

Variance Staff Report

Date: May 6, 2025
To: Douglas County Board of Adjustment
Through: Douglas J. DeBord, County Manager
From: Terence T. Quinn, AICP, Director of Community Development *TQ*
CC: Carolyn Washee-Freeland, AICP, Senior Planner
Michael Cairry, Zoning Compliance Manager
Steven E. Koster, AICP, Assistant Director of Planning Services
Subject: **Bald Mountain Estates Filing 1, Block 5, Lot 3 - Variance**
Project File: **VA2025-003**

Board of Adjustment Hearing:

May 20, 2025 @ 1:30 p.m.

I. APPLICATION INFORMATION

A. Applicants

Diego and Emily Sarmiento
2859 Cagle Drive
Larkspur, Colorado 80118

B. Request

The applicants request approval of a variance to allow for a reduction to the street setbacks. The subject property is a corner lot situated at the intersection of Cagle Drive and Ray Drive, and the lot has a property line on each of these two streets. The variance request will allow a reduction in the street setback from 25 feet to 7.2 feet on Ray Drive, and from 25 feet to 19.8 feet on Cagle Drive to accommodate an existing outbuilding. The property is located on Lot 3 of Block 5 within the Bald Mountain Estates Filing 1 subdivision and is approximately 1 acre in size.

C. Location

The site is located at 2859 Cagle Drive, in Larkspur, approximately one-quarter of a mile north of East Palmer Divide Avenue, and one and one-half miles east of I-25. See the attached zoning map, vicinity map, and aerial map.

D. Development Standards

The property is zoned Estate Residential (ER) and is approximately 1 acre in size. The required setbacks for parcels of this size in the ER zone district are 100 feet from a regional or major arterial street, 25 feet from other street types, 15 feet from a side lot line, and 25 feet from a rear lot line.

II. CONTEXT

A. Background

The property owners, Mr. and Mrs. Sarmiento, purchased the property in 2009. Currently on the property there is a single-family residence with an attached garage, a new outbuilding, and a smaller shed. The outbuilding is the subject of this variance request. According to the applicants, the outbuilding was constructed in 2020. Further, the applicants have indicated that they will remove the smaller shed structure off the premises.

In 2019, the applicants hired a contractor to build an 18-foot by 24-foot outbuilding on the property. The applicants assert that their contractor pulled a building permit with the County for the construction of the building. As the project neared completion, the contractor failed to schedule final inspections for the outbuilding that would have closed out the permit. Additionally, the applicants state that the setback encroachments of the outbuilding would have been discovered if the contractor had followed through with final inspections. The applicants further indicate that they were unaware that the outbuilding had an open permit and that the outbuilding had been constructed within two street setbacks.

Since this time, the applicants listed the home for sale and received an offer on the property. The applicants indicate that through the buyer's due diligence research, it was discovered that the outbuilding was located within the street setbacks, and that the building permit for the construction of the outbuilding had not been closed out.

The applicants wish to rectify the situation through a variance to bring the property into compliance with the zone district. The applicants considered the possibility of demolishing a portion of the outbuilding; however, a partial demolition would destabilize the remaining structure, and the building would have to be fully demolished. Additionally, the applicants also contemplated moving the building to another location on the lot, however, the lot is 1 acre in size, with some topographic challenges that may not be suitable for development.

B. Adjacent Land Uses and Zoning

The subject property is located at the intersection of Cagle Drive and Ray Drive, east of Interstate 25, in Larkspur, and is zoned ER. Parcels adjacent to the property are zoned ER. Vicinity, zoning, and aerial maps are contained in this report as an attachment.

Zoning and Land Use

Direction	Zoning	Land Use
North	Estate Residential	Residential
South	Estate Residential	Residential
East	Estate Residential	Residential
West	Estate Residential	Residential

III. SITE CHARACTERISTICS

A. Site Characteristics and Constraints

The 1-acre site is bounded by Cagle Drive to the south and Ray Drive to the east and is generally located one and one-half miles east of Interstate 25 in Larkspur. The Bald Mountain Ranch Estates subdivision borders El Paso County to the south, County designated open space to the west, and agricultural lands to the north and east. The topography of the site has gentle hilly areas, with slight contours ranging from 7,420 to 7,440 feet. Vegetation on the property consists of native grasses, Ponderosa Pine trees, and other native vegetation.

IV. PUBLIC NOTICE AND INPUT

At least 14 days prior to the Board of Adjustment hearing, the applicant is required to mail a written notice by first-class mail to each abutting property landowner and post a notice on the land under consideration in compliance with Section 2606 of the Douglas County Zoning Resolution (DCZR). As of the writing of this staff report, staff received one phone call from an abutting neighbor expressing his objection to the variance request. The applicant has acknowledged receipt of the comment and has attempted to reach out to the neighbor to provide more information on the variance request.

Referral requests were sent to required referral agencies on April 23, 2025. Referral responses were due on May 5, 2025. Referral agencies did not provide comments for the applicant to address. All referral responses received are included in the referral response report attached to the staff report.

V. STAFF ANALYSIS

The following approval criteria for variances are set forth in Section 2603 of the DCZR:

2603.01: A variance shall be granted only upon the finding that a strict application of this resolution causes peculiar and exceptional practical difficulties or exceptional and undue hardship by reason of exceptional narrowness, shallowness, or shape of the specific parcel of land or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the land.

Staff Comment: The applicants state that the outbuilding encroaches into two street setbacks. The applicants assert that the structure was constructed within the two street setback areas at the error of the contractor without their knowledge.

The current property owners indicate that they have listed the subject property for sale and that it was brought to their attention by the realtor, that the structure encroached 17.8-feet in the 25-foot street setback on Ray Drive, and 5.2-feet into the 25-foot street setback on Cagle Drive. Additionally, it was discovered that the building permit issued by Building Services had not been closed out, and final inspections had not commenced. The

applicants wish to act in good faith and rectify these issues by obtaining a variance for the structure to stay in its current place.

The applicants have indicated that they have considered demolishing a portion of the structure to bring it into compliance with the setback requirement and found that it would affect the structural stability of the overall building. Please see the applicants' attached narrative for additional evidence in support of the request.

2603.02: The applicant shall provide reasonable and adequate evidence that the variance request is not a self-imposed hardship which can be rectified by means other than relief through a variance.

Staff Comment: The applicants state that this is not a self-imposed hardship. The Sarmiento's purchased the property in 2009. In 2019, the applicants hired a contractor to build an outbuilding on the subject property. The contractor proceeded to obtain a County issued building permit for construction and built the outbuilding. Once the structure was complete, the contractor failed to schedule final inspections and close out the permit. The permit has remained open since this time. In 2025, the applicants placed the property on the market and received an offer from a potential buyer. The buyer's realtor discovered that there was an open building permit for the structure and found that the structure was constructed within two street setbacks. After learning of the status of the building permit and the street setback encroachments, the applicants began the process of working with Building Services and Zoning Compliance to seek a variance. Please see the applicants' attached Improvement Survey Plat showing the existing home and outbuilding for additional details.

2603.03: A variance may be granted provided that no substantial detriment to the public good is created and that the intent and purpose of this Resolution are not impaired.

Staff Comment: The applicants currently use the structure for storage. The outbuilding is considered an accessory structure and is permitted as an accessory use within the ER zone district.

Referral review requests were sent to utility companies to review the setback encroachment. The utility companies did not provide any comments for the applicant to address. Granting the variance will not create a substantial detriment to the public good or impair the purpose of the Douglas County Zoning Resolution.

2603.04: The concurring vote of three members of the Board of Adjustment shall be necessary for a variance.

VI. STAFF ASSESSMENT

It is staff's assessment that the applicants have adequately demonstrated that a strict application of this resolution causes peculiar and exceptional practical difficulties or

exceptional and undue hardship, that the request is not a self-imposed hardship, and that there would be not substantial detriment to the public good created by the request.

