

Eagle Ranch Wildlife Protection Board

Established per Sections 5.9.1 and 5.9.2 of Declaration for Eagle Ranch for the purpose of protecting and managing wildlife within, affecting or affected by Eagle Ranch.

Executive Board of Eagle Ranch Association to create a separate committee, which formulates a reasonable budget for use of amounts allocated from the transfer assessments. Expenditures made in accordance with the approved budget from separate account.

Members of the committee are appointed by Executive Board and need not be members of the Executive Board or the Association.

Five members: 1 appointed by Department of Wildlife (Brian Wodrich)
1 appointed by Town of Eagle (Brian Lieberman)
3 appointed by Executive Board (Kent Rose, Scott Turnipseed, Derek Rose)

Operates in a manner similar to DRB, except that all expenses of the committee to be paid from funds allocated to the Eagle Ranch Wildlife Protection Board by the transfer assessments.

In its discretion, ER Wildlife Protection Board may cooperate with other entities or groups whose goals are similar in a joint effort to most efficiently serve the purpose of wildlife protection.

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EAGLE RANCH PUD WILDLIFE MITIGATION AND ENHANCEMENT PLAN

January 8, 1999

This Wildlife Mitigation and Enhancement Plan (Plan), developed for the proposed Eagle Ranch Planned Unit Development, proposes West Eagle Ranch L.L.C.'s commitments to avoid, minimize, and mitigate impacts resulting from the proposed development; Through consultation with the Colorado Division of Wildlife (CDOW) over the approximately four year period during which field data were collected and the project designed, substantive changes have been made to the development resulting in a considerable reduction of potential impacts to wildlife and their habitats. The standards contained in this plan are consistent with, or exceed, those associated with other wildlife mitigation and enhancement plans prepared for other Eagle County developments.

1.1 BACKGROUND

West Eagle Ranch, LLC, developers (hereinafter "owners") of the Eagle Ranch and Brush Creek Stables properties, jointly hereinafter known as the Eagle Ranch Planned Unit Development (PUD), its successors or assigns, ultimately including a Homeowners Association which will undertake owners' responsibilities under this Agreement, and the CDOW, hereby agree to the following stipulations in conjunction with the Eagle Ranch PUD, Town of Eagle (Town), Eagle County, Colorado. It is also recognized that this PUD will become an extension of the Town of Eagle, which will also be responsible for enforcing the provisions of this Plan and agreement. This commitment will be executed at or before approval of the first Final Plat for Eagle Ranch by the Town. The CDOW recognizes that the measures herein committed to adequately mitigate wildlife-related impacts associated with construction and habitation of Eagle Ranch, as set forth in the approved Preliminary Plan.

This wildlife mitigation and enhancement plan was developed to avoid, minimize, and mitigate wildlife impacts resulting from the Eagle Ranch PUD approved by the Town. The specifics contained herein have evolved from existing wildlife information, results of field surveys, discussions, meetings, and site visits with CDOW representatives, input from the Town and the public, and meetings and discussions with professionals representing the owners. This plan not only considers the present development approval, but also considers how the development can be integrated into existing, approved but unbuilt; and potential surrounding developments, to facilitate continued wildlife use.

This plan is organized by wildlife issues. Where mitigation measures apply to more than one issue, they are discussed under the most appropriate issue and only mentioned elsewhere. Map

attached) shows wildlife constraints on and adjacent to the property. Map 2 (attached) shows the proposed golf course and residential development plan.

1.2 BIG GAM WINTER RANGE

Portions of Eagle Ranch overlap various designations of elk and deer winter range, which are considered critical habitats in Eagle County (Map 1). Development has avoided the majority of such designated habitats on the property to the maximum extent feasible (Map 2). Big game wintering on these areas of the property will continue to do so. The areas of undeveloped big game winter range have been designated as open space and will be deeded to the Town of Eagle. Management of these lands will be the responsibility of the Town. Management of these lands may include seasonal closures to facilitate wildlife use.

While most winter range on the PUD has been avoided, some margins of winter range will be developed. Big game which formerly wintered on these areas be displaced to adjacent habitats. Enhancement of adjacent, undisturbed winter range, through fertilization,, burning, shrub manipulation, etc., is an effective compensatory approach that can be implemented on-site and on adjacent properties to accommodate animals displaced from developed portions of Eagle Ranch.

The Eagle Area Community Plan (Town of Eagle 1996) recommends developing, adopting, and applying wildlife habitat protection measures to developments such as Eagle Ranch and presently requires that sensitive habitats, such as critical big game winter range, be protected "to the maximum extent feasible" by, for example, incorporating such areas into open space. While the term "maximum extent feasible" is open to interpretation, the present Eagle Ranch development proposal goes far in avoiding and minimizing winter range impacts and shall be considered to have met this standard. However, owners propose to exceed this standard by compensating for impacts to wildlife by establishing an entity that will be empowered and funded to promote a variety of enhancement techniques.

To that end, owners shall establish the Eagle Ranch Wildlife Trust Fund (ERWTF) whose interest and/or principal will be used to fund wildlife, stream, and riparian enhancements, including compensatory big game winter range enhancement. Fund principal will be obtained from payments generated from a 0.2% real estate transfer fee established for all new and resale residences purchased within the Eagle Ranch PUD. Projected initial sales to full buildout of 1,100 units would generate approximately \$700,000. into the Fund, with resales generating approximately \$40,000. to \$60,000. per year. This mechanism would provide substantial initial and ongoing contributions to a fund that should adequately compensate project-related wildlife impacts.

This Fund will be used for Eagle Ranch authorized and CDOW-approved wildlife enhancement projects in Eagle County, on or within five miles of Eagle Ranch. On-site mitigation generally has highest efficacy, followed by mitigation or enhancement in adjacent areas. It is the intention that all mitigation efforts be focused on those animals affected by Eagle Ranch development.

Disbursement of funds shall be overseen by the Eagle Ranch Wildlife Committee, composed of community and Town representatives; advised by the CDOW and other resource professionals. Funds will be applied to a wide variety of wildlife and habitat enhancement projects, including, but not limited to stream, riparian, wetland fisheries, winter range compensation/ enhancement, purchases of additional open space with important wildlife values, wildlife-related education. etc.

1.3 SETBACKS

Maintain an arbitrary 100 foot setback from the closest edge of building envelopes adjacent to BLM lands to buffer residential activities from public lands and public activities (e.g., hunting, trapping, etc.). Maintain 200 foot setbacks from the Eagle Valley Land Trust (EVL) parcel to buffer wildlife (e.g., winter-bald eagle) and recreational use (e.g., waterfowl hunting) on that parcel from residential activities originating on Eagle Ranch. The bicycle/ pedestrian and footpaths as indicated on the approved park d trails plans shall be allowed within this setback as shown. These paths may be subject to seasonal closures for wildlife protection.

Building setbacks have been addressed in the Eagle Ranch PUD Guide. Building setbacks of 100 feet along Brush Creek would be adequate for filtering runoff. Residential property lines shall maintain a 50 foot setback from Brush Creek, allowing a zone for high value riparian vegetation to develop following its suppression by cattle grazing. Building setbacks of 50 feet from other intermittent creeks on the property should be adequate to protect water quality and allow riparian development. It is recognized that some roads will cross Brush Creek and its tributaries. In those areas, Best Management Practices shall be implemented to contain sediment and erosion on-site during construction and operation. Disturbed areas will be immediately revegetated to reduce erosion. Of particular concern is insuring that sediment, chemicals, and runoff are contained on-site. Any sediment ponds should be properly engineered to control runoff. Furunculosis outbreaks, thought to be caused by runoff, have occurred in the Eagle River. Impacts to jurisdictional wetlands will be protected by the Clean Water Act.

Portions of Abrams, Hernage and Third Gulch are severely degraded and will be subject to disturbance and enhancement as part of the work permitted under the U.S. Army Corps of Engineers 404 permit. All work on these streams shall be in compliance with the 404 permit and shall implement Best Management Practices to contain sediment and erosion on-site during construction and operation. Disturbed areas will be immediately revegetated to reduce erosion.

