

**McPhee Waiver Request
Public Hearing for Board of County Commissioners
June 9, 2025, Cont. July 7, 2025**

Exhibit List

Exhibit #	Exhibit Description
1	Public Notice
2	Garfield County Land Use and Development Code, as Amended
3	Garfield County Comprehensive Plan 2030
4	Application
5	Staff Report and Presentation
6	Referral Comments: Glenwood Springs Fire Department, Robin Pitt
7	Referral Comments: Garfield County Sheriff, Levy Burris
8	Referral Comments: CDPHE, Air Quality, Brendan Cicione
9	Referral Comments: Consulting Engineer, Chris Hale
10	Referral Comments: Garfield County Public Health, Ted White
11	Agreement with the McPhees and Oak Meadows Water Association

**PUBLIC HEARING NOTICE INFORMATION**

Please check the appropriate boxes below based upon the notice that was conducted for your public hearing. In addition, please initial on the blank line next to the statements if they accurately reflect the described action.



My application required written/mailed notice to adjacent property owners and mineral owners.

☒ Mailed notice was completed on the 7th day of May, 2025

☒ All owners of record within a 200 foot radius of the subject parcel were identified as shown in the Clerk and Recorder's office at least 15 calendar days prior to sending notice.

☒ All owners of mineral interest in the subject property were identified through records in the Clerk and Recorder or Assessor, or through other means [list] _____

- Please attach proof of certified, return receipt requested mailed notice.



My application required Published notice.

_____ Notice was published on the _____ day of _____, 20____.

- Please attach proof of publication in the Rifle Citizen Telegram.



My application required Posting of Notice.

_____ Notice was posted on the _____ day of _____, 20____.

_____ Notice was posted so that at least one sign faced each adjacent road right of way generally used by the public.

I testify that the above information is true and accurate.

Name: Mary E McPhee

Signature: Mary E McPhee

Date: 5/12/25

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Evan M. & Kim E. Quint
Street and Apt. No., or PO Box No.
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Glenwood Spgs CO 81601

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

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☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.73

Total Postage and Fees \$5.58

Sent To
Cody & Sage O'Neil
Street and Apt. No., or PO Box No.
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City, State, ZIP+4®
Glenwood Spgs CO 81601

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☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.73

Total Postage and Fees \$5.58

Sent To
Michael Bryan & Colleen Ann Dohahan
Street and Apt. No., or PO Box No.
162 Sunking Dr
City, State, ZIP+4®
Glenwood Spgs CO 81601

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☐ Adult Signature Required \$0.00
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White River National Forest
Street and Apt. No., or PO Box No.
PO Box 2748
City, State, ZIP+4®
Glenwood Spgs CO 81602

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Postage \$0.73

Total Postage and Fees \$5.58

Sent To
Barnes Browner Trust
Street and Apt. No., or PO Box No.
833 Sunking Dr
City, State, ZIP+4®
Glenwood Spgs CO 81601

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions



RIFLE
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RIFLE, CO 81650-9800
(800)275-8777

05/07/2025 02:07 PM

Product	Qty	Unit Price	Price
First-Class Mail® Letter	1		\$0.73
Glenwood Springs, CO 81601			
Weight: 0 lb 0.30 oz			
Estimated Delivery Date Sat 05/10/2025			
Certified Mail®			\$4.85
Tracking #: 9589 0710 5270 2965 5224 40			
Total			\$5.58
First-Class Mail® Letter	1		\$0.73
Glenwood Springs, CO 81601			
Weight: 0 lb 0.30 oz			
Estimated Delivery Date Sat 05/10/2025			
Certified Mail®			\$4.85
Tracking #: 9589 0710 5270 2965 5224 57			
Total			\$5.58
First-Class Mail® Letter	1		\$0.73
Glenwood Springs, CO 81601			
Weight: 0 lb 0.30 oz			
Estimated Delivery Date Sat 05/10/2025			
Certified Mail®			\$4.85
Tracking #: 9589 0710 5270 2965 5224 64			
Total			\$5.58
First-Class Mail® Letter	1		\$0.73
Glenwood Springs, CO 81602			
Weight: 0 lb 0.30 oz			
Estimated Delivery Date Sat 05/10/2025			
Certified Mail®			\$4.85
Tracking #: 9589 0710 5270 2965 5224 88			
Total			\$5.58
First-Class Mail® Letter	1		\$0.73
Glenwood Springs, CO 81601			
Weight: 0 lb 0.30 oz			
Estimated Delivery Date Sat 05/10/2025			
Certified Mail®			\$4.85
Tracking #: 9589 0710 5270 2965 5224 71			
Total			\$5.58

Grand Total: \$27.90

Credit Card Remit \$27.90

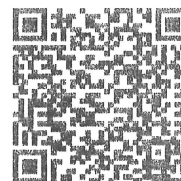
Card Name: VISA
Account #: XXXXXXXXXXXXX4209
Approval #: 008272
Transaction #: 970
AID: A0000000980840 Contactless
AL: US DEBIT

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Clerk: 14



LAND USE AND DEVELOPMENT CODE

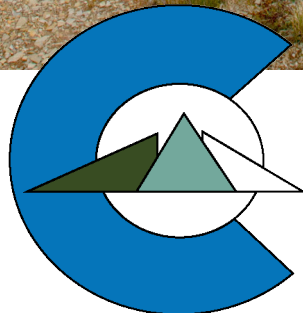
EFFECTIVE JULY 15, 2013



Last Amended September 9, 2024

COMPREHENSIVE PLAN 2030

2020 UPDATE



GARFIELD COUNTY

Adopted: November 10, 2010

Last Amended: February 26, 2020

MCPHEE WATER HAULING WAIVER REQUEST
STAFF REPORT

TYPE OF REVIEW	Administrative Review of a Waiver Request
FILE NO.	GAPA 02-25-9055
APPLICANTS (OWNERS)	Michael and Mary McPhee
LEGAL DESCRIPTION	SECTION: 22 TOWNSHIP: 7 RANGE: 89 SWSE & TR IN W1/2NW, and further described in the warranty deed recorded as Reception No. 849666.
PRACTICAL DESCRIPTION	839 Sun King Drive, Glenwood Springs, CO
PARCEL NUMBER	239522200004
LOT SIZES	1.965 acres
ZONING	Rural
COMPREHENSIVE PLAN	Residential Medium High
PLANNERS	Heather MacDonald & Glenn Hartmann, Director

I. DESCRIPTION OF SITE - BACKGROUND

The subject parcel is located approximately 7.5 miles south of the City of Glenwood Springs in the Oak Meadows Subdivision. It is accessed from County Road 117 to Sun King Drive. Parcel is part of Oak Meadow Subdivision Filling 2 Plat as known as Reception No. 250268. Filing 2 is part of the Oak Meadows Water Association (OMWA). Based on a Garfield & Hecht letter representing OMWA, the augmentation decree will not allow anymore taps for any more residential units. It allows a total of 29 units in Filling 2 as decreed in Case 92CW350.

An ADU is use by right in the rural zone district. In 2020, the applicants were granted a waiver of standards (Reception No. 939113) to construct a detached ADU while the lot size is slightly less than the minimum lot size of 2 acres. The parcel is 1.965 and an ADU it would have same effect if the parcel was 2 acres. While being granted approval to allow an ADU on that lot size, currently the project can’t move forward without an adequate supply of water.



Figure 1 Location of Parcel

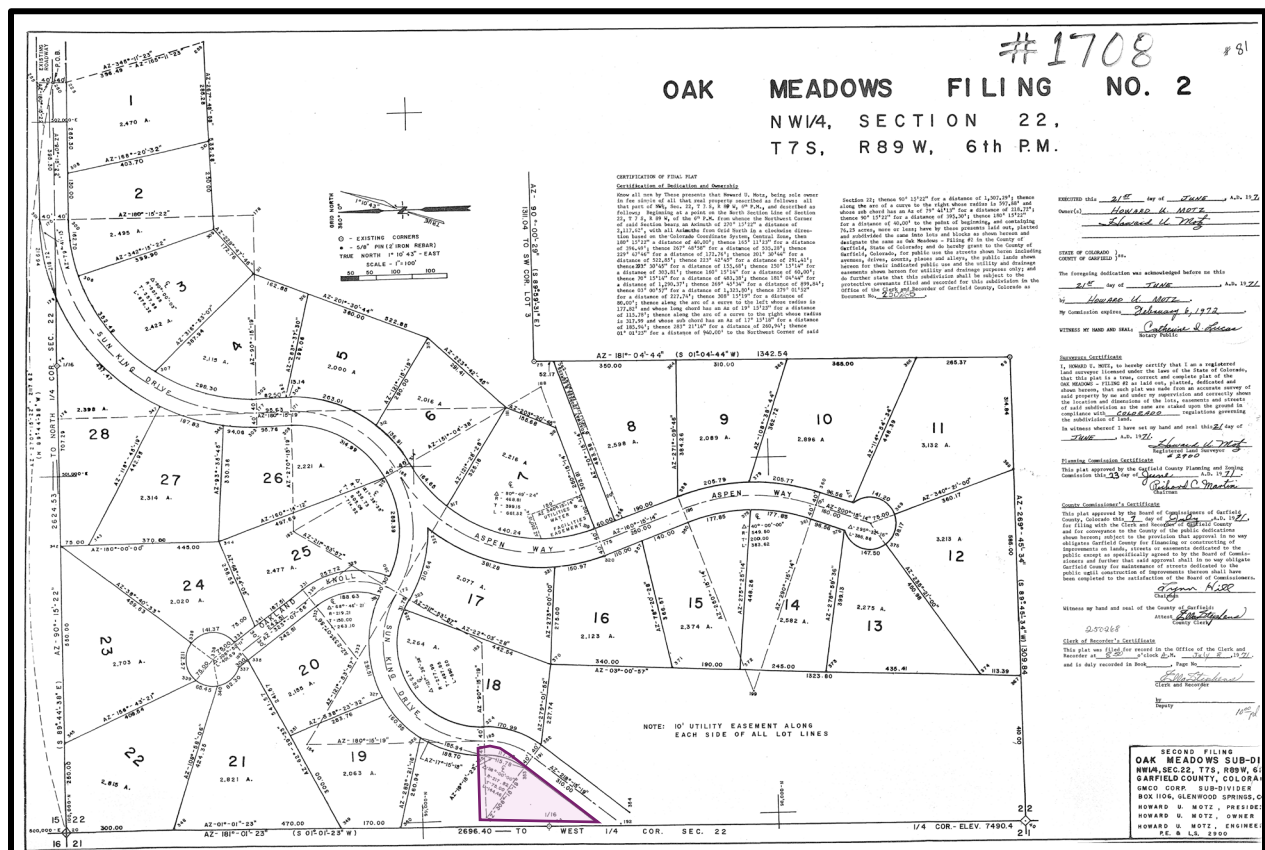


Figure 2 Oak Meadows Filing No. 2

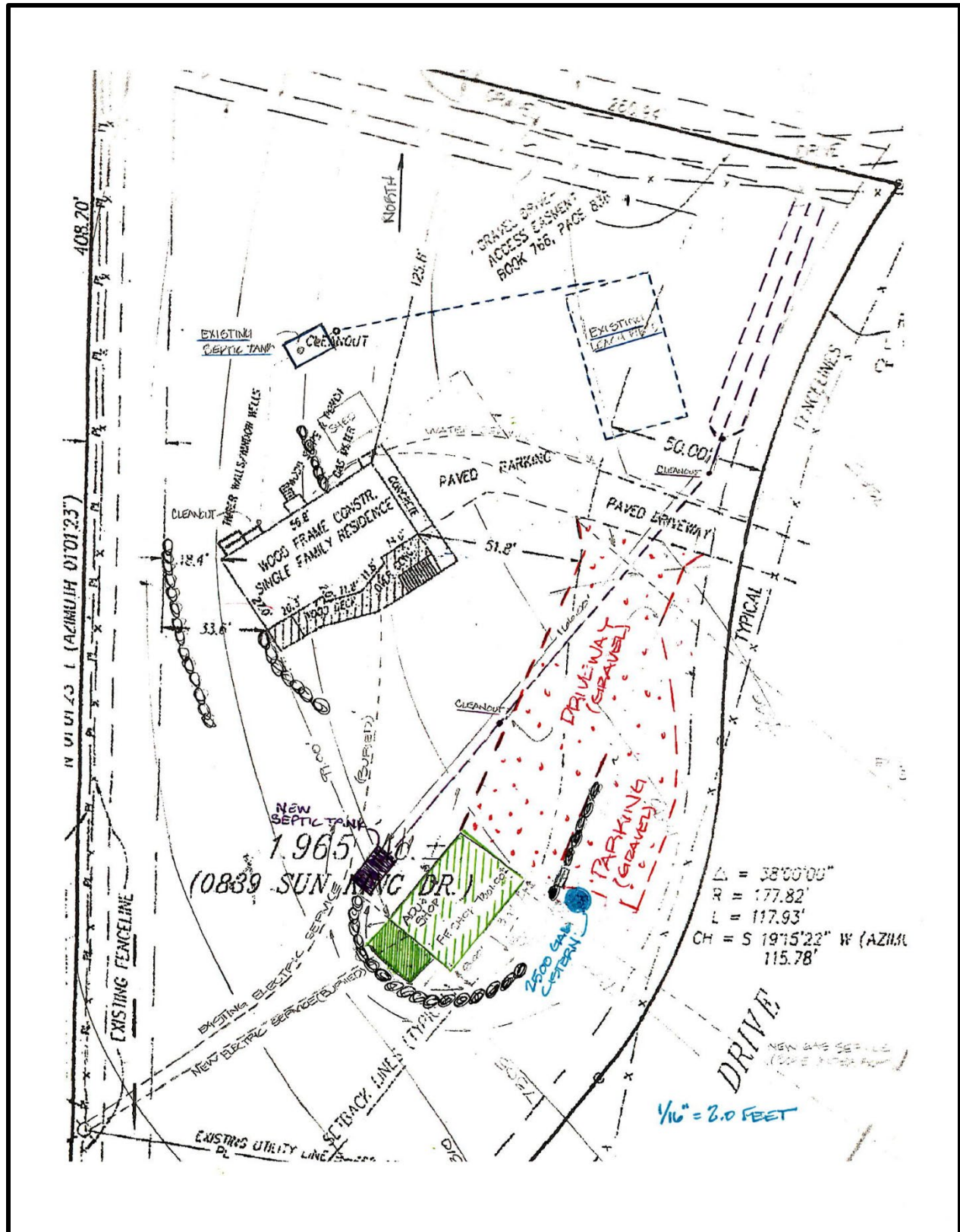


Figure 3 Site Plan

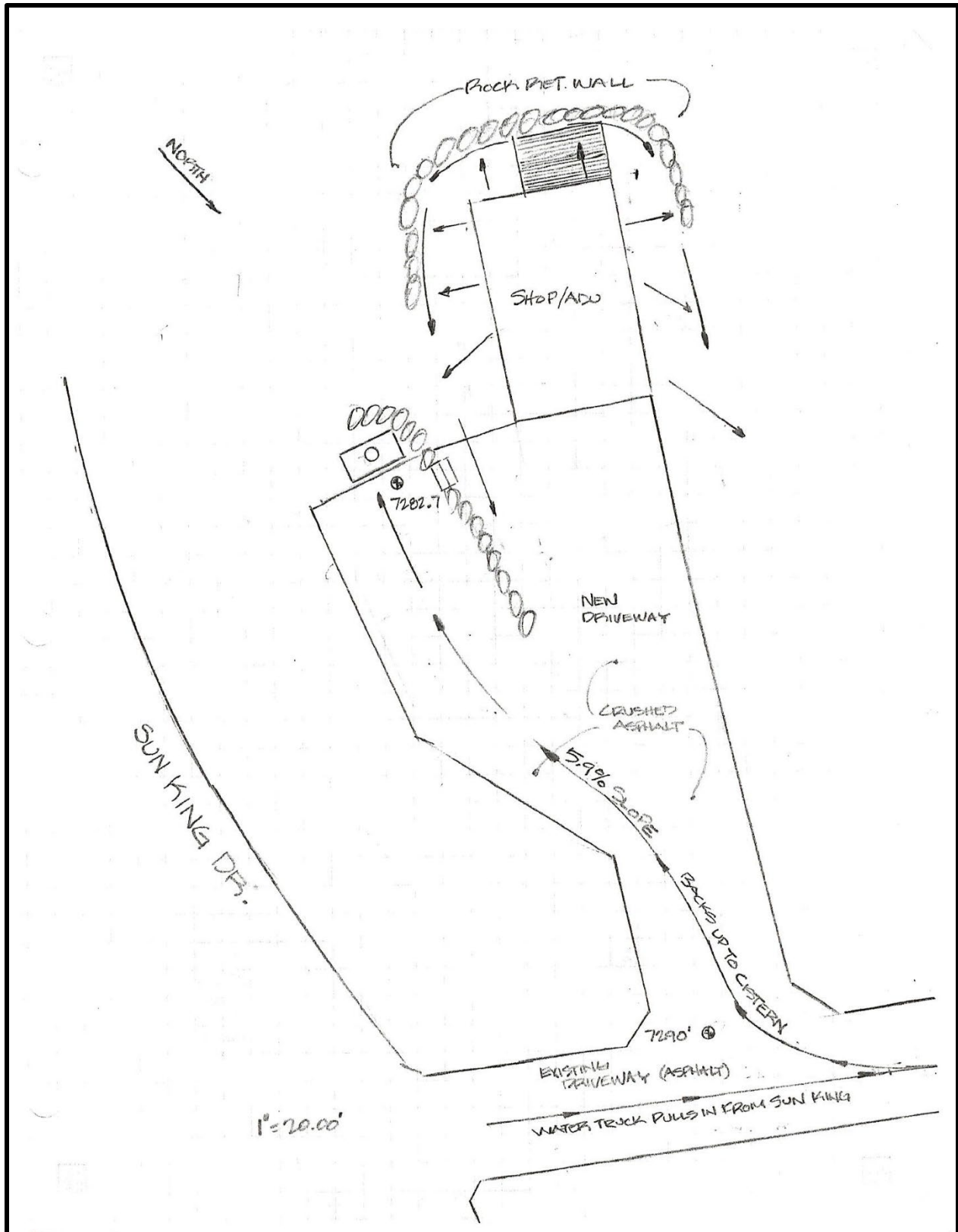


Figure 4 Detail of Propose ADU and Cistern Site Plan

II. DESCRIPTION OF PROPOSAL

The proposal is to request a waiver from Section 7-104 Source of Water to allow water hauling for the domestic water supply for a proposed ADU. The proposed ADU would be located just northeast of the current single-family residence. The gravel driveway would branch off of the main driveway up a 5.9% slope to the ADU and cistern. The 2500-gallon cistern would be located just east of the proposed ADU and have its own split from the gravel driveway. The cistern would be buried and screened by some existing scrub oak trees. About every 3 weeks, the water hauling truck would deliver water to the property.

III. COMPREHENSIVE PLAN

The property is in an area designated Residential Medium High on the Future Land Use Map (FLUM). The comprehensive plan, Section 7, Water and Sewer Service, Policy 2, Strategy V. indicates as follows:

“While water hauling is generally not a long-term reliable solution the County should coordinate with local municipalities and districts that are selling water for hauling and identify solution that could help ensure water availability”.

IV. AUTHORITY – APPLICABLE REGULATIONS

The Land Use Table contained in *Section 4-118* of the Land Use and Development Code, designates a **Waiver from Standards** is subject to a Director’s Decision. The Community Development Director has referred the application to the Board of County Commissioners for your review and decision.

Other code sections in the review of this application include:

Applicable provisions of Article 7 Standards

Section 7-104 Sourced Water

Section 7-105 Central Water Distribution and Wastewater Systems

Section 7-701 (A) Accessory Dwelling Unit Standards

The standards are addressed in the Application submittals and in the Staff Analysis section of the Staff Report.

V. REFERRAL AND PUBLIC COMMENTS

Referral comments

1. *Glenwood Springs Fire District, Robin Pitt*: Keep address sign clear of obstruction during and after the construction.
2. *Garfield County Sheriff’s Office, Levy Burris*: No issues or concerns.
3. *Colorado Department of Public Health and Environment, Air Quality, Brendan Cicione*: Provided standard fugitive dust control techniques for roadways, paved surfaces and disturbed areas.
4. *Consulting Engineer, Chris Hale*: Concerned that historically hauling water isn’t a legal or physical supply of water. Notes that the County’s LUDC allows water hauling for temporary housing, could be a condition of approval, and County’s legal staff should investigate its feasibility.

5. *Garfield County Public Health, Ted White:* References Weld County Cistern Code and provides several recommendations on location of cistern, OWTS location and feasibility, and maintaining cisterns. Also recommends a condition of approval for hauling water for ADU to not drive over existing and proposed OWTS.
6. *Oak Meadows Water Association:* A referral was sent to the Association and while no formal comments were received, the Applicant has recently provided a Letter Agreement proposed by the Association and agreed to by the Applicant addressing operational considerations for the cistern use. A copy of the document is included as an Exhibit.

Public Comments

No public comments were received.

VI. STAFF ANALYSIS AND CRITERIA

Code Analysis

Section 7-104 Waiver Request

Section 7-104 requires an adequate, reliable, physical, long term, legal water supply for Land Use Changes. An ADU proposal would constitute a Land Use Change pursuant to the Land Use and Development Code. This provision of the code has generally required connection to a central water system or connection to an individual or shared well with a well permit approved by the Division of Water Resources with adequate well production and water quality compliant with the State Primary Water Quality Standards. Outlined below is the review criteria for a waiver and Staff Analysis.

Section 4-118 Waiver of Standards

C. Review Criteria

A waiver may be approved if the Applicant demonstrates that the following criteria have been met by the propose alternative:

1. It achieves the intent of the subject standard to the same or better degree than the subject standard:

- The intent of the Water Supply requirement is to ensure that uses have a reliable and safe domestic/drinking water supply. It is consistent with the purposes of zoning to protect the health and welfare of citizens.
- The Comprehensive Plan Section 7, Water and Sewer Service, Background and Key Issues notes that water hauling may not be a long term reliable solution for water quantity and/or quality issues.
- The County currently allows the use of cisterns in special cases such as where wells have gone dry or water quality is no longer safe.
- In addition, undeveloped pre-existing legally created lots have been granted building permits served by cisterns and water hauling. In some cases this is the only realistic option for the property owner to develop their property.
- This Code Section also requires properties to connect to central water systems if they are within 400 ft. and connection is feasible. The Applicant

has demonstrated that such a connection is not feasible based on the lack of an available tap from the system.

- Subject to compliance with operational conditions the use of cisterns may be able to meet the intent of providing a safe and adequate water source for a residential dwelling unit such as an ADU.

2. It imposes no greater impacts on adjacent properties that would occur through compliance with the specific requirements of this Code:

- The proposed cistern will not impose greater impacts on adjacent properties since it is not allowed to have another tap from Oak Meadows Water Association.
- Proposed cistern would be underground and screened by existing scrub oak.

Section 7 Standards

Section 7-101 Zone District Use Regulations: The property is zoned rural. The proposal is in compliance with other zone district provisions including but not limited to setbacks, building height, and lot coverage.

Section 7-103 Compatibility: The parcel is surrounded by other single-family residences with similar lot sizes, residences, and accessory structures.

Section 7-104 Source of Water (also see section on Waivers above):

- Section 7-104(B) sets forth that it is the BOCC sole discretion to determine if the applicant has an adequate supply of water.
- Oak Meadows Water Association provides one tap for the property with no allowances for another tap when it was 1st platted in 1971.
- A Garfield and Hecht letter from 2020 is included in the application to explain that the augmentation plan in 1992 didn't contemplate the addition of ADUs and only allowed 29 units in Filling No. 2, therefore there is no additional legal water supply for any proposed ADUs.
- The current water line runs from the street to the residence on the north side of the driveway.

Section 7-105 Adequate Central Water Distribution and Wastewater Systems:

- Applied for a residential water well permit in May of 2024 and was denied.
- 2 licensed water suppliers are listed in the application and are willing to provide water to the property.
- OWTS provides wastewater for the single-family residence. A separate proposed OWTS system will provide a wastewater system for the ADU. The septic tank will be located next to the ADU while the leach field will be on the other side of the driveway near the road and residence's leach field.

Section 7-106 Public Utilities: Existing utilities service the single-family residence. Another buried line from the existing line at the corner property will serve the proposed ADU.

Section 7-107 Access and Roadways: Access to property is by County Road 117 to Sun King Drive.

Section 7-302 Off Street Parking: Proposed ADU parking spaces will be provided in the driveway.

Section 7-701 Accessory Dwelling Unit and Secondary Dwelling Unit: The proposed ADU is 999 sq ft. ADU will be for a family member and sole employee of a business. Will not be used as a short-term rental. A building application as a shop/garage with 2nd floor storage area has been filed, but the 2nd floor will be converted into an apartment if waiver is approved.

VII. ADDITIONAL STAFF ANALYSIS

Further Analysis and Discussion

Staff did a site visit to the property. The proposed ADU will be located just east of the main residence.



Fig. 5 Location of cistern.



Fig. 6 Location of proposed ADU.

2500-gallon cistern is proposed to be buried in the removed scrub oak. Screening of the cistern will be provided by additional scrub oak not removed on the property near the road.

Cistern policies and codes can be found in a few counties. The most thorough cistern regulation is in Weld County in their Charter and Code under Article III. The code goes into detail on how it is to be constructed and that a Cistern Usage Permit must be obtained. Weld County's Department of Public Health and Environment reviews and approves applications while working with the Building Department during installation of a cistern. There is also a code on terminating a permitted cistern where an alternative supply of water is found on the property such as a well and public water system. Other jurisdictions have broader policies on the use of cisterns. Douglas County has less extensive code to regulate cisterns, but they accept tanks and cisterns as an acceptable supply of water when wells are producing low and cannot be connected to a water district. That county allows for more flexible design of tanks so that it can easily be maintained while still supplying water to property. Fremont County allows cisterns with specific criteria which applicants will have to prove.



Fig. 7 Proposed OWTS leach fields on the north side of the driveway

The current location of the single-family residence septic tank is north of the residence with a leach field located in the grass north of the driveway. A proposed OWTS system will locate the septic tank just west of the ADU. The OWTS pipe will travel across the grass and under the driveway to the leach field on the north side of the driveway on the current berm. The water line provided from OMWA starts from Sun King Drive and it travels along the driveway to the residence.

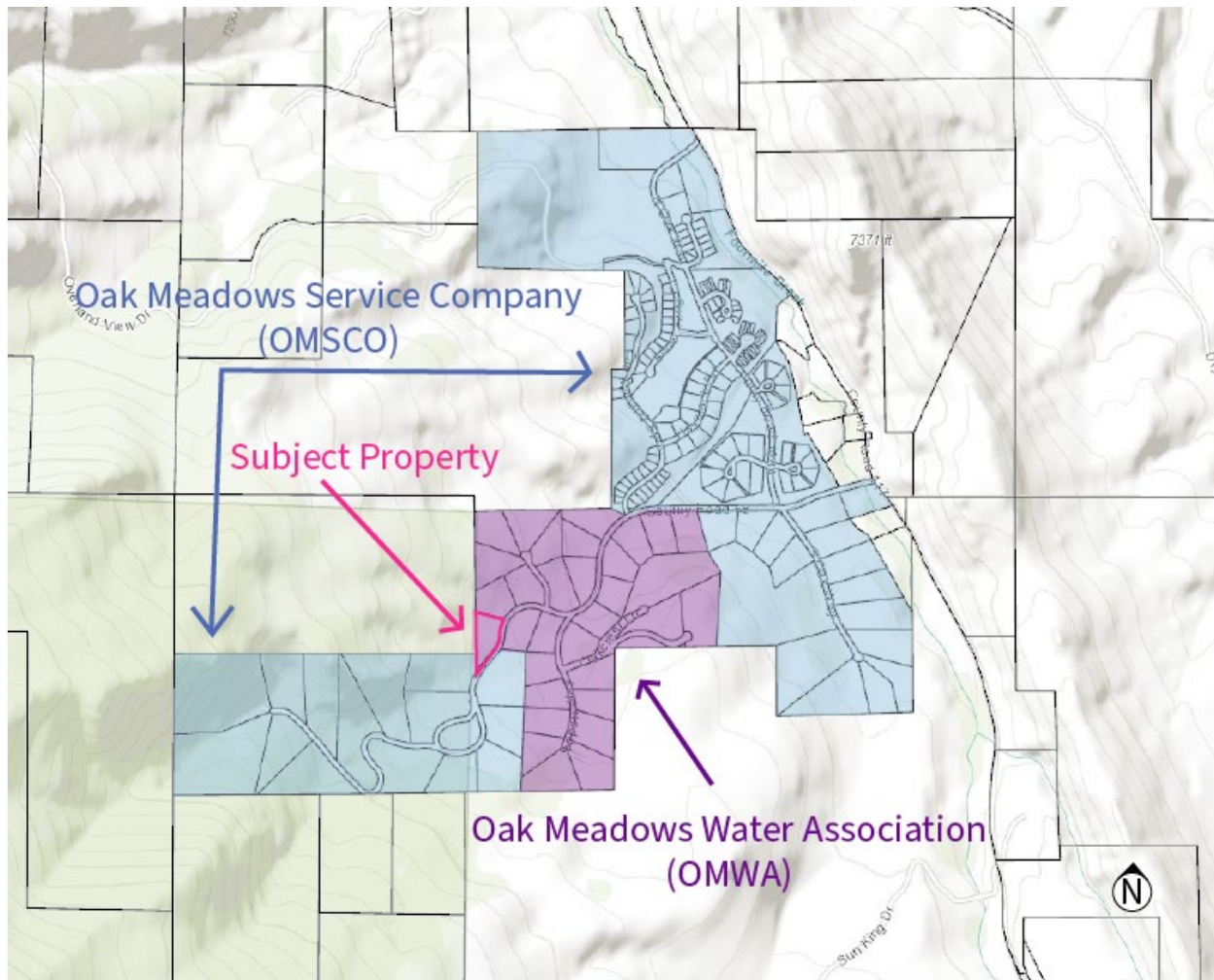


Figure 8 Oak Meadow Water Service Areas

The property is located in Oak Meadows Subdivision Filing 2. It is zoned rural and not in the Oak Meadows HOA. Filing 2 is served by Oak Meadows Water Association, while the other fillings are except for 3 units in Filing 3 are served by Oak Meadows Service Company.

Other Issues to Consider

1. The Applicant's proposal and application is very specific to their property and situation and is reviewed based on those attributes/details and consistency with applicable code sections and waiver criteria. There has been some speculation that approval of a waiver in this case will open up the County for many more requests for cisterns and hauling water. Any such proposals would be required to apply for and go through a waiver process as with the current applicants.
2. A waiver approval will allow for the creation of a more affordable small dwelling unit which is consistent with Comprehensive Plan policies encouraging a diverse range of housing types and affordable units to address current housing needs in the County.
3. Water Supply standards for subdivision and PUD Applications have consistently been applied requiring connection to central water systems or wells approved by

the Division of Water Resources. This includes well construction, pump testing and water quality testing consistent with the Land Use and Development Code. The granting of a waiver would not change the implementation of Water Supply Plan standards for subdivisions and PUD proposals.

4. Referral of the Application to the Board is based on the code provisions that set forth that the determination of adequacy of water is in the sole discretion of the BOCC.
5. As noted previously in the Staff memo, the current implementation of Water Supply Code provisions for ADU's require well permits or connection to central system and have not supported the use of Cisterns. Staff are prepared to update said policies and implementation in accordance with BOCC direction.

VIII. RECOMMENDED FINDINGS AND CONDITIONS

Originally, the public hearing was to be on June 9th, but due to not having a full board, the hearing was opened and continued to July 7th.

The Board has sole discretion to decide if the use of a cistern for the McPhee property is an adequate source of water. Staff supports maintaining current implementation of water supply requirements for ADU's and therefore denial of the waiver request. However, based on the complexity of the issue we are providing findings for the BOCC consideration for both approval and denial. Conditions of approval for a BOCC approval are also provided.

Suggested Findings For Denial

1. That proper public notice was provided as required for the hearing before the Board of County Commissioners.
2. That the hearing before the Board of County Commissioners was extensive and complete, that all pertinent facts, matters and issues were submitted or could be submitted and that all interested parties were heard at that meeting.
3. That for the above stated and other reasons, the request for a Waiver of Standards for Water Hauling is not in the best interest of the health, safety, convenience, order, prosperity, and welfare of the citizens of Garfield County.
4. That the application is not in general conformance with Garfield County's Comprehensive Plan 2030, as amended.
5. The application has not adequately met the requirements of the Garfield County Land Use and Development Code of 2013, as amended including but not limited to Section 4-118 Waiver of Standards, Review Criteria and Section 7-104 Water Supply that provides the determination of adequacy of Water Supply is in the sole discretion of the Board of County Commissioners.

Suggested Findings For Approval

1. That proper public notice was provided as required for the hearing before the Board of County Commissioners.

2. That the hearing before the Board of County Commissioners was extensive and complete, that all pertinent facts, matters and issues were submitted or could be submitted and that all interested parties were heard at that meeting.
3. That for the above stated and other reasons, the request for a Waiver of Standards for Water Hauling is in the best interest of the health, safety, convenience, order, prosperity, and welfare of the citizens of Garfield County.
4. That the application is in general conformance with Garfield County's Comprehensive Plan 2030, as amended.
5. Subject to compliance with all Conditions of Approval, the application has adequately met the requirements of the Garfield County Land Use and Development Code of 2013, as amended including but not limited to Section 4-118 Waiver of Standards, Review Criteria and Section 7-104 Water Supply that provides the determination of adequacy of Water Supply is in the sole discretion of the Board of County Commissioners.

Suggested Conditions of Approval

1. All representations of the Applicant in the Application Submittals and during the Public Hearing shall be considered conditions of approval.
2. Compliance with all Federal, State, and Local regulations for the proposed Waiver of Standards for Water Hauling.
3. Prior to issuance of a building permit for the ADU a deed restriction shall be recorded on the property with the following stipulations:
 - a. Prohibiting the ADU's use as a short-term rental.
 - b. Providing notice to any future buyer of said property that the ADU is limited to a cistern and water hauling for domestic water.
4. Prior to issuance of a building permit for the ADU the Applicant shall provide a signed contract with a water hauling provider, which provider shall have the proper State credentials and demonstrate compliance with all CDPHE requirements for provision of a safe domestic water supply.
5. The Applicant shall not be permitted to fill the cistern from the Oak Meadows central water system. To help ensure compliance with this condition and provide on-site management, one of the units on the property shall be required to be owner occupied.
6. Prior to the issuance of a building permit for the ADU the Applicant shall provide operational plans for use of the cistern consistent with the referral comments from the County Environmental Health Department including but not limited to the following:
 - a. A plan for maintaining and cleaning the cistern.
 - b. A plan for proper disinfecting water upon delivery.
 - c. A plan for periodic testing of the cistern water.
 - d. Provisions for maintaining documentation of water deliveries to site which shall be provided to the County upon request.
 - e. Construction plans/details for installation of the cistern.

7. The OWTS serving the ADU shall be properly engineered, obtain all required permits from the County Environmental Health Department, and comply with required standards including but not limited to setbacks and protection from vehicle traffic including water delivery trucks.

Optional Condition #8 subject to additional Staff review of the Oak Meadows Water Association agreement.

8. The Applicant shall comply with all provisions of the Oak Meadows Water Association Agreement regarding the use of the Cistern.

From: [Robin Pitt](#)
To: [Heather MacDonald](#)
Subject: RE: McPhee Waiver Request for Water Hauling
Date: Tuesday, May 6, 2025 10:44:10 AM

Hi Heather,

This application looks ok. The new driveway for the shop/adu looks big enough for the water truck to maneuver.

One thing that I noted was that the address sign for 839 Sun King is tucked into the trees on the left side on the driveway. Can you please ask the applicant to ensure the sign remains visible from the street during and after construction.

Thanks,

Robin Pitt

Fire Marshal
Glenwood Springs Fire Department
970-384-6433 (office) | 970-379-9814 (cell)

[*Accessibility Policy / Póliza de accesibilidad*](#)

From: Heather MacDonald <hmacdonald@garfieldcountyco.gov>
Sent: Monday, May 5, 2025 2:18 PM
To: Kelly Cave <kcave@garfieldcountyco.gov>; Chris Bornholdt <cbornholdt@garcosheriff.com>; Ted White <twhite@garfieldcountyco.gov>; Jannette Whitcomb <jwhitcomb@garfieldcountyco.gov>; Levy Burris <lburris@garcosheriff.com>; Sullivan - DNR, Megan <megan.sullivan@state.co.us>; Thyne - DNR, Ailis <Ailis.Thyne@state.co.us>; Localreferral - CDPHE, CDPHE <cdphe_localreferral@state.co.us>; Chris@mountaincross-eng.com; Robin Pitt <robin.pitt@cogs.us>; Steve Sandoval <steve.sandoval@cogs.us>; cbrown@oakmeadows.us; oakmeadowshoa@gmail.com; Samantha.engen@intergratedmtn.com
Subject: McPhee Waiver Request for Water Hauling

Referral Agencies:

Attached is a referral request for an administrative review located at 839 Sun King Drive, Glenwood Springs. Applicant request for a waiver of standards to water hauling and determination of adequate water supply by the Board of County Commissioners to utilize water hauling and cistern for a proposed ADU.

The request includes a link to review the complete application, and the link is also included below:

<https://records.garfieldcountyco.gov/WebLink/browse.aspx?id=4069567&dbid=0&repo=GarfieldCounty&cr=1>

We request that your comments be submitted by May 26th, or sooner, if possible, to facilitate the review/hearing schedules.

Comments can be submitted directly to my email at hmacdonald@garfieldcountyco.gov

Please let us know if you have any questions or if you have any difficulty in accessing the file. Thanks in advance for your assistance as your comments are an important component of our review process.

Heather MacDonald

Planner I

Garfield County Community Development

108 8th Street, Suite 401 Glenwood Springs, CO 81601

o: 970.945.1377 x1605

hmacdonald@garfieldcountyco.gov www.garfieldcountyco.gov

Staff email addresses are shifting to end in @garfieldcountyco.gov. However, personal names/prefixes on email addresses will remain the same. Please update our contact information domain.

From: [Levy Burris](#)
To: [Heather MacDonald](#)
Subject: RE: McPhee Waiver Request for Water Hauling
Date: Tuesday, May 13, 2025 8:09:44 AM

The Garfield County Sheriff's Office has no issues or concerns regarding the McPhee waiver request. If you have any questions or concerns, please feel free to contact me directly.

Levy Burris

From: Heather MacDonald <hmacdonald@garfieldcountyco.gov>
Sent: Monday, May 5, 2025 2:18 PM
To: Kelly Cave <kcave@garfieldcountyco.gov>; Chris Bornholdt <cbornholdt@garcosheriff.com>; Ted White <twhite@garfieldcountyco.gov>; Jannette Whitcomb <jwhitcomb@garfieldcountyco.gov>; Levy Burris <lburris@garcosheriff.com>; Sullivan - DNR, Megan <megan.sullivan@state.co.us>; Thyne - DNR, Ailis <Ailis.Thyne@state.co.us>; Localreferral - CDPHE, CDPHE <cdphe_localreferral@state.co.us>; Chris@mountaincross-eng.com; Robin Pitt <robin.pitt@cogs.us>; steve.sandoval@cogs.us; cbrown@oakmeadows.us; oakmeadowshoa@gmail.com; Samantha.engen@intergratedmtn.com
Subject: McPhee Waiver Request for Water Hauling

Referral Agencies:

Attached is a referral request for an administrative review located at 839 Sun King Drive, Glenwood Springs. Applicant request for a waiver of standards to water hauling and determination of adequate water supply by the Board of County Commissioners to utilize water hauling and cistern for a proposed ADU.

The request includes a link to review the complete application, and the link is also included below:

<https://records.garfieldcountyco.gov/WebLink/browse.aspx?id=4069567&dbid=0&repo=GarfieldCounty&cr=1>

We request that your comments be submitted by May 26th, or sooner, if possible, to facilitate the review/hearing schedules.

Comments can be submitted directly to my email at hmacdonald@garfieldcountyco.gov

Please let us know if you have any questions or if you have any difficulty in accessing the file. Thanks in advance for your assistance as your comments are an important component of our review process.

Heather MacDonald**Planner I**

Garfield County Community Development

108 8th Street, Suite 401 Glenwood Springs, CO 81601

o: 970.945.1377 x1605

hmacdonald@garfieldcountyco.gov www.garfieldcountyco.gov

Staff email addresses are shifting to end in @garfieldcountyco.gov. However, personal names/prefixes on email addresses will remain the same. Please update our contact information domain.



Dedicated to protecting and improving the health and environment of the people of Colorado

Heather MacDonald
Planner I
Garfield County Community Development
108 8th Street, Suite 401 Glenwood Springs, CO 81601

VIA EMAIL
RE: McPhee Waiver Request for Water Hauling

Dear Heather MacDonald,

The Colorado Department of Public Health and Environment’s Air Pollution Control Division (APCD or Division) received a request for an air quality administrative review concerning the proposed McPhee Waiver Request for Water Hauling ADU project as described in your correspondence dated May 5, 2025. The Division has reviewed the project letter and respectfully offers the following comments. Please note that the following Air Quality Control Commission (AQCC) regulations may not be inclusive of the regulations the proposed project will be subject to. It is the responsibility of the involved parties to determine what regulations they are subject to and follow them accordingly.

Land Development

We also note that projects similar to this proposal often involve land development. Under Colorado air quality regulations, land development refers to all land clearing activities, including but not limited to land preparation such as excavating or grading, for residential, commercial or industrial development. Land development activities release fugitive dust, a pollutant regulation by the Division. Small land development activities are not subject to the same reporting and permitting requirements as large land activities. Specifically, land development activities that are less than 25 contiguous acres and less than 6 months in duration do not need to report air emissions to the Division. It is important to note that even if a permit is not required, fugitive dust control measures including the Land Development APEN Form APCD-223 must be followed at the site. Fugitive dust control techniques commonly included in the plan are included in the table below.

Control Options for Unpaved Roadways	
Watering	Use of chemical stabilizer
Paving	Controlling vehicle speed
Graveling	
Control Options for Mud and Dirt Carry-Out Onto Paved Surfaces	
Gravel entry ways	Washing vehicle wheels
Covering the load	Not overfilling trucks
Control Options for Disturbed Areas	
Watering	Application of a chemical stabilizer
Revegetation	Controlling vehicle speed
Compaction	Furrowing the soil
Wind Breaks	Minimizing the areas of disturbance



Synthetic or Natural Cover for Slopes

Please refer to the website <https://cdphe.colorado.gov/apens-and-air-permits> for information on land use APENs and permit forms. Click on “Land Development” to access the land development specific APEN form. Please contact KC Houlden, Construction Permits Unit Supervisor, at 303-692-4092, kenneth.houlden@state.co.us if you have any specific questions about APENs and permit forms.

If you have any other questions or need additional information, please use the contact info listed above, or e-mail or call me directly. Thank you for contacting the Air Pollution Control Division about your project.

Sincerely,
Brendan Cicione
Air Quality and Transportation Planner
General SIP Unit
Air Pollution Control Division
Colorado Department of Public Health and Environment





**MOUNTAIN CROSS
ENGINEERING, INC.**

Civil and Environmental Consulting and Design

May 27, 2025

Ms. Heather MacDonald
Garfield County Community
Development Department
108 8th Street, Suite 401
Glenwood Springs, CO 81601

RE: Review of the McPhee Waiver Request: GAPA-02-25-9055

Dear Heather:

This office has performed a review of the documents provided for the McPhee Waiver Request application. The submittal was found to be thorough and well organized.

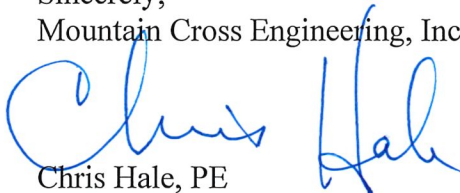
The application materials provided is specific to a waiver request for a cistern and to haul water for an ADU. There are other potential issues that this office can foresee with access, onsite waste-water treatment, grading, and drainage. However, since they are not technically included in the application, no comments were made specific to these items.

The review of the application generated the following comments:

- Hauling of water has been historically not been considered a legal or physical supply of water. The reasons are varied but one of the most often listed reasons is that in times of drought, water sources are very often turned off. Another is the expectations of future owners and/or occupants to have a legal and physical water supply per Garfield County standards identified in the LUDC.
- The LUDC does allow water hauling for temporary housing. It might be possible to allow the water hauling under the condition that it is temporary; the length of time and the testing requirements could perhaps be determined in the conditions of approval. This might allow the Applicant the proposed use but prevent issues with setting a precedence and/or future owners. County legal staff should be consulted for feasibility.

Feel free to call if you have any questions or comments.

Sincerely,
Mountain Cross Engineering, Inc.


Chris Hale, PE



195 West 14th Street
Rifle, CO 81650
(970) 625-5200

2014 Blake Avenue
Glenwood Springs, CO 81601
(970) 945-6614

Garfield County Community Development
108 8th Street, Suite 401
Glenwood Springs, CO 81601
Attention: Heather MacDonald
hmacdonald@garfieldcountyco.gov

RE: McPhee Waiver Request
Parcel No. 2395-222-00-004
839 Sun King Drive
Glenwood Springs, Colorado 81601
File # GAPA-02-25-9055

May 27, 2025

Heather,

Garfield County Public Health (GCPH) has reviewed the application for the McPhee Waiver Request to haul water (GAPA-02-25-9055) and has the following comments. Garfield County has previously approved the use of cisterns and hauling water as the source of drinking water for other residential developments. The applicant received approval from the Garfield County Community Development Director for an Accessory Dwelling Unit (ADU) on July 7, 2020, pending the demonstration of an adequate water supply. Relevant codes that were reviewed as part of our application review include the Garfield County Land Use Development Code (LUDC) 4-203.M and 7-104. The applicant was denied a new service tap to the Oak Meadows Water Association (OMWA) because ADUs were not accounted for in the water allocated per lot by the OMWA. The applicant also applied for a residential water well permit from the Colorado Division of Water Resources and were also denied (reason not provided). The applicant proposes to provide potable water to the ADU supplied by a licensed water hauling supplier via storage in a 2,500-gallon underground cistern. The applicant also proposes to construct a second Onsite Wastewater Treatment System (OWTS) on the property to provide wastewater treatment for the ADU.

Items for consideration:

1. The applicant has demonstrated that no other potable water source is available for the previously approved ADU.
2. Garfield County does not currently regulate the installation of cisterns. However, Weld County regulates the installation of cisterns via a Cistern Use Permit (CUP), which outlines minimum standards the cistern shall be constructed under and the water in the

cistern shall be maintained. GCPH recommends the following conditions of approval for the construction of the proposed cistern and maintenance of the water stored in the cistern, adapted from the Weld County Cistern Code:

- a. The cistern shall be located and constructed to prevent freezing and in such a manner that neither underground nor surface contamination occurs from any septic tank, soil treatment area, corral, flooding or other possible sources of pollution. The horizontal distance from any such source of pollution should be as great as possible, but in no case shall it be less than distances defined in the Garfield County OWTS Regulation or fifty (50) feet, whichever is greater. The cistern must be a fixed non-mobile facility.
 - b. The cistern shall be of watertight construction, such as concrete, fiberglass or plastic, with smooth interior surfaces.
 - c. For below-ground cisterns:
 - i. Platform and manhole: The platform shall be constructed to slope away from the four-inch sleeve. The manhole cover shall be of tight-fitting overlapping construction. The cover shall be kept locked and opened only for cleaning or filling purposes.
 - ii. Watertight connection at top of casing: The four-inch sleeve shall be cast in a concrete platform and should extend at least six (6) inches above the platform. A watertight connection shall be made by means of a flange.
 - iii. Flange and seals are of one (1) piece and are available through pump manufacturers or well drillers. If the space between the concrete platform and sleeve is not tight, it must be properly sealed to prevent entrance of contamination.
 - iv. Pump: The type of hand pump (if present) used shall have the following features: a closed spout directed downward, and the top of the pump made watertight by means of a seal through which the pump rod operates. The cylinder shall be located within six (6) inches of the bottom of the cistern. The pump shall require no priming.
 - v. Drain line: A drain line shall be used only if the cistern can be drained to the ground surface. If the cistern cannot be drained to ground surface, it will have to be emptied by pumping and hand bailing. The floor of the cistern shall slope to the drain or to one (1) side if there is no drain.
3. Cisterns, like private water wells, are considered a private drinking water source and are therefore not regulated by the state or Local Public Health Agency (LPHA) unless the LPHA adopts regulations governing cisterns. Citizens are responsible for the health and cleanliness of the water in the cistern.
- a. GCPH recommends regular chlorination of the water stored in the cistern. The cistern should be filled with water from a safe supply provided by a licensed water hauler. Drainage collected from runoff is not considered a safe supply. Chlorination should be carried on whenever water is added to the cistern and during the actual filling process to provide mixing. Chlorination may be done by

adding one-half (½) to one (1) pint of any liquid laundry bleach containing five-percent available chlorine to each one thousand (1,000) gallons of water in the cistern. The one-half (½) to one (1) pint of liquid laundry bleach should be mixed with approximately five (5) gallons of water before adding to the cistern.

4. The location of the cistern will determine the potential feasibility and location of the additional OWTS components, such as the septic tank and soil treatment area (aka leach field). Below are some considerations regarding the new OWTS proposed:
 - a. The Garfield County OWTS Regulations provide minimum setback distances to protect public health and the environment in Table 7-1 of the Regulation from a water supply cistern to various components of an OWTS. If setback distances for the drinking water cistern and all other protected features such as waterlines and property lines cannot be met in the design of the new OWTS, then protection of drinking water and other features may be impacted. A variance process, as outlined in the OWTS regulations, provides criteria for the Board of Health to consider a variance to the required setbacks. The variance process includes a requirement that the applicant provide proof of hardship as justification for the reduction in minimum setback distances, as well as proof that the reduction in setback distances would pose no greater risk to public health or the environment.
 - b. Careful planning and coordination of the location of the cistern and OWTS will need to be undertaken during design, installation, and maintenance of these components.
 - i. Two of the applicable setback requirements are:
 1. Minimum distance from a water supply cistern to a septic tank: 50 feet.
 2. Minimum distance from a water supply cistern to a soil treatment area: 100 feet.
 - c. The number of bedrooms for the ADU were not indicated in the application. The minimum design flow rate required for a new home shall be for a two-bedroom house per Garfield County OWTS Regulation 43.6.A.2.c. The size of the soil treatment area is based on both the number of bedrooms as well as the conditions of the soil and its ability to treat the wastewater.
5. GCPH recommends a condition of approval for the ADU to be able to locate the cistern, the ability to haul water without driving over the existing OWTS and proposed new OWTS, and the new OWTS components meet all setback distance requirements in the Garfield County OWTS Regulations at time of building permit without the need for a variance request.
6. To determine if the land use will be served by a wastewater system that is adequate to serve the proposed use and density (as required in Garfield County LUDC 7-105.B), GCPH recommends a condition of approval that the applicant provides a recent inspection report on the condition of all components of the existing OWTS by a qualified OWTS professional. If the report indicates failure of any of the components, then as part of this condition, the existing OWTS shall be brought into good working order through

the appropriate Garfield County OWTS application and installation of improvements needed to bring the OWTS into good working order.

Thank you,

A handwritten signature in blue ink, reading "Edward R. White, P.E.", with a stylized flourish at the end.

Edward R. "Ted" White, P.E.
Environmental Health Specialist III
Garfield County Public Health
2014 Blake Avenue
Glenwood Springs, CO 81601
(970) 665-6383
twhite@garfieldcountyco.gov

COVENANT AND AGREEMENT REGARDING WATER SUPPLY FOR ADU

This COVENANT AND AGREEMENT REGARDING WATER SUPPLY FOR ADU ("Agreement") is made the 1st day of June, 2025 by and between MICHAEL MCPHEE and MARY MCPHEE, whose address is 839 Sun King Drive, Glenwood Springs, CO 81601 (the "McPhees"), and the OAK MEADOWS WATER ASSOCIATION, INC., a Colorado nonprofit corporation whose address is 1512 Grand Avenue, Suite 109, Glenwood Springs, CO 81601 ("OMWA"). The McPhees and OMWA are collectively referred to herein as the "Parties."

RECITALS:

WHEREAS, the McPhees own certain real property located in the County of Garfield, State of Colorado, legally described in Exhibit A, attached hereto and incorporated herein, (the "Property") with an address of 839 Sun King Drive, Glenwood Springs, CO 81601; and

WHEREAS, the McPhees want to construct an accessory dwelling unit ("ADU") on the Property and have applied to Garfield County for a waiver of standards to allow hauled water as the domestic water source to serve the ADU; and

WHEREAS, OMWA owns and operates water rights and supplies and provides domestic water service to the Property and other nearby properties within its service area (the "OMWA Water System"); and

WHEREAS, the current legal water supplies for the OMWA Water System do not permit water service to or use by accessory dwelling units; and

WHEREAS, the McPhees and OMWA desire to enter into this Agreement regarding the water supply for the ADU.

NOW THEREFORE, for and in consideration of ten dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into and made a part of this Agreement.
2. Water Supply for ADU. The Parties acknowledge and agree that the OMWA Water System is not legally capable of supplying water for the ADU and that any use of the OMWA Water System to serve the ADU is strictly prohibited. The McPhees further covenant and agree that no water rights or water supplies owned or controlled by OMWA shall be used as a source of water for the ADU. Subject to the approval of Garfield County, the McPhees covenant and agree that hauled water shall be the only source of domestic water for the ADU.
3. Records of Hauled Water Supply. To document their compliance with this Agreement, the McPhees shall submit records (purchase orders, invoices, etc.) of all hauled water supplied to the ADU to OMWA within ten days of receipt thereof.

4. Indemnification. The McPhees hereby covenant and agree to indemnify, defend, and hold harmless OMWA from and against any and all claims, demands, causes of action, liabilities, damages, costs, or expenses (including without limitation reasonable legal fees and costs) relating to, alleging, or arising out of: (i) any use or alleged use of the OMWA Water System to serve the ADU; or (ii) the unavailability of hauled water to serve the ADU.

5. Miscellaneous.

a. Entire Agreement; Modification. This Agreement constitutes the entire and complete agreement of the Parties on the subject matter hereof. No promise or undertaking has been made by any party, and no understanding exists with respect to the transaction herein contemplated, except as expressly set forth herein. This Agreement shall not be amended or modified except by subsequent written and signed instrument of the Parties.

b. Covenant Running with the Land; Recording. This Agreement and the terms and conditions hereof are a covenant running with the land, burdening and benefitting the Property and owners thereof. This Agreement shall be recorded with the Clerk and Recorder for the County of Garfield, State of Colorado.

c. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Garfield County, Colorado.


d. Attorney Fees and Costs. Should either party commence legal action to enforce any provision(s) of this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs actually incurred in such action.

e. Binding. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors or assigns.

f. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute one and the same document.

[Remainder of page intentionally left blank.]

WHEREFORE, the Parties have executed this Agreement to be effective as of the day and year first set forth above.


Michael McPhee


Mary McPhee

STATE OF COLORADO)
)ss
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 04 day of June, 2025 by Michael McPhee and Mary McPhee.

Witness my hand and official seal.

My commission expires: 08/23/2026




Notary Public

[Signature and acknowledgment by OMWA on following page.]

Oak Meadows Water Association, Inc.,
a Colorado nonprofit corporation

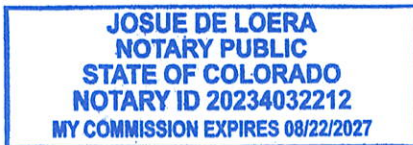
By: Mark Noel
Mark Noel, President

STATE OF COLORADO)
)ss
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 4th day of June, 2025 by Mark Noel as President of Oak Meadows Water Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 8/22/2027



[Signature]
Notary Public

EXHIBIT A

A TRACT OF LAND IN THE WEST 1/2 NORTHWEST 1/4 SECTION 22, TOWNSHIP 7 SOUTH, RANGE 89 WEST OF THE 6TH PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 WHENCE THE NORTHWEST CORNER OF SECTION 22, TOWNSHIP 7 SOUTH, RANGE 89 WEST OF THE 6TH PRINCIPAL MERIDIAN BEARS AZIMUTH 01 DEGREES 01 MINUTES 23 SECONDS, A DISTANCE OF 1348.20 FEET;
THENCE AZIMUTH 1 DEGREES 01 MINUTES 23 SECONDS, A DISTANCE OF 408.20 FEET;
THENCE AZIMUTH 103 DEGREES 21 MINUTES 16 SECONDS, A DISTANCE OF 260.94 FEET;
THENCE 188.70 FEET ALONG AN ARC OF A CURVE TO THE LEFT WITH A CENTRAL ANGLE OF 34 DEGREES, RADIUS OF 317.99 FEET; THE CHORD BEARS AZIMUTH 197 DEGREES 15 MINUTES 18 SECONDS, A DISTANCE OF 185.94 FEET;
THENCE 117.93 FEET ALONG AN ARC OF A CURVE TO THE RIGHT WITH A CENTRAL ANGLE OF 38 DEGREES, RADIUS OF 177.82 FEET, THE CHORD BEARS 199 DEGREES 15 MINUTES 22 SECONDS, A DISTANCE OF 115.78 FEET;
THENCE AZIMUTH 218 DEGREES 15 MINUTES 19 SECONDS, A DISTANCE OF 275.54 FEET;
THENCE AZIMUTH 1 DEGREES 01 MINUTES 23 SECONDS, A DISTANCE OF 155.41 FEET TO THE POINT OF BEGINNING.
COUNTY OF GARFIELD
STATE OF COLORADO