

DISCLOSURE STATEMENT

FOR ALL SUBDIVISIONS CONTAINING MORE THAN FIVE (5) PARCELS.

YOU SHOULD READ THIS DISCLOSURE STATEMENT BEFORE YOU SIGN ANY DOCUMENTS OR AGREE TO ANYTHING.

This disclosure statement is intended to provide you with enough information to make an informed decision on the purchase, lease or acquisition of the property described in this statement. You should read carefully all of the information contained in this disclosure statement before you decide to buy, lease or otherwise acquire the described property.

Various public agencies may have opinions on both the subdivision proposal and the information contained in this disclosure statement. Summaries of these opinions are contained in this disclosure statement. They may be favorable or unfavorable. You should read them closely.

The Board of County Commissioners has examined this disclosure statement to determine whether the subdivider can fulfill what the subdivider has said in this disclosure statement. However, the Board of County Commissioners does not vouch for the accuracy of what is said in this disclosure statement. In addition, this disclosure statement is not a recommendation or endorsement of the subdivision by either the County or the State. It is informative only.

The Board of County Commissioners recommends that you inspect the property before buying, leasing or otherwise acquiring it.

If you have not inspected the parcel before purchasing, leasing or otherwise acquiring it, you have six (6) months from the time of purchase, lease or other acquisition to personally inspect the property. After inspecting the parcel within the six (6) month period, you have three (3) days to rescind the transaction and receive all your money back from the subdivider when merchantable title is revested in the subdivider. To rescind the transaction you must give the subdivider written notice of your intent to rescind within three (3) days after the date of your inspection of the property.

County regulations require that any deed, real estate contract, lease or other instrument conveying an interest in a parcel in the subdivision be recorded with the Otero County Clerk.

Building permits, wastewater permits or other use permits must be issued by state or county officials before improvements are constructed. You must investigate the availability of such permits before you purchase, lease or otherwise acquire an interest in the land. You should also determine whether such permits are requirements for construction of additional improvements before you occupy the property.

1. **NAME OF THE SUBDIVISION:** Elk Springs Estates

2. NAME AND ADDRESS OF THE SUBDIVIDER:

Name of Subdivider: TKG Development

Address: 935 Horner Road
Street Address or P.O.Box

Las Cruces New Mexico 88007
City State Zip Code

3. NAME AND ADDRESS OF PERSON IN CHARGE OF SALES, LEASING, OR OTHER CONVEYANCE IN NEW MEXICO

Name: Tom Austin

Address: 935 Horner Road
Street Address or P.O. Box

Las Cruces New Mexico 88007
City State Zip Code

Telephone Number(s): 575-649-8407

4. SIZE OF SUBDIVISION, BOTH PRESENT AND ANTICIPATED

Present Anticipated

Number of parcels: 1 Number of Parcels: 42

Number of Acres: 115.415 Number of Acres: 69.621

5. SIZE (IN ACRES) OF LARGEST PARCEL OFFERED FOR SALE, LEASE OR CONVEYANCE WITHIN THE SUBDIVISION:

5.187 acres

6. SIZE (IN ACRES) OF SMALLEST PARCEL OFFERED FOR SALE, LEASE OR OTHER CONVEYANCES WITHIN THE SUBDIVISION:

0.883 acres

7. PROPOSED RANGE OF PRICES FOR SALES, LEASES OR OTHER CONVEY -ANCES:

Lowest dollar amount: \$49,900.00 Parcel size (in acres): 1.036 ACRES

Highest dollar amount: \$154,900.00 Parcel size (in acres): 5.187 ACRES

8. FINANCING TERMS

Is owner financing available? YES NO

If yes, please provide any information required by the Truth in Lending Act and Regulation Z:

9. NAME AND ADDRESS OF PERSON WHO IS RECORDED AS HAVING LEGAL TITLE:

Name: TKG Development, LLC

Address: 935 Horner Rd

Las Cruces NM 88007
City State Zip Code

President (Only Officer of LLC):

General Partner: Thomas W. Austin, 935 Horner Rd, Las Cruces, NM, 88007.

Kevin Tegmeyer, 480 N 17th St Las Cruces, NM, 88005

Greg Aguirre, PO Drawer 2276, Las Cruces, NM 88004

NOTE: If any of the holders of legal title named above is a corporation of partnership, list the names and addresses of all officers of that corporation and/or partnership, including designation of managing partner.

10. NAME AND ADDRESS OF PERSON WHO IS RECORDED AS HAVING EQUITABLE TITLE (IF DIFFERENT FROM ANSWER IN QUESTION 9):

Name: N/A

Address: N/A

N/A
Street Address or P.O Box
N/A
City State Zip Code

NOTE: IF ANY OF THE HOLDERS OF EQUITABLE TITLE NAMED ABOVE IS A CORPORATION OR PARTNERSHIP, LIST THE NAMES AND ADDRESSES OF ALL OFFICERS OF THAT CORPORATION AND/OR PARTNERS IN THE PARTNERSHIP, INCLUDING DESIGNATION OF MANAGING PARTNER.

11. CONDITION OF TITLE

Include at least the following information where applicable:

Number of mortgages: none

Name and addresses of each mortgage: none

none

Balance owing and summary of release provisions for each mortgage: n/a

Number of real estate contracts on the subdivided land for which the subdivider is making payments as a purchaser: None

Name and address of each person holding a real estate contract as owner of the subdivided land for which the subdivider is making payments as a purchaser: NA

Balance owing on each real estate contract: NA

Summary of default and release provisions of each real estate contract: N/A
Statement of any other encumbrances on the land: NA

Statement of any other conditions relevant to the state of title: NA

12. STATEMENTS OF ALL RESTRICTIONS OR RESERVATIONS OF RECORD THAT SUBJECT THE SUBDIVIDED LAND TO ANY CONDITIONS AFFECTING ITS USE OR OCCUPANCY

State here all deed and plat restrictions affecting the subdivided land: See restrictive covenants. Lots 4 and 5 are subject to a 50' road and utility easement for Young Canyon Road.

Are there restrictive covenants for this subdivision? Yes No
If yes, attach copy of restrictive covenants to this disclosure statement.

13. ESCROW AGENT

Has an escrow agent been assigned? Yes No
If answer is yes, answer the rest of this question, if answer is No skip to Question 14.

Name of escrow agent: Pioneer Abstract & Title Company

Address: 909 Delaware, Alamogordo, NM 88310
Street Address or P.O. Box

Statement of whether or not the subdivider has any interest in or financial ties to the escrow agent: No interest or financial ties exist between the subdivider and the escrow agent.

14. UTILITIES

Name of entity providing electricity: Otero County Electric Cooperative, Inc

Please describe availability of electric service. Is electric service available to each parcel in the subdivision? If electric service is available to some but not all parcels in the subdivision, please state which parcels it will be available to: Underground Electric service

will be provided to the front of all parcels.

Electric utilities are: () above ground (X) below ground

Who is responsible for providing electric service to individual parcels?

(x) Subdivider () Purchaser/ Lessee

If Purchaser/Lessee is responsible, state estimated cost of installation of electric service:
Coop will allow \$1950 credit toward installation from the front of each parcel to the structure or service drop. Beyond that cost, Purchaser is responsible.

Gas service: (x) Propane () Natural

If natural gas is available, name of entity providing services: NA

Is natural gas service available to each parcel in the subdivision? If gas service is available to some but not all parcels in the subdivision, please state which parcels it will be available to: NA

Gas utilities are: (X) above ground () below ground

Who is responsible for providing gas service (either natural or propane) to individual parcels?

() Subdivider (X) Purchaser/Lessee

If Purchaser/Lessee is responsible, state estimated cost of installation of gas service:
Initial set-up cost with 250 or 500 gallon propane tank is about \$200 with previously installed plumbing from house to tank, plus \$60/yr lease and cost of propane.

Water: () Well (X) Shared Well () Community System

Who is responsible for providing water service to individual parcels?

Subdivider is responsible for providing water service to individual parcels

If water is to be provided by well or shared well, complete Section 18 of this form.
If water is provided by a community system, complete Section 17 of this form.

Is telephone service available to this subdivision? (x) Yes () No

Name of entity providing telephone service: Penasco Valley Telephone Cooperative, Inc.

Please describe availability of telephone service. Is telephone service available to each parcel in the subdivision? If telephone service is available to some but not all parcels in the subdivision, please state which parcels it will be available to:

PVT Coop can provide service, including internet service, and telephone to all tracts in this subdivision.

Who is responsible for providing telephone service to individual parcels?

(X) Subdivider () Purchaser/Lessee

If Purchaser/Lessee is responsible, state estimated cost of installation of telephone service: N/A

Telephone utilities are: () above-ground (X) below-ground

Method of liquid waste disposal: (X) Septic tank () Community system

Who is responsible for providing liquid waste disposal service to the individual parcels?

() Subdivider (x) Purchaser/Lessee

Complete Section 24 of this form.

15. INSTALLATION OF UTILITES

Please state whether the following utilities are currently available to the subdivision (this question does not include availability to individual parcels). If not available at this time, state the date of installation of each utility.

Electricity: (X) Now available
() Date to be installed: N/A

Natural Gas: () Now available
() Date to be installed: Not Available

Water: () Now available
(x) Date to be installed: Upon Development, subdivider will provide water to individual parcels

Telephone (X) Now available
() Date to be installed: N/A

Liquid Waste Disposal: () Now available
() Date to be installed: Purchaser/lessee Responsibility

Other: () Now available
() Date to be installed: NA

16. WATER AVAILABILITY

Describe the maximum annual water requirements of the subdivision including water for indoor and outdoor domestic uses: See attached Water Demand Analysis, for a total fully-developed use of 12.3 acre-feet per year.

Describe the availability and sources of water to meet the subdivision's maximum annual water requirements: Wells will be installed in the area providing water from groundwater sources. Developers are currently in negotiation with the village of Cloudcroft concerning the inclusion of the subdivision in the village water distribution system.

Describe the means of water delivery within the subdivision: 2" distribution line will provide water to a meter on each lot.

Describe any limitations and restrictions on water use in the subdivision: Outdoor irrigation maximum of 6,720 gals per year for each lot. Indoor maximum use of 66.2 gallons per person each day (average use, includes evaporative cooling and use of Low flow devices; see attached Water Demand Analysis).

Summarize the provisions of any covenants or other restrictions requiring the use in the subdivision: Outdoor restrictions include 600 sq. ft. maximum locally adapted grass, 200 sq. ft. max. shrubs or trees, or equivalent (or less) water use by analysis (TR-47 OSE). No decorative ponds, water fountains, or swimming pools will be allowed unless the water is supplied by a rainfall collection system (e.g. metal roofs, rain gutters, and cisterns) or an outside source. Indoor restrictions include 1.6 gpf toilets, 2.5 gpm showerheads, and 2.0 gpm sink faucets or lower flow devices. Heat pump climate control systems are recommended. Evaporative cooling systems are discouraged although budgeted in the analysis. Also refer to Item # 35 of this Disclosure Statement and Item "N" of the Water Well Ownership and Operation Agreement (attached).

Describe what measures, if any will be employed to monitor or restrict water use in the subdivision: A meter will be installed at each well and The Office of The State Engineer will monitor the use to ensure a less than 1 acre-foot use per year for each well user for a maximum of 3 acre-feet per well.

17. FOR SUBDIVISIONS WITH COMMUNITY WATER SYSTEMS

Name and address of entity providing water: NA

Source of water and means of delivery: NA

Summary of any legal restrictions on either indoor or outdoor usage: A meter will be installed at each well and The Office of The State Engineer will monitor the use to ensure a less than 1 acre-foot use per year for each well user for a maximum of 3 acre-feet per well.

Statement that individual wells are prohibited, if such is the case: NA

18. FOR SUBDIVISIONS WITH INDIVIDUAL DOMESTIC WELLS OR SHARED WELLS

State whether wells will be provided by the subdivider or by the prospective purchaser/lessee: The subdivider will provide the shared wells. Water Well Ownership and Operation Agreement is attached.

If wells are provided by purchaser/lessee, state the estimated cost to complete a domestic well, including drilling, pressure tank, control devices, storage and treatment facilities: NA

If wells are provided by the subdivider state the cost, if any, to the purchaser/ lessee/ conveyee: A minimum quarterly fee of \$75 per quarter and an initial hook-up fee of \$200 applies. See attached Water Well Ownership and Operation Agreement.

Summary of legal restrictions on either indoor or outdoor usage: None

Average depth to groundwater and the minimum and maximum well depths to be reasonably expected: Average depth to ground water will vary with the elevation of each well from an estimated one hundred foot for the lower wells in Elk Springs to about five hundred fifty feet for the highest well.

Recommended total depth of well: Recommended total depth of well is less than 40 feet below water-bearing strata or 140 feet for the lower wells and 600 feet for the highest well.

Estimated yield in gallons per minute of wells completed to recommended total depth: 10 gpm

19. LIFE EXPECTANCY OF WATER SUPPLY

State the life expectancy of each source of water supply for the subdivision under full development of the subdivision: The life expectancy of the aquifer supplying the wells in this area has proven to be a reliable source for most wells and the subdivider believes that with proper watershed management and conservation practices the life expectancy of this aquifer is more than forty years. The oldest nearby (~mile) well, listed on the OSE website, still in operation as a domestic source, was installed in 1983 (PN-291).

20. SURFACE WATER*

***Not applicable where subdivider intends to provide water for domestic use.**

Provide a detailed statement of the source and yield of the surface water supply and any restrictions to which the surface water supply is subject:

N/A

21. NEW MEXICO STATE ENGINEER'S OPINION ON WATER AVAILABILITY

Include here the approval summary of the opinion received by the Board of County Commissioners from the New Mexico State Engineer regarding: A positive opinion has been issued by the Office of the State Engineer. See attached letter.

Whether or not the subdivider can furnish water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses: A favorable opinion has been received by the Office of the State Engineer.

Whether or not the subdivider can fulfill the proposals in this disclosure statement concerning water, excepting water quality: The subdivider has demonstrated that the proposals in the disclosure statement can be met.

22. WATER QUALITY

Describe the quality of water in the subdivision available for human consumption: Purchaser/lessee should test water intended for potable use and follow guidelines established by the New Mexico Environment Department. Nearby wells have proven to be good sources of potable water.

Describe any quality that would make the water unsuitable for use within the subdivision:
None Known

State each maximum allowable water quality parameter that has been exceeded with the approval of the Board of County Commissioners and the name of the element, compound or standard that has exceeded that parameter:

None Known

23. NEW MEXICO ENVIRONMENT DEPARTMENT'S OPINION OF WATER QUALITY

Include here the approved summary of the opinion received by the Board of County Commissioners from the New Mexico Environment Department on: The NMED, based on the information provided, has no basis for disapproval of Elk Springs Estates. See attached letter.

Whether or not the subdivision can furnish water of an acceptable quality for human consumption and measures to protect the water supply for contamination in conformity

with state regulations: The NMED, based on the information provided, has no basis for disapproval of Elk Springs Estates.

Whether or not the subdivider can fulfill the water quality proposal made in this disclosure statement: If the subdivider complies with all NMED regulations and recommendation, the NMED has no basis for disapproval of Elk Springs Estates. The NMED Drinking Water Bureau has more detailed information on the quality of the water supply and can be contacted at 505-258-3272, Joe Savage.

Whether or not the subdivider's proposal for water quality conforms to the County's water quality regulations: The NMED, based on the information provided, has no basis for disapproval of Elk Springs Estates.

24. LIQUID WASTE DISPOSAL

Describe the precise type of liquid waste disposal that is proposed and that has been approved by the Board of county Commissioners for use within the subdivision:

Individual approved septic systems will be installed at purchaser's expense. Septic Systems must be at least 200 feet from the wells. Because of the type of soil and abundance of rock, the purchaser may need to install a more expensive alternative system and/or soil replacement when installing an NMED approved liquid waste system. Percolation tests will be performed as part of the application for individual septic tank systems.

NOTE: NO LIQUID WASTE DISPOSAL SYSTEM MAY BE USED IN THIS SUBDIVISION OTHER THAN A SYSTEM APPROVED FOR USE BY THE BOARD OF COUNTY COMMISSIONERS.

25. N.M. ENVIRONMENT DEPARTMENT'S OPINION ON LIQUID WASTE DISPOSAL

Include here the approval summary of the opinion received by the Board of County Commissioners from the New Mexico Environment Department on: The NMED, based on the information provided, has no basis for disapproval of Elk Springs Estates. See attached letter.

Whether there are sufficient liquid waste disposal facilities to fulfill the requirements of the subdivision in conformity with state regulations: Septic systems for each lot will be required to meet all setback requirements including the 200 foot minimum distance from the leach field to shared water wells. The Soil Survey rates this area as "Severe" for septic systems due to slow percolation, depth to rock, slopes, and large stones. This will likely require soil replacement, expansion of drain-fields, or alternative systems. Applicants will have to verify four (4) feet of suitable soil when installing an NMED approved liquid waste system.

Whether or not the subdivider can fulfill the liquid waste proposals made in this disclosure statement: Each Purchaser/Lessee will be required to obtain a permit to install

28. TERRAIN MANAGEMENT

Describe the suitability for residential use of the soils in the subdivision as defined in the Natural Resources Conservation Service's soil survey for Otero County: Large stones may be encountered and/or soil with a high shrink/swell potential may exist requiring foundation material to be imported at purchaser/ lessee's expense.

Describe any measures necessary for overcoming soil and topographic limitations, and who will be responsible for implementing these measures: Purchaser is responsible for engineering challenges derived from developing the lot for Building, septic, drainage, etc.

Identify by lot and block numbers all parcels within the subdivision that are subject to flooding: Lots 1-3 are all partly in a Zone A Flood Zone as defined on the Flood Hazard Boundary Map, Community Panel No. 3500440014 A and Community Panel No. 3500440015A, Effective 8/1/87.

Identify by lot and block numbers all parcels within the subdivision located in whole or in part on slopes in excess of 8%: Only Lot 4 does not have a part of the lot where slopes exceed 8%

Describe the surface drainage for all lots in the subdivision: Typical mountain and valley drainage patterns, sheet flow to shallow concentrated flow, please refer to Terrain Management Plan.

Describe the subsurface drainage for all lots in the subdivision (as per the Natural Resources Conservation Service's soil survey for Otero county: Lots drain to the northeast along existing structure, ditches, culverts to James Canyon Ditch, please refer to Terrain Management Plan.

Describe the nature, location and completion dates of all storm drainage systems constructed or required to be constructed in the subdivision: Purchaser/lessee will be responsible for the construction of an on-lot pond, please refer to the Terrain Management Plan.

29. SOIL AND WATER CONSERVATION DISTRICT'S OPINION ON TERRAIN MANAGEMENT

Include here the approval summary of the opinion received by the Board of County Commissioners from the Soil & Water Conservation District on: The Otero Soil and Water Conservation District recommends approval of Elk Springs Estates. See attached letter.

Whether or not the subdivider can furnish terrain management sufficient to protect against flooding, inadequate drainage and soil erosion: The Otero Soil and Water Conservation District has reviewed the Terrain Management Plans, finds them satisfactory and recommends approval of Elk Springs Estates.

Whether or not the subdivider can satisfy the terrain management proposals made in this disclosure statement: The Otero Soil and Water Conservation District has reviewed the

Terrain Management Plans, finds them satisfactory and recommends approval of Elk Springs Estates.

30. SUBDIVISION ACCESS

Name of town or village nearest to subdivision:

Cloudcroft

Distance in miles from nearest town to subdivision and the general route over which that distance is computed: 3 miles east of Cloudcroft as computed along US Highway 82.

Describe access roads to subdivision, including approximate width and surfacing: US Highway 82, 24 feet width- Asphalt Road.

State whether or not subdivision is accessible by conventional vehicle and whether it is accessible at all times of the year; also state any weather conditions that could affect access to the subdivision and any measures that will be necessary to gain access during these conditions: Subdivision is accessible by conventional vehicle and the property is ordinarily accessible in all seasons under most weather conditions. Because access is across the James Canyon Ditch, during a flooding event the ditch may not be passable. In heavy snow, four wheel drives and tire chains may be necessary to access individual lots.

Describe the width and surface of all roads within the subdivision: 24 foot wide private asphalt paved roads, exceeding current County minimum standards, with the exception of Young Canyon Road which will remain as is.

31. MAINTENANCE

Does the subdivider propose to submit the roads within the subdivision to the County for maintenance?

Yes No Approved

THIS DOES NOT GUARANTEE THAT ROADS WILL BE ACCEPTED FOR MAINTENANCE BY THE COUNTY.

For roads proposed to be privately maintained or until the county accepts roads for public maintenance, who is responsible for maintenance of the roads?

Subdivider Purchaser

State how the roads will be maintained, describe any responsibilities and obligations lot owners will have with respect to road maintenance, and describe the measures taken to make sure the maintenance of the roads takes place (include responsibilities of property owner's association, if applicable): The developer will construct and maintain all roads within the subdivision, until 51 percent of the lots within the subdivision are sold. Each property owner is required to sign an agreement to the terms of the Road Maintenance Agreement(attached). Annual road maintenance fee for each property owner will be \$100, subject to future changes as needed and explained in the Road Maintenance Agreement. If the lot owners petition the County to take over maintenance of the roads

within the subdivision, it will be the lot owner's responsibility to bring the roads up to the then current County road standards.

Who is responsible for maintenance of other improvements within the subdivision (water systems, parks, etc.)?

() Subdivider (x) Purchaser

State how the improvements will be maintained, describe any responsibilities and obligations lot owners will have with respect to maintenance of improvements, and describe the measures taken to make sure that maintenance of the improvements takes place (include responsibility of property owner's association, if applicable): The purchaser/lessee will be responsible for all their own improvements on the purchased property with the only exception being the roads which will be maintained under the Road Maintenance Agreement (attached).

NOTE: UNDER NEW MEXICO STATE LAW, LAND OWNERS ARE RESPONSIBLE FOR PROVIDING THEIR OWN FENCE IF THEY WANT TO KEEP LIVESTOCK OUT.

32. STATE HIGHWAY DEPARTMENT'S OPINION ON ACCESS

Include here the approval summary of the opinion received by the Board of County Commissioners from the State Highway and Transportation Department. All requirements have been met and Access Permit No. 2-4627 has been issued.

Whether or not the subdivider can fulfill the state highway access requirements for the subdivision in conformity with state regulations: All requirements have been met and Access Permit No. 2-4627 has been issued.

Whether or not the subdivider can satisfy the access proposal made in this disclosure statement: NMDOT has issued an access permit.

Whether or not the subdivider's access proposals conform to the County's regulations on access: NMDOT, based on the information provided, has no reason for disapproval.

33. CONSTRUCTION GUARANTEES

Describe any proposed roads, drainage structures, water treatment facilities or other improvements that will not be completed before parcels in the subdivision are offered for sale: Roads, drainage structures, and underground utilities will be under construction when properties are offered for sale with contingencies in purchase agreements that all construction will be completed within one year after final plat approval.

Describe or attach all performance bonds, letters of credit or other collateral securing the completion of each proposed improvement: Funding for construction has been secured from First National Bank of Las Cruces.

UNLESS THERE IS SUFFICIENT BOND, LETTER OF CREDIT OR OTHER ADEQUATE COLLATERAL TO SECURE THE COMPLETION OF PROPOSED IMPROVEMENTS, IT IS POSSIBLE THAT THE PROPOSED IMPROVEMENTS WILL NOT BE COMPLETED. CAUTION IS ADVISED.

34. ADVERSE OR UNUSUAL CONDITIONS

State any activities or conditions adjacent to or nearby the subdivision, such as feed lots, dairies, cement plants or airports, that would subject the subdivided land to any unusual conditions affecting its use or occupancy: 1) From the Cultural Affairs comments – if archaeological artifacts (i.e. pottery shards, flaked stone, animal bone, etc.) are discovered during earth disturbing activities, please stop work in the vicinity of the discovery and contact us immediately for advice on the best course of action. 2) There will be a requirement for purchaser/lessee to comply with the Dark Skies Ordinance.

35. RECREATIONAL FACILITIES

Describe all recreational facilities, actual and proposed in the subdivision, and state the estimated date of completion of each: No additional facilities are planned.

State whether or not there are any bonds, letters of credit or other collateral securing the construction of each proposed recreational facility and describe or attach any such bond, letter of credit or other collateral: None

36. FIRE PROTECTION

Name of nearest fire station: Municipality Village of Cloudcroft Fire Department
 Volunteer James Canyon VFD

Distance to nearest fire station from subdivision and route over which distance is computed: Village of Cloudcroft Fire Department: For a 911 call for fire, the James Canyon VFD, 2.1 miles East on US Highway 82, would be dispatched. Only if James Canyon VFD requests additional assistance would the Village of Cloudcroft's VFD respond 4 Miles West on US Highway 82.

37. POLICE PROTECTION

Show the various law enforcement agencies having jurisdiction in the area of the above subdivision:

NM State Police Otero County Sheriff's Department Police Department

38. PUBLIC SCHOOLS

Name and distance (in miles) to nearest public elementary school serving the subdivision:
The Cloudcroft Elementary School is located in the Village of Cloudcroft, 3 miles west of the subdivision.

Name and distance (in miles) to nearest public Junior High or Middle School serving the subdivision:
Cloudcroft Middle School located in the Village of Cloudcroft, is 3 miles west of the subdivision.

Name and distance (in miles) to nearest public High School serving the subdivision:
Cloudcroft High School located in the Village of Cloudcroft, is 3 miles west of the subdivision.

39. HOSPITALS

Name of nearest hospital: Gerald Champion Regional Memorial Center - Alamogordo

Distance (in miles) to nearest hospital and route over which that distance is computed:
From the subdivision go west 17 miles on U.S. highway 82, thence South on Florida Avenue 2 miles to Scenic Road, Thence 2 miles East to the Hospital.

Number of Beds In Nearest Hospital: 76 Beds

40. SHOPPING FACILITIES

Description of nearest shopping facilities including number of stores: There are 7 Restaurants, several Cabin/Hotels, 1 Gas Station and many Gift Shops in Cloudcroft.

Distance (in miles) to nearest shopping facilities and route over which that distance is computed: 3.10 miles west on U.S. Highway 82

41. PUBLIC TRANSPORTATION

Describe all public transportation that serves the subdivision on a regular basis: None.

WATER WELL OWNERSHIP AND OPERATION AGREEMENT

ELK SPRINGS ESTATES WELL USERS

TKG Development, LLC, here in after referred to as "Developer", whose address is 935 Horner Road, Las Cruces, NM 88007 is the owner of that particular domestic Water System. Water quantity limits being 3 acre feet per well per annum, utility line easements, piping, electrical equipment, well, pump, pump control, valves, water meter boxes and yokes, water storage tank and all other property, real and personal, associated with the Water System located within the easements described on Utility Plan Plat made a part hereof and hereafter designated as the "Water System".

This Water System has been installed to service four properties and all located within that particular property boundary described on Utility Plan and hereafter referred to as the "Water Service Area".

Upon the initial sale of any property within the Water Service Area, Developer shall simultaneously convey and transfer therewith an equal and undivided one-fourth interest in the Water System, each of said one-fourth interests hereafter designated "One Share".

In the case of the previous sale of properties within the Water Service Area, a conveyance of One Share in the Water System shall be made available for conveyance and transfer to the owners of record of those properties by the recordation of specific conveyance documents. All of such conveyances of Shares in this Water System are granted and received with no warranty as to the production of the well, life of the Water System or any of its components. This Water System has been installed in good faith. The transferee of each Share recognizes that no warranty is attached to the conveyance and accepts that Share under such conditions.

Foreclosure or repossession of any of the property served by this Water System shall automatically cover and include the applicable Share in the Water System, whether referenced specifically or not.

Upon transfer of a Share in this Water System from Developer to the property owner, that Share's owner shall join with all other owners of Shares in the Water System in taking over full responsibility for the operation and maintenance of the Water System.

IT IS MUTUALLY AGREED AND UNDERSTOOD that the operation and future use of said Water System shall be controlled and administered as follows:

- A. **DIRECTOR:** The Share owners shall hold an annual meeting to handle all business associated with the Water System and to elect a Director from among the Share owners, who shall serve for the following year. The Director's duties shall be as follows:
 - 1. Take and record quarterly meter readings of water consumption, proportion quarterly water bills for each property and distribute by appropriate means to each Shareowner.
 - 2. Pay all utility bills and any other expenses which arise out the operation of the Water System or become necessary for its continued operation. These expenses would include, but are not limited to taxes of any nature, electric utility expense,

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maintenance, repair and replacement expenses, water laboratory testing and analysis fees, postage and checking account fees.

3. Comply with all county, state and federal regulations applicable to the Water System.
4. In the event of a breakdown, Director can decide and authorize repairs to be made paying costs from checking account funds. If inadequate funds are available, funds shall be assessed and collected from each Shareowner to assure all bills will be paid in full when due.
5. Take care of any other matters which may arise in order to maintain uninterrupted water service to the four properties.

The Director shall not be paid, shall not be required to be bonded and shall not be liable for failure to collect assessments from Shareowners.

B. **SHARE OWNERSHIP AND PROPERTY RE-SUBDIVISION:** Each Water System *is* owned as tenants in common by the property owners, owning property within each Water Service Area, which will ultimately comprise four properties after complete conveyance from Developer. Each property represents a one-fourth undivided interest in the Water System. Each property in this Water System may not be subdivided, nor used for more than one single-family residence plus out buildings and other pertinent domestic uses. Nor shall a second residence be established on a parcel for owners use, rental, option, or otherwise and served by the Water System. The intent of this agreement is for each property owner in the Water System to service one single family household plus the pertinent ancillary uses as described above and the use of each quarter ownership in the Well System and the water derived therefrom shall not be circumvented in any manner by the present owners, the future owners, their heirs, successors, assigns, tenants, or any other party.

C. **EXPENSE PROPORTIONING:** It is recognized that the various Share owners will use unequal amounts of water in any given quarter and that the percentage of the quarters total water production which is consumed by each individual property is equal to the utility consumption and equipment wear and tear attributable to that property for the quarter. The Director shall keep a record of the total water production during each quarter and the amount consumed by each property.

1. Monthly recurring expenses and minor repairs, which include water line leaks and breaks anywhere in the Water System, shall be paid by Director.
2. Major repairs and expenses such as replacement of the pump, shall be shared in the following manner:
 - a) The date when the faulty item was initially installed or last replaced shall be established.
 - b) The production of the well from that date to the present date shall be totaled.

- c) The total water consumption shall be totalled from that date to the present date.
 - d) The fact that a previous Shareowner incurred part of a property's total consumption does not relieve that Share's present owner from payment of the entire amount of that property's proportional expense, as computed above, one-quarter of each share holder.
 - e) Each Shareowner shall be responsible for the installation and repair of the water line servicing their improvements. Loss of water from leaks in their water line from the point of, and including, their water meter yoke to and including their property improvements, is the responsibility of that Shareowner.
 - f) Cost of water lost due to leaks located between the pump and the meter yokes shall be allocated, during the time of the leak.
 - g) A water meter shall be provided each property owner in each Water System Area. The meter (Badger Meter Company, Model 25, "Record All" with positive replacement disk) is designed to measure water flows at standard and low pressures. The property owner is responsible for installing this meter, maintaining it and replacing it, when necessary, with a like kind water meter, if possible.
- D. **CHECKING ACCOUNT:** A checking account shall be maintained. All expenses shall be paid from this account and all water bill payments and other funds shall be deposited into this account. The Director shall be responsible for the account and shall give a report on its status at each annual meeting, or more often if so voted by the majority of the property owners.
- E. **INITIAL WATER HOOK-UP FEE:** Upon the initial hook-up to the Water System by the original purchaser of each property's Share in the Water System, that owner shall pay \$200.00. This initial hook up fee shall be deposited into the checking account and maintained throughout the life of the Water System.
- F. **ZERO CONSUMPTION BILLING:** A minimum bill of \$75.00 quarterly for full time users shall be billed to each property once the property has been conveyed by Developer. Thus, if a property stands vacant for a period of time before construction begins, or if its occupants are away for an extended period of time, a bill will be due, even though no water was consumed by the property.
- G. **CASH RESERVE:** To build up a cash reserve in the checking account, so as to allow immediate payment of unexpected bills, the Share owners may choose to bill themselves one and one-half times the quarterly expenses incurred. This additional proportion may vary from the one and one-half multiple and shall be decided upon by the Shareowners. The Director shall maintain a running total of each Shareowner's cash reserve.
- H. **VOTING:** On all issues, which require a vote of the Shareowners, the decision of the

majority shall be acceptable to all Shareowners. Each Share in this Water System shall have one vote.

- I. **TRANSFER OF OWNERSHIP:** The transfer of a property owner's Share in this Water System shall pass to the successive property owner simultaneously with the transfer of title to the property it serves.
- J. **USE:** This Water System shall only provide water to property within the Water Service Area. Shareowners, owning property within said area may not use this Water System's water outside of that area.
- K. **DUE DATE OF BILLINGS:** All billings to property owners shall be due within thirty (30) days of the date of postmark of the bill. Any bill not paid within said thirty (30) days shall be considered delinquent. It is the responsibility of the property owner to pay said bills and to ascertain the amount due, recognizing that a bill is due every quarter. Emergency billings requiring shorter due dates may be authorized by the Director. Late charges may be established by vote of the Shareowners. In the event payment of a quarterly water billing is over 30 days past due, the Director may, and is authorized to shut off that property's water service until the billings are paid current. To reinstate, unpaid amount and late charges, if applicable, must be brought current.
- L. **ENFORCEMENT OF PROVISIONS:** To enforce the provisions of this agreement, the Director, in concurrence with the majority vote of the Shareowners, may proceed to enforce the terms and provisions of this agreement. Director is authorized to obtain a Judicial Lien against the Share and real property of a Shareowner who fails or refuses to pay a valid charge of the Water System. Before following any action in District Court, a Notice shall be sent to the Shareowner who is in breach of the terms of this agreement and its future modifications, stating that he shall have thirty (30) days in which to correct said breach. This Notice shall be sent certified return receipt requested, and shall specify the breach. If the delinquent landowner has not corrected said breach within thirty (30) days of the postmark of said Notice, and also pay all expenses incurred by the Director in sending the Notice, action may be commenced in the District Court of Otero County, New Mexico. The prevailing party shall be entitled to court costs and reasonable attorney's fees as established by said court.
- M. **WATER PRESSURE AND VOLUME:** No warranty is made as to the water pressure or volume of the water provided to each property. It is the property owner's responsibility to provide appropriate means of reducing or increasing said water pressure if said pressure is inconsistent with that property owner's desired water pressure.
- N. **REGULATIONS GOVERNING WELL AND PRODUCTION:** It is essential that it be understood that the water production from the well in this Water System is required to be metered and such production is controlled by the New Mexico State Engineer. The New Mexico State Engineer has established a maximum allowable annual water production for this Water System. It is recognized that each property will consume a different quantity of water annually. However, in the event one property consumes an amount of water considered "excessive" by the majority of the Shareowners having voting rights under this agreement, the Director shall be authorized to limit the amount of water furnished to that property. The evaluation of "excessive" shall be made in relation to the number of active Shares in the Water System, the consumption of the other properties, the maximum

water Demand Analysis

Property owners are encouraged to practice water conservation measures and are restricted to using low flow devices (e.g. maximum flow rates: 1.6 gal/flush Toilets, 2.5 gpm showerheads, 2.0 gpm faucets) and having no more than 800 ft² irrigation area. The 800 square feet may be planted in any combination of trees, shrubs, annuals and perennials, grasses and gardens. Grasses should be selected that are well adapted to local climatic conditions, and non-native grasses are discouraged. Low-water use landscaping techniques applying the principles of xeriscape shall be utilized. Drip irrigation is encouraged whenever possible.

