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Background Information

The Brush Creek Ranch is a vast parcel of land that is located along Brush Creek Road which rises to the ridge top between the Brush Creek and Owl Creek Valleys (see attached vicinity map). The property is approximately 926 acres in size. It is zoned Low Impact Residential (LIR). Approximately 600 acres of the Ranch are encumbered by conservation easements between the Droste Family, Pitkin County and the Town of Snowmass Village.

The Ranch was subdivided into Parcels 1 through 10 and Tracts A and B pursuant to Board of County Commissioners Resolution 051-2009 (see Exhibit #4). The PUD Plan for the property is recorded in Plat Book 93 at Page 7. It shows that Parcels 1 through 9 are located in the upper reaches of the property, along the ridge top, with a long winding road from the valley floor that provides access to these lots. Tracts A and B are located at lower elevations of the property and are both encumbered by conservation easements. Finally, Tract 10 is located along Brush Creek Road and includes a historic house and barn that were placed on the Pitkin County Historic Inventory.

Pitkin County is under contract to purchase large portions of the ranch property from the Droste Family so these areas can be preserved as open space. As a first step toward securing this open space, a companion land use application to this subdivision exemption application has been submitted. That application proposes a minor amendment to the lot lines of Parcels 1 through 9 of the PUD to add most of the lands within Tract B to those parcels, and designates the remaining 27.400 acres of Tract B as Parcel 10B. A copy of the amended plat that would accomplish these changes is attached to this application.

This subdivision exemption application represents the next step toward securing this open space. It proposes the creation of the Airport Parcel, a 108.450 acre parcel of land. This will enable Pitkin County to purchase the Airport Parcel from the Droste Family as the first phase of a purchase of the undeveloped portions of the Ranch as open space. The second and third phases are intended to purchase the remainder of Parcels 1 through 9 from the Droste Family.

Standards for Review of Open Space Subdivision Exemption

Section 2-30-30 (h) (4) of the Land Use Code authorizes the County to grant subdivision exemptions to create parcels for community and public facilities or open space. To be eligible for this exemption, the application must comply with the following standards:

- (a) *The subdivision of land for community and public facilities and open space, including parcels for conveyance to public entities for public purposes, is exempt from subdivision, subject to compliance with the standards in Sec. 6-30-120.*

Ms. Suzanne Wolff
August 23, 2010
Page Three

Response: As described above, this application would facilitate the first phase of a three phase conveyance of lands that will make up the Wapiti Ridge Mountain Park. That land will be used solely as public open space. Therefore, this application qualifies for this subdivision exemption.

(b) *An applicant shall be required to prepare and record with the County Clerk and Recorder a subdivision exemption plat approved by the Community Development Director meeting the requirements of the Pitkin County Land Use Application Manual.*

Response: A proposed subdivision exemption plat is included in this application

(c) *For applications that comply with applicable criteria, a GMQS exemption is available pursuant to Sec. 6-30-120.*

Response: A response to the standards of Sec. 6-30-120 of the Land Use Code is provided below

Standards for Review of GMQS Exemption for Civic and Institutional Uses

Section 6-30-120 provides the standards for a Growth Management Quota System (GMQS) exemption for the development of civic and institutional uses. The provisions of this section would apply to this property if the applicant was proposing to develop civic or institutional uses on the Airport Parcel. However, no development that is subject to GMQS is proposed as a consequence of this subdivision exemption. The sole purpose of this application is to create a parcel of land that can be conveyed to Pitkin County for open space purposes and the only future development anticipated for the property is for trails. Therefore, no further responses to the provisions of this section are provided.

Conclusion

I believe the above responses and the attached documents provide the information you require to process this application. If there is anything else you need, please do not hesitate to contact me.

Very truly yours,

PITKIN COUNTY OPEN SPACE AND TRAILS



Dale Will, Executive Director

EXHIBITS

EXHIBIT #1

Ms. Suzanne Wolff, Senior Planner
Pitkin County Community Development Department
130 South Galena Street
Aspen, Colorado 81611

RE: LAND USE APPLICATIONS FOR BRUSH CREEK RANCH LIR-80 PUD

Dear Ms. Wolff,

We are the owners of Parcels 1-9 and Tract B of the Brush Creek Ranch LIR-80 PUD. We hereby authorize Pitkin County to submit and process the following applications for these properties so that the properties may be conveyed to Pitkin County:

1. An application for a minor amendment to the development permit to amend the configuration of Parcels 1-9 and Tract B and;
2. An application for an open space subdivision exemption to create the Airport Parcel.

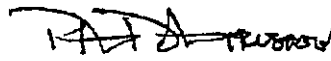
Please let us know if there is anything else you require as you process this application.

Sincerely,



Peter Droste

Bruce Droste



Peter Droste
Trustee

Bruce Droste
Trustee

EXHIBIT #1

Ms. Suzarine Wolff, Senior Planner
Pitkin County Community Development Department
130 South Galena Street
Aspen, Colorado 81611

RE: LAND USE APPLICATIONS FOR BRUSH CREEK RANCH LIR-80 PUD

Dear Ms. Wolff,

We are the owners of Parcels 1-9 and Tract B of the Brush Creek Ranch LIR-80 PUD. We hereby authorize Pitkin County to submit and process the following applications for these properties so that the properties may be conveyed to Pitkin County:

1. An application for a minor amendment to the development permit to amend the configuration of Parcels 1-9 and Tract B and;
2. An application for an open space subdivision exemption to create the Airport Parcel.

Please let us know if there is anything else you require as you process this application.

Sincerely,

Peter Droste

Bruce Droste

Peter Droste
Trustee

Bruce Droste
Trustee




EXHIBIT #2

**COMMITMENT FOR TITLE INSURANCE
SCHEDULE A**

1. Effective Date: July 8, 2010 at 8:00 AM

Case No. PCT22792F5

2. Policy or Policies to be issued:

(a) ALTA Owner's Policy-(6/17/06)

Amount\$ 0.00
Premium\$ 0.00
Rate: Re-Issue

Proposed Insured:
PROFORMA

(b) ALTA Loan Policy-(6/17/06)

Amount\$ 0.00
Premium\$ 0.00
Rate:

Proposed Insured:

(c) ALTA Loan Policy-(6/17/06)

Amount\$
Premium\$
Rate:

Proposed Insured:

3. Title to the FEE SIMPLE estate or interest in the land described or referred to in this Commitment is at the effective date hereof vested in:

See attached title vesting page

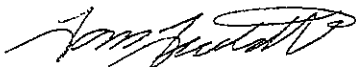
4. The land referred to in this Commitment is situated in the County of PITKIN State of COLORADO and is described as follows:

PARCELS 1, 2, 3, 4, 5, 6, 7, 8, AND 9, AND TRACTS A AND B, BRUSH CREEK RANCH LIR-80 P.U.D., according to the Plat thereof recorded January 7, 2010 in Plat Book 93 at Page 7.

PITKIN COUNTY TITLE, INC.
601 E. HOPKINS, ASPEN, CO. 81611
970-925-1766 Phone/970-925-6527 Fax
877-217-3158 Toll Free

AUTHORIZED AGENT

Countersigned:



Schedule A-PG.1
This Commitment is invalid
unless the Insuring
Provisions and Schedules
A and B are attached.

