



RESOLUTION NO. 17-403

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO**

**RESOLUTION TO ESTABLISH ENFORCEMENT PROCEDURES FOR THE
COLORADO NOXIOUS WEED ACT AND TO APPROVE THE 2017 EL PASO
COUNTY NOXIOUS WEED MANAGEMENT PLAN**

WHEREAS, the Colorado Noxious Weed Act, § 35-5.5-101 *et seq.*, C.R.S. (the “Act”) mandates that the Board of County Commissioners of each county in the state of Colorado shall adopt and provide for the administration of a noxious weed management plan for all of the unincorporated lands within the county, and

WHEREAS, the El Paso County Board of County Commissioners (“Board”) has previously adopted several iterations of a noxious weed management plan; however, enforcement procedures were included within the plan itself; and

WHEREAS, pursuant to C.R.S. § 35-5.5-105, in addition to remedies provided in the Act, the Board may further adopt and provide for the enforcement of such ordinances, resolutions, rules, and other regulations as may be necessary and proper to enforce said plan and otherwise provide for the management of noxious weeds within the county; and

WHEREAS, the Board deems it prudent and more efficient to separate the enforcement procedures from the plan, and provide for enforcement procedures in this Resolution; and

WHEREAS, the Board also desires to review, update, and approve the 2017 El Paso County Noxious Weed Management Plan (“Plan”); and

WHEREAS, the Plan was reviewed and endorsed by the El Paso County Noxious Weed Advisory Commission on May 16, 2017; and

WHEREAS, the Board deems it in the best interests of the citizens of El Paso County to establish enforcement procedures in this resolution and approve the 2017 El Paso County Noxious Weed Management Plan.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of El Paso, State of Colorado, as follows:

I. PURPOSE

These procedures are adopted pursuant to the Colorado Noxious Weed Act, § 35-5.5-101 *et seq.*, C.R.S. (the “Act”), and the El Paso County Noxious Weed Management Plan (the “Plan”), and shall provide the procedures to be followed for enforcement of the Act and the Plan.

C.R.S. § 35-5.5-108.5 shall govern procedures related to enforcement of noxious weeds that have been classified as list A species and to populations of list B species designated for eradication by the Commissioner of the Colorado Department of Agriculture or his or her designee.

C.R.S. § 35-5.5-109 shall govern procedures related to enforcement of noxious weeds classified as list B species designated for containment or suppression and to populations of list C species by the Commissioner of the Colorado Department of Agriculture or his or her designee.

II. GENERAL

The El Paso County Community Services Department - Environmental Division ("Environmental Staff") shall be responsible for identifying and mapping noxious weed infestations throughout El Paso County and enforcing the provisions of this Resolution and the Plan.

Every reasonable effort shall be made to manage noxious weeds through a voluntary compliance program.

Environmental Staff shall make themselves available for consultation with property owners to maximize the opportunities for citizens to obtain the necessary instruction and technical information for the proper identification and proper management of noxious weeds.

Enforcement of the Colorado Noxious Weed Act, through the procedures described herein, will be undertaken only after the unsuccessful solicitation of voluntary compliance.

Enforcement procedures shall be initiated by Environmental Staff based on Rights-of-Way inspections and/or in response to citizen's complaints after confirmation of the presence of noxious weeds on public and private properties. Environmental Staff may also confirm or deny the existence of noxious weeds on any private property through an inspection warrant if necessary as provided in Section III.

III. INSPECTION WARRANTS

If Environmental Staff are unable to make a visual observation of noxious weeds from a public right-of-way or adjacent property and have reason to believe that a noxious weed infestation exists, the landowner or occupant shall be notified by certified mail of a request for inspection and Environmental Staff shall make reasonable efforts, where possible, to schedule and conduct an inspection with the concurrence of the landowner and/or occupant.

If the landowner or occupant denies access to Environmental Staff, or fails to respond to the mailed request within ten (10) calendar days, then Environmental Staff may request the assistance of the County Attorney's Office in obtaining an inspection warrant to authorize Environmental Staff onto the private property in question.

Pursuant to C.R.S. §§ 35-5.5-108.5(5) and 109(2), Environmental Staff shall execute an affidavit to be filed in court providing the following:

- The information that gives the inspector reasonable cause to believe that any provision of the Act, is being or has been violated;
- The affected landowner has failed to respond or the landowner or occupant has denied access to the inspector; and
- A general description of the location of the affected land.

IV. ENFORCEMENT PROCEDURES

Enforcement procedures shall be initiated by Environmental Staff based on Rights-of-Way inspections, in response to citizen's complaints, or through an inspection warrant, after confirmation of the presence of noxious weeds on public and private properties.

Environmental Staff shall comply with applicable federal, state and local laws, rules and regulations, and the Colorado Noxious Weed Act regarding entry onto public or private properties for the purpose of inspecting for the presence of, or for mitigating/managing noxious weeds.

a. LIST A OR LIST B DESIGNATED FOR ERADICATION

If, following inspection, land is found to contain List A species or populations of List B species designated for eradication, the landowner or occupant shall be given written notice by certified mail. The notice shall name the noxious weeds, identify their location, advise the landowner or occupant that eradication is the required management objective and that eradication efforts must begin within a specified period or condition, and specify the integrated weed management techniques prescribed for eradication. The notice shall include an offer to consult with the landowner or occupant in the development of an eradication plan and a response form. The notice also shall state that the landowner or occupant shall, within a reasonable time not to exceed ten (10) days, either:

- (a) Comply with the terms of the notification; or
- (b) Acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of the plan for compliance.

If the landowner or occupant chooses action option (a), Environmental Staff will re-inspect the land to confirm compliance.

If the landowner or occupant chooses action option (b), Environmental Staff will review the proposed weed management plan and determine its adequacy. If the plan is acceptable, no further action will be taken except to monitor compliance, including re-inspection.

Should the property owner or occupant fail to respond to the notification letter, or fail to submit a management plan, or otherwise show an unwillingness to cooperate in the eradication of noxious weