City of Loveland

DEVELOPMENT SERVICES
Current Planning
500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

ITEM NO:	**Consent Agenda - 1**
PLANNING COMMISSION MEETING:	**December 12, 2011**
TITLE:	**Willow Park Fourth Subdivision—Mineral Interest Notification**
LOCATION:	**Generally located west of N. Monroe Ave. and east of N. Lincoln Ave. on the south side of E. 27th St.**
APPLICANT:	**Ken Merritt, Landmark Engineering on behalf of Don Burns, the property owner**
STAFF CONTACT:	Steven Williams, Current Planning Kevin Gingery, Stormwater Mark Warner Power Sean Kellar, Transportation Engineering Carie Dann, Fire Dave Sprague, Building
APPLICATION TYPE:	Public Hearing Relative to Mineral Rights for a Minor Subdivision Plat
STAFF RECOMMENDATION:	Subject to the Colorado Revised State Statutes, Title 24, Article 65.5, staff recommends that the City of Loveland Planning Commission conduct a public hearing for notification of mineral estate owners for the East Loveland Industrial 20th Subdivision. No motion or action shall be made by the City of Loveland Planning Commission.

I. ATTACHMENTS:

1. Vicinity Map
2. Minor Subdivision Plat
3. Colorado Revised State Statues 24-65.5-102, 24-65.5-103, and 24-65.5-103.3

II. SITE DATA

ACREAGE OF THE PREIMINARY PLAT	+/-0.77 AC
EXISTING ZONING	R3 – DEVELOPING HIGH-DENSITY RESIDENTIAL & B – DEVELOPING BUSINESS
PROPOSED ZONING	R3 – DEVELOPING HIGH-DENSITY RESIDENTIAL & B – DEVELOPING BUSINESS
EXISTING USE	UNDEVELOPED
PROPOSED USE	4 BUILDABLE SINGLE-FAMILY DETACHED RESIDENTIAL LOTS
GROSS DENSITY (DU/ACRE)	5.195DU/ACRE
EXIST ADJ ZONING & USE - EAST	R3 – DEVELOPING HIGH-DENSITY RESIDENTIAL, OUTLOT FOR DETENTION
EXIST ADJ ZONING & USE - SOUTH	B – DEVELOPING BUSINESS, FORMER CAR DEALERSHIP, VACANT
EXIST ADJ ZONING & USE - WEST	B – DEVELOPING BUSINESS, VACANT
EXIST ADJ ZONING & USE - NORTH	B – DEVELOPING BUSINESS & R3 - DEVELOPING HIGH-DENSITY RESIDENTIAL, COMMERCIAL/PROFESSIONAL OFFICES
UTILITY SERVICE - SEWER	CITY OF LOVELAND
UTILITY SERVICE - ELECTRIC	CITY OF LOVELAND
UTILITY SERVICE - WATER	CITY OF LOVELAND

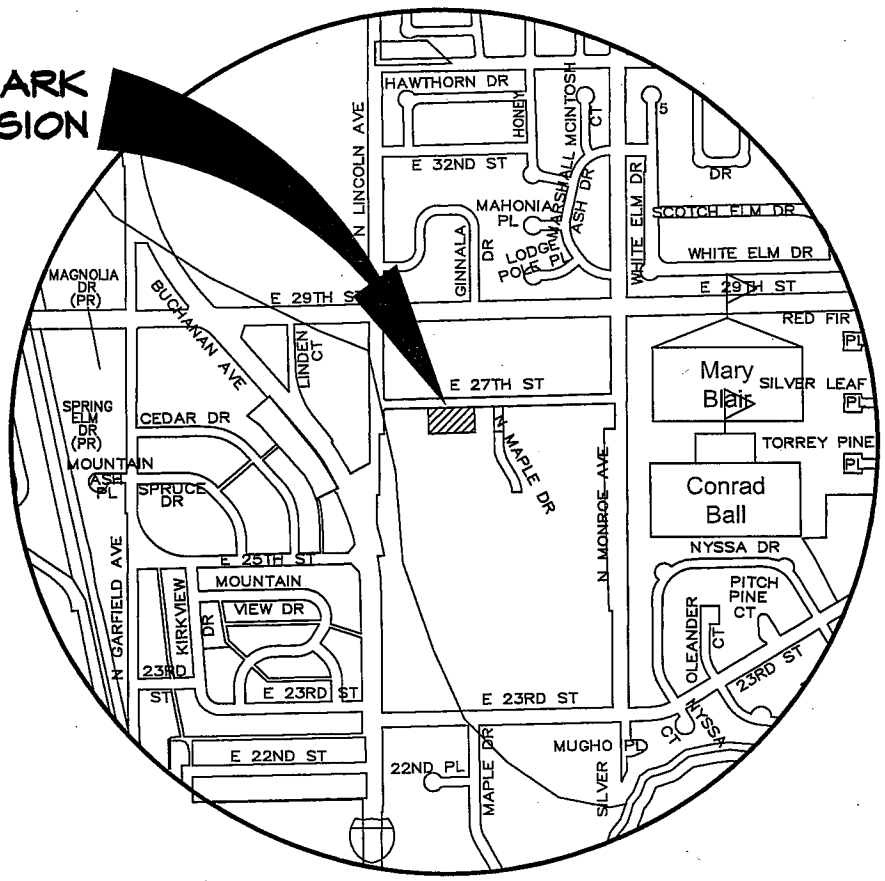
III. PROJECT DESCRIPTION

This public hearing is being held exclusively to satisfy the notification requirements relative to severed mineral estate owners. The associated application for a minor subdivision of approximately 0.77 acres to create four single-family detached building lots is not under consideration. Minor subdivision applications typically are not considered by the Planning Commission. Rather, these applications are generally processed administratively. However, the property being platted includes severed mineral estate owners. Title 24, Article 65.5 of the Colorado Revised State Statutes identifies this as a development application whereby a public hearing is required to be held with respect to the mineral estate owners. The requirement for a public hearing at the platting level reflects changes to state statutes which went into effect in August, 2007.

The Planning Commission serves as a conduit in which to facilitate the public hearing. No motion or action other than opening and closing the public hearing shall be made. Based upon the City of Loveland Municipal Code, approval of the minor subdivision plat is issued by the Director of Development Services. This approval will be made in the coming weeks subject to

appeal. Any mineral owners objecting to the application at the public hearing on December 12, 2011 may seek a surface use agreement with the property owner or pursue other civil remedies. This is coordinated only through the property owner and mineral estate owner(s). The City is not party to such an agreement, consequently the only role of Planning Commission is to conduct a public hearing which affords notice to mineral rights owners and provides them the opportunity to be heard. The Planning Commission has no role relative to approval of this plat; the plat (Willow Park Fourth Subdivision) will be reviewed administratively and approved (if accepted) by the Director of Development Services as per City code.

WILLOW PARK
FOURTH SUBDIVISION



VICINITY MAP
SCALE: 1' = 1000'

ATTACHMENT 1

WILLOW PARK FOURTH SUBDIVISION

BEING A MINOR SUBDIVISION OF LOTS 2 AND 3, BLOCK 2
WILLOW PARK SECOND SUBDIVISION TO THE CITY OF
LOVELAND SITUATE IN THE NORTHWEST QUARTER OF SECTION
12, TOWNSHIP 5 NORTH, RANGE 69 WEST,
OF THE 6TH P.M., COUNTY OF LARIMER,
STATE OF COLORADO.

KNOW ALL PERSONS BY THESE PRESENTS THAT THE UNDERSIGNED, being all the owners and lien holders of the following described property, except any existing public streets, roads of highways, which property is located in Section 12, Township 5 North, Range 68 West of the 6th P.M., being more particularly described as follows:

LOTS 2 AND 3, BLOCK 2 OF WILLOW PARK SECOND SUBDIVISION

Containing 33,924.59 (square feet) more or less, and is subject to all easements and rights-of-ways on record or existing, do hereby subdivide the same into lots, blocks, tracts, outlots, rights-of-way, and easements, as shown on the plat; and do hereby designate and dedicate: (i) all such rights-of-way and easements, other than utility easements and private easements, to and for public use, except where indicated otherwise on this plat; and (ii) all such utility easements to and for public use for the installation and maintenance of utility, irrigation and drainage facilities; and do hereby designate the same as WILLOW PARK FOURTH SUBDIVISION to the City of Loveland, Colorado.

All expenses involving necessary improvements for water system, sanitary sewer system, storm sewer system, curbs and gutters, sidewalks, street improvements, street signs, traffic control signs, alley grading and surfacing, gas service, electric system, grading and landscaping shall be paid by D.E. Burns Construction.

_____
DON BURNS, D.E. BURNS CONSTRUCTION

STATE OF COLORADO)
) SS
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____ 2011,
by _____

Witness my hand and official seal.
My commission expires _____

_____
Notary Public

_____
Address

_____

CITY OF LOVELAND APPROVAL:

This plat is approved by the Director of Development Services of the City of Loveland, Larimer County, Colorado, this _____ day of _____ 2011, for filing with the Clerk and Recorder of Larimer County and for conveyance to the City of the public dedications shown hereon, which are accepted; subject to the provision that approval in no way obligates the City of Loveland, for the financing or constructing of improvements on land, streets or easements dedicated to the public except as specifically agreed to by the Director of Development Services.

_____
Director of Development Services

Witness my hand and seal of the City of Loveland.

ATTEST:

_____
City Clerk

ATTORNEY'S CERTIFICATE:

I, _____, an attorney licensed to practice law in the State of Colorado, certify that I have examined title to the above described land dedicated to the City of Loveland, Colorado, and that the parties executing the dedication are the owners thereof in fee simple and the dedicated land is free and clear of all liens and encumbrances, except as set forth hereon.

So sworn this _____ day of _____ 2011

_____
Attorney at Law

SURVEYOR'S CERTIFICATE:

I, Paul A. Hernandez, being a registered Professional Land Surveyor in the State of Colorado, do hereby certify that the survey of WILLOW PARK FOURTH SUBDIVISION to the CITY of LOVELAND, COLORADO was made by me or under my supervision and that the survey is accurately represented on this plat and that the statements contained hereon were read by me and the same are true to the best of my knowledge.

Dated this _____ day of _____ 2011.

Landmark Engineering Ltd.

By: _____

Paul A. Hernandez
Colo. L.S. 32829

COLORADO REGISTERED WITHOUT LIMITATION PROFESSIONAL LAND SURVEYOR 32829

According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.

Recorded and apparent rights-of-way and easements are shown per the recorded plat of Willow Park Second Subdivision.

This property is subject to a Development Agreement which has been recorded in the real property records of Larimer County, at Reception No. _____

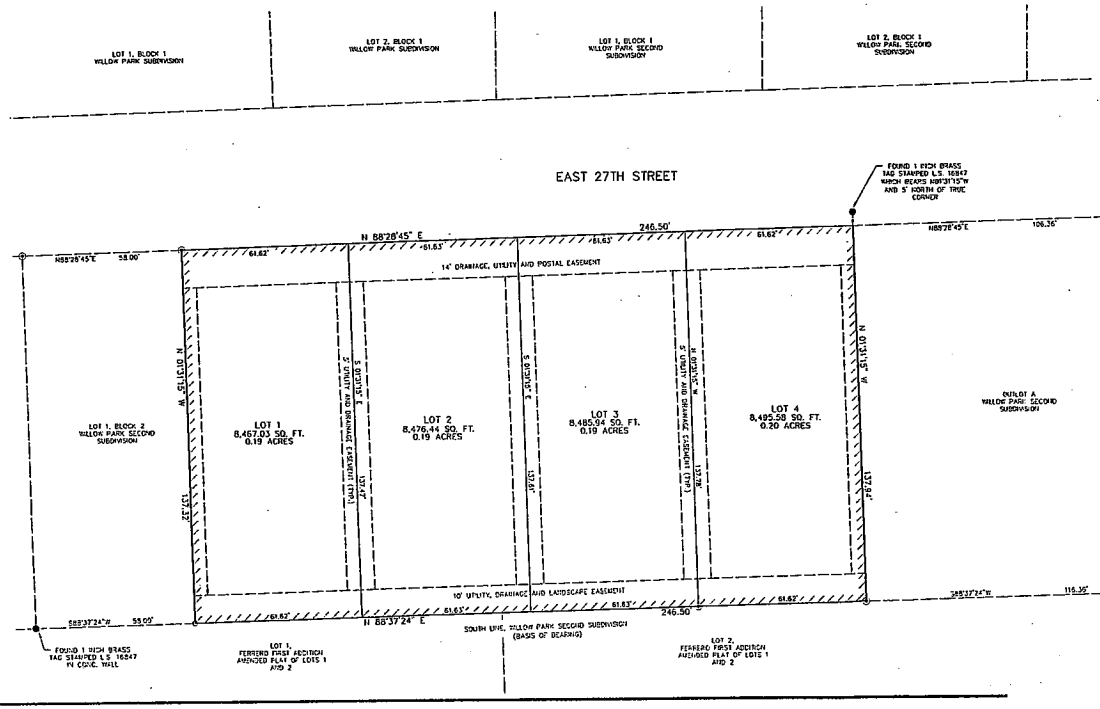
Unless otherwise approved by the City, all unsatisfied conditions of approval for the original subdivision shall continue to apply to this property.