ATTACHMENTS	PAGE
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LAND USE APPLICATION

Please complete, sign, and date this application. Return it with the required items listed on the Submittal Checklist to planningsubmittals@douglas.co.us. Submittals may also be mailed or submitted in person to Planning Services. **NOTE: The Planning Commission or the Board of County Commissioners should not be contacted regarding an open application.**

OFFICE USE ONLY**PROJECT TITLE:** Bald Mountain Estates Filing 1, Block 5, Lot 3 - Variance Request**PROJECT NUMBER:** VA2025-003**PROJECT TYPE:** VARIANCE REQUEST (Reduction in street setback)**MARKETING NAME:** n/a**PRESUBMITTAL REVIEW PROJECT NUMBER:** PS2025-076 Bald Mountain Estates Filing 1, Lot 3, Block 5**PROJECT SITE:****Address:** 2859 Cagle Dr, Larkspur, CO 80118**State Parcel Number(s):** 2771-360-04-006**Subdivision/Block#/Lot# (if platted):** Bald Mountain Estates / Block 5 / Lot 3**PROPERTY OWNER(S):****Name(s):** Diego M Sarmiento Ortiz & Emily A Sarmiento**Address:** 2859 Cagle Dr, Larkspur, CO 80118**Phone:** (719) 502-1219**Email:** sarmiento.emily@gmail.com

AUTHORIZED REPRESENTATIVE: (Notarized Letter of Authorization is required from the property owner, unless the owner is acting as the representative)

Name: n/a**Address:****Phone:****Email:**

To the best of my knowledge, the information contained on this application is true and correct. I have received the County's information sheet regarding the *Preble's Meadow Jumping Mouse*.



Applicant Signature

April 11, 2025

Date

VARIANCE REQUEST

NARRATIVE

Diego & Emily Sarmiento | 2859 Cagle Drive, Larkspur, CO 80118

REQUEST: We are requesting a variance approval for reduction in street setbacks.

- For Ray Drive: from 25 feet to 7.2 feet
- For Cagle Drive: from 25 feet to 19.8 feet

HARDSHIP DESCRIPTION

1. What exceptional practical difficulties, exceptional and undue hardship, or other extraordinary and exceptional situations or conditions of your land prevents compliance with the DCZR?

In late 2019, we contracted in good faith for the building of a 18' x 24' garage (labeled "barn" on the enclosed survey) with Sunset Buildings of Colorado Springs. They presented the engineer's letter and directly opened the building permit with Douglas County at the time, approving the plot plan. Sunset finished the project in early 2020, but never completed the requisite inspections to close the permit or the encroachments would have been discovered before now.

Only upon entering a transaction for property sale did we discover the issue (see supporting information for a full recap of our discovery leading to this request).

We are seeking a variance approval due to the exceptional situation of the contractor's error—something that was done to us, without our knowledge or awareness, under a contractor's agreement established in good faith.

2. A variance may not be granted if it is due to self-imposed hardship that can be rectified by means other than relief through a variance. What other design or development alternatives have you considered and why aren't they feasible?

There is a small, secondary shed (labeled "shed" on the attached survey) in the same location on our property, that is unrelated to the building permit. We are working to have that structure moved before a public hearing on the variance in question.

For the large garage in question, it was constructed on site as a permanent structure and bolted down on a 18' x 24' concrete slab foundation. In reviewing our options, it is clear that moving it would require tearing it down, likely producing permanent damage to the materials and a complete loss of the investment.

3. Why do you believe that your variance request is in harmony with the intent and purpose of the DCZR?

There is a good distance between the edge of the garage structure on both streets and where the right of way begins on what is a rural residential road with limited traffic.

Supporting Information: Chronology of Events

In late 2019, we contracted in good faith for the building of a 18' x 24' garage (labeled "barn" on the enclosed survey) with Sunset Buildings of Colorado Springs. They presented the engineer's letter and directly opened the building permit with Douglas County at the time, approving the plot plan. Sunset finished the project in early 2020, but never completed the requisite inspections to close the permit or the encroachments would have been discovered sooner.

In March 2025, we put our house on the market. Upon receiving a contract for purchase (March 16)—which later terminated (March 28)—we learned from the buyers' research that the permit with Douglas County was still open.

Emily called and spoke with Douglas County Building (Christine Lyle on March 17) and Zoning (Sherry Lindeman also on March 17) to learn what happened. They confirmed Sunset Buildings had opened the permit and presented the engineer's letter, but never advanced the required inspections to conclude the permit. We lack rough and final inspections (note: there is no electricity to the garage).

Emily called Sunset Buildings (also on March 17) to inquire, but there was new leadership—and no ownership of any issues—since the time we worked with Sunset five years ago. Recognizing we would not get very far, and at the Building Division's suggestion, we filed the form (also on March 17) to take over the open permit (19-10136) as a homeowner's permit, reactivate it, and proceeded to secure the updated survey so we can properly close this out.

We received an updated survey the morning of March 31 and promptly applied to pre-submittals the same day.


On April 10, we met with the Douglas County Presubmittal Committee leading to our formal variance application.

VARIANCE
Bald Mountain Estates
Filing 1, Block 5, Lot 3

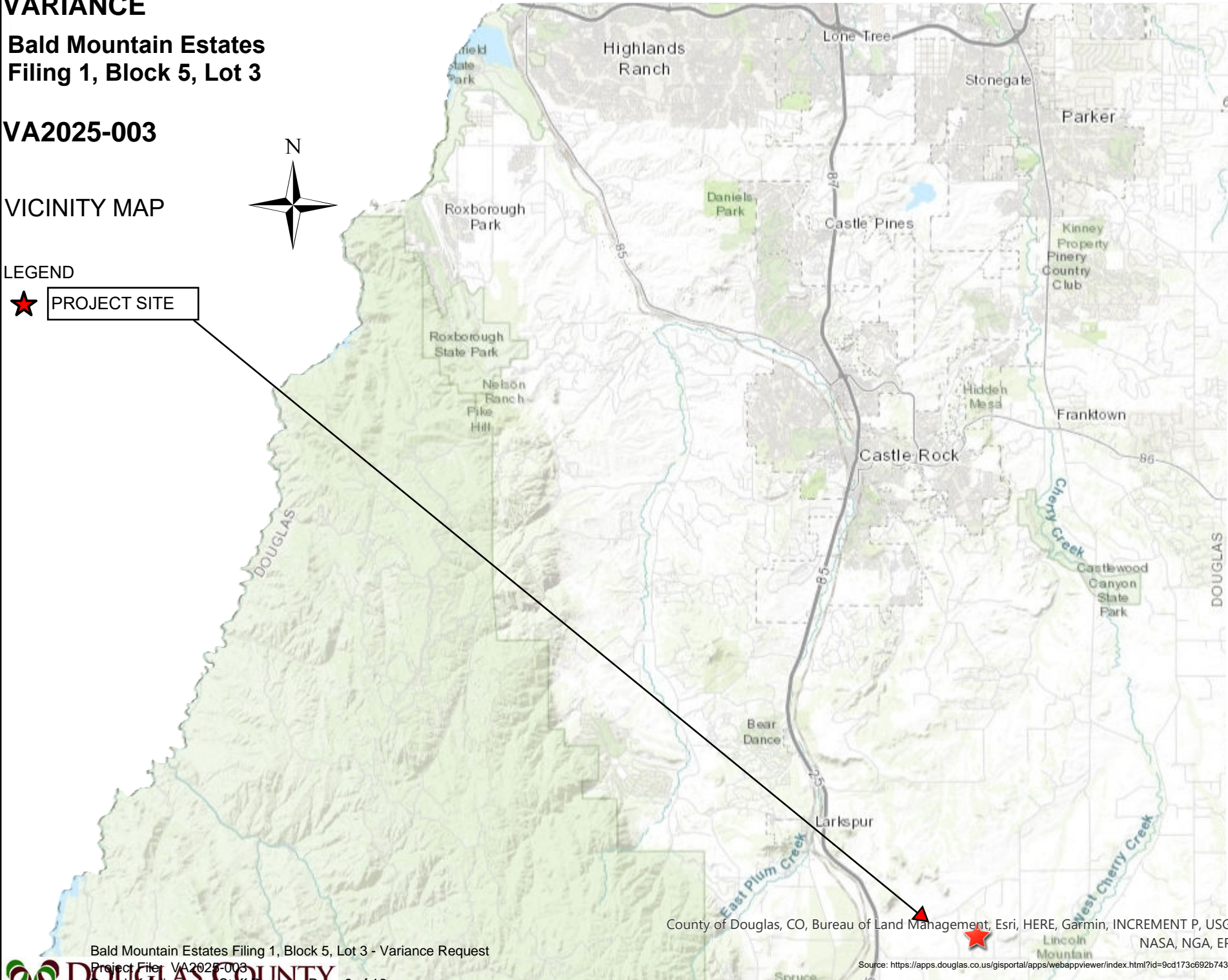
VA2025-003

VICINITY MAP

LEGEND



PROJECT SITE



ZONING MAP

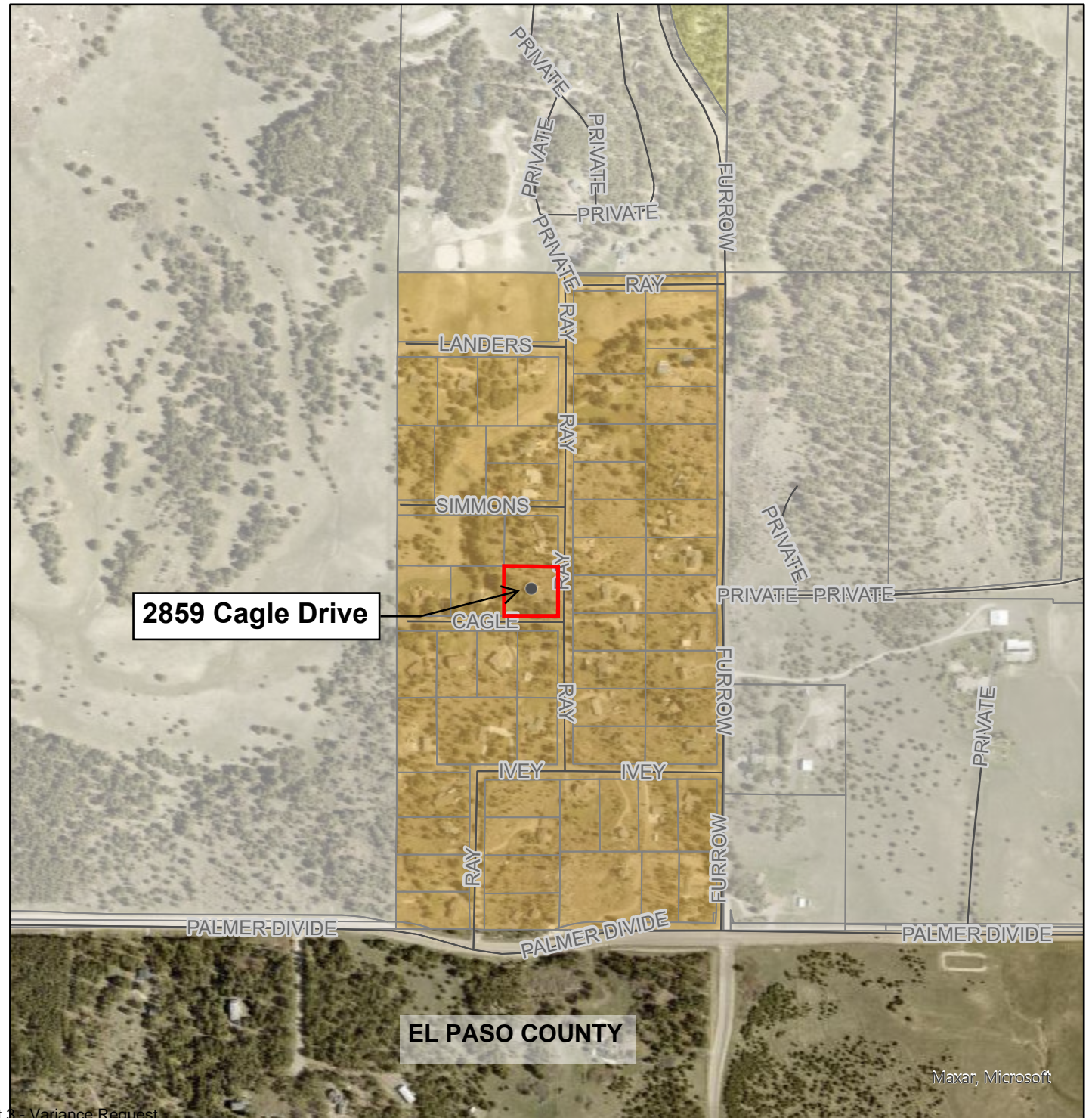
Bald Mountain Estates Filing 1, Block 5, Lot 3

VA2025-003



LEGEND

- Roads
- Major Roads
- ▭ Parcels - PARCELS
- ▭ A1 - AGRICULTURAL ONE
- ▭ RR - RURAL RESIDENTIAL
- ▭ ER - ESTATE RESIDENTIAL



AERIAL MAP

Bald Mountain Estates Filing 1, Block 5, Lot 3

VA2025-003



LEGEND

- Roads
- Major Roads
- Parcels - PARCELS



Maxar, Microsoft

Referral Agency Response Report**Page 1 of 2****Project Name:** Bald Mountain Estates Filing 1, Block 5, Lot 3**Project File #:** VA2025-003**Date Sent:** 04/23/2025**Date Due:** 05/05/2025

Agency	Date Received	Agency Response	Response Resolution
Addressing Analyst	04/28/2025	No Comment	No action necessary
Assessor	05/05/2025	No Comment	No action necessary
AT&T Long Distance - ROW		No Response Received	No action necessary
Black Hills Energy		No Response Received	No action necessary
Building Services	04/25/2025	Received: Exterior walls with Fire Separation Distances of 5 feet or less are required to be one hour rated. The submitted plans show distance of greater than 5 feet.	Comment forwarded to applicant
CenturyLink	04/23/2025	Received: Good afternoon. We have received your request for a vacate-abandon and have set up a Lumen project accordingly. Your project number is P865813, and it should be referenced in all emails sent in for review. Your project owner is Tom Hoopes, and they can be reached by email at Tom.Hoopes@lumen.com with any questions that you may have regarding this project. Requests are addressed in the order received, Lumen will endeavor to respond within 30 days. Cassie Martin, Project Coordinator Faulk & Foster 214 Expo Circle, Suite 7, West Monroe, LA 71292 Cassie.martin@lumen.com	No action necessary
Comcast		No Response Received	No action necessary

Referral Agency Response Report**Page 2 of 2****Project Name:** Bald Mountain Estates Filing 1, Block 5, Lot 3**Project File #:** VA2025-003**Date Sent:** 04/23/2025**Date Due:** 05/05/2025

Agency	Date Received	Agency Response	Response Resolution
CORE Electric Cooperative	05/04/2025	Received: We have received the above-referenced referral request. We have reviewed our records and find that this property is not in our service territory.	No action necessary
Engineering Services	04/29/2025	No Comment	No action necessary
Xcel Energy-Right of Way & Permits	04/30/2025	Received: Public Service Company of Colorado's Right of Way & Permits Referral Desk has reviewed the plan for Bald Mountain Estates F1 B5 L3 and has no apparent conflict. Donna George Right of Way and Permits Public Service Company of Colorado dba Xcel Energy Office: 303-571-3306 – Email: Donna.L.George@xcelenergy.com	No action necessary



Right of Way & Permits

1123 West 3rd Avenue
Denver, Colorado 80223
Telephone: **303.571.3306**
Facsimile: 303.571.3284
Donna.L.George@xcelenergy.com

April 30, 2025

Douglas County Department of Community Development
100 Third Street
Castle Rock, CO 80104

Attn: Carolyn Washee-Freeland

Re: Bald Mountain Estates F1 B5 L3, Case # VA2025-003

Public Service Company of Colorado's Right of Way & Permits Referral Desk has reviewed the plan for **Bald Mountain Estates F1 B5 L3** and has no apparent conflict.

Donna George
Right of Way and Permits
Public Service Company of Colorado dba Xcel Energy
Office: 303-571-3306 – Email: Donna.L.George@xcelenergy.com

Carolyn Freeland

From: Tom Turner <tom.turner@heicivil.com>
Sent: Monday, May 5, 2025 3:25 PM
To: Carolyn Freeland
Subject: Case Number VA2025-003

Hi

I'm not fine with buildings being in the building setback zone.

Biggest qs is then building most not be survey or ever inspected.

Then is building built to code?

Not per building set back code.

I have to work May 20th what our my opinions?

Thanks



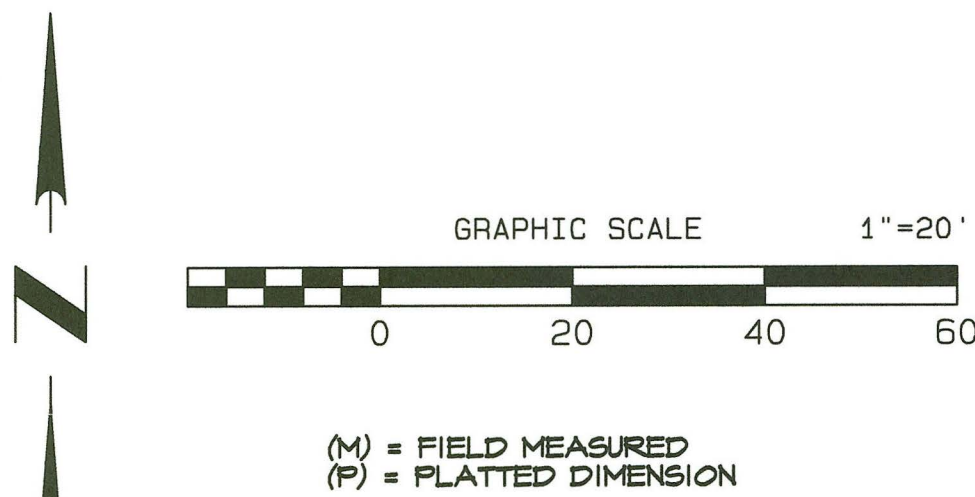
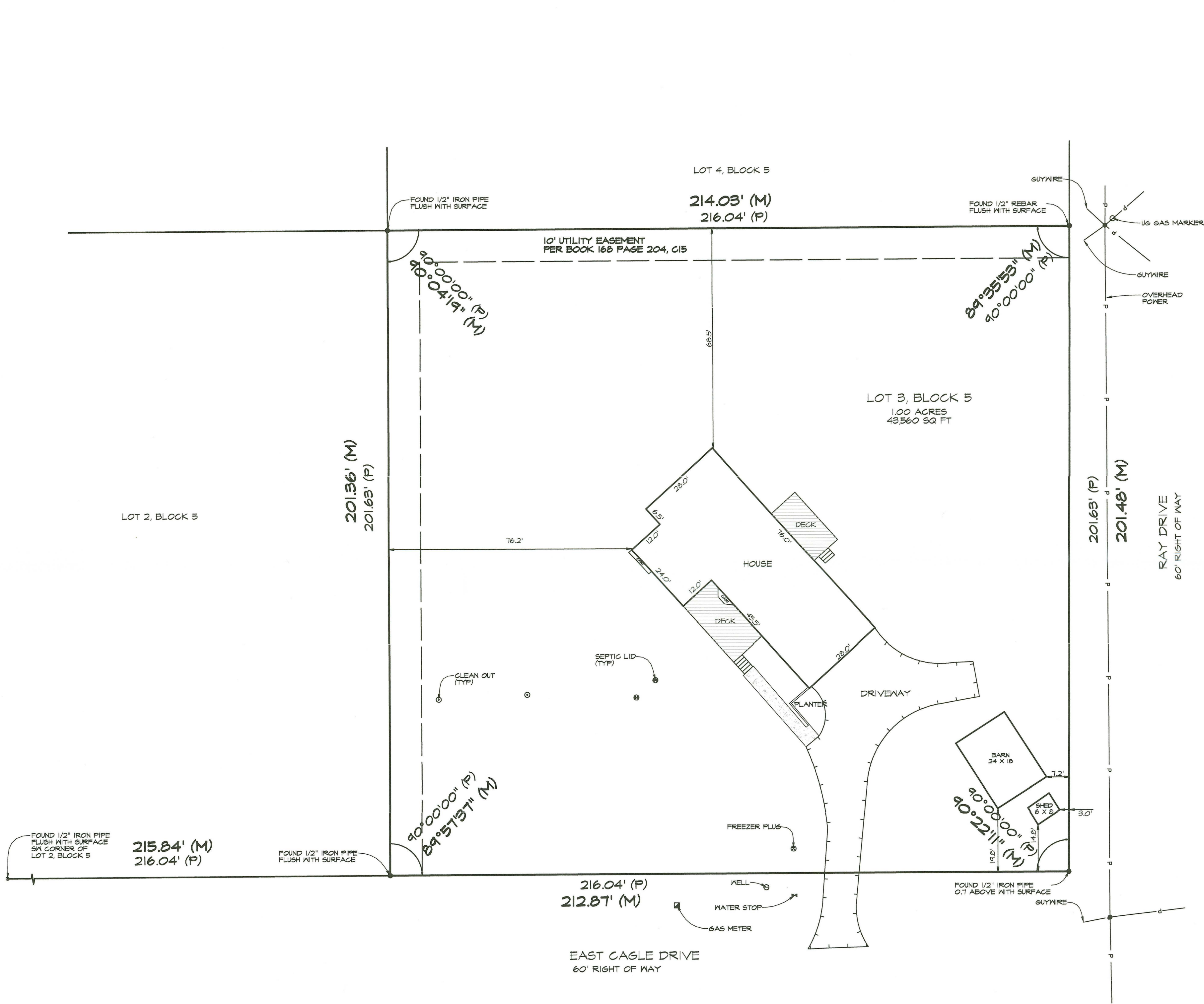
Tom Turner

Superintendent

Mobile: (720) 926-8046

Attracting and building the best
people, teams, and projects.

IMPROVEMENT SURVEY PLAT
In Section 36, Township 10 South, Range 67 West,
6th P.M, Douglas County, Colorado



- NOTES:
1. This survey was performed without the benefit of a title insurance commitment or a title insurance policy. A title insurance commitment or a title insurance policy may disclose facts not reflected on this survey.
 2. Corner monuments were set or found and accepted as indicated hereon.
 3. Client did not want easements or rights of way researched beyond the Platted Easements.
 4. All measurements shown hereon are U.S. Survey Feet.
 5. Conflicting boundary evidence (if any) is as shown. (none)
Encroachments (if any) are as shown hereon. (none)

PROPERTY DESCRIPTION:
Lot 3, Block 5, Bald Mountain Estates,
Recorded August 16, 1960 Rec No 1960108871
In Section 36, Township 10 South, Range 67 West,
County of Douglas, State of Colorado

CERTIFICATE OF SURVEY:
I, Darrell Eugene Roberts, a duly registered Professional Land Surveyor practicing in the State of Colorado, do hereby certify to Emily Sarmiento that, on March 25, 2025, a survey was made under my direct supervision, of 2859 East Cagle Drive, Douglas County, Colorado. The survey was made on the ground using the normal standard of care of Professional Land Surveyors, and is based upon the professional land surveyor's knowledge, information and belief, that it is in accordance with applicable standards of practice and that this plat accurately represents said survey. It is not a guaranty or warranty, either expressed or implied. The location and dimensions of all buildings, buildings under construction, improvements, platted easements and rights of way in evidence or known to me and encroachments by or on the premises are accurately shown. This survey does not constitute a title search by David E. Archer and Associates, Inc. of the property shown and described hereon to determine:
1. Ownership of the tract of land.
2. Compatibility of this description with those of adjacent tracts of land.
3. Rights of way, easements and encumbrances of record affecting this tract of land.

Signed 
Darrell Eugene Roberts for and on behalf of David E. Archer & Assoc.

REVISIONS ADD DIM D.L. 2-28-25	 DAVID E. ARCHER & ASSOCIATES, INC. LAND DEVELOPMENT CONSULTING SURVEYING & ENGINEERING PHONE (303) 688-4642 105 WILCOX ST. CASTLE ROCK, COLORADO 80104		TITLE IMPROVEMENT SURVEY PLAT 2859 East Cagle Drive In Section 36, Township 10 South, Range 67 West, 6th PM, Douglas County, Colorado SCALE 1" = 20' DATE 3-25-25 DRN. D.L. APPROV. E.K.O. CLIENT Emily Sarmiento JOB NUMBER 25-0191 Sheet 1 of 1
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"NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon."