

EXHIBIT A

CITY OF COLORADO SPRINGS/EL PASO COUNTY DRAINAGE BOARD AGENDA May 3, 2018

The City of Colorado Springs/El Paso County Drainage Board will hold the scheduled meeting at **3:00PM on Thursday, May 3, 2018** in the City Council Chambers at City Hall at 107 N. Nevada Avenue.

Item 1: Call to Order.

Item 2: Approval of the January 25, 2018 Drainage Board minutes

Item 3: Old Business - None

Item 4: New Business

a) Financial Update – (City)

b) Request on behalf of Nor'Wood Development to close the Wolf Ranch portion of the Cottonwood Creek Drainage Basin – (City)

ACTION REQUESTED: This action is a request to close the Wolf Ranch portion of the Cottonwood Creek Drainage Basin. The closing of the Wolf Ranch Development would exempt the developer from paying the per acre drainage fee, erase the developer's credits within the Wolf Ranch portion of Cottonwood Creek and eliminate the opportunity for reimbursement for construction of any facilities. Wolf Ranch would still be required to pay the Bridge Fee and Surcharge Fee associated with the Cottonwood Creek Drainage Basin.

c) Fixed Drainage Fees for Powers Autopark – (City)

ACTION REQUESTED: The City Code referenced above states, *"...The subdivider may determine to build drainage facilities as required by the DBPS prior to subdividing or otherwise developing land. In that event the fees applicable to the land proposed to be subdivided or otherwise developed may, with the approval of the City, be fixed at the time the subdivider contracts for the construction of the drainage facilities in accord with subsections B and C of this section."* This action is requested to fix the fee for the Powers Autopark at the current rate of \$13,241 per acre in the Cottonwood Creek Drainage Basin.

d) Pursuant to City Code 7.7.902, a fee adjustment in the Cottonwood Creek Drainage Basin is necessary in order to balance the fee with credits owed – (City)

ACTION REQUESTED: The Water Resources Engineering Division is requesting a mid-year adjustment to the Cottonwood Creek Drainage Basin per acre drainage fee.

e) Elimination of the Cottonwood Creek Surcharge Fee – (City)

ACTION REQUESTED: This request is to eliminate the Surcharge Fee in the Cottonwood Creek Drainage Basin.

f) Informational

g) Housekeeping

h) Open Discussion

Item 5: Adjournment

For the Public Works Director/City Engineer


Public Works/Water Resources Engineering

C: (with Attachments)

Drainage Board Members
Brian Kelley, City, Public Works/Water Resources Engineering
Elizabeth Nijkamp, El Paso County Engineering
Gilbert LaForce, El Paso County Engineering
Jennifer Irvine, El Paso County Engineering
Lois Ruggera, City Planning
Marla Novak, Director, Government Affairs, HBA
Mary Murray, City Finance
Mike Cartmell, El Paso County Engineering
Richard Mulledy, Public Works/Water Resources Engineering
Steve Rossoll, Public Works/Water Resources Engineering
Tracy Peters, City Finance

C: (w/o Attachments)

Travis Easton, City, Public Works Director
City Clerk (for posting)
Fran St. Germain, County Administration
Henry Yankowski, County Administrator
Marc Smith, City Attorney
Public Communications Department



DATE: May 3, 2018

TO: Brian Kelley, Secretary Drainage Board

FROM: Steve Rossoll

SUBJECT: Cottonwood Creek Drainage Basin

RE: Request on behalf of Nor'Wood Development to close the Wolf Ranch portion of the Cottonwood Creek Drainage Basin.

ACTION REQUESTED: This action is a request to close the Wolf Ranch portion of the Cottonwood Creek Drainage Basin. The closing of the Wolf Ranch Development would exempt the developer from paying the per acre drainage fee, erase the developer's credits within the Wolf Ranch portion of Cottonwood Creek and eliminate the opportunity for reimbursement for construction of any facilities. Wolf Ranch would still be required to pay the Bridge Fee and Surcharge Fee associated with the Cottonwood Creek Drainage Basin.

BACKGROUND: The drainage basin fee program is designed to spread the cost of major drainage improvements across properties within a drainage basin. A per acre fee is established based on an engineered drainage study called a Drainage Basin Planning Study (DBPS). The fee is the calculated cost of major infrastructure within the study area divided by the unplatted land within the study area. Land within the DBPS boundary must pay the per acre fee at the time of platting. A developer that constructs a storm sewer system that conveys flows from upstream development may be reimbursed for the construction by the upstream developer(s) if the constructed storm system has been identified as reimbursable in the DBPS.

Developers with large parcels of land will regularly build reimbursable infrastructure of which the cost offsets drainage fees that are due at platting. In other words, they do not pay drainage fees because the cost of their infrastructure exceeds the cost of the drainage fees. This results in the developer who constructs reimbursable facilities being able to offset drainage fees and also being granted drainage credits within the basin as is normal throughout the City.

On occasion, a DBPS will define a drainage area as a closed basin. This means that there are no fees due at platting and no reimbursement is available for major storm infrastructure. Each developer constructs the infrastructure required to convey on-site and off-site flows at their own expense without an opportunity for reimbursement.

Cottonwood Creek is a fee basin, that is, there are fees due at platting and reimbursement available for the construction of major infrastructure. This basin is in the midst of a DBPS update. One of the purposes of this update is to recalculate the fee applied to unplatted land. The 2018 fee per platted acre is \$13,241. This fee has not kept up with the cost of construction.

The draft updated DBPS calculated the per platted acre fee at \$23,502. The updated fee is calculated the same way as other DBPS's (cost of infrastructure divided by unplatted land) with the added component of making the credit holders within the basin whole (cost of infrastructure plus total amount owed to credit holders divided by unplatted land).

Wolf Ranch is a master planned community within the Cottonwood Creek drainage basin. Based on recent analysis, of the +/-1130 remaining unplatted acres within the Cottonwood Creek Basin, there are only approximately 270 acres outside of Wolf Ranch. Additionally, all of the infrastructure identified as reimbursable in the DBPS update is within the Wolf Ranch Development. Wolf Ranch is also a credit holder within the basin. What this means is that if the current draft DBPS moves forward, Wolf Ranch will continue to offset platting fees with the cost of reimbursable infrastructure thereby not contributing any cash to the basin. In fact they will likely increase their credit position. The result of this is that the remaining unplatted land outside of Wolf Ranch will bear the burden of repaying the credit holders.

The purpose of this request is to close Wolf Ranch within the Cottonwood Creek Drainage Basin. In doing so, the cost of infrastructure within Wolf Ranch will be the responsibility of Wolf Ranch with no opportunity for reimbursement. Wolf Ranch will not have to pay Drainage Basin fees at the time of platting. However, the developer, Nor'Wood, will retain credits earned outside of Wolf Ranch.

If Wolf Ranch is closed, the DBPS calculations for the per acre drainage fee will be revised to be the total amount owed to credit holders divided by the remaining (outside of Wolf Ranch) unplatted land. The cost of infrastructure is removed from the calculation because the remaining reimbursable infrastructure is all in Wolf Ranch. The end result is a per acre drainage fee of \$16,100.

RECOMMENDATION: The Water Resources Engineering Division recommends that the Drainage Board approve the closing of Wolf Ranch within the Cottonwood Creek Drainage Basin.

A recommended motion would be: I move to close Wolf Ranch within the Cottonwood Creek Drainage Basin. Wolf Ranch will be exempt from paying the per acre drainage fee and be eliminated from reimbursement opportunities. Wolf Ranch will still be obligated to pay other fees associated with the Cottonwood Creek Drainage Basin.



DATE: May 3, 2018

TO: Board Packet

FROM: Steve Rossoll

SUBJECT: Wolf Ranch closing in Cottonwood - Backup

The following exhibits are supplied as background information for the Cottonwood Creek board recommendation. The exhibits as well as this missive are provided to aid the board members in their understanding of the item before them for vote. This document has been prepared, for the most part, using common language and attempts to answer questions that are bound to arise.

Generally speaking, the "closing" of a basin is inclusive of an entire basin, rather than a portion of a basin as in this case. That said, there have been portions of basins closed in the past. This type of closure is typically at the request of a developer with large chunks of land within a basin.

Cottonwood Creek is in an odd situation. The previous DBPS identified very little in the way of reimbursable facilities. As such the bulk of the basin has developed without improvements to the creek. The current DBPS identifies necessary creek improvements that have little to any adjacent development, outside of Wolf Ranch. The result of this is that the improvements will be a City responsibility. The fee calculations in the attached exhibits reflect this City cost.

Throughout the research of this project the question was asked, "Didn't Nor'Wood lose a lawsuit with the City wherein they wanted to close the basin?" The answer to the question is yes Nor'Wood lost the lawsuit but it wasn't about closure of the basin. The lawsuit was regarding whether the City had the right to even charge a drainage fee if a development was releasing at historic rates.

"The Colorado Supreme Court affirms the judgment of the Colorado Court of Appeals, holding that Colorado Springs' drainage fee system does not trigger the Regulatory Impairment of Property Rights Act. The supreme court finds that the fee assessed to Wolf Ranch was promulgated by Colorado Springs via legislative process and uniformly assessed to all property owners occupying the drainage basin. Accordingly, the supreme court holds that Colorado Springs' drainage fee system falls under the act's exception for legislatively formulated fees imposed upon a broad class of property owners"

Nor'Wood will be keeping their credits within the basin in order to offset future drainage fees for property they own outside of Wolf Ranch. The credits that they are keeping were all earned outside of Wolf Ranch.

The attached exhibits are taken from the draft DBPS for Cottonwood Creek, except for the last page which is an updated and annotated map from the DBPS. Following is a brief explanation of the exhibits

The first page, titled "7.0 FEE DEVELOPMENT" is an explanation of the methodology used in developing the fee. Section 7.3 on this exhibit defines the terms used in the fee calculation. The language is somewhat confusing so for clarity the following brief definitions are provided:

- Development Fee = Facilities costs that are eligible for reimbursement.
- Reimbursement Fee = The credits owed from the basin to developers.
- Total Fee = Development Fee plus Reimbursement Fee.
- City Cost = All necessary improvements that are not considered reimbursable.

Exhibit 2, labeled "Cottonwood Creek DBPS Fee Development" is from appendix E of the DBPS. In the "Notes" section of this page there is an asterisk that relates to the "Development Fee." The asterisked note identifies the facilities that were used to calculate the Development Fee or, as noted above, the facilities eligible for reimbursement. This is a key component of the recommended approval of this request. All of the facilities identified under the asterisk are in Wolf Ranch.

The third exhibit is Figure 7-1 from the DBPS. This exhibit shows the unplatted developable land (red) within Cottonwood Creek drainage basin. The exhibit was prepared in 2010 so it's a little outdated but it can be easily seen that the Wolf Ranch Development holds the majority of the unplatted developable land within the basin.

Figure 6-1, the fourth exhibit, identifies necessary improvements within the basin. This map can be used to correlate the necessary improvements with the asterisked improvements identified on Exhibit 2. Again, all of the improvements under the asterisk are located within Wolf Ranch.

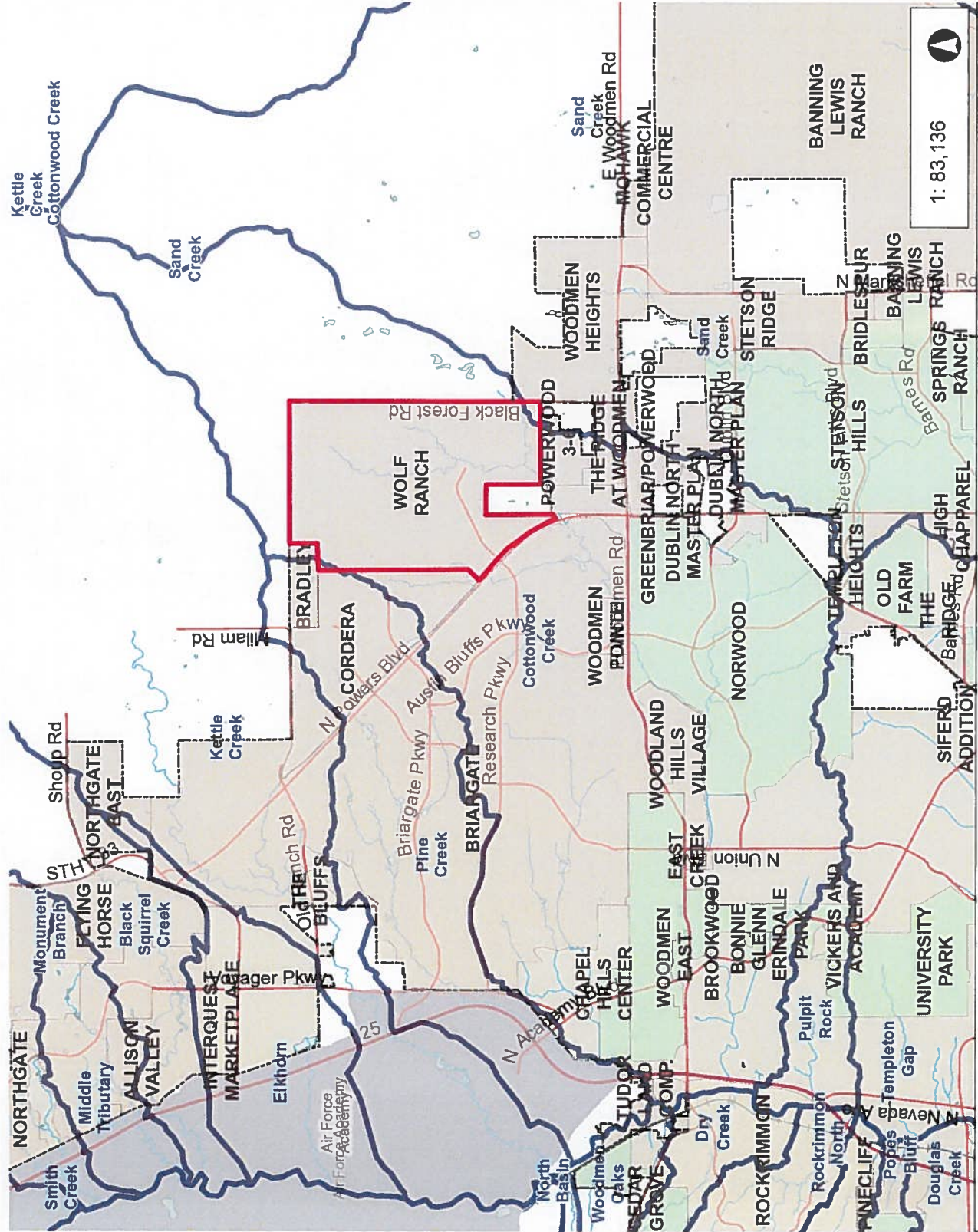
The final exhibit is labeled "Figure 7-1" but it is not the same 7-1 noted in the third exhibit. This map is a hybrid of the unplatted developable land map and the necessary improvements map. Additionally, this map has identified land that has been platted since 2010 (lime green boundary) and therefore no longer a part of the unplatted developable land. The text boxes show the potential for necessary improvements that are outside of Wolf Ranch and adjacent to unplatted developable land. The blue text is comments regarding the viability of the unplatted land/improvements correlation.

Based on all of this information the revised calculation for the basin fee is:

Numbers are rounded for simplification.

\$4,346,626	Credits in Cottonwood Creek (includes Nor'Wood)
270	acres of unplatted developable land outside of Wolf Ranch
\$16,100	drainage fee per acre (rounded up to nearest 100)

Vicinity Map



Legend

	Drainage Fee Basins Master Plan 2011
	Other
	Implemented
	Operative
	National Forest
	Military
	Towns
	County Boundary
	Place Labels
	Bus Stops
	Hospitals
	Schools
	Streets
	Interstate
	Major Roads
	Local Roads
	Ramps
	Trails_Parks
	Trails_Urban_Paved
	Trails_Urban_Gravel
	Trails_Urban_Natural
	Creeks
	Railroads
	Parcels
	Golf Fairways

Notes

1: 83,136

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13,856.0 0 6,928.02 13,856.0 Feet

NAD_1983_StatePlane_Colorado_Central_FIPS_0502_Feet

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7.0 FEE DEVELOPMENT

7.1. Introduction

The objective of the fee development exercise was to determine the equitable share of drainage improvement costs that a developer is responsible for paying to the City if they wish to plat a piece of land. This cost is a function of the total cost for the selected plan and will be used by the City to pay for drainage improvements that are necessary as a result of development. The outcome of this section is a unit fee (cost/acre) that is a one-time charge to the developer based on the number of acres platted.

7.2. Developable Land

The Cottonwood Creek Fee Basin (Fee Basin) encompasses both of the Study Basins and has a total area of 15,358 acres. A total of 12,198 acres of the Fee basin are within the City boundary, and of this amount, 1,559 acres are unplatted and able to be developed according to the GIS dataset received from the City. This dataset also includes unplatted areas that can't be developed because of specific land use designations. A list of unplatted area that can't be developed is listed in Table 7-1. A complete summary of unplatted area land use within the City and El Paso County is provided in Appendix E.

Table 7-1. Unplatted Area That Can't Be Developed

Land Use	Area (acres)
Floodplain	2
Open Space	299
Undefined Park	4
Drainage Easement	7
Community Park	26
Neighborhood Park	22
Primary/Secondary School	91
Candidate Open Space	4
Other	1
Total	456

A summary of land classification within the Fee Basin is provided in Table 7-2 and shown graphically on Figure 7-1.

Table 7-2. Land Classification

Classification	Area (acres)		Total
	City	County	
Platted	10,183	2,482	12,666
Unplatted (not developable)	456	56	512
Unplatted (developable)	1,559	621	2,180
Total	12,198	3,160	15,358

Note that the combined area for both of the Study Basins is 14,656 acres, whereas the total area for the Fee Basin is 15,358 acres. The reason for the difference is because the hydrologic basin boundaries

for the Study Basins were developed independently of the Fee Basin boundary as described in Section 3.0. Figure 7-1 shows two large areas within the Fee Basin that are not included in the Study Basins. The first area is to the south of the Cottonwood Creek outfall and the second area is to the north of the Cottonwood Creek outfall and to the south of the South Pine Creek outfall. Drainage improvements were not evaluated for any areas outside of the Study Basin boundary with the exception of the improvements recommended for Pine Creek between I-25 and the confluence with Monument Creek.