1.4 BUILDING ENVELOPES

The Subdivision Final Plat or Plats for Parcels K, L, and M shall contain appropriate notations requiring building envelopes to be designated on certain lots prior to any site grading or other disturbance of the designated lot. Specifically, any lot over 1/2 acre that is located within, or partially within, areas of native vegetation that have not been previously cultivated for agricultural use shall be limited to a building envelope of 16,500 square feet. Developer's application(s) for Subdivision Final Plat approval for parcels, K, L and M shall include a supplemental exhibit specifying designated building envelopes. Upon approval of such building

Envelopes by the Town, any modification of such envelopes shall require approval from the Design Review Committee and the Town. Any modification to such approved building envelopes shall be requested by the lot owner or building architect prior to any Design Review Committee concept approval. The proposed modified building envelope shall be indicated graphically on a landscape/site plan. This landscape/site plan shall also include calculations to indicate the building envelope does not exceed 16,500 sq. ft. Following approval of a request for a modified building envelope by the Design Review Committee, such request shall be submitted to the Town for approval. The Town reserves the right not to issue a building site improvement permit until a designated building envelope, if required, has been approved by the Town.

Total building envelope shall include the residence, any allowable outbuildings, driveways, walkways, patios, and landscaped areas.

All portions of a lot outside of the designated 16,500 square feet building envelope shall be retained in its natural state to maintain undisturbed native vegetation as wildlife habitat. No grading, vegetation manipulation or landscaping shall be permitted to these lands. Underground utility crossings shall be permitted but must be revegetated to a natural condition subject to Design Review Committee and Town approval.

Homeowners will be educated to appreciate and maintain the existing vegetative community, particularly woodlands and shrubby areas which provide critical wildlife cover and forage values. The area of fertilized, irrigated landscaping each residence (in the parcels specified above in this section) is permitted to have shall be restricted to S 10,000 square feet. Residents will also be located to recognize that they have moved into wildlife habitat, that some wildlife will have strong compulsions to eat what homeowners plant, and that the CDOW will not be liable for wildlife damage to landscaping.

1.5 SEASONAL USE RESTRICTIONS

Insensitive recreational use of open space along the southern portions of Eagle Ranch (owned and managed by the Town), and public lands beyond, will adversely affect continued wildlife use of these properties. Seasonal use restrictions may be imposed and enforced by the Town to optimize wildlife use on and adjacent to Eagle Ranch.

Native habitats on and adjacent to Eagle Ranch represent critical elk and deer winter range. Recreational and maintenance uses of Open Space Parcels OS 1 and OS2 (Map 2) will be restricted during the winter range occupancy period, extending from December 15 to April 15. The following uses and activities shall be prohibited in the above defined areas, during the above designated periods:

- A. No construction activities (e.g., construction of those portions of the sewer/ water/ power/ telephone lines, water plants/ tanks, etc.), other than emergency maintenance, shall occur within this area on Eagle Ranch from December 15 to April 15. Construction access is permitted within the above defined areas year-round, as long as the access is confined to designated, existing roadways.

Construction activities are permitted within designated development pods year-round.

B. Recreational use including nordic skiing, hiking, bicycling, equestrian use, etc., of these habitats shall also be restricted from the above area from December 15 to April 15, with the exception of activities along established bike paths connecting various development parcels through narrow isthmuses of open space within the "interior" of the community.

To protect winter range values on BLM lands adjacent to Eagle Ranch, residents and guests of Eagle Ranch will be educated and discouraged from use of adjacent BLM lands during the big game winter range occupancy period (as defined above).

These seasonal/ area restrictions will be enforced through Eagle Ranch education efforts (described in Section 1.15, below) and through Town enforcement. Furthermore, because these conditions are part of the PUD, the CDOW could also enforce these restrictions.

1.6 RECLAMATION/ LANDSCAPING

Native wildlife habitats disturbed by construction activity outside of building envelopes and along access/ utility easements/ corridors (including driveways) in portions of Parcels K, L, and M (Map 2), or Open Space Parcels OS1, OS2, and OS8 shall be reseeded or replanted with those native plant species originally present. A species list will be developed. Where service access is required, trees may be excluded from buried or overhead utility corridors. Road shoulders may exclude trees and shrubs to maximize vertical and horizontal sight-distances and reduce the probability of road-killed wildlife. Vehicle speeds within the development should be slow enough that road shoulders could be reseeded with plants palatable to big game without increasing the probability of road-kills.

Homeowners are strongly encouraged to landscape with native plant species to avoid wildlife damage. The CDOW will not be liable for wildlife damage to landscaping. A list of suitable landscaping materials, their maintenance and protection will be provided to homeowners.

1.7 DOGS AND PET CONTROL

Each dwelling unit will be permitted to house up to two dogs and offspring up to three months old. Residents will be prohibited from harboring dogs on their property unless they have adequate facilities {i.e., animals kept in residence, a fenced yard, dog run, or kennel) to contain the animals. Enclosed runs must be located immediately adjacent to the home, within the lot's building envelope if an envelope is required, and shall not exceed 1,000 square feet. If facilities are inadequate to contain the dog(s), the animals will be immediately removed from the subdivision until adequate structures can be built.

At no time are dogs to be allowed to run freely. Eagle Ranch shall be subject to any and all leash laws and other pet regulations as adopted by the Town of Eagle.

Stray dogs may also be controlled by the County and CDOW. Homeowners not in compliance with these dog restrictions will be responsible for any and all costs incurred by the Town, County, and/or CDOW for enforcing these provisions.

1.8 FENCING

Fencing on lots within the portions of Parcels K, L, and M that require building envelopes will be restricted to facilitate local wildlife movements, optimize habitat availability, and reduce wildlife mortality. Fencing approval will be under the purview of the Design Review Board or Homeowners Association. Homeowners will be permitted a privacy fence to enclose up to 5,000 square feet, provided it is immediately adjacent to the house and it is entirely within the designated building envelope, unless further restricted by the Eagle Ranch Design Review Board. All other fences shall be compatible with wildlife movements and conform to the following specifications:

Wildlife compatible fencing is limited to a maximum of 3 strands of wire (smooth wire preferred) or 2 wooden rails. Individual rails shall not be more than 4 inches tall to provide adequate space for wildlife to move between rails. The top of the top rail or wire strand shall not be higher than 42 inches above mean ground level. With the exception of a split-rail design, a rail fence shall not have a top rail oriented horizontally whose width perpendicular to the ground exceeds 1 inch. This measure is to prevent snow accumulation atop the top rail from restricting big game movements. The middle wire strand shall be no higher than 30 inches above mean ground level, providing a 12 inch kickspace below the top strand. The bottom rail or wire strand shall be at least 18 inches above mean ground level, to provide sufficient clearance for passage of elk calves, deer fawns, and other wildlife.

Fencing may be subject to more restrictive provisions as stated in the Protective Covenants, Design Guidelines, or other documents related to the property.

1.9 BEARS AND MOUNTAIN LIONS/ TRASH REMOVAL/ NUISANCE WILDLIFE

1.9.1 Bears and Related Issues

Portions of Eagle Ranch are located adjacent to high quality black bear habitat. Most bears do not cause damage where residential areas have encroached into bear habitat. The key is that if a bear doesn't find food it will move on. Black bears are omnivorous and while they mostly eat vegetation, they will eat almost anything. They will eat human food, garbage, hummingbird nectar, bird seed, pet food, grease off grills, suntan lotion, etc. Garbage generally provides the greatest attraction for bears to residential developments. Once a bear has found an easily accessible, consistent food source, it will often overcome its wariness of people and visit the site regularly. This increases the chance of a bear-human encounter. After repeated use of the food source, the bear may even act aggressively toward residents, their pets, or their unsuspecting neighbors. When this happens and wildlife authorities are notified, the bear is usually killed to protect human safety.

The following measures will be required to reduce potential bear problems:

1. There shall be no outside storage of any trash or garbage, no matter how briefly (e.g., overnight), at any residence or anywhere within the development, unless it is contained within individual bear-proof containers which meet North American Bear Society, CDOW, or U.S. National Park Service specifications. These containers presently cost around \$300.00 and can contain one 32 gallon trash can. They are nonmobile and are generally cemented on a stand at the junction of a resident's driveway and the local road. Most homeowners need two containers.

2. Prior to disposal, any refuse that might attract bears should be kept within the garage in a suitable receptacle with a tight-fitting lid. Trash containers should be taken to the collection points (e.g., the end of driveways or in alley ways) the morning of collection and not put out the night before.

However, following these recommendations may not eliminate bear problems. Bears have broken into attached residential garages in the surrounding area for garbage. Bear-proof containers are the most secure approach to garbage disposal.

3. There shall be no dumps or underground disposal of refuse within the development. Buried garbage will attract bears.

4. Residents should be discouraged from using a garden compost pile, unless the compost pile is bear-proof, meeting North American Bear Society, CDOW, or U.S. National Park Service specifications. Residents will also be educated that household and garden waste contributions to compost piles compose the materials that can attract bears and other nuisance wildlife (e.g., skunks), creating conflicts. Composted yard waste consisting of leaves, grass, small branches, etc. do not usually attract bears.

5. Pets shall not be fed outside. Bowls of pet food left on the back deck will attract bears and other predators (e.g., coyotes) and nuisance species (e.g., skunks) of wildlife. Some of these wildlife species may carry diseases that can be transmitted to pets.

6. With the exception of bird feeders, the feeding, baiting, salting, or other means of attracting wildlife is illegal and will be prohibited.

7. Homeowners will be educated about bears and other local wildlife via the CDOW's brochure entitled "Living with Wildlife in Bear Country". One copy of the brochure shall be provided to each homeowner at closing.

i .9.2 Mountain Lions

Mountain lions are occasionally present year-round on Eagle Ranch, but may be more common from fall through spring when large numbers of deer and elk (prey species) are wintering and calving at lower elevations. In other areas of Colorado where subdivisions have encroached upon mountain lion habitat containing high concentrations of prey species encounters between lions, humans, and their pets and livestock have increased. The following measures will be implemented to minimize lion-human conflicts:

1. All residents and perspective residents will receive a copy of the CDOW's brochure entitled "Living with Wildlife in Mountain Lion Country". One copy of the brochure shall be provided to each homeowner at closing.
2. With the exception of bird feeders, the feeding, baiting, salting, or other means of attracting wildlife shall be prohibited on Eagle Ranch.

1.10 HORSES

There will be no boarding of horses on individual lots within the Eagle Ranch. Any horses owned by residents of Eagle Ranch will be boarded off-site. Eagle Ranch residents will not be permitted to have a temporary "saddle-up" area, corral, or other fenced areas to allow horses to be kept overnight, over a weekend, or for any length of time on their property.

1.11 WILDLIFE MORTALITY ON LOCAL ROADS

Vehicle speeds on most proposed roads within Eagle Ranch should be slow enough to avoid killing most wildlife that may be crossing roads. Vehicle speeds along the relocated Brush Creek Road will be higher, but will probably be below those speeds (i.e., >45 mph) where most wildlife mortality occurs. Eagle Ranch is not presently used as a significant east-west wildlife movement corridor, although that could change.

Eagle Ranch, however, is accessed by high speed roads, including I-70, Highway 6, and portions of Brush Creek Road south of the property, where moderate numbers of deer and elk are killed by vehicles each year. Obeying posted speed limits would not only reduce wildlife mortality, but would also reduce the risks of damage to personal property and injury to motorists. Eagle Ranch residents should be educated about avoiding wildlife mortality on roads in any educational information that is developed.

1.12 FISHERIES/ WATER QUALITY AND QUANTITY

The owners commit to developing an enhancement plan whose goal is to maintain, if not enhance, minimum Brush Creek instream flows. The proposed transfer of senior Eagle Ranch and Brush Creek Stables water rights to the Town should result in an annual net gain in surface water at full

Eagle Ranch buildout.

A proposed riparian enhancement plan (see below) for Brush Creek on Eagle Ranch would benefit the local fishery.

Eagle Ranch representatives will consult with the CDOW to determine if and when a fish barrier might be required to preserve the integrity of the Abrams Creek cutthroat population. The design and installation of such a barrier will include CDOW consultation.

1.13 RIPARIAN ENHANCEMENT

riparian habitats support some of the highest wildlife values of any habitat type. This community has been degraded as a result of historic and contemporary livestock management on Eagle Ranch and the Brush Creek Stables properties. A riparian enhancement plan for reaches of Brush Creek on Eagle Ranch will help this community achieve its wildlife potential, improving nongame and fishery values. After terminating livestock grazing and livestock access to the riparian zone, woody species such as cottonwoods and willows will attempt voluntary recolonization. This long process will be accelerated by stabilizing creek banks and planting woody vegetation and wetland species. A riparian enhancement plan has been developed for Eagle Ranch for Brush Creek and, as a part of the 404 permit for the Brush Creek tributaries.

1.14 CDOW INDEMNIFICATION

Eagle Ranch shall indemnify the CDOW from any and all future wildlife damage claims. This commitment should be transmitted to residents at closing via a signed copy of this Wildlife Mitigation Agreement.

1.15 EDUCATING RESIDENTS

Homeowners moving to Eagle Ranch and the Brush Creek Valley will do so partly because of the natural setting and the wildlife it contains. Many homeowners will be unfamiliar with the wildlife of Colorado and its mountains and the responsibility that goes with living in this setting. Homeowners generally don't want to disturb, harass, or impact wildlife, but they often unwittingly do.

Homeowners will be educated about wildlife issues on Eagle Ranch by providing each homeowner one copy of this Wildlife Mitigation Agreement at the time of closing. Other wildlife-related education sources will include, but will not be limited to, information developed through the Eagle Ranch Wildlife Committee.

1.16 ENFORCEMENT

The authority to enforce the terms of this Plan is granted to the Eagle Ranch homeowners' association. In the event that there is a violation of this Plan by an owner within Eagle Ranch, then the following procedures shall be taken by the owner's association to enforce the terms hereof:

1. The owner violating the Plan shall first receive a written warning of the violation.
2. If a second offense occurs by an owner of the same type of violation or the owner does not correct the initial violation within one (1) calendar day after receiving notice (or such reasonable time as is necessary in order for the owner to correct violation), then a fine of \$100 will be assessed against the owner.
3. Upon the occurrence of a third offense of the same type of violation or the continuation of a violation in excess of two (2) calendar days after the owner receives notice, a fine of \$150 will be assessed against the owner.
4. Upon the occurrence of a fourth offense of the same type of violation or the continuance of a violation in excess of four (4) calendar days after the owner receives notice, a fine of \$300 will be assessed against the owner. In addition, the association may take such action as is reasonably necessary to cause the violation to cease, including entry on the property of the owner. For example, in the event of a pet or livestock violation, the animal(s) which are in violation may be removed from the owner's property for permanent disposition if prohibited or for a period of six (6) months if the animal(s) are permitted but are violating the Plan. Enforcement of animal violations will be made only with respect to the express provisions of this Plan (or as otherwise set forth in the homeowner documents of the association). Rules and laws of the Town of Eagle (such as those regarding leash requirements, barking, etc.) shall be enforced by the Town.
5. For each additional recurrence of the same type of violation, or if a violation continues beyond sixty (60) days after an owner receives notice, an additional fine will be assessed in an amount equal to double the amount of the previous fine. With respect to a continuing violation, the additional fine will be assessed every four (4) calendar days beyond the sixty (60) day period during which the violation continues. The aggregate amount of fines which may be charged against an owner for the recurrence or continuation of one type of violation shall be \$10,000.

Each violation of the Plan, even if based on the same situation or animal, shall be considered a separate offense for purpose of this section.

If an owner does not pay a fine which has been assessed due to a violation of the Plan within thirty (30) days of receipt of the notice to pay the fine, then the late payment or nonpayment shall be considered a separate offense for which the owner can be fined on the same terms as set above. In other words, an owner may owe one amount for violating a specific provision of the Plan and owe another amount for not timely paying the fine for such violation.

If the association or its authorized agent(s) knowingly fail to enforce the Plan, the association will

be in violation and will be fined according to the fine structure outlined in this section.

The fines collected under this section of the Plan shall be deposited in the account of the Eagle Ranch Wildlife Protection Board to be used in accordance with the budget of such entity; provided, however, an amount equal to up to fifteen percent (15%) of the amount of the fines collected may be applied to the costs incurred by the association to administer and enforce this section.

1.17 LITERATURE CITED

Thompson, R.W. 1996; Wildlife assessment of West Eagle development, Town of Eagle, Eagle County, Colorado. Western Ecosystems, Inc. Boulder, CO. 53 pp.