TITLE VESTING

PETER C. DROSTE, INDIVIDUALLY AND BRUCE F. DROSTE, INDIVIDUALLY AND PETER C. DROSTE, AS TRUSTEE OF A TRUST FOR THE BENEFIT OF PETER C. DROSTE, JR. AND ELISE DROSTE UNDER WRITTEN TRUST INSTRUMENT, DATED DECEMBER 25, 1991 AND BRUCE C. DROSTE, AS TRUSTEE OF A TRUST FOR THE BENEFIT OF EDWARD DROSTE AND WILLIAM DROSTE, UNDER WRITTEN TRUST INSTRUMENT, DATED DECEMBER 25, 1991

SCHEDULE B SECTION 2 EXCEPTIONS

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession, or claiming to be in possession, thereof.
2. Easements, liens, encumbrances, or claims thereof, which are not shown by the public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land, and that is not shown by the public records.
4. Any lien, or right to a lien, imposed by law for services, labor, or material heretofore or hereafter furnished, which lien, or right to a lien, is not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) Indian treaty or aboriginal rights, including but not limited to, easements or equitable servitudes; or, (d) water rights, claims or title to water (see additional information page regarding water rights), whether or not the matters excepted under (a), (b), (c) or (d) are shown for the public records.
6. Taxes or assessments which are not now payable or which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records
7. Any service, installation, connection, maintenance or construction charges for sewer, water, electricity, or garbage collection or disposal or other utilities unless shown as an existing lien by the public records.
8. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

SPECIAL EXCEPTIONS

9. Right of the proprietor of a vein or lode to extract or remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted as reserved in United States Patent recorded May 10, 1900 in Book 55 at Page 496.
10. Right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted and right of way for ditches or canals constructed by the authority of the United States as reserved in United States Patent recorded June 5, 1892 in Book 55 at Page 57.
11. Reservation of all rights to any and all minerals, ores and metals of every kind and character and all coal, asphaltum, oil and other like substances in or under said land and the right of ingress and egress for the purpose of mining, together with enough of the surface of same as may be necessary for the proper and convenient working of such minerals and substances as reserved in Patent from the State of Colorado recorded February 26, 1941 in Book 167 at Page 364 and November 28, 1947 in Book 171 at Page 332.
12. Right of way for ditches or canals constructed by the authority of the United States as reserved in United States Patent recorded July 1, 1955 in Book 180 at Page 381.
13. Mineral royalty interests as reserved in Deed recorded June 4, 1965 in Book 213 at Page 241.

(Continued)

SCHEDULE B SECTION 2
EXCEPTIONS - (Continued)

14. Easement and right of way as granted to The Mountain States Telephone and Telegraph Company in instrument recorded October 19, 1970 in Book 251 at Pages 369.
15. Easement and right of way for an electric transmission or distribution line or system, as granted to Holy Cross Electric Association, Inc., in instrument recorded February 25, 1972 in Book 261 at Pages 599, 602 and 605.
16. Terms, conditions, provisions and obligations as set forth in Indemnity Agreement recorded May 29, 1973 in Book 276 at Page 163.
17. Terms, conditions, provisions and obligations as set forth in Agreement recorded December 3, 1985 in Book 500 at Page 795.
18. Access easement and clear zone restrictive easement as set forth in Deed recorded May 4, 1990 in Book 619 at Page 859.
19. Terms, conditions, provisions and obligations as set forth in Agreement recorded June 6, 1991 in Book 647 at Page 848.
20. Terms, conditions, provisions, obligations and all matters as set forth in Resolution of the Board of County Commissioners recorded November 8, 1991 in Book 661 at Page 704 as Resolution No. 91-102.
21. Terms, conditions, provisions and obligations as set forth in Occupancy Deed Restriction recorded June 24, 1992 in Book 681 at Page 676.
22. Terms, conditions, provisions and obligations as set forth in Grant of Easement recorded November 13, 1992 in Book 694 at Pages 419 and 420.
23. Easement and right of way for an electric transmission or distribution line or system, as granted to Holy Cross Electric Association, Inc., in instrument recorded May 11, 1994 in Book 750 at Page 253.
24. Terms, conditions, provisions and obligations as set forth in Trench, Conduit and Vault Agreement with Holy Cross Electric Association, Inc., recorded May 13, 1994 in Book 750 at Page 535.
25. Terms, conditions, provisions and obligations as set forth in Water Treatment Plant Easement Agreement recorded August 22, 1994 in Book 759 at Page 39.
26. Easement and right of way for an electric transmission or distribution line or system, as granted to Holy Cross Electric Association, Inc., in instrument recorded April 12, 1996 as Reception No. 391704.
27. Easement and right of way as granted to Brush creek Metropolitan District, in instrument recorded June 3, 1996 as Reception No. 393262.

(Continued)

SCHEDULE B SECTION 2
EXCEPTIONS - (Continued)

28. Easements, rights of way and all matters as disclosed on Holy Cross Electric Plat recorded April 7, 1997 in Plat Book 42 at Page 39.
29. Conservation Easement as set forth in Deed of Conservation Easement recorded November 11, 1997 as Reception No. 410437.
30. Terms, conditions, provisions and obligations as set forth in First Amendment to Agreement recorded March 16, 1999 as Reception No. 428805. NOTE: Collateral Assignment of Agreement was given to Vectra Bank Colorado by instrument recorded January 25, 2000 as Reception No. 439833.
31. Terms, conditions, provisions, obligations and all matters as set forth in Ordinance No. 99-51, Series of 1999 by Town of Snowmass Village recorded December 1, 1999 as Reception No. 438113.
32. Easement for Trail purposes as set forth in instrument recorded December 1, 1999 as Reception No. 438190.
33. Conservation Easement as set forth in instrument recorded December 1, 1999 as Reception No. 438191.
34. Terms, conditions, provisions and obligations as set forth in Subdivision Restrictive Covenant recorded December 1, 1999 as Reception No. 438192.
35. Easements, rights of way and all matters as disclosed on survey recorded July 26, 2000 in Plat Book 54 at Page 23.
36. Terms, conditions, provisions and obligations as set forth in Easement Relocation Agreement recorded November 5, 2001 as Reception No. 460453.
37. Terms, conditions, provisions and obligations as set forth in Determination of the Hearing Officer of Pitkin County, Colorado recorded June 19, 2002 as Reception No. 468853.
38. Terms, conditions, provisions, obligations and all matters as set forth in Ordinance No. 156, Series of 2002 by Board of County Commissioners of Pitkin County, Colorado recorded October 2, 2002 as Reception No. 472898.
39. Terms, conditions, provisions and obligations as set forth in Mutual Easement Deed recorded February 13, 2003 as Reception No. 478728.
40. Terms, conditions, provisions and obligations as set forth in Construction Agreement recorded May 11, 2004 as Reception No. 497444 and Agreement Supplemental to Grant of Underground Electric Transmission Line Easement recorded July 11, 2008 as Reception No. 550989
41. Terms, conditions, provisions and obligations as set forth in Water Line Agreement recorded July 7, 2005 as Reception No. 512142.

(Continued)

SCHEDULE B SECTION 2
EXCEPTIONS - (Continued)

42. Terms, conditions, provisions and obligations as set forth in Grant of Subsurface Easement and Pipeline Access, Maintenance, Repair and Operation Agreement recorded July 7, 2005 as Reception No. 512144.
43. Terms, conditions, provisions and obligations as set forth in Pipeline Easement recorded November 16, 2005 as Reception No. 517464 and Assignment thereto recorded November 24, 2008 as Reception No. 554507.
44. Terms, conditions, provisions and obligations as set forth in Temporary Construction Easement recorded November 16, 2005 as Reception No. 517465.
45. Terms, conditions, provisions and obligations as set forth in Easement recorded April 28, 2006 as Reception No. 523470.
46. Terms, conditions, provisions and obligations as set forth in Grant of Underground Electric Transmission Line Easement recorded August 10, 2006 as Reception No. 527365 and as Reception No. 527366.
47. Terms, conditions, provisions and obligations as set forth in Pipeline Easements recorded March 14, 2008 as Reception No. 547383 and February 25, 2009 as Reception No. 556687 and Reception No. 556688.
48. Terms, conditions, provisions and obligations as set forth in Resolution of the Board of county Commissioners of Pitkin County, Colorado, Resolution No. 051-2--9, recorded September 4, 2009 as Reception No. 562550 and re-recorded December 9, 2009 as Reception No. 565141.
49. Easement as set forth in Special Warranty Deed recorded November 19, 2009 as Reception No. 564659.
50. Terms, conditions, provisions and obligations as set forth in Agreement recorded November 19, 2009 as Reception No. 564660.
51. Terms, conditions, provisions and obligations as set forth in Covenant to Cease Irrigation recorded November 19, 2009 as Reception No. 564661.
52. Terms, conditions, provisions and obligations as set forth in Restrictive Covenant recorded January 7, 2010 as Reception No. 565968.
53. Those terms, conditions, provisions, obligations, easements, restrictions, assessments and all matters as set forth in Declaration of Protective Covenants for Brush Creek Ranch PUD recorded January 7, 2010 as Reception No. 565969 and re-recorded January 19, 2010 as Reception No. 566269, deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.
54. Terms, conditions, provisions and obligations as set forth in Brush Creek Ranch PUD Improvement Agreement recorded January 7, 2010 as Reception No. 565967 and re-recorded January 19, 2010 as Reception No. 566270.
55. Easements, rights of way and all matters as disclosed on Plat of BRUSH CREEK RANCH LIR-80 P.U.D. recorded January 7, 2010 in Plat Book 93 at Page 7.

EXHIBIT #3

PITKIN COUNTY PRE-APPLICATION CONFERENCE SUMMARY

PLANNER: Suzanne Wolff
PHONE: (970) 920-5093

DATE: 8/4/10
E-MAIL: suzanne@co.pitkin.co.us

LOCATION: Brush Creek Ranch PUD, Tract B
PARCEL ID #: 264332101012

ZONE: LIR

OWNER: Droste Family
APPLICANT: Pitkin County Open Space & Trails

EMAIL: barbd@co.pitkin.co.us

Type of Application: Subdivision Exemption to Create Open Space Parcel

Description of Project/Development: The Applicant is requesting to subdivide the parcel to convey a parcel on the eastern end of the property to the County. The open space parcel is south of Cozy Point South and west of the airport.

Land Use Code Sections to be addressed in letter of request (application):

Sec. 2-30-30(h)(4): Subdivision Exemption to Create Parcels for Open Space;

Review by: BOCC

Public Hearing: YES. The Applicant shall post a public notice sign on the property at least 15 days prior to the date specified for the Hearing pursuant to Sec. 2-20-100(a)(3) of the Land Use Code. In addition, the Applicant shall mail notice (by first class mail) to all adjacent property owners and mineral estate owners with the return address of the Community Development Department (form of notice to be obtained from the Community Development Department) pursuant to Sec. 2-20-100 (a)(4). The names and addresses shall be those on the current tax records of Pitkin County, as they appear no more than 60 days prior to the date of the public hearing.

FEES: \$2,081 (make check payable to "Pitkin County Treasurer")

- **\$1,872** Planning Office flat fee (non-refundable; based on 6 hours of staff time; if staff review time exceeds 7 hours, the Applicant will be charged for additional time above 6 hours at a rate of \$312/hour)
- **\$130** Clerk fee
- **\$54** Public Notice fee
- **\$25** Web Technology Fee

To apply, submit 7 copies of the following information, unless noted otherwise:

1. Summary letter explaining the request, providing background on prior approvals and permits, and addressing compliance with the Code sections listed above;
2. Application materials as stated in Section 1 (General) and 2.1.13 (Subdivision Exemption Plat) of the Pitkin County Land Use Application Manual;
3. Proof of ownership of subject property;
4. Parcel description, including legal description and vicinity map;
5. Total fee for review of the application;
6. Signed fee agreement (1 copy);
7. Consent from owner(s) to process application and authorizing the representative, if applicable (1 copy);
8. Copy of this preapp form (1 copy)

**PITKIN COUNTY COMMUNITY DEVELOPMENT DEPARTMENT
AGREEMENT FOR PAYMENT OF LAND USE APPLICATION FEES**

PITKIN COUNTY (hereinafter COUNTY) and Pitkin County Open Space & Trails
(hereinafter APPLICANT) AGREE AS FOLLOWS:

1. APPLICANT has submitted to COUNTY an application for Open Space
Subdivision Exempt (hereinafter, THE PROJECT).
2. APPLICANT understands and agrees that Pitkin County Ordinance No. 008-2008 establishes a fee structure for land use applications and the payment of all processing fees is a condition precedent to a determination of application completeness. The fee structure is based on the County's policy that development shall pay, in full, the cost of development review in Pitkin County. Fees have been set to be consistent and fair to the public and to reflect the expense incurred in providing such services to the public.
3. APPLICANT and COUNTY agree that because of the size, nature or scope of the proposed project, it may not be possible at the time of application to ascertain the full extent of the costs involved in processing the application.
4. APPLICANT and COUNTY agree that fees charged for the processing of land use applications shall accumulate if an application includes more than one type of land use review.
5. COUNTY and APPLICANT further agree that it is impracticable for COUNTY staff to complete processing or present sufficient information to the Planning Commission and/or Board of County Commissioners to enable the Planning Commission and/or Board of County Commissioners to make legally required findings for project approval, unless current billings are paid in full prior to decision.
6. Therefore, APPLICANT agrees that in consideration of the COUNTY's waiver of its right to collect full fees prior to a determination of application completeness, APPLICANT shall pay a base fee in the amount of \$2081 which is based on 6 hours of staff time, and if actual time spent by staff to process the application exceeds the average number of hours by more than 20%, then the COUNTY will bill the APPLICANT quarterly for the additional time spent. Such periodic payments shall be made within 30 days of the billing date. APPLICANT further agrees that failure to pay such accrued costs shall be grounds for suspension of processing.