7.3. Fee Calculation & City Cost

The total cost for the Selected Plan was separated into a Development Fee, Reimbursement Fee, and City Cost. A description of how the aforementioned were defined is as follows:

- **Development Fee** - All drainage improvement costs that are directly associated with new development and that can't be considered a shared drainage improvement. A shared drainage improvement is an improvement that conveys stormwater from an existing development and that will also convey stormwater from future development.
- **Reimbursement Fee** - The amount of reimbursements due in the Fee Basin as of April 16th, 2010.
- **Total Fee** - The summation of the Development Fee and Reimbursement Fee. This is the total fee for the Fee Basin.
- **City Cost** - The difference between the total cost for the Selected Plan and the Total Fee. This cost includes all shared drainage improvement costs since there is not a clear way how to assign a portion of these costs to the development fee.

Drainage improvements that are required as a result of new development are listed in Appendix E. The development fee calculation is provided in Table 7-3 and City cost is provided in Table 7-4.

Table 7-3. Development Fee Calculation

Developer Fee	\$ 31,396,800
Reimbursement Fee	\$ 7,003,700
Total Fee	\$ 38,400,500
Fee/Acre	\$ 24,624

Table 7-4. City Cost

Selected Plan Cost	\$ 99,382,800
Total Fee	\$ 38,400,500
City Cost	\$ 60,982,300

**Cottonwood Creek DBPS
Fee Development**

Land Classification	Area (acres)		Total
	City	County	
Platted Area	10,109	2,557	12,666
Unplatted Area (Not Developable)	456	56	512
Unplatted Area	1,634	547	2,180
Total	12,198	3,160	15,358

Cottonwood Creek Cost	\$ 91,309,200
South Pine Creek Cost	\$ 7,077,600
Pine Creek Outfall Cost	\$ 996,000
Total Improvement Cost	\$ 99,382,800

Development Fee* = \$ 31,396,800 = All drainage improvement costs that are directly associated with new development and that can't be considered a shared drainage improvement
 Reimbursement Fee = \$ 7,003,700 = Amount of reimbursements due in the Cottonwood Creek Fee Basin
 Total Fee = \$ 38,400,500 = Development Fee + Reimbursement Fee
 Fee/Acre = \$ 23,502 = Total Fee / City Unplatted Area
 City Cost = \$ 60,982,300 = Total Improvement Cost - Total Fee

Notes:

* Cost included Ponds PL1, PL2, PL3, and PL4.

Cost included Reaches:

- | | |
|--------|--------|
| RMC070 | RWR096 |
| RMC082 | RWR097 |
| RMC084 | RWR098 |
| RMC086 | RWR112 |
| RUC180 | RWR114 |
| RWR032 | RWR116 |
| RWR034 | RWR130 |
| RWR036 | RWR140 |
| RWR080 | RWR162 |
| RWR091 | RWR164 |
| RWR092 | RWR166 |
| RWR093 | RWR168 |
| RWR094 | RWR170 |
| RWR095 | |

- LEGEND**
- City Boundary
 - Hydrologic Basin Boundary
 - Fee Basin Boundary
 - City Unplatted Area
 - Developable
 - Not Developable
 - County Unplatted Area
 - Developable
 - Not Developable
- * Information that became available after data procurement was complete was not incorporated

Land Classification	Area (acres)	
	City	County Total
Platted Area	10,109	2,557 12,666
Unplatted Area (Not Developable)	456	56 512
Unplatted Area	1,634	547 2,180
Total	12,198	3,160 15,358

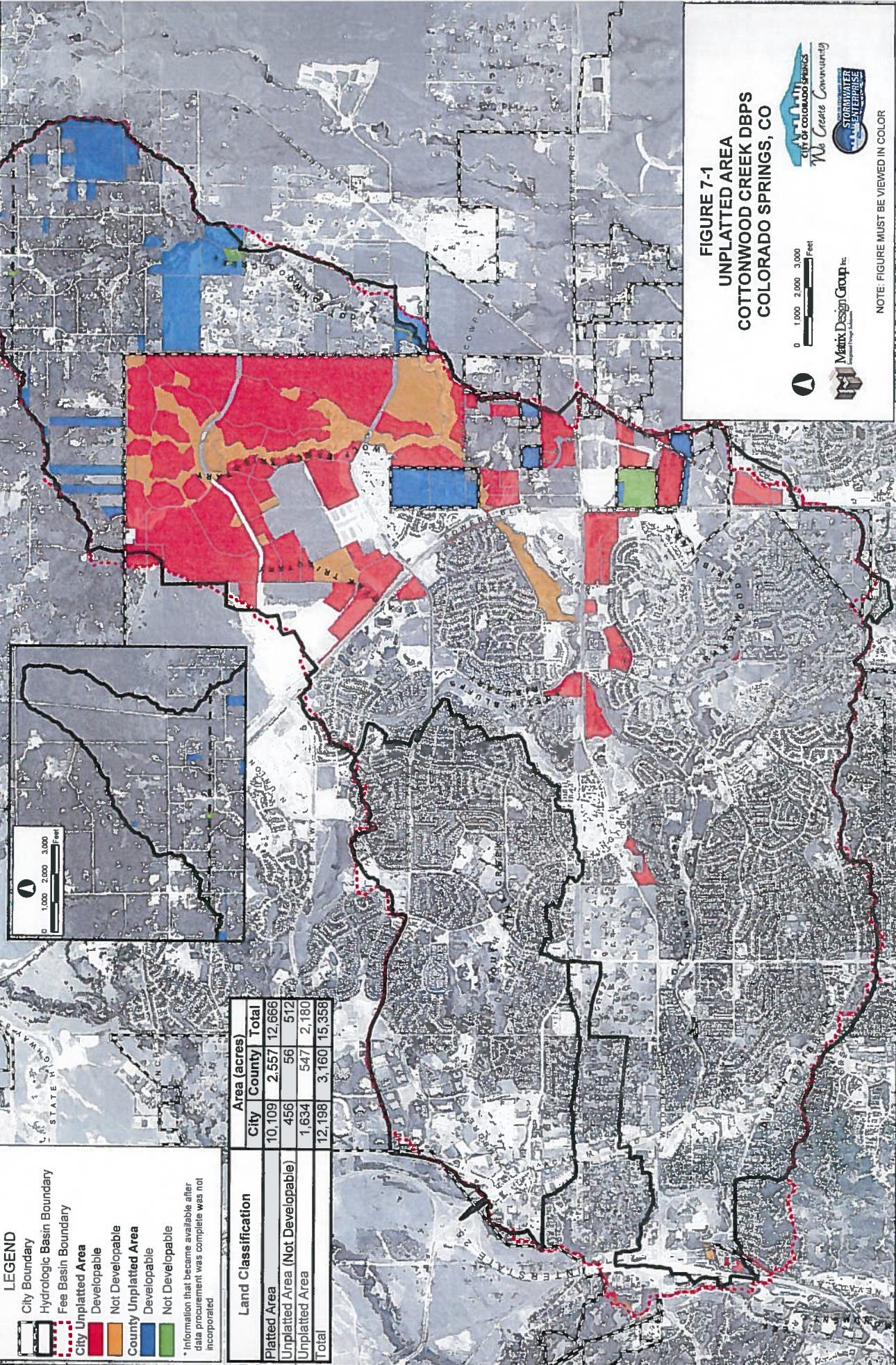
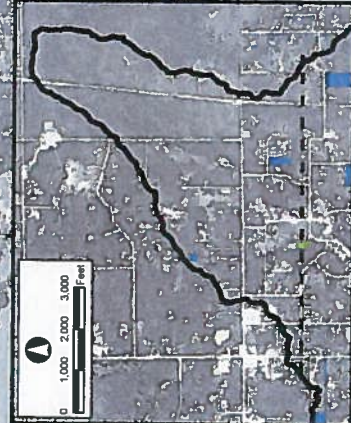
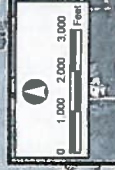
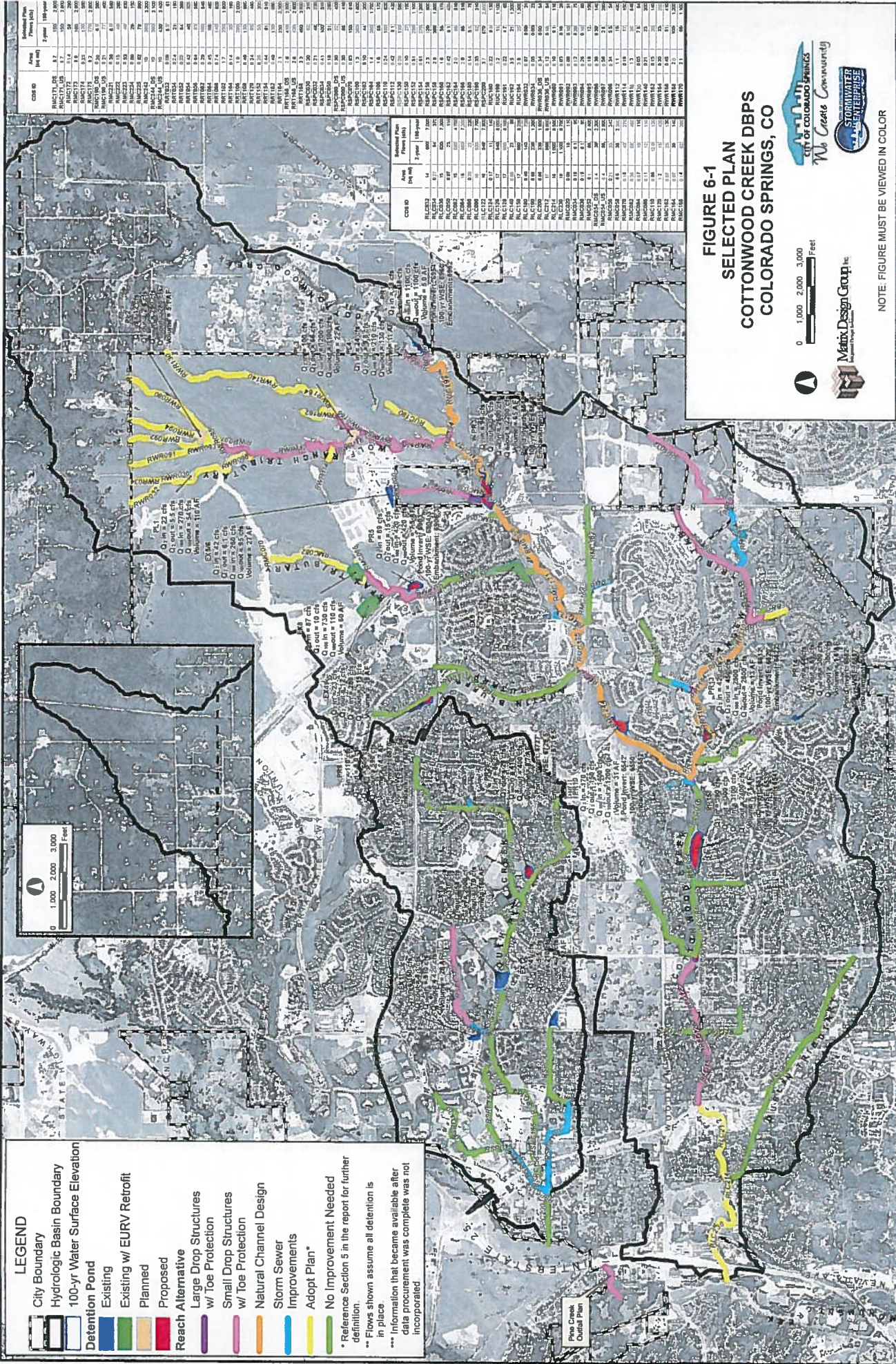