Elk Springs Estates Water Demand Analysis

Average Occupancy for each Lot **3.5 cpu**

Total Indoor Water Use per Person per Day

Item	GPCD
-Toilets (1.6 gal/flush/capita day)	9.6
-Toilet Leakage (0.17 x 24 gal/capita day)	4.1
-Showers (2.5 gpm x 4.8 minutes)	12.0
-Baths (50 gal/bath x 0.14 bath/capita day)	7.0
-Faucets (Estimated)	9.0
-Dishwasher (13gal/load x 0.17 load/capita day)	2.2
-Washing Machine (50 gal/load x 0.30 load/capita day)	<u>15.0</u>
Subtotal	58.9

Evaporative Cooling Water Requirement

- 1) Volume of interior space to be cooled using 2,500 ft² living area and 8 foot high ceilings:
 $V=2,500(8)=20,000 \text{ ft}^3$
- 2) Volumetric rate of air flow with a complete change of air every four minutes:
 $CFM=20,000/4=5,000\text{ft}^3/\text{min}$
- 3) Design Dry Bulb temperature = 90° F, mean coincident wet bulb temperature = 61°F, from data for Santa Fe, NM (686 cooling hours)
- 4) Consumptive use, maximum hour: $CU_1=(5,000/1,000)(90-61)/10=14.5 \text{ gal/hr}$
- 5) Consumptive use, average annual: $CU_2=0.8(14.5) 686=7,957.6 \text{ gal/yr}$
- 6) Total annual evaporative cooling water requirement with re-circulating bleed-off systems (Bleed-off water multiplier, F=1.15): $W=1.15(7,957.6)=9,151.24 \text{ gal/yr}$
- 7) Total Evaporative cooling water requirement per person each day:
 $GPCD = 9,151.24/[(3.5 \text{ cpu})(365 \text{ days/yr})]=7.26 \text{ gal/cap.day}$

Total Indoor Water Use (GPCD): 66.2

Landscape Irrigation Water Requirements

Data for Cloudcroft, Appendix C, Technical Report 48

Bermuda Grass = 9.84 gals/ft²yr, flood or sprinkler irrigation
Buffalo Grass = 4.19 gals/ft²yr, flood or sprinkler irrigation
Allow 600 ft² of grass ~ **5,904 gals/yr**

Trees and Shrubs = 4.08 gals/ft²yr, flood or sprinkler irrigation
Allow 200 ft² of trees and/or shrubs ~ **816 gals/yr**

Total Irrigation Water Requirement per Lot ~ 6,720 gals/yr/du

Total Water Use for Fully Developed Elk Springs Estates

Indoor Total Use: 66.2 gpcd x 3.5 cpu x 42 users x 365 days/yr = **3,551,961 gals/yr or 10.9 acre-feet/yr**

Outdoor Total Use: 6,720gal/yr x 42 Lots = **282,240 gals/yr or 0.87 acre-feet/yr**

Total estimated indoor and outdoor yearly water use, under fully developed conditions and assuming 5% in distribution losses: (3,515,961 + 282,240)/0.95 = **3,998,106.32gals/yr or 12.3 acre-feet/yr**

Useful Comparative Data:

1 acre-ft = 325,851 gallons

1 cubic foot of water = 7.48 gallons

1 gallon of water = 8.345 lbs

Water Quality Plan

TKG Development, LLC, as part of the development, will provide water wells. Each well will service up to 4(four) lots and will be considered one water system. As lots are purchased, transfer of a Share in this Water System from Developer to the property owner will occur and will be attached to the property in perpetuity. That Share's owner shall join with all other owners of Shares in the Water System in taking over full responsibility for the operation and maintenance of the Water System. Owners of the Water System will also be responsible for the testing and monitoring of the water quality within the system.

Reference:

Water Conservation and Quantification of Water Demands in Subdivisions, A Guidance Manual for Public Officials and Developers, Technical Report 48, New Mexico State Engineers Office, Brain C. Wilson, P.E., May 1996

**ROAD MAINTENANCE AGREEMENT
FOR ELK SPRINGS ESTATES**

This agreement is made this ____ day of _____, _____, by and between TKG Development, LLC, owner of that certain subdivision located in Otero County, New Mexico known as "Elk Springs Estates" and the property owners of each lot.

RECITALS:

- A. The parties to this agreement are the owners of the real property located in Otero County, New Mexico which has been developed as a subdivision known as "Elk Springs Estates" ("the Subdivision"), and which is more particularly described on the plat of the Subdivision which is attached hereto as Exhibit "A" ("the Plat"); and,
- B. Certain easements have been created for the installation of water, utilities and for access to the lots located in the Subdivision for ingress and egress to and from Highway 82, a public right-of-way as more particularly shown on the Plat; and,
- C. The parties intend that the easements and that part of Elk Springs which connects the subdivision to Highway No. 82, will be utilized by the owners and residents of Lots 1, 2, 7-10, Lots 12-15, Lots 25-30, Lots 33-38, of Elk Springs Estates, and these owners and residents shall contribute to the maintenance of the easements and that part of Elk Springs.
- D. The parties intend that the easements and that part of Elk Meadows, which connects with Elk Springs, will be utilized by the owners and residents of Lots 3-6, and Lot 11 of Elk Springs Estates, and these owners and residents shall contribute to the maintenance of the easements and that part of Elk Meadows.
- E. The parties intend that the easements and that part of Elk Wallow, which connects with Elk Springs, will be utilized by the owners and residents of Lots 16-22, and Lot 24 of Elk Springs Estates, and these owners and residents shall contribute to the maintenance of the easements of that part of Elk Wallow.
- F. The parties intend that the easements and that part of Elk Ridge, which connects with Elk Springs, will be utilized by the owners and residents of Lots 31-32, and Lots 39-43 of Elk Springs Estates, and these owners and residents shall contribute to the maintenance of the easements of that part of Elk Ridge.

Therefore, in consideration of the mutual covenants of the parties as set forth in this instrument, they agree as follows:

- 1. TKG Development hereby grants to the owners and residents of the Subdivision, for their benefit and that of their successors and assigns of owners of any residential units located on or to be constructed in the Subdivision those easements shown on the plat of the Subdivision.

2. The use of the easements and cost of maintenance of the easements shall be governed by this agreement
3. The rights and interests granted and conveyed in this agreement shall allow each owner, their successors and assigns to use the easements in Elk Springs Estates, Elk Springs, Elk Meadows, Elk Wallow, and Elk Ridge, on behalf of themselves, and that they shall have an easement and right-of-way for ingress and egress to and from Highway No. 82.
4. The road and utility easements which have been granted herein are to be mutually enjoyed and shared by the parties, their successors and assigns of all of the residential units now located or to be constructed in the Subdivision and the cost of maintaining those easements shall be shared equally by the lot owners.
5. The parties agree that any expenses of maintenance, repair, resurfacing, or patching of the easements and that part of Elk Springs, that is a shared access from Highway 82, shall be shared equally by each owner of all those Lots in Elk Springs Estates.
6. The amount of each owner's contribution shall be determined annually, by a Director appointed by the majority of the property owners in the Subdivision. The expenses to be shared shall include, but shall not be limited to, the expenses associated with the maintenance, repair, resurfacing, or patching of the easements. The Director shall determine the total annual estimated expense of maintenance, repair, resurfacing, or patching of the easements. The total combined annual estimated costs and expenses for the easements shall be allocated among the parties equally. Each owner shall pay the cost of maintenance on a yearly basis. The initial cost to be \$100 yearly but can be changed by agreement by the majority of property owners.
7. The parties expressly understand and agree, for themselves, their successors and assigns, and on behalf of all tenants, guests of tenants, agents, employees, and business invitees, that no party or beneficiary to this agreement shall have any liability to any other party or any other person or party for any damage or injury in connection with the shared facilities located on any land other than the one owner by the respective party as a consequence of entering into this agreement or any of the actions taken in performance of this agreement.
8. Any dispute, controversy or claim arising out of or in connection with or relating to this agreement or any breach or alleged breach of this agreement shall, on the request of one of the parties, be submitted to and settled by arbitration as follows: Each party shall select a person not related or affiliated to the selecting party and the selection shall be made within 30 days after the request for arbitration by

either party. The two arbitrators so selected shall choose a third independent arbitrator and then render a decision within 30 days after the selection. The costs the arbitrators and the arbitrators' fees, if any, shall be shared equally by the parties to the arbitration; provided, however, that the arbitrators in their sole discretion may allocate costs and fees to one of the parties to the arbitration if they believe that one of the parties unreasonably causes a dispute, controversy or claim to be submitted to arbitration. Each party shall be responsible for experts and attorneys engaged by the party on its behalf. A decision of two of the three arbitrators shall be determinative. Any decision rendered by arbitrators shall be final and conclusive on the parties and a judgment on the decision may be entered in a District Court in New Mexico.

- 9. The easements and rights created by this agreement shall be deemed to run with the land, and shall be for the benefit of and inure to the parties, their successors and assigns, their agents, employees, business invitees, tenants and guests of tenants, and shall burden their respective parcels, perpetually.

In witness, the parties have executed this cross easement and agreement on the day and year first written above.

PURCHASER/LESSEE

STATE OF NEW MEXICO)
COUNTY OF OTERO)

:ss

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____.

Notary Public

My Commission Expires:

Habitat Surveys
of
Elk Springs Estates
for
Sacramento Mountains Checkerspot Butterfly
(*Euphydryas anicia cloudcroftii*)

Phil Tonne and Julie McIntyre,
Private Consultants
413 Hermosa Dr. NE
Albuquerque, NM 87108

Prepared for:

Tom Austin
Elk Springs Estates
935 Horner Rd.
Las Cruces, NM 88007

October 2007

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Introduction

The Sacramento Mountains checkerspot butterfly (hereafter referred to as checkerspot) is found only in mountain meadows within a six mile radius of the Village of Cloudcroft. In 2001, the U.S. Fish and Wildlife Service (USFWS) proposed to list the checkerspot as endangered with critical habitat. Threats to the checkerspot were habitat loss from proposed development, stochastic events such as drought and wildfire, and potential degradation of habitat and host plants from livestock grazing. Local parties from Otero County and the Village of Cloudcroft stepped forward in January 2004 and proactively addressed conservation needs of the checkerspot. Meetings were held with the Village of Cloudcroft, Otero County, the U.S. Forest Service, and the U.S. Fish and Wildlife Service to develop a conservation strategy for the species. Certain threats were reduced, such as the curtailment of development into butterfly habitat. Representatives from local governments and Federal agencies met several times and collaboratively prepared the Sacramento Mountains Checkerspot Butterfly Conservation Plan (finalized in November, 2005) and signed a Memorandum of Understanding to confirm commitments to implement conservation actions. In December, 2005, the checkerspot was withdrawn as a proposed species for federal listing. However, as a rare species, its population numbers remain small and Federal projects are required to evaluate impacts to the checkerspot under its current status as a "sensitive species". Monitoring of its populations along with conserving its habitat are important to the checkerspot's survival and to the reduction of the possibility of becoming a federally listed threatened or endangered species in the future.

The general approach to assist this species involves a combination of protection of both occupied meadow habitats as well as meadow habitat that is unoccupied but that has the floral components important to the butterfly. In August of 2005, the Otero County Subdivision Ordinance (Ordinance No. 01-05) was signed with the purpose of protecting occupied and suitable checkerspot habitat on private lands slated for development, etc. However, it is the understanding of our client, Tom Austin, that the ordinance is not currently active because it has not yet been submitted to the State of New Mexico for approval and signature.

In accordance with the Ordinance, we surveyed potential habitat for the checkerspot. The study area was limited to the un-forested portion of the 115-acre parcel, and targeted the three perennial plant species utilized by the checkerspot: New Mexico penstemon (NM penstemon; *Penstemon neomexicanus*); tobacco root (*Valeriana edulis*); and sneezeweed [*Helenium hoopsei* (synonym of *Hymenoxys hoopsei*)]. In addition to these plants, noxious weeds were noted and mapped for these surveys.

Methods

We completed surveys on foot on 2 October 2007 within the meadows and grasslands along and above James Canyon Creek, ca. 4.2 road miles (6.7 kilometers) east of Cloudcroft, New Mexico on US highway 82. We targeted 28 acres of meadow, grassland, and short stretches of wetland/creek habitat. We surveyed on separate paths parallel to the

property boundaries, as indicated on the preliminary plat supplied for our survey, completing tighter transects in open and relatively disturbed areas and spreading out in areas with tall, dense stands of grass. In other words, we covered all of the property designated for survey, but increased our efforts in more favorable habitat for the target plant species.

We visited known habitat for the checkerspot and familiarized ourselves with the current lifestage conditions of the caterpillar and occupied host plants. This allowed us to gauge the state of development of the checkerspot and the appearance of herbivorized NM penstemons. Larvae were active but not abundant within the known habitat.

Within the study area, upon finding tobacco root or NM penstemon, we examined individuals carefully, looking for signs of herbivory, turning leaves and looking for signs of the presence of the checkerspot caterpillar. The caterpillar is a small (6-13 mm, or .24-.5 in.) and cryptic insect that is difficult to detect. However, when present, the condition of the penstemon host plant shows signs of its presence. The caterpillar forms tents at the base of occupied penstemons and feeds extensively on the leaves and bracts of the inflorescence. The inflorescence, if present, yellows and reveals the presence of caterpillar excrement. cursory surveys examining small subsamples of the penstemons present are insufficient to detect the presence of checkerspot larvae at this time of year. When we encountered penstemon or tobacco root, we examined all of the individuals occurring in small clumps thoroughly. When concentrations of several hundred penstemon were encountered we looked closely for signs of herbivory on all individuals, examining all plants and bare ground visually, but only turning leaves on plants possessing partly consumed leaves, spider webs, or other potential signs of the checkerspot caterpillar. Within these large groups we sometimes took the time to examine all individuals very closely; but other times we examined a majority, but not all of the plants.

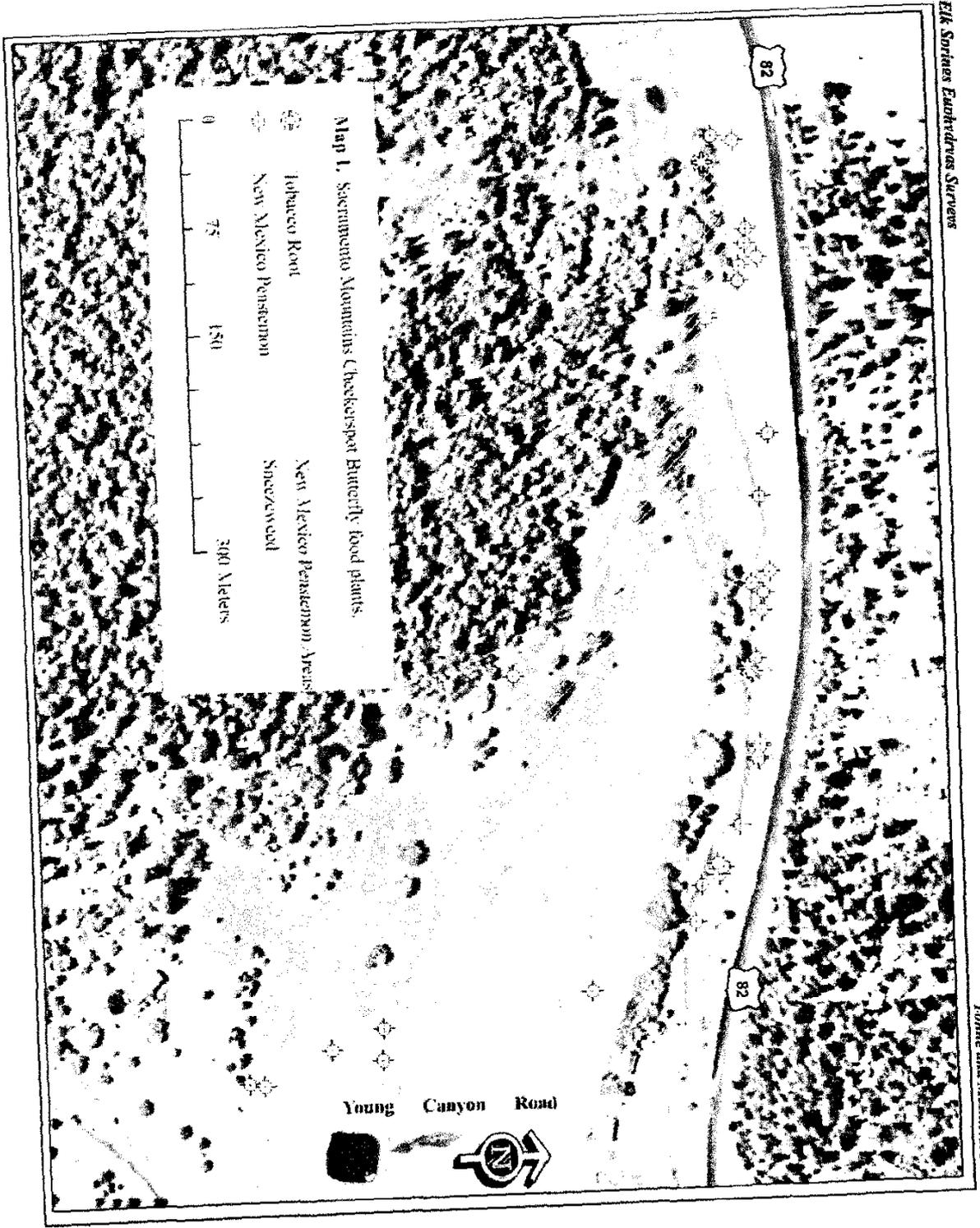
When we encountered tobacco root or NM penstemon we mapped their locations using a Trimble GeoXT GPS unit running TerrasyncPro 2.6 software. Satellite coverage was reliable throughout the survey period and all point locations were accurate to ≤ 1.2 meters. Points were used to represent individuals or small groups of plants. Larger colonies were mapped as small areas by walking the perimeter of the colony while collecting a polygon feature. GPS data was refined using GPS Pathfinder Office 4.0 and ArcGIS 9.2 software. General locations for weeds and sneezeweed were added during map development using ArcMap.

Results

Butterfly Habitat

We encountered all of the three targeted plant species within the study area. NM penstemon was present in high abundance (727 plants), with sneezeweed (ca. 200 plants) less so. Tobacco root was present in low numbers and was only encountered at two small sites consisting of eight individuals growing in partial shade beneath Gambel oak. Most of the target plant colonies were associated with James Canyon Creek, occurring on the banks and terraces of this feature or within close proximity (Map 1). An incidental plant species list is included as Appendix 1.

Much of the study area was covered with thick grass that contained few target plants. NM penstemon and sneezeweed were present in low abundance and tobacco root was not encountered within thick Indiangrass (*Sorghastrum nutans*) grasslands. However, wherever there were breaks in the grass cover, especially when accompanied by disturbance (rodent, elk, and likely historical livestock), we found marginal habitat for the penstemon and sporadic patches of sneezeweed. Few penstemon were observed in this area. A small number were encountered at Elk Spring, near the southeastern corner of the property, and in the swale below. Only one individual was encountered above the old road that skirts the northeast edge of the forested hill within the proposed development.



Elk Springs Euphrasia Survey

Tonne and McInyre, 2007

Tomie and McIntyre, 2007

Elk Springs Euphydryas Surveys

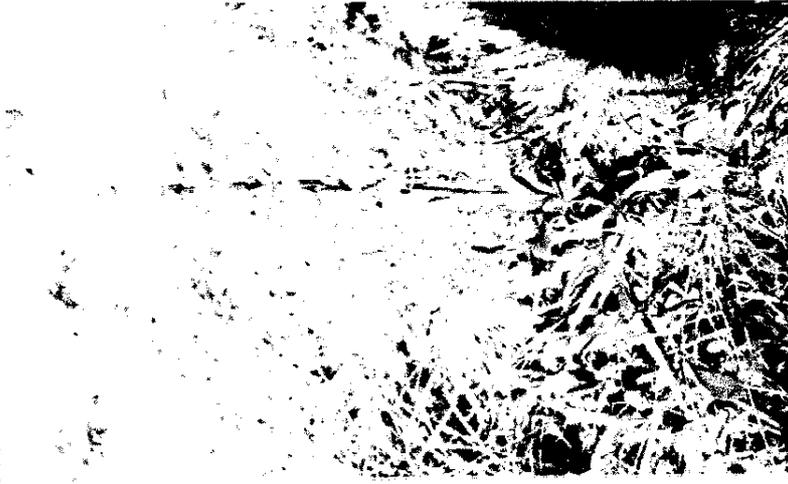
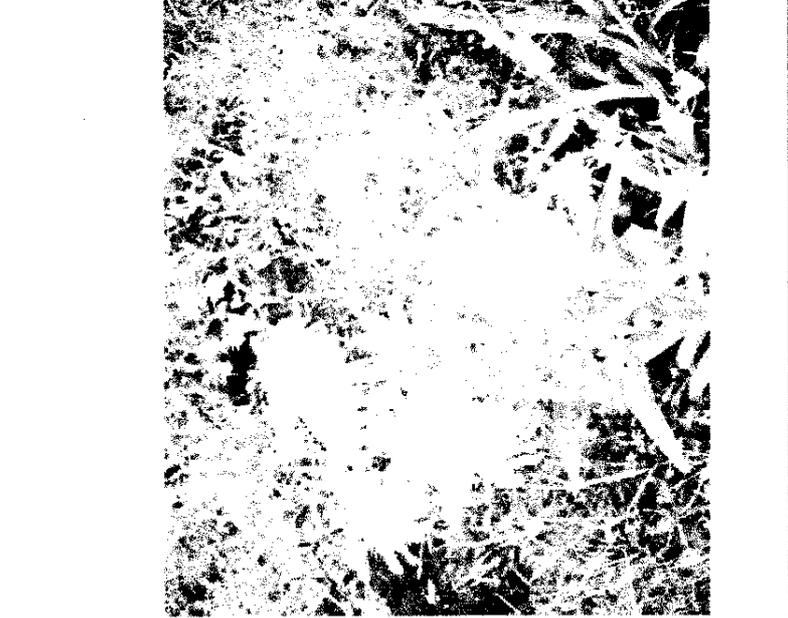
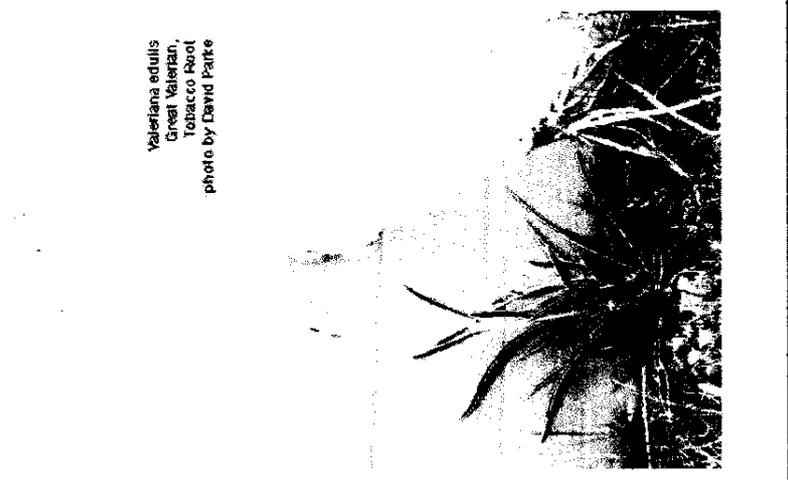
		 <p data-bbox="368 226 443 383"> <i>Valeriana edulis</i> Great Valerian, Tobacco Root photo by David Parke </p>
<p data-bbox="1018 1361 1082 1821"> New Mexico p <i>Penstemon</i> <i>neomexicanus</i> </p>	<p data-bbox="1018 925 1050 1310"> <i>Sneezeweed (Helenium hoopesi)</i> </p>	<p data-bbox="1018 275 1050 665"> <i>Tobacco Root (Valeriana edulis).</i> </p>

Figure 1. Photos of target food plants of the Sacramento Mountains checkerspot butterfly.

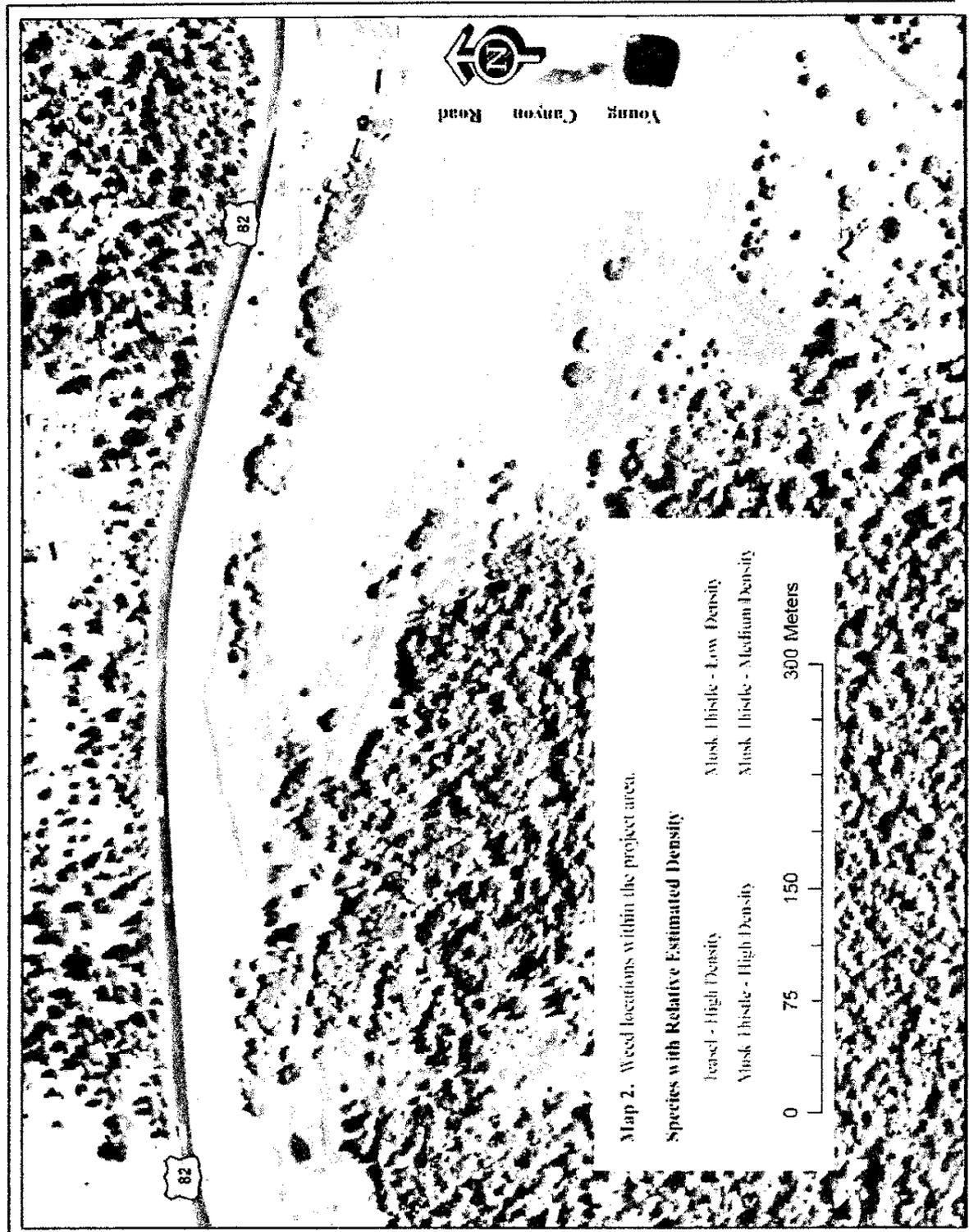
Elk Springs Emptydyes Surveys

Weeds

The county ordinance also requires that the landowner develop a plan to monitor noxious weeds, and, if present within the property, to develop and implement a weed-control plan. We encountered large stands of noxious weeds within the project area, primarily consisting of musk thistle (*Carduus nutans*) and teasel (*Dipsacus fullonum*), Figure 2, Map 2. There were also a few (ca. 3) burdock (*Arcium minus*) located in a single group.



Figure 2. Photos of the two most problematic weeds on within the study area. The two teasel photos were taken by Patrick Alexander.



Discussion

Butterfly Habitat

We conducted surveys during the larval, pre-diapause, stage of the checkerspot butterflies' life cycle. There had not yet been a freeze within this area and caterpillars, if present in high abundance, would certainly have been detected. However, this taxon is often present in low concentrations and quite difficult to detect as it is a small, inconspicuous, and often cryptic early instar caterpillar. While we completed thorough surveys and were familiar with the species, its host plants, and signs indicating its presence, we can not say with certainty that this insect does not exist within the study area.

However, the stipulations of the county ordinance are quite similar concerning occupied and potential habitat for *Euphydryas anicia cloudcroftii*. This area contains potential habitat for this subspecies as indicated by the presence and localized abundance of the three food plants utilized by the checkerspot butterfly. While the butterfly could potentially be present within the proposed Elk Springs Estates, it was not detected in its larval stage during this single survey. It does have all of the indicators of potential habitat and, as such, could be colonized by Cloudcroft's endemic butterfly in the future. In keeping with Ordinance 01-05 we will treat this area as if it were occupied and make management suggestions accordingly. This document states that "[r]egardless of the number of surveys conducted in a given area, some Sacramento Mountains Checkerspot [B]utterfly populations (e.g. low density) may not be detected [i]n a given year, indicating that one flight season may not be adequate to document presence/absence." This survey did not coincide with the adult flight season suggested, but not required, by the county. However, we did carefully delineate the larval host plants and indicate areas of relative sneezeweed abundance. This information will be useful if future surveys and monitoring are completed.

Weeds

Having a weed-control plan for the construction and revegetation phase of subdivision development would appear to be a good idea because construction activity has the potential to introduce new weeds into the area. Weeds are often carried as seed on earth-moving equipment or simply on the fenders, tire treads, etc. of vehicles entering from other geographic areas. The temporary increase in disturbance and traffic in the area may add to the abundance of existing weeds or introduce new weedy species to the site. Most seed mixtures for re-vegetating areas after construction contain exotic species such as cheat grass. High quality native grass mixes, while initially more costly, may prevent weed control issues in

the future. Purchasing seed mixes that are guaranteed to be pure, or of very low weed content, would be recommended.

As biologists familiar with the weed issues in the Sacramento Mountains we feel obligated to point out the potential damage of a poorly conceived and/or executed weed-control plan where it concerns the checkerspot and its food plants. Absent an all-encompassing plan that applies to all land of all ownerships, weed control on an isolated stretch of meadow along James Canyon Creek is unlikely to have a lasting positive effect on the property. As can be seen in figure 3., below, a photograph taken just upstream of the proposed Elk Springs Estates, there are hundreds of thousands, if not millions, of airborne musk thistle seeds waiting to recolonize the property should it be cleared of this species. Similarly, upstream teasel populations would recolonize James Canyon Creek in a short period of time if they were eliminated from the project area.



Figure 3. Musk thistle population extending beyond the western property boundary.

Teasel and musk thistle are biennial to short-lived perennial species. They persist as a basal rosette until conditions are right and then send up a flowering stalk, flower, set fruit, and die. They are prolific seed producers; a teasel plant can produce 2,000 seeds (Wisconsin DNR 1998) and a musk thistle can produce 100,000 seeds (10,000 is average; Beck 1999). These seeds can remain viable, with a high germination potential, in the soil for at least two years (teasel) to at least 10 years (musk thistle; CWMA 2007). Without a weed control plan that applies to all land of all ownerships in the area, the singling out of subdivisions as sole land stewards for this purpose makes little biological sense.

An effective weed plan that would increase the likelihood of success, where it concerns the musk thistle and teasel, would necessitate unprecedented cooperation,

coordination, and rigid and rapid implementation schedules. Such an effort would have to be revisited and re-implemented annually, creating a constant maintenance issue.

Where weed control concerns the checkerspot's food plants, each plant species would likely be placed in jeopardy using traditional herbicide applications in the area. There would likely be collateral damage of these and other native species under the most commonly adopted weed management strategies. Direct spraying or overspray from herbicide application is almost certain to adversely impact the native flora upon which the checkerspot depends and may also cause damage to the checkerspot itself. We would not recommend general application of herbicide to the area. The use of herbicide on individual plants, while preferable, is not practical given the current extent of the infestation. The Sacramento Mountains Checkerspot Butterfly Conservation Plan recommends no spraying within habitat for this species (USFWS 2005). Since we have determined that much of the project area constitutes potential habitat, herbicide use in this area would go against the recommendations of this document which calls for manual hand pulling of noxious weeds.

The use of fire for control of musk thistle and teasel is not supported. While late-spring burns are reported to have some beneficial effect with regard to teasel control they are said to improve habitat for musk thistle (FEIS 2007), which thrives on open areas. Likewise, mowing would almost certainly spread weeds if there were any current or past seeds to be scattered by this activity.

Biological controls have not been successfully demonstrated in the Sacramento Mountains. These measures have been employed with limited effectiveness to weeds and have detrimentally affected the native flora (Sivinski 2007).

Biological controls and herbicide applications in the Sacramento Mountains have been responsible for damage to, and/or mortality in, two threatened and endangered species occurring in the area this year and would likely have the same effect on the checkerspot host plants (Sivinski 2007, Tonne 2007). Their use would not be recommended as a weed-control measure within the survey area.

Our recommendation is to avoid all of the weed control measures discussed above other than hand pulling or seed head removal of teasel and/or musk thistle. We recognize the limits of what could be accomplished given the extent of the infestation and the condition of neighboring land. However, should a weed problem develop in newly disturbed land during construction, well removed from the checkerspots' food plants, limited and controlled use of herbicide might make sense. Care should be taken not to confuse native thistles with the exotic musk thistle under any weed-control measure.

Elk Springs Euphydryas Surveys

Tonne and McIntyre, 2007

Careful planning of the subdivision to avoid increased erosion could go a long way towards preventing the spread of noxious weeds beyond their current condition on this property.

References

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- Wisconsin DNR. 1998. Common teasel (*Dipsacus sylvestris*) and Cut-leaved teasel (*Dipsacus laciniatus*). Exotic teasels. Wisconsin Department of Natural Resources. Available

Appendix 1.

Incidental Plant List:

Scientific Name	COMNAME	Family
<i>Abies concolor</i>	white fir	Pinaceae
<i>Achillea millefolium</i>	common yarrow	Asteraceae
<i>Achnatherum robustum</i>	sleepygrass	Poaceae
<i>Amaranthus hybridus</i>	slim amaranth	Amaranthaceae
<i>Antennaria</i> sp.	Pussytoes	Asteraceae
<i>Arctium minus</i>	lesser burdock	Asteraceae
<i>Argentina anserina</i>	silverweed cinquefoil	Rosaceae
<i>Artemisia dracunculus</i>	tarragon	Asteraceae
<i>Artemisia ludoviciana</i>	white sagebrush	Asteraceae
<i>Besseyia oblongifolia</i>	eggleaf coraldrops	Scrophulariaceae
<i>Bidens</i> sp.	Beggarticks	Asteraceae
<i>Boerhavia gracillima</i>	slimstalk spiderling	Nyctaginaceae
<i>Bromus</i> sp.	Brome	Poaceae
<i>Bromus ciliatus</i>	fringed brome	Poaceae
<i>Bromus inermis</i> ssp. <i>inermis</i>	smooth brome	Poaceae
<i>Chenopodium</i>	goosefoot	Chenopodiaceae
<i>Cirsium parryi</i>	Parry's thistle	Asteraceae
<i>Cirsium undulatum</i>	wavyleaf thistle	Asteraceae
<i>Convolvulus arvensis</i>	field bindweed	Convolvulaceae
<i>Coryza canadensis</i>	Canadian horseweed	Asteraceae
<i>Cosmos</i> sp.	Cosmos	Asteraceae
<i>Dipsacus fullonum</i>	Fuller's teasel	Dipsacaceae
<i>Elymus elymoides</i>	squirreltail	Poaceae
<i>Epilobium ciliatum</i>	fringed willowherb	Onagraceae
<i>Erigeron divergens</i>	spreading fleabane	Asteraceae
<i>Erodium cicutarium</i>	crane's beak	Geraniaceae
<i>Gaura</i> sp.	Beeblossom	Onagraceae
<i>Geranium caespitosum</i>	pineywoods geranium	Geraniaceae
<i>Geranium richardsonii</i>	Richardson's geranium	Geraniaceae
<i>Gnaphalium</i>	cudweed	Asteraceae
<i>Grindelia squarrosa</i>	curlycup gumweed	Asteraceae
<i>Helenium autumnale</i>	common sneezeweed	Asteraceae
<i>Helenium autumnale</i>	common sneezeweed	Asteraceae
<i>Helianthus pauciflorus</i>	stiff sunflower	Asteraceae
<i>Heliomeris multiflora</i>	showy goldeneye	Asteraceae
<i>Humulus lupulus</i>	hops	Cannabaceae
<i>Hymenoxys hoopsei</i>	sneezeweed	Asteraceae
<i>Ipomopsis aggregata</i>	scarlet gilia	Polemoniaceae
<i>Iris missouriensis</i>	Rocky Mountain iris	Iridaceae

Elk Springs Euphydryas Surveys

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Scientific Name	COMNAME	Family
<i>Koeleria macrantha</i>	prairie Junegrass	Poaceae
<i>Lappula redowskii</i>	stickseed	Boraginaceae
<i>Lathyrus eucosmus</i>	bush vetchling	Fabaceae
<i>Linum lewisii</i>	prairie flax	Linaceae
<i>Lupinus sp.</i>	lupine	Fabaceae
<i>Marrubium vulgare</i>	horehound	Lamiaceae
<i>Melilotus officinalis</i>	yellow sweetclover	Fabaceae
<i>Mentha arvensis</i>	wild mint	Lamiaceae
<i>Mentha arvensis</i>	wild mint	Lamiaceae
<i>Mertensia sp.</i>	bluebells	Boraginaceae
<i>Oenothera elata</i>	Hooker's evening-primrose	Onagraceae
<i>Oligoneuron rigidum</i>	stiff goldenrod	Asteraceae
<i>Panicum sp.</i>	panicgrass	Poaceae
<i>Panicum capillare</i>	witchgrass	Poaceae
<i>Pascopyrum smithii</i>	western wheatgrass	Poaceae
<i>Penstemon neomexicanus</i>	New Mexico beardtongue	Scrophulariaceae
<i>Pinus ponderosa</i>	ponderosa pine	Pinaceae
<i>Poa pratensis</i>	Kentucky bluegrass	Poaceae
<i>Polygonum sp.</i>	knotweed	Polygonaceae
<i>Populus tremuloides</i>	quaking aspen	Salicaceae
<i>Prunus virginiana</i>	chokecherry	Rosaceae
<i>Pseudotsuga menziesii</i>	Douglas-fir	Pinaceae
<i>Pteridium aquilinum</i>	western brackenfern	Dennstaedtiaceae
<i>Quercus gambelii</i>	Gambel oak	Fagaceae
<i>Ratibida columnifera</i>	upright prairie coneflower	Asteraceae
<i>Ribes sp.</i>	currant	Grossulariaceae
<i>Rubus idaeus</i>	American red raspberry	Rosaceae
<i>Rudbeckia laciniata</i>	cutleaf coneflower	Asteraceae
<i>Rumex sp.</i>	dock	Polygonaceae
<i>Salvia sp.</i>	sage	Lamiaceae
<i>Sambucus</i>	elderberry	Caprifoliaceae
<i>Scrophularia montana</i>	Montana figwort	Scrophulariaceae
<i>Solidago canadensis</i>	Canada goldenrod	Asteraceae
<i>Solidago wrightii</i>	Wright's goldenrod	Asteraceae
<i>Sorghastrum nutans</i>	Indiangrass	Poaceae
<i>Symphoricarpos</i>	snowberry	Caprifoliaceae
<i>Symphyotrichum ericoides</i>	white heath aster	Asteraceae
<i>Symphyotrichum praealtum</i>	willowleaf aster	Asteraceae
<i>Taraxacum officinale</i>	common dandelion	Asteraceae
<i>Thalictrum fendleri</i>	Fendler's meadow-rue	Ranunculaceae

Scientific Name	COMNAME	Family
<i>Toxicodendron rydbergii</i>	western poison ivy	Anacardiaceae
<i>Tragopogon dubius</i>	yellow salsify	Asteraceae
<i>Tragopogon porrifolius</i>	salsify	Asteraceae
<i>Trifolium repens</i>	white clover	Fabaceae
<i>Urtica dioica</i>	stinging nettle	Urticaceae
<i>Valeriana edulis</i>	tobacco root	Valerianaceae
<i>Verbascum thapsus</i>	common mullein	Scrophulariaceae
<i>Verbena macdougalii</i>	MacDougal verbena	Verbenaceae
<i>Verbesina encelioides</i>	golden crownbeard	Asteraceae
<i>Veronica americana</i>	American speedwell	Scrophulariaceae
<i>Vicia americana</i>	American vetch	Fabaceae

RESTRICTIVE COVENANTS OF ELK SPRINGS ESTATES SUBDIVISION.

The owners of all lots located in Elk Springs Estates Subdivision, a subdivision located in Otero County, New Mexico, a plat of which was recorded in the records of Otero County, New Mexico, do hereby consent and agree that the following restrictive covenants shall be in full force and affect all property within said subdivision.

1. There shall not be erected on any one lot more than one (1) single private family dwelling house together with the necessary and appurtenant attached building such as servant quarters, garages and car ports customarily used in connection therewith. No structure shall have more than two (2) stories unless otherwise approved by the Architectural Control Committee named below. All structures will be site-built. Mobile homes are not permitted. Garages and accessory buildings must match in material and color to the main building. All homes must have a minimum living space of 1500 square feet.
2. No business or profession, manufacturing operation, commercial enterprise or public or commercial amusement enterprise shall be conducted, operated or maintained on any lot.
3. There is hereby created the Architectural Control Committee (hereinafter sometime referred to as the "Committee") composed of a Chairperson, and other property owners in good standing, appointed by the developer. Future and succeeding members shall be selected at an annual meeting of the committee.
 - (a) No dwelling house, garage, car port, outbuilding, fence, wall, retaining wall, pier, breakwater, or other structure of any kind shall be erected, constructed, placed, moved on, or maintained on any lot or lots, or any parcel or portion thereof, nor shall any alterations, additions, change or repair be made to the exterior thereof, unless prior to the commencement of any constructions, excavation, grading, or other work, three (3) complete sets of plans and specifications thereof, including front, side, and rear elevations, and floor plan for each floor and basement, color scheme thereof, and plot plan, indication and fixing the exact location of such structure of such altered structure thereof, shall first have been submitted to the Committee in writing for its approval and such approval obtained in writing from the committee. One (1) approved set will go to the committee. One (1) approved set will go to the builder, and One (1) approved set will go to the owner.
 - (b) All structures must have a slanting roof with a minimum of a two and one half in twelve pitch. The Architectural committee must approve roofing materials and color. The Committee may grant variances below the minimum pitch requirement.
 - (c) Approval by the committee of such plans, specifications, and location of buildings shall be endorsed on all three sets of plans and specifications, and once set thereof shall be returned to the person submitting the same, one set will be given to the builder and the committee will retain the other set.
 - (d) In the event that the proposed improvements be for the repairing and/or redecoration of the exterior of a structure, without remodeling the same or making additions thereto, it shall be necessary only to file the color scheme or such proposed work with the committee and have the same approved in writing by it prior to commencement of such repairs and/or redecoration.

- (e) After such plans and specifications and other data submitted have been approved by the committee, no building, garage, fence, wall, car port or other structure of any kind shall be erected, constructed, placed, altered or maintained upon said property unless the same shall be erected, constructed, place, altered or maintained in conformity with the plans and specifications, color scheme and plot plan therefore approved by the committee. No building, garage, car port, fence wall, retaining wall, or other structure of any kind shall be erected, constructed, placed, altered, or maintained on said property other than in accordance with the plans and specifications, color scheme, and plot plan therefore approved by the Committee.
 - (f) Building or structures shall not be constructed of a building material that will cause the sunlight to be reflected there from; nor shall any building or other structure be painted with any paint or other substance that will cause the sunlight to be reflected there from.
 - (g) All plans for septic tanks in Elk Springs Estates shall be submitted to the Architectural committee for approval. The Committee will base its approval for the installation of such septic tanks on the existing or anticipated municipal, county, state or federal regulations regarding septic tanks of other methods of sewage disposal.
 - (h) In the event of any ambiguity in a provision of these restrictions, the interpretation of the Architectural control Committee as to the meaning intended shall prevail.
 - (i) The Committee may withhold its approval for any of the following reasons: (1) Non-compliance with any of the specific conditions and restrictions contained in these Restrictive Covenants; or (2) Reasonable dissatisfaction of the committee with the locations of the structure of the building site, or with the appearance of the proposed structure, or with the lot grading, having in mind the character of the neighborhood in which it is proposed to be erected, the materials of which it is to be built, the harmony thereof with the surroundings, and the effect of the building or other structure as planned on the outlook from the adjacent or neighboring property or properties. However, the Committee shall act with all due promptness; in the event the committee shall fail to approve or disapprove any matters submitted to it within thirty (30) days from such submission, then the submission shall be deemed to have been fully complied with.
4. No lots shall be subdivided into smaller lots or parcels of land, for the purpose of these restrictions, if one owner shall own two or more adjacent lots, such adjacent lots may be considered to be one lot with set backs to be measured from the perimeter thereof. Further, if two or more adjacent lots are under common ownership, the owner thereof may elect by written notice to the Committee to develop them as a single lot. In the event of such election they shall thenceforth be treated as a single lot for the purposes of set back restrictions only.
5. No structure shall be erected, constructed, placed or maintained on any lot nearer than twenty-five (25) feet to the front lot line, nearer than ten (10) feet to the side lot lines, no nearer than twenty (20) feet to the back lot lines, except that upon written application to the committee, if the configurations and typography permit, a variance may be granted from said set backs, provided, however, that the owners of lots within 75 feet of the lot being considered for a variance, be notified and be given 15 days to voice objection. The Architectural Control Committee has the authority to make the final decision to grant/or not grant a variance from above said set backs.
6. No garage, carport, shed, tent, trailer or temporary structure of any kind shall be erected, constructed, permitted or maintained on any lot prior to the commencement of the erection of a principal dwelling house thereon. No garage, carport, shed, tent, trailer, basement, or

temporary building shall be used for temporary residence purpose unless written permission is granted by the committee for use only during construction of the principal dwelling.