PITKIN COUNTY

APPLICANT

Cindy Houben
Community Development Director

Boris D'Autrechy
Print Name
B D'Autrechy
Signature

Date: 8/25/10
Mailing Address: _____
530 E main st
Aspen CO 81611

EXHIBIT #4

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PITKIN COUNTY, COLORADO APPROVING THE BRUSH CREEK RANCH LOW IMPACT RESIDENTIAL PUD CONCEPTUAL SUBMISSION, 1041 HAZARD REVIEW, SCENIC OVERLAY REVIEW AND GMQS EXEMPTION; DENYING THE SPECIAL REVIEW FOR TDRS FOR ADDITIONAL FLOOR AREA; AND LISTING THE HISTORIC RESOURCES TO THE HISTORIC

INVENTORY

RECEPTION#: 565141, 12/09/2009 at 03:05:39 PM, 1 OF 13. R \$0.00 Doc Code RESOLUTION Janice K. Vos Caudill, Pitkin County, CO

Resolution No. 051-2009

RECITALS

1. Droste Family Interests ("Applicant") have applied to the Board of County Commissioners of Pitkin County, Colorado ("BOCC") to create 11 parcels (10 new, plus the Homestead Parcel) pursuant to the Low Impact Residential (LIR) Planned Unit Development (PUD) option. The application was submitted in 2005, and, therefore, is subject to the Land Use Code ("Code") in effect at that time. Each 80 acre parcel in the LIR zone district is exempt from growth management up to 8,250 square feet. The Applicant also proposes to construct an access road and a looped driveway. The following approvals are requested and required:
 - A. 1041 Hazard Review, Conceptual Submission and Scenic Overlay Review to establish building envelopes and access roads/driveways;
 - B. Low Impact Residential Planned Unit Development;
 - C. GMQS Exemption and Special Review to establish the new parcels as TDR receiver sites, each of which will accommodate in excess of 8,250 and up to 15,000 square feet of floor area.
2. The property is located on Brush Creek Road, and is more specifically described in Exhibit A. The property is currently divided into 11 separate parcels, each in excess of 35 acres.
3. The property is zoned Low Impact Residential ("LIR") and contains approximately 926 acres. Approximately 600 acres of the property are encumbered by two conservation easement agreements between the Applicant, the Town of Snowmass Village and Pitkin County.
4. The Applicant submitted a complete application prior to July 6, 2006, therefore, the application is being considered pursuant to the 1994 Land Use Code, as amended.
5. The Planning and Zoning Commission reviewed the application at regular meetings on June 14, 2005, October 17, 2006, January 16, 2007 and March 31, 2009, and recommended approval by a vote of 3-2.
6. The BOCC considered this application on first reading at duly noticed public hearings on May 27, June 24 and August 12, 2009 and at a regular meeting on August 26, 2009, at which time evidence and testimony was presented with respect to the application.
7. The BOCC finds that the house and barn on the Homestead Parcel have substantial historic integrity and are representative of the types of buildings erected during the late 19th and early 20th centuries, and, therefore, are eligible for listing on the Pitkin County Historic Inventory.
8. The BOCC further finds that the proposed development is consistent with the provisions of the LIR zone district's Planned Unit Development ("PUD") option, as follows:
 - A. The entire 926 acres that is held in common ownership is included in the PUD.

is needed to include looking into a current publication date

RECEPTION#: 562550, 09/04/2009 at 04:30:35 PM, 1 OF 13. R \$0.00 Doc Code RESOLUTION: Janice K. Vos Caudill, Pitkin County, CO

- B. The development is based on a density of one unit per 80 acres – 10 parcels on the upper portion of the property and one that encompasses the remainder of the property, including the existing residences and ranch buildings adjacent to Brush Creek Road.
 - C. The Applicant has selected the best building sites possible, given the various constraints on the property, including conservation easements, wildlife habitat areas, steep slopes, landslide areas and scenic/visual impacts. In addition, the proposed road and driveway alignments represent the best compromise between the avoidance of 1041 hazard areas and the preservation of scenic quality.
 - D. The undeveloped lands outside of the development areas in the PUD will be preserved in perpetuity by conservation easement or covenant approved by the County Attorney, which at a minimum shall restrict the property from future development and subdivision.
9. The BOCC further finds that the request for use of up to three TDRs on each of Parcels 1-11 for additional floor area up to 15,000 square feet does not comply with the special review criteria, as follows:
- A. Larger residences will have greater adverse visual, natural resource and service impacts that are inappropriate given the rural location.
 - B. 15,000 square feet of floor area is not compatible with the character of the adjacent open space lands.
 - C. The Brush Creek and Owl Creek Master Plans state that larger homes are part of the character of those areas, however, those larger homes of up to 15,000 square feet have generally been located on the Owl Creek valley floor; most residences in the Brush Creek planning area are smaller than 8,250 square feet.
10. The BOCC further finds that the request to vary certain standards of the 2003 Asset Management Plan (“AMP”) for the access road and loop driveway will not pose a threat to the safety of the traffic, given the average daily traffic for this roadway, and will allow for less disturbance and visual impact.
11. The BOCC further finds that the impact on elk severe winter range could be further mitigated by eliminating Parcel 9 and redistributing the 8,250 square feet of floor area associated with Parcel 9 among the remaining parcels; the Applicant agreed to this proposal.

NOW, THEREFORE, BE IT RESOLVED by the BOCC that it does hereby list the historic resources (homestead house and barn on the Homestead Parcel – renumbered Parcel 10) on the Pitkin County Historic Inventory.

BE IT FURTHER RESOLVED by the BOCC that it does hereby deny the special review request to designate Parcels 1-11 as receiver sites to utilize TDRs for floor area in excess of 8,250 and up to 15,000 square feet.

BE IT FURTHER RESOLVED by the BOCC that it does hereby grant variances to the following standards of the 2003 Asset Management Plan: sight distance – vary minimum K values for crest and sag vertical curves; alignment – vary minimum centerline radius from 115’ to 60’; and switchbacks – vary minimum distance between switchbacks from ¼ mile to 200-400’.

BE IT FURTHER RESOLVED by the BOCC that it does hereby approve the Brush Creek Ranch Low Impact Residential PUD Conceptual Submission, 1041 Hazard Review, Scenic Overlay Review, Special Review and GMQS Exemption, subject to the conditions set forth herein, which shall run with the land and be binding on all successors in interest.

1. Prior to submission of any development permits for the property, the Applicant shall record the following documents, which shall first be submitted for approval by the County Attorney and Community Development Department. The above referenced approvals shall be a condition precedent to finalization and recordation. All documents shall be recorded concurrently.
 - A. Low Impact Residential PUD Plat. The Plat shall depict the entire property, the development parcels, the building and activity envelopes, the access envelopes (for the access road, looped driveway and individual driveways), the three underground water storage tank envelopes, and the slopes within the activity and access envelopes at 2' contours. The Plat shall be revised as follows, prior to submission:
 - 1) All areas outside of the activity envelopes shall be designated as "preservation areas" with reference to the conservation easement or covenant to be recorded to preserve those areas.
 - 2) The boundaries of the previously granted conservation easements shall be depicted with reference to the Reception numbers for those easements.
 - 3) Eliminate the barn and barn/corral easement and activity envelope.
 - 4) The "disturbance envelope" on Parcel 10 shall maintain a 20' setback from the high water line on the north side of Brush Creek; the area to the south of this setback shall be removed from the envelope, except over the existing 30' ranch access easement crossing the creek at the existing bridge and continuing south to the fence.
 - 5) Include the map that establishes the maximum roof height or "glass ceiling" on each parcel.
 - 6) Eliminate Parcel 9.
 - 7) Relocate the following building envelopes:
 - a) Move Parcel 1 building envelope to the north side of the small knob and relocate the driveway to the south of the relocated building envelope. Eliminate the second easterly access envelope.
 - b) Move Parcel 2 building envelope northeast to point of curve in the road.
 - c) Move Parcel 4 building envelope to the north.
 - d) Move Parcel 5 building envelope to the northeast.
 - e) Move Parcel 8 building envelope northeast closer to access road. Eliminate the second access envelope to the south of the building envelope.
 - f) Move Parcel 10 building envelope northeast so it is located on the north side of the knob and out of the saddle area. Renumber as Parcel 9.
 - 8) Designate an access envelope to Parcel 5.
 - 9) Renumber Parcel 11 (Homestead Parcel) as Parcel 10.
 - B. Conservation easement or covenant that at a minimum preserves all lands outside the activity envelopes from future development and subdivision. The conservation easement or covenant shall run to the benefit of the County, shall be enforceable by the County, and may not be released or amended without the consent of the County.
 - C. Protective Covenants for the property.
 - D. PUD Improvements Agreement, which shall address the following:
 - 1) Construction of the access road and driveway loop, prior to issuance of any building permits for residences on Parcels 1-9.
 - 2) Construction of a left turn lane to County standards off of Brush Creek Road onto the new access road to the PUD, prior to the issuance of a building permit for the third new residence on Parcels 1-9, if the County Engineer determines that demand necessitates the turn lane.

- 3) Installation of the three 120,000 gallon underground water tanks in the locations shown on the plat and evidence that the tanks have been filled from the primary water source on the property, prior to issuance of any building permits for residences on Parcels 1-9.
 - 4) Provision that no property within the project may be sold, and no building permit application for construction may be submitted, until the improvements identified in the agreement have been completed. The agreement shall provide for the sale of property and submission of permits prior to completion of the improvements, if adequate financial security is provided to secure completion of the improvements. The amount of the financial security shall be based on a current bid from a professional engineer that shall be verified by the Planning Engineer prior to acceptance.
2. Prior to submission for recordation, the Applicant shall amend the Protective Covenants as follows:
- A. Include a signature block for the BOCC and specify which provisions are enforceable by the County and may not be amended without County approval.
 - B. Article II – Include definitions of “building envelope” (footprint of structures), “activity envelope” (encompasses building envelope and provides area for all other development associated with the residence, including well, septic system, landscaping, etc.), “access envelope” (all disturbance associated with driveway, if not encompassed within the activity envelope) and “preserved area.” These terms shall be used throughout the Covenants.
 - C. Section 4.1 – Eliminate the bulleted items listed as Architectural Guidelines and landscaping guidelines, and reference the Design Guidelines, which shall be attached as an Exhibit to the Covenants.
 - D. Section 5.1 – Equines shall not be allowed on Parcels 1-9.
 - E. Section 5.5 – Each owner shall install and use an approved bear proof garbage container as specified in the County’s Wildlife Protection Ordinance, or the Association may install a common trash facility that complies with the Ordinance.
 - F. Section 5.6 – Specify that commercial hunting is prohibited on the property.
 - G. Section 5.8 – Dogs shall be prohibited on Parcels 1-9. Exotic pets shall also be prohibited.
 - H. Sections 5.8.7 and 5.8.8 – Equines and livestock shall be prohibited on Parcels 1-9.
 - I. Add a provision to Section 5 that prohibits off-road recreational use of motor vehicles, including snowmobiles, except to retrieve animals downed from hunting.
 - J. Add provisions to Section 6 regarding maximum allowable floor area and maximum height limitations as specified in this approval.
 - K. Section 6.3(b) – Caretaker units shall be attached to the principal residence.
 - L. Section 6.3(d) – Eliminate “shed for summer shelter of horses...” and other references to allow such structures outside of an activity envelope.
 - M. Section 6.4 – Eliminate “guest house.”
 - N. Section 6.6 – Change to “On-Site Wastewater Treatment Systems.” Specify that the OWTS on each parcel shall be located within the activity envelope.
 - O. Section 6.8 – State that all lighting shall comply with the County’s lighting regulations. Exterior lighting on the residences shall be limited to lighting required by the building code.
 - P. Section 6.9 – Include all of the wildfire mitigation provisions specified in the Resolution.
 - Q. Section 6.12 – Construction of the residences on Parcels 1-9 (including all exterior and interior work starting with ground breaking through issuance of a Certificate of Occupancy) shall not occur from November 15 through April 30. No permit(s) shall lapse due to inactivity during this period November 15 through April 30.
 - R. Section 8.3 – Human recreational activity shall be limited to activity envelopes and access roads from November 15 through April 30 in order to minimize disturbance during migration and winter range use.
 - S. Section 9.2 – Reference the BOCC Resolution that approved the PUD.

H

3. Prior to submission for recordation, the Applicant shall amend the Design Guidelines as follows:
 - A. Section II.A & B – Development Zones should be consistent with the designations defined in the Covenants: building envelope, activity envelope and access envelope.
 - B. Section II.B.2 – Eliminate reference to barns.
 - C. Section II.B.3.A – Eliminate “cross country ski trails,” “leach fields and septic systems” and “buried or adequately screened water storage tanks, lines, pumps and associated equipment” as uses allowed within Preserved Areas.
 - D. Section II.B.3.B – Include “development outside building, activity and access envelopes” as a prohibited use.
 - E. Section II.A.1, Driveway/Access Roads –Maximum total vertical exposure of approved retaining should not exceed *seven* feet. The width of terracing between any four foot vertical retaining walls should be at least three feet. Retaining walls higher than four feet should be separated from any other retaining wall by a minimum of five horizontal feet. Terraces created between retaining walls shall be permanently landscaped or revegetated with native vegetation. Retaining walls should be faced with stone or earth-colored materials similar to the surrounding natural landscape.
 - F. Section II.A.2, Grading – No grading should occur outside the building, activity or access envelopes. Major natural drainages that traverse the lots should be maintained in their original configuration. All utilities shall be underground and contained within the building, activity or access envelopes.
 - G. Section II.A.3, Plantings – Eliminate provision to allow “installation of underground or screened utilities” outside of the building, activity or access envelopes.
 - H. Section II.A.4, Ponds – Ponds shall be located within the activity envelope. The pond liner shall be covered with a minimum of 2’ of topsoil from the high water level to a depth recommended by the Division of Wildlife. Applicant shall construct a littoral shelf along the edge of the pond and plant with wetland vegetation.
 - I. Section II.A.5, Pools – Any pool shall be fenced with a minimum 6’ fence to prevent wildlife access.
 - J. Section II.A.6, Lighting - State that all lighting shall comply with the County’s lighting regulations. Exterior lighting on the residences shall be limited to lighting required by the building code.
 - K. Section II.A.7, Fencing - Fencing on Parcels 1-9 shall be limited to activity envelopes only and shall meet Pitkin County “wildlife friendly” standards. Eliminate references to dog and livestock fencing, except if limited to Parcel 10.
 - L. Section II.A.9, Wildfire Management – Refer to conditions in Resolution and the Covenants.
 - M. Section II.B, Architectural Standards – Add a section titled “Architectural Theme and Style” which states, “These guidelines do not mandate an architectural style or theme. Instead, owners are required to design with materials and forms that reflect the mountain character of the site and its climate in order to create places intimately connected with nature, and to be as invisible as possible from off site. Certain “styles” of architecture are not consistent with the intent and goals of the PUD. Styles such as Tudor, Santa Fe, Tyrolean and Victorian are not allowed. All structures shall be designed to reflect styles that are regional to western Colorado ranches, homesteads and towns.”
 - N. Section II.B.2, Building Form and Massing – Include height limits as specified in the Resolution.
4. Prior to submission of any building permit applications for residences on Parcels 1-9, the Applicant shall obtain an access permit from the County for the access road and looped driveway. Construction of the road and driveway shall be completed prior to issuance of any building permit applications for residences on Parcels 1-9. Construction of the access road and driveway shall be limited to May 1 - November 14. The access permit application must include a specific engineered geotechnical report which evaluates the subsurface conditions along the proposed road alignment and assesses the risk of local instability and provides mitigation measures to reduce the risk, if necessary. The report shall specify if retaining walls would be more appropriate in certain locations to lessen the disturbed area and the visual impacts and to avoid significant impacts on steep slopes. The access permit must also include a plan to reclaim and

revegetate the existing primitive road that provides access to the ridge once the new access road is completed, verification that the floodplain and riparian/wetland areas will not be impacted by construction activities, utility line locations, a construction management plan that addresses all phases of development of the PUD, a revegetation and screening plan, a State Stormwater Permit, and site triangles prepared by a Professional Engineer for the intersection of the access road and Brush Creek Road. Open Space and Trails shall review and comment on the permit, prior to issuance. The entry along Brush Creek Road shall be "low-key" and "ranch-like" with no gatehouse or accent lighting and minimal landscaping, signage, etc. The bridge shall utilize native stone, iron, wood or timbers, details and colors that are in harmony with the natural landscape and overall development character.

5. If the County Engineer determines that traffic demand necessitates a left turn lane, then prior to the issuance of a building permit for the third new residence on Parcels 1-9, the Applicant shall submit for and the County shall issue a County Right-of-Way permit to construct a left turn lane off of Brush Creek Road onto the new access road to the PUD. The turn lane shall comply with the provisions of the Asset Management Plan in effect at the time of submission of the permit.
6. Prior to submission of a building permit application for a residence, each lot owner shall obtain a site-specific slope stability analysis from a geologist or geotechnical engineer, who shall provide structural designs based on the analysis.
7. Prior to issuance of a building permit for residences on Parcels 1-9, each lot owner shall:
 - A. Obtain a fireplace/woodstove permit from the Community Development Department.
 - B. Obtain an access permit for the driveway to the building envelope that meets all Pitkin County and Aspen Fire Protection District standards. If the driveway exceeds 30 inches above or below natural grade within the setbacks, the Board of Adjustment must approve a variance prior to issuance of an Access Permit.
 - C. Submit a site specific drainage and erosion control plan for review and approval by the Planning Engineer.
 - D. Submit a construction management plan for review and approval by the Planning Engineer.
 - E. Submit a fugitive dust control plan to be approved by the Environmental Health/Natural Resources Department.
 - F. Pay the applicable road and employee housing impact fees.
 - G. Provide documentation of adequate quality and quantity of water to the Environmental Health/Natural Resources Department. Water shall not be obtained from the Snowmass Water and Sanitation District, due to the potential impact on minimum streamflows in Snowmass Creek.
 - H. Obtain approval of an On-Site Wastewater Disposal System permit from the Environmental Health/Natural Resources Department. The system shall be located within the approved activity envelope, and must comply with the setback requirements from surface and groundwater sources. A qualified professional engineer must design the system.
 - I. Demonstrate that structures do not break the ridgeline as seen from Brush Creek Road or Highway 82 and that no portion of the roof ridge of any structure exceeds the maximum height or "glass ceiling" as shown on the Plat.
 - J. Provide samples of exterior materials and colors for review and approval by Community Development.
 - K. Submit a landscape/revegetation plan to Community Development for review and approval.
8. With the building permit applications for Parcel 6, the Applicant shall submit a plan for vegetative screening to mitigate wildlife impacts for review and approval by Community Development and the Division of Wildlife. On Parcel 6 screening shall be provided on the south and east sides. Screening

shall be comprised of evergreen trees of sufficient size (12-16') and density to break up the disturbance and activity associated with the residence.

9. The exterior of all structures shall be finished in earth tones which blend with the colors of the natural surrounding environment. Roof materials shall be non-reflective.
10. Prior to commencement of construction on any lot, the activity envelope shall be staked and construction fencing shall be installed around the activity envelope to prevent any unnecessary vegetation disturbance during construction. The fencing shall remain in place until issuance of a certificate of occupancy.
11. Development on Parcels 1-9 shall comply with the following standards for development in a Severe Wildfire Hazard Area:
 - A. Defensible Space: The area around all buildings/structures, limited by property boundaries that may limit a property owner's ability to comply with this section, shall incorporate landscaping with wildfire defensible space considerations as follows (note: actual vegetation manipulation to meet these conditions may not be necessary where the natural vegetation patterns have already fulfilled these conditions):
 - 1) Primarily noncombustible hardscape surfaces or low vegetation (6 inches or less) shall be maintained within a 15 foot perimeter around all structures. Woody vegetation shall not be planted within this perimeter.
 - 2) For a distance of 45 feet around all structures, thin existing trees and brush to break up the vertical and horizontal continuity of fuels and maintain natural or irrigated grass at less than 6" between clusters of trees or brush. Remove the lower branches of all trees allowed to remain within the 35 foot perimeter up to half the total height of the tree to eliminate ladder fuels.
 - 3) For a distance of 100 feet around all structures, thin and clump existing oak/serviceberry. The diameter of remaining clumps shall be no larger than 2 times the height of the existing shrubs. The area between clumps should be a minimum of 3 times the height of the existing plants. Remove the lower limbs of remaining shrubs within the 100 foot perimeter up to half the total height of the shrubs to eliminate ladder fuels.
 - 4) Remove all deadfall within 100 feet of all structures.
 - 5) Future landscaping shall incorporate spacing between plants that is consistent with #1 and #2 above.
 - B. Roofing Materials: Class A covering or Class A assembly as defined by the currently adopted Building Code. No wood shakes or shingles. All other adopted Building Code compliant methods and materials permitted. Roofs with less than a 3:12 pitch are not permitted unless they comply with the following:
 - 1) All roof coverings shall be constructed of non-combustible materials and installed on a Class A roof assembly.
 - 2) All roof coverings shall have a surface that shall facilitate the natural process of clearing roof debris.
 - 3) Protrusions above the roofline, such as parapets, shall be prohibited.
 - 4) Roofs shall be installed as required by the adopted Building Code and shall have a minimum pitch of 1:48.
 - 5) All roof designs, coverings, or equivalent assemblies shall be specifically approved by the

Fire Marshal prior to submittal of a building permit application.

C. Roof Venting:

- 1) Soffit venting shall be located in the outer 1/3rd portion of the overhang.
- 2) Attic, soffit and other roof venting shall be of non-corrosive metal mesh with maximum 1/4" openings.

D. Projections at the Roofline, including Soffits, Rafters, Porch or Deck Roofs, Fascias, or Other: One hour rated material or any material underlain by 5/8" Type X gypboard or equal, or "Type IV" Heavy Timber materials, per the currently adopted building code.

E. Decks, Decking, Cantilevered Floors, or Other Projections Below the Roofline:

- 1) Construction with noncombustible or one (1) hour rated material, or material with flame spread <25 (tested to ASTM E84 and listed for exterior use), or
- 2) Conventionally framed deck with waterproof surface and underside protected with 5/8" Type X gypboard or equal (decking as "a" above), or
- 3) "Type IV" Heavy Timber materials: joist and beams minimum 6"x10", columns minimum 8"x8", decking minimum 4" in depth, or decking as "a" above; or equivalent log construction, or
- 4) Enclose projection vertically to ground with one hour fire resistive materials. Decking as "a" above.

F. Railings: Railings must be constructed of noncombustible or "Type IV" Heavy Timber materials.

G. Exterior of the Structure, Including All Walls:

- 1) One (1) hour fire resistive rated materials, or
- 2) 5/8" gypboard underlying combustible materials, or
- 3) Cement stucco, minimum 3/4" thickness.
- 4) All glazing to be tempered glazing; and
- 5) Doors to be metal or wood 1 3/4" thick minimum.

H. Foundations: Foundations, skirting, and crawl space openings shall be fully enclosed and constructed with materials approved for one (1) hour fire-resistive construction on the exterior side of the walls and shall extend from the top of grade to the underside of the floor decking or walls.

I. Maintenance and Miscellaneous Requirements

- 1) Roofs and gutters shall be kept clear of debris.
- 2) Any outbuilding shall adhere to the same wildfire requirements.
- 3) Yards shall be kept clear of all litter, slash and flammable debris.
- 4) All flammable materials shall be stored on a parallel contour a minimum of fifteen (15) feet away from any structure.
- 5) Weeds and grasses within the ten (10) foot perimeter shall be maintained to a height not more than six (6) inches.
- 6) Firewood/wood piles shall be stacked on a parallel contour a minimum of fifteen (15) feet away from the structure.
- 7) Swimming pools and ponds shall be accessible by the local fire district.
- 8) Fences shall be kept clear of brush and debris.
- 9) Wood fences shall not connect to other structures.

- 10) Fuel tanks shall be installed underground with an approved container.
 - 11) Propane tanks shall be buried, if possible, or installed according to NFPA 58 standards and on a contour away from the structure with standard defensible space vegetation mitigation around any aboveground tank. Any wood enclosure around the tank shall be constructed with materials approved for two (2) hour fire-resistive construction on the exterior side of the walls.
 - 12) Each structure shall have a minimum of one ten (10) pound ABC fire extinguisher.
 - 13) Addresses shall be clearly marked with two (2) inch non-combustible letters and shall be visible at the primary point of access from the public or common access road and installed on a non-combustible post.
 - 14) Utility lines shall be buried within or along roadways.
 - 15) Install automatic fire sprinkler systems within each residence.
12. All codes and requirements of the Aspen Fire Protection District shall be adhered to for access, water supply, sprinkler systems, and turning around of fire apparatus.
13. All development shall comply with the following wildlife mitigation measures:
- A. Dogs shall be prohibited on Parcels 1-9.
 - B. Maintain native vegetation outside of the activity envelopes, except as necessary to comply with the wildfire mitigation required elsewhere in this approval.
 - C. Install and use approved bear proof garbage containers as specified in the County's Wildlife Protection Ordinance.
 - D. Avoid fruit, nut, or berry-bearing trees and shrubs in any landscaping to minimize black bear activity in this area.
 - E. Caretaker dwelling units shall be attached to the main residence.
 - F. Horse grazing shall be limited to the existing pastures at the bottom of the property adjacent to Brush Creek Road, consistent with the provisions of the Conservation Easement.
 - G. Human recreational activity shall be limited to activity envelopes and access roads from November 15 through April 30 in order to minimize disturbance during migration and winter range use.
 - H. Construction of the access road and looped driveway shall be limited to May 1 through November 14.
 - I. Construction of the residences on Parcels 1-9 (including all exterior and interior work starting with ground breaking through issuance of a Certificate of Occupancy) shall not occur from November 15 through April 30. No permit(s) shall lapse due to inactivity during this period November 15 through April 30.
 - J. Fencing on Parcels 1-9 shall be limited to activity envelopes only and shall meet Pitkin County "wildlife friendly" standards.
14. No development, including grading, excavation, fill placement, landscaping, vegetation removal or disturbance, well or septic system, shall occur outside of the approved building, activity and road/driveway activity envelopes, except in conjunction with approved access permits, and as necessary to implement the wildfire mitigation measures required elsewhere in this document.
15. Native vegetation shall be utilized to revegetate areas outside of the activity envelopes that are disturbed by construction of access, no later than one growing season after completion of construction. A revegetation plan shall be submitted with all access permits. Such plan will be reviewed by Community development and must meet County standards before an access permit will be issued.
16. The Applicant shall comply with the County's lighting regulations. Lighting is prohibited along the access road, looped driveway and individual driveways. Exterior lighting on the residences shall be limited to lighting required by the building code.

17. The total floor area of all structures on Parcels 1-10 shall not exceed 90,750 square feet, as defined by the Land Use Code in effect at the time of building permit application; this floor area is exempt from growth management, and growth management allotments or TDRs may not be used to exceed this amount. No more than 10,000 square feet of floor area shall be developed on any one parcel, with the exception of new Parcel 9, which shall be limited to 8,250 square feet of floor area. Subject to the foregoing, the Applicant shall allocate the allowable square footage of Floor Area for each parcel either at the time of the initial sale of such parcel or upon application for a building permit for a residence on such parcel, whichever first occurs. The Floor Area to be allocated shall be set forth in a document entitled "Allocation of Floor Area" which shall identify the parcel for which the allocation is made, shall be signed by the Applicant and recorded in the office of the Clerk and Recorder of Pitkin County, Colorado. Thereafter, the Allocation of Floor Area as set forth in the recorded document may only be amended by and through an amendment to the Final Approval Resolution processed pursuant to the regulations of the County then in effect.
18. New development or redevelopment on Parcel 10 shall be subject to the provisions of the Land Use Code in effect at the time the development is proposed.
19. The Applicant shall adhere to all material representations made in the final application and in all BOCC public meetings and site visits in 2009 on May 27, June 15, June 24, July 16, August 12 and August 26, and shall consider those representations, as finalized by the BOCC, to be conditions of approval, unless amended by other conditions.
20. Failure to comply with the conditions of this approval as they relate to common infrastructure improvements may result in revocation of this approval, or any subsequent permit(s) or approval(s) related to this property, or vested rights associated with this property.
21. Failure to comply with the conditions of this approval as they relate to individual parcels may result in the revocation of any subsequent permit(s) or approvals related to the offending parcel or the revocation of the vested rights associated with the offending parcel.
22. Statutory vested rights for the approval contained herein are granted pursuant to the Pitkin County Land Use Code and Colorado Statutes, subject to the exceptions set forth in Pitkin County Land Use Code, § 2-20-170 and C.R.S., § 24-68-105. The statutory vested rights granted herein shall expire on 8-26, 2029.

NOTICE OF PUBLIC HEARING published in the Aspen Times Weekly on the 26th day of April, 2009.

INTRODUCED AND FIRST READ AT PUBLIC HEARINGS on the 27th day of May, 24th day of June and 12th day of August, 2009.

APPROVED AND ADOPTED AFTER SECOND READING on the 26th day of August, 2009.

PUBLISHED AFTER ADOPTION in the Aspen Times Weekly on the ~~13th~~ day of ~~September~~ 27th 2009.

BOARD OF COUNTY COMMISSIONERS,
PITKIN COUNTY, COLORADO

09/04/09

By [Signature]
Patti Kay-Clapper, Chair

[Signature]
Rachel E. Richards
for chair BOCC

ATTEST:

[Signature]
Jeanette Jones, Clerk to the BOCC

APPROVED AS TO CONTENT:

[Signature]
Cindy Houben
Community Development Director

APPROVED AS TO FORM:

[Signature]
John Ely
County Attorney

The undersigned owners accept the conditions and terms of this approval:

[Signature]
Peter C. Droste

[Signature]
Bruce F. Droste

[Signature] TRUSTEE
Peter C. Droste Children's Trust

[Signature], trustee
Bruce F. Droste Children's Trust



1, 2, 4, 5, AND 6 BRUSH CREEK RANCH LIR-80 P.U.D.

A PARCEL OF LAND SITUATED IN A PORTION OF SECTIONS 28, 29, 32, 33 & 34
TOWNSHIP 9 SOUTH, RANGE 85 WEST OF THE 6th P.M.
COUNTY OF PITKIN, STATE OF COLORADO

SHEET 1 OF 2

SHEET INDEX
SHEET 1 - CERTIFICATIONS, DEDICATION LANGUAGE, AND VICINITY MAP
SHEET 2 - TRACT BOUNDARIES, MONUMENTATION, AND ADJOINERS

SUBDIVISION EXEMPTION PLAT OF:

NOTES

- 1) DATE OF FIELD WORK: OCTOBER, 2007 AND MAY - AUGUST, 2008.
- 2) DATE OF PREPARATION: AUGUST, 2010.
- 3) BASIS OF BEARING: A BEARING OF S 30°25'17" W BETWEEN A FOUND ALUMINUM CAP (L.S. 15710) MONUMENTING THE QUARTER CORNER BETWEEN SECTIONS 28 AND 29 AND A FOUND REBAR AND CAP (L.S. 15710) MONUMENTING THE ANGLE POINT ON THE EASTERLY BOUNDARY OF THE CONSERVATION EASEMENT, AS SHOWN ON SHEET 2.
- 4) BASIS OF SURVEY: THE G.L.O. & B.L.M. PLATS OF TOWNSHIP 9 SOUTH, RANGE 85 WEST OF THE SIXTH PRINCIPAL MERIDIAN, THE PLAT OF SEVEN STAR SUBDIVISION, RECORDED OCTOBER 25, 2006 AS RECEPTION NO. 53029A, THE FIRST AMENDED FINAL PLAT OF DROSTEPIONEER SPRING RANCH RECORDED MAY 24, 1985 AS RECEPTION NO. 381026, THE PLAT OF 7 STAR RANCH RECORDED MARCH 8, 1985 AS RECEPTION NO. 322298, THE SECOND AMENDED PLAT AND LOT LINE ADJUSTMENT PLAT OF THE BRUSH CREEK RANCH RECORDED MAY 11, 2007 AS RECEPTION NO. 577758, THE FINAL PLAT OF THE BRUSH CREEK RANCH LOT SPLIT AND PARAGON ENTERPRISES RECORDED MAY 12, 2000 AS RECEPTION NO. 442936, THE FINAL PLAT OF THE PARAGON ENTERPRISES PARCEL RECORDED MAY 12, 2000 AS RECEPTION NO. 442936, CROSS ELECTRIC EASEMENT RECORDED APRIL 7, 1997 AS RECEPTION NO. 403190, THE FINAL PLAT OF OWL CREEK RANCH RECORDED JULY 28, 2009 AS RECEPTION NO. 208642, THE IMPROVEMENT SURVEY OF LOT 4, OWL CREEK RANCH RECORDED APRIL 15, 1997 AS RECEPTION NO. 208642, THE DROSTE SURVEY RECORDED JULY 28, 2009 AS RECEPTION NO. 442936, THE FINAL PLAT OF BRUSH CREEK RANCH LIR-80 P.U.D. RECORDED JANUARY 7, 2010 AS RECEPTION NO. 565986, VARIOUS DOCUMENTS OF RECORD, AND THE FOUND MONUMENTS, AS SHOWN.
- 5) THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY SOPRIS ENGINEERING, LLC (SE) TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS OF WAY AND/OR TITLE OF RECORD, SEE RELIED UPON THE ABOVE SAID PLATS DESCRIBED IN NOTE 4 AND THE TITLE COMMITMENT PROVIDED BY PITKIN COUNTY TITLE, INC. CASE NO. PCTZ28072, WITH AN EFFECTIVE DATE OF AUGUST 2, 2010.
- 6) FOR EASEMENTS AND ENVELOPES OF RECORD, REFER TO THE 1ST AMENDED PLAT OF BRUSH CREEK RANCH LIR-80 P.U.D. RECORDED RECEPTION NO. _____ OF THE PITKIN COUNTY RECORDS _____ 10 AS

TITLE CERTIFICATE

THE UNDERSIGNED, A DULY AUTHORIZED REPRESENTATIVE OF PITKIN COUNTY TITLE, INC., REGISTERED TO DO BUSINESS IN THE STATE OF COLORADO, HEREBY CERTIFY THAT THE PERSON(S) OR ENTITY LISTED AS OWNER ON THIS PLAT DO HOLD FEE SIMPLE TITLE TO THE WITHIN DESCRIBED REAL PROPERTY, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES EXCEPT _____

WE BELIEVE THE FACTS STATED ON THIS PLAT ARE TRUE. THIS CERTIFICATION IS NOT TO BE CONSTRUED AS AN ABSTRACT OF TITLE, NOR AN OPINION OF TITLE, NOR A GUARANTEE OF TITLE. IT IS UNDERSTOOD AND AGREED THAT PITKIN COUNTY TITLE, INC. NEITHER ASSUMES NOR WILL BE CHARGED WITH ANY FINANCIAL OBLIGATION OR LIABILITY WHATSOEVER ON ANY STATEMENT CONTAINED HEREIN.

PITKIN COUNTY TITLE, INC.

BY: _____
AUTHORIZED SIGNATOR

WITNESS MY HAND AND OFFICIAL SEAL, MY COMMISSION EXPIRES _____

NOTARY PUBLIC

BOARD OF COUNTY COMMISSIONERS' APPROVAL AND ACCEPTANCE

THIS PLAT IS HEREBY ACCEPTED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS OF PITKIN COUNTY, COLORADO, THIS _____ DAY OF _____, 2010, PURSUANT TO PITKIN COUNTY RESOLUTION, RECORDED ON _____ 2010 RECEPTION NO. _____ IN THE RECORDS OF PITKIN COUNTY, COLORADO.

BOARD OF COUNTY COMMISSIONERS