FIGURE 7-1
UNPLATTED AREA
COTTONWOOD CREEK DBPS
COLORADO SPRINGS, CO

0 1,000 2,000 3,000 Feet

NOTE: FIGURE MUST BE VIEWED IN COLOR



LEGEND

- City Boundary
- Hydrologic Basin Boundary
- 100-yr Water Surface Elevation
- Detention Pond
 - Existing
 - Existing w/ EURV Retrofit
 - Planned
 - Proposed
- Reach Alternative
 - Large Drop Structures w/ Toe Protection
 - Small Drop Structures w/ Toe Protection
 - Natural Channel Design
- Storm Sewer Improvements
- Adopt Plan*
- No Improvement Needed

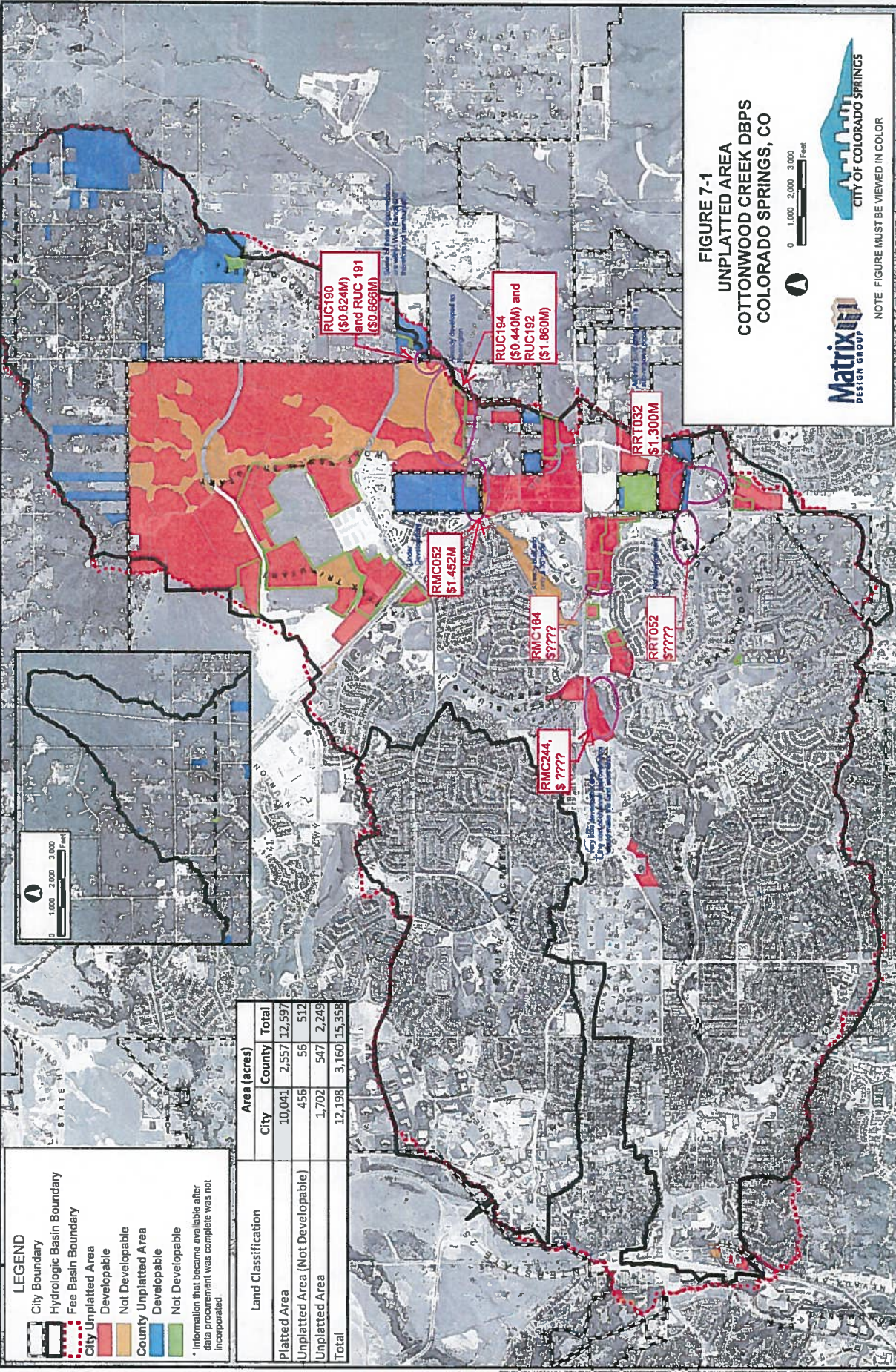
* Reference Section 5 in the report for further definition.
 ** Flows shown assume all detention is in place
 *** Information that became available after data procurement was complete was not incorporated.

CSID	Area (sq ft)	Stormwater Flow (cfs)	
		1-year	100-year
PLC001	14	67	1,000
PLC002	14	67	1,000
PLC003	14	67	1,000
PLC004	14	67	1,000
PLC005	14	67	1,000
PLC006	14	67	1,000
PLC007	14	67	1,000
PLC008	14	67	1,000
PLC009	14	67	1,000
PLC010	14	67	1,000
PLC011	14	67	1,000
PLC012	14	67	1,000
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PLC095	14	67	1,000
PLC096	14	67	1,000
PLC097	14	67	1,000
PLC098	14	67	1,000
PLC099	14	67	1,000
PLC100	14	67	1,000

FIGURE 6-1
SELECTED PLAN
COTTONWOOD CREEK DBPs
COLORADO SPRINGS, CO



NOTE: FIGURE MUST BE VIEWED IN COLOR



LEGEND

- City Boundary
- Hydrologic Basin Boundary
- Fee Basin Boundary
- City Unplatted Area
- Not Developable
- County Unplatted Area
- Developable
- Not Developable

* Information that became available after data procurement was complete was not incorporated.

Land Classification	Area (acres)		Total
	City	County	
Platted Area	10,041	2,557	12,597
Unplatted Area (Not Developable)	456	56	512
Unplatted Area	1,702	547	2,249
Total	12,198	3,160	15,358

FIGURE 7-1
UNPLATTED AREA
COTTONWOOD CREEK DBPS
COLORADO SPRINGS, CO



NOTE: FIGURE MUST BE VIEWED IN COLOR