7. When construction of a dwelling is commenced upon any lot, the owner or owners thereof shall prosecute, with all reasonable diligence, the completion thereof and shall complete the construction thereof within twelve (12) months from the date of commencement, delays caused by Act of God excepted, unless written consent of the committee is obtained for a longer period of time for construction prior to the commencement to such construction.
8. No exposed concrete block, whether painted or otherwise, shall exist on any lot without the written consent of the committee.
9. No old or second-hand building shall be moved on any lot in this subdivision; and no second-hand materials shall be used in the construction of any building thereon; except upon the prior written consent of the committee.
10. No brush, trash, or other material shall be burned except in compliance with the fire regulations of the appropriate regulatory agency.
11. Neither barbed wire nor chicken wire shall be used in this subdivision.
12. No windmills or wind chargers shall be erected upon any lot in this subdivision.
13. No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done on any lot, which may be or become an annoyance to the neighborhood.
14. No television, radio antennas, or large satellite dish (over 3 feet in diameter), located upon any lot shall be permitted to be visible from any adjoining lot or street in this subdivision without prior written consent of the Committee; and no laundry upon or above any lot shall be permitted to be visible from any adjoining lot or street in the subdivision.
15. No garbage, refuse, junk, trash or obnoxious or offensive material shall be permitted to accumulate on any lot; the owner or owners of each lot shall cause the same to be disposed of by and in accordance with accepted sanitary practices. All garbage or trash containers, oil and other facilities must be placed under ground or in walled-in or fenced-in areas so that they shall not be visible from any adjoining lot, any street, or waterway. Garbage shall be disposed of in accordance with the regulations of the State of New Mexico and of any of its subdivision. Such garbage shall be removed by the lot owner to a sanitary landfill provided by Otero County or other governmental agency.
16. Fuel tanks shall be installed to comply with municipal county, state and federal regulations. The location of the tank on the property owner's lot also requires written approval of the Architectural Committee.
17. No animal or fowl of any description shall be raised, housed or kept on any lot; except that dogs, cats, or other household pets that are of such a nature as not to interfere with the safety and comfort of adjoining lot owners may be kept on a lot, provided that they are not bred or maintained thereon for any commercial purposes.

18. During construction the builder will provide outdoor portable toilets at the building site. All permanent toilets shall be located inside the principal buildings and shall be connected with proper septic tanks that conform to the State of New Mexico and Otero County health laws and regulations.
19. All principal dwelling houses, exclusive of garage, carport patios, terraces and porches, shall be constructed or maintained with a heated living area of not less than 1500 square feet as determined by the Architectural Committee.
20. Parking for three standard size American automobiles (not compact size) must be provided on each lot by the property owner. Parking spaces must be used instead of on-street parking.
21. No work or exploration for any minerals, or drilling for water (beyond that required for shared wells) or any minerals or mining of any minerals or quarrying of any rock minerals, soil or material of any nature shall be conducted on any lot or portion thereof, nor shall any excavation of any nature be made upon any lot or portion thereof except as may be incident to the installation of utility services, drainage lines, excavation incident to the grading and preparation of building sites, the construction of dwelling and/or swimming pools and the grading of roads and streets.
22. No signs of any character shall be permitted to be placed or maintained on any lot except a sign not larger than 72 square inches setting forth the name of the owner or occupant of said lot. All other signs are prohibited on any lot without prior written approval of the Committee. This restriction does not apply to addresses assigned and posted by the Rural Addressor for Otero County.
23. In the event the owner or purchaser of any lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Committee, and after a reasonable attempt has been made to allow the owner or purchaser to correct the deficiency themselves, said Committee shall have the right to enter upon such lot and so repair, maintain, rehabilitate and restore the premises and the exterior or any improvements situated thereon and the cost thereof shall be charged against the owner of said lot by notice to the lot owner or purchaser by regular mail addressed to his/her last address as shown on the records of the Committee, and if the sum is not paid within thirty (30) days after such notice has been mailed, the amount due shall be and become a lien on said lot when the Committee has caused to be filed or recorded in the office of the County Clerk of Otero County an affidavit of non payment of such sum in the form of a material man's lien, and posting a copy of the same upon said lot within one (1) year from the date of mailing such of amount due. Such lien shall be foreclosed in the manner provided by the laws of the State of New Mexico for the foreclosure of material man's liens.
24. The Committee reserves easements over or under the surface or both, required for the installation and maintenance of electric lines, telephone lines, water lines and for all other utilities, both public and private, with the right to assign such easements. The easements herein reserved shall consist of a ten (10) foot strip of land along the rear lot line and seven and a half (10) foot strip of land along each side of each lot, thus reserving an easement of twenty (20) feet along the rear lot line and fifteen (20) feet along the side lot lines when two abutting lots are considered. There is also an easement of fifteen (15) feet reserved along the rear lines common with the adjacent owners along the boundary of Elk Springs.

25. The Committee expressly reserves the right to make any reasonable and necessary changes in these restrictions to benefit the lot owners. There shall be no changes in any of these restrictions without the formal approval by written vote of no less than two thirds (2/3) of the lot owners, such vote to be taken no sooner than five (5) days after one hundred per cent (100%) of the lot owners have been fully informed in writing of any such proposed changes. Proposed changes in these restrictions requiring approval as aforesaid must be submitted in writing to the Architectural Control Committee, which Committee shall have the duty and responsibility to prepare and send complete copies of such proposed changes to all lot owners by mail addressed to their address as shown on the records of the Committee. Such copies shall be sent within fifteen (15) days of receipt by the committee and deposited in the U. S. Mail and shall be considered as meeting this requirement. Voting on any proposed change may be by mail.
26. The Committee provides maintenance of all roads, water systems, etc. within the subdivision; it also provides snow plowing of the roads. Fees to be determined annually based on:
 1. Cost of operation and maintenance
 2. Inflation.
27. Ownership of all streets remains vested in the Committee. The Committee may, at its discretion and upon reasonable notice to the lot owners and lot buyers, make assessments against each lot for the maintenance and repair of such streets. Such assessments, if unpaid shall be considered as a lien against such lots, and after said lien has been filed in the manner provided in paragraph 21 above, said lien may be foreclosed in the manner provided by the laws of the State of New Mexico.
28. The Committee reserves the right to control the number and types of vehicles in the subdivision so as to promote the best interests of the lot owners. The owners of any motorized vehicle that causes or emits excessive pollutants, including but not limited to noise and particulate matter, may be required to modify or repair such vehicle to meet the standards required by the Committee. Failure of the owner to do so shall be considered a breach of these covenants and in addition to the other remedies provided herein; the Committee may suspend the right of the violator to enter the subdivision in the vehicle.
29. The covenants are to run with the land and shall be binding upon the undersigned and all persons claiming under them their heirs, successors and assigns.
30. All of the restrictive covenants contained herein are for the benefit of any and all of the owners of the lots within the boundaries of the subdivision, and if the undersigned owner or any of its assigns or successors in interest shall violate or attempt to violate any of such Restrictive Covenants, then it shall be lawful for any person owning land within said boundaries and for the Architectural Control Committee to prosecute any proceeding as law or inequity to recover damages or to enjoin such act and to have any and all further legal and equitable relief. The word (person) as used herein means any individual, partnership, firm, company, trust, committee, corporation, or any and all entities of any nature.
31. Invalidation of any one of these covenants shall in no way effect any of the other provisions hereof, which shall remain in full force and effect.
32. Property owners will be required to conform to New Mexico Dark Skies-Light Pollution Laws. Attached and made a part of these covenants is House Bill 39, New Mexico Light Pollution Law.

33. Property owners are encouraged to practice water conservation measures and outdoor restrictions include 600 sq. ft. maximum locally adapted grass, 200 sq. ft. max. shrubs or trees, or equivalent (or less) water use by analysis (TR-47 OSE). No decorative ponds, water fountains, or swimming pools will be allowed unless the water is supplied by a rainfall collection system (e.g. metal roofs, rain gutters, and cisterns) or an outside source. Indoor restrictions include 1.6 gpf toilets, 2.5 gpm showerheads, and 2.0 gpm sink faucets or lower flow devices. Heat pump climate control systems are recommended. Evaporative cooling systems are discouraged although budgeted in the analysis. Grasses should be selected that are well adapted to local climatic conditions, and non-native grasses are discouraged. Low-water use landscaping techniques applying the principles of xeriscape are suggested. Drip irrigation is encouraged whenever possible.
34. Any single water use greater than 96,000 gals/year, 8,000 gals/month, or 24,000 gals/quarter year may be considered "Excessive Use" and will be dealt with in the manner described in the Well Users Agreement, Paragraph "N", page 70.
35. 700 cubic foot of ponding shall be installed downstream and as a catch basin for each 1500 square feet of impervious surface developed. 1500 cubic foot of ponding shall be installed downstream and as a catch basin for each 5000 square feet of impervious surface developed.
36. Attached and made a part of these covenants is Otero County Ordinance 01-05, laws governing the habitat of the Checkerspot Butterfly, which applies to Lots 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, & 15, designated as within the habitat area for the butterfly. Lot owners within this habitat will be required to follow the requirements of Ordinance 01-05 during construction of any structure or disturbance of existing vegetation. A survey has already been done by the subdivider and is made a part of the Preliminary Plat.

NEW MEXICO LIGHT-POLLUTION LAW

On April 6th, New Mexico Governor Gary E. Johnson signed a state-wide light-pollution bill into law. State Representative Pauline K. Gubbels introduced the Night Sky Protection Act in January in order to "regulate outdoor night lighting fixtures to preserve and enhance the state's dark sky while promoting safety, conserving energy and preserving the environment for astronomy." Both legislative houses passed the bill by a wide margin. The law states that outdoor-lighting fixtures of more than 150 watts must be shielded, or they must be turned off between 11 p.m. and sunrise. Furthermore, after January 1, 2000, mercury-vapor lamps cannot be sold or installed.

HOUSE BILL 39

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Pauline K. Gubbels

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE NIGHT SKY PROTECTION ACT; PROVIDING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. --This act may be cited as the "Night Sky Protection Act".

Section 2. PURPOSE. -- The purpose of the Night Sky Protection Act is to regulate outdoor night lighting fixtures to preserve and enhance the state's dark sky while promoting safety, conserving energy and preserving the environment for astronomy.

Section 3. DEFINITIONS. --As used in the Night Sky Protection Act:

A. "outdoor lighting fixture" means an outdoor artificial illuminating device, whether permanent or portable, used for illumination or advertisement, including searchlights, spotlights and floodlights, whether for architectural lighting, parking lot lighting, landscape lighting, billboards or street lighting; and

B. "shielded" means a fixture that is shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected at least fifteen degrees below a horizontal plane running through the lowest point on the fixture where light is emitted.

Section 4. SHIELDING OF OUTDOOR LIGHT FIXTURES. -- All outdoor lighting fixtures shall be shielded, except incandescent fixtures of one hundred fifty watts or less and other sources of seventy watts or less.

Section 5. NONCONFORMING LIGHT FIXTURES. --

A. In addition to other exemptions provided in the Night Sky Protection Act, an outdoor lighting fixture not meeting these provisions shall be allowed, if the fixture is extinguished by an automatic shutoff device between the hours of 11:00 p.m. and sunrise.

B. No outdoor recreational facility, whether public or private, shall be illuminated after 11:00 p.m. except to conclude any recreational or sporting event or other activity conducted, which is in progress prior to 11:00 p.m. at a ballpark, outdoor amphitheater, arena or similar facility.

Section 6. USE OF MERCURY VAPOR LIGHTING FIXTURES. --

No new mercury vapor outdoor lighting fixtures shall be sold or installed after January 1, 2000. No replacement equipment or bulbs for Mercury vapor lighting fixtures shall be sold in the state after January 1, 2001.

Section 7. EXEMPTIONS. --

A. The following are exempt from the requirements of the Night Sky Protection Act:

(1) outdoor lighting fixtures existing and legally installed prior to the effective date of the Night Sky Protection Act; however, when existing lighting fixtures become inoperable, their replacements are subject to all the provisions of the Night Sky Protection Act;

(2) outdoor lighting fixtures used on land or facilities under the control of the federal government; and

(3) navigational lighting systems at airports and other lighting necessary for aircraft safety at airports.

B. The provisions of the Night Sky Protection Act are cumulative and supplemental and shall not apply within any county or municipality that, by ordinance or resolution, has adopted provisions restricting light pollution that are equal to or more stringent than the provisions of the Night Sky Protection Act.

Section 8. CONSTRUCTION INDUSTRIES DIVISION--

DUTIES:--The construction industries division of the regulation and licensing department shall review the outdoor lighting provisions in the uniform building codes used in New Mexico and make recommendations for appropriate changes to comply with the provisions of the Night Sky Protection Act.

Section 9. VIOLATIONS--PENALTY.--Any person, firm or corporation violating the provisions of the Night Sky Protection Act is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