All Side and Rear Yard Drainage Easements shown hereon are Public Drainage Easements which are privately owned and maintained by the individual lot owners.

Basis of Bearings:
Assumed the SOUTH line of the WILLOW PARK SECOND SUBDIVISION as bearing North 88°37'24" East; said line being monumented as shown hereon.

DEDICATION & VACATION OF EASEMENT SUMMARY

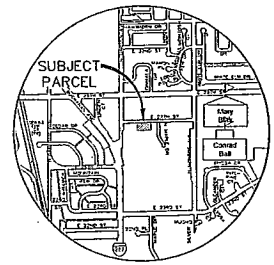
1. Total area in square feet of easement dedication to the public or City by this plat.
   Total area = 7,896 Square Feet. (Includes easements dedicated exclusively to outside entities and/or agencies).
2. Total area in square feet of easement dedicated to the public or the City that is being vacated by this plat.
   Total area = 0.0 Square Feet.



GRAPHIC SCALE

(IN FEET)
1 inch = 20 ft.

⊕ – FOUND #4 REBAR WITH 1" PLASTIC CAP STAMPED L.S. 16847
● – FOUND MONUMENT AS DESCRIBED
O – SET 18" #4 REBAR LONG WITH 1" PLASTIC CAP STAMPED L.S. 32829



VICINITY MAP
SCALE 1" = 1000'

ATTACHMENT 2

REVISIONS		
Description	By	Date

Landmark Engineering
Engineers Planners Surveyors Architects Geographics
3021 West Eisenhower Blvd., Loveland, Colorado 80537
(970) 667-4266 • Toll Free 1-800-530-4266 • Fax (970) 667-4238
www.landmarkengineering.com

DATE: OCTOBER 2011
SCALE: 1" = 20'
DRAWN: EJS
CHECKED: PAH
APPROVED: PAH

CLIENT: D.E. BURNS CONSTRUCTION

TITLE: WILLOW PARK FOURTH SUBDIVISION
FINAL PLAT

JOB NO.: BURDOOL
184A-17-211

SHEET 1 OF 1

24-65.5-102. Definitions - legislative declaration.

As used in this article, unless the context otherwise requires:

(1) "Applicant" means a person who submits an application for development to a local government.

(1.5) "Affiliate" means a person controlling, controlled by, or under common control with another person and any officer, director, shareholder, member, partner, or owner of any such person.

(2) (a) "Application for development" means an initial application for a sketch plan, a preliminary or final plat for a subdivision, a planned unit development, or any other similar land use designation that is used by a local government. "Application for development" includes applications for general development plans and special use permits or any applications for zoning or rezoning to a planned unit development that would change or create lot lines where such applications are in anticipation of new surface development, but does not include amendments to an urban growth boundary, applications for annexation and zoning, applications for zoning or rezoning that will not change or create lot lines, an application for development that is a special use permit for the extraction of construction materials, as that term is defined in section 34-32.5-103, C.R.S., building permit applications, applications for a change of use for an existing structure, applications for boundary adjustments, applications for platting of an additional single lot, applications for lot site plans, or applications with respect to electric lines, crude oil or natural gas pipelines, steam pipelines, chilled and other water pipelines, or appurtenances to said lines or pipelines.

(b) (I) The general assembly hereby finds that:

(A) Pursuant to section 2-4-202, C.R.S., statutes are presumed to have only prospective effect, and under applicable case law this presumption applies unless the general assembly's contrary intent is clearly expressed; and

(B) House Bill 01-1088, which enacted this article, did not contain an applicability clause and was silent with regard to the issue of whether the requirements of this article apply to applications for development that were pending on July 1, 2001, the effective date of House Bill 01-1088.

(II) The general assembly hereby determines that, notwithstanding the fact that House Bill 01-1088 did not clearly express any intent of the general assembly that the requirements of this article would apply retroactively, there is uncertainty concerning whether such requirements should apply retroactively.

ATTACHMENT 3

(III) To clarify its intent, the general assembly hereby declares that this article was intended to apply, and should only be applied, to applications for development that were filed on or after July 1, 2001, except as specified in subparagraphs (IV) and (V) of this paragraph (b).

(IV) To further clarify its intent, the general assembly hereby declares that the provisions of section 24-65.5-103 as amended on August 3, 2007, are intended to apply, and should only be applied, to applications for development where the initial public hearing had not been held prior to August 3, 2007, and that nothing in section 24-65.5-103 shall be deemed to supersede or modify the provisions of any surface use agreement or the provisions of any oil and gas or mineral lease entered into prior to August 3, 2007.

(V) To further clarify its intent, the general assembly hereby declares that nothing in this article shall be deemed to affect or establish the application of the doctrine of reasonable accommodation to determine the respective rights and obligations of the surface owner or mineral estate owner except upon lands that are qualifying surface developments burdened by oil and gas operations areas under section 24-65.5-103.5.

(2.5) "Commission" means the Colorado oil and gas conservation commission created in section 34-60-104, C.R.S.

(2.6) "Drilling window" means an area established by the commission within which the surface location of a well or wells may be established. In the greater Wattenberg area, such drilling windows are referred to generally as the "GWA window" and more specifically as the "four-hundred-foot window" and the "eight-hundred-foot window".

(2.7) "Governmental quarter section" means an area, approximately square, consisting of four contiguous quarter-quarter sections as defined by an official governmental survey.

(2.8) "Greater Wattenberg area" means those lands from and including townships 2 south to 7 north and ranges 61 west to 69 west of the sixth principal meridian.

(3) "Local government" means a county; a home rule or statutory city, town, or city and county; or a territorial charter city.

(4) "Mineral estate" means a mineral interest in real property that is shown by the real estate records of the county in which the real property is situated.

(5) "Mineral estate owner" means the owner or lessee of a mineral estate underneath a surface estate that is subject to an application for development.

(5.5) "Oil and gas operations" has the meaning established in section 34-60-103, C.R.S.

(5.6) "Oil and gas operations area" means an area designated pursuant to section 24-65.5-103.5 as the exclusive area for the conduct of oil and gas drilling and production operations and the location of associated production facilities in qualified surface developments.

(5.7) "Qualifying surface development" means an application for development covering at least one hundred sixty gross acres, plus or minus five percent, within the greater Wattenberg area, including any applications for development filed by affiliates sharing a common boundary, in whole or in part.

(6) "Surface estate" means a fee title interest in the surface of real property that may or may not include mineral rights as shown by the real estate records of the county in which the real property is situated.

(7) "Surface owner" means the owner of the surface estate and any person with rights under a recorded contract to purchase all or part of the surface estate.

Source: L. 2001: Entire article added, p. 486, § 2, effective July 1. **L. 2002:** (2) and (4) amended, p. 891, § 1, effective August 7. **L. 2003:** (2) amended, p. 3, § 1, effective February 26. **L. 2007:** (1.5), (2.5), (2.6), (2.7), (2.8), (5.5), (5.6), and (5.7) added and (2), (4), and (6) amended, p. 2111, § 2, effective August 3.

24-65.5-103. Notice requirements.

(1) Not less than thirty days before the date scheduled for the initial public hearing by a local government on an application for development, the applicant shall send notice, by certified mail, return receipt requested, or by a nationally recognized overnight courier, to:

(a) (I) A mineral estate owner who either:

(A) Is identified as a mineral estate owner in the county tax assessor's records, if those records are searchable by parcel number or by section, township, and range numbers or other legally sufficient description; or

(B) Has filed in the office of the county clerk and recorder in which the real property is located a request for notification in the form specified in subsection (3) of this section.

(II) Such notice shall contain the time and place of the initial public hearing, the nature of the hearing, the location and legal description by section, township, and range of the property that is the subject of the hearing, and the name of the applicant.

(b) The local government considering the application for development. Such notice shall contain the name and address of the mineral estate owners to whom notices were sent in accordance with paragraph (a) of this subsection (1).

(1.5) If an applicant files more than one application for development for the same new surface development with a local government, the applicant shall only be required to send notice pursuant to subsection (1) of this section of the initial public hearing scheduled for the first application for development to be considered by the local government. Local governments shall, pursuant to section 24-6-402 (7), provide notice of subsequent hearings to mineral estate owners who register for such notification.

(2) (a) The applicant shall identify the mineral estate owners entitled to notice pursuant to this section by examining the records in the office of the county tax assessor and clerk and recorder of the county in which the real property is located, including the appropriate request for notification pursuant to subsection (3) of this section. Notice shall be sent to the last-known address of the mineral estate owner as shown by such records.

(b) If such records do not identify any mineral estate owners, including their addresses of record, the applicant shall be deemed to have acted in good faith and shall not be subject to further obligations under this article. The applicant shall not be liable for any errors or omissions in such records.

(3) A mineral estate owner who requests or desires to obtain notice under this article or

the mineral estate owner's agent may file in the office of the county clerk and recorder of the county in which the real property is located a request for notification form that identifies the mineral estate owner's mineral estate and the corresponding surface estate by parcel number and by section, township, and range numbers or other legally sufficient description. The clerk and recorder shall file request for notification forms in the real estate records for the county and shall also keep an index of request for notification forms by section, township, and range numbers or by subdivision lots and blocks.

(4) Prior to convening an initial public hearing on an application for development, a local government shall require the applicant to certify that notice has been provided to the mineral estate owner pursuant to subsection (1) of this section.

(5) A mineral estate owner may waive the right to notice under this section in writing to the applicant. Failure of a mineral estate owner to be identified in the records described in paragraph (a) of subsection (1) of this section or to file a request for notification under subsection (3) of this section shall not waive the right of such mineral estate owner to file an objection with the local government to such application for development no later than thirty days following the initial public hearing for approval of the application for development or to exercise the remedies set forth in section 24-65.5-104.

(6) Before completing the sale of a mineral estate, a mineral estate owner who has received notice as the owner of the mineral estate of a pending public hearing with respect to an application for development pursuant to this section shall notify the buyer of the mineral estate of the existence of the application for development. A transfer of an interest in a mineral estate by a mineral estate owner following the filing of a request for notification pursuant to subsection (3) of this section shall not modify the address to which the applicant may deliver notice under paragraph (a) of subsection (1) of this section until the transferee of such interest has filed an amendment to the request for notification describing the address to which such notices shall be sent.

Source: L. 2001: Entire article added, p. 487, § 2, effective July 1. **L. 2002:** (1.5) and (6) added and IP(2)(a), (2)(a)(I), and (2)(b) amended, p. 892, § 2, effective August 7. **L. 2007:** Entire section amended, p. 2113, § 3, effective August 3.

ANNOTATION

Law reviews. For article, "Tension Beneath the Surface: The Evolving Relationship Between Surface and Mineral Estates", see 30 Colo. Law. 67 (December 2001).

24-65.5-103.3. Local government approval.

(1) A local government shall, as a condition of final approval of an application for development, require the applicant to certify:

(a) That notice has been provided to mineral estate owners pursuant to section 24-65.5-103; and

(b) With respect to qualifying surface developments, that either:

(I) No mineral estate owner has entered an appearance or filed an objection to the proposed application for development within thirty days after the initial public hearing on the application;

(II) The applicant and any mineral estate owners who have filed an objection to the proposed application for development or have otherwise filed an entry of appearance in the initial public hearing regarding such application no later than thirty days following the initial public hearing on the application have executed a surface use agreement related to the property included in the application for development, the provisions of which have been incorporated into the application for development or are evidenced by a memorandum or otherwise recorded in the records of the clerk and recorder of the county in which the property is located so as to provide notice to transferees of the applicant, who shall be bound by such surface use agreements; or

(III) The application for development provides:

(A) Access to mineral operations, surface facilities, flowlines, and pipelines in support of such operations existing when the final public hearing on the application for development is held by means of public roads sufficient to withstand trucks and drilling equipment or thirty-foot-wide access easements;

(B) An oil and gas operations area and existing wellsite locations in accordance with section 24-65.5-103.5; and

(C) That the deposit for incremental drilling costs described in section 24-65.5-103.7 has been made.

(2) A local government approval of an application for development without the certification required by subsection (1) of this section when a mineral owner has timely entered an appearance or filed an objection shall be suspended and shall not constitute a valid final approval until the required certification is provided, any required local government proceedings following notice to affected mineral estate owners are held, and the local government approval is confirmed, amended, or revoked in response to the

certification.

Source: L. 2007: Entire section added, p. 2115, § 4, effective August 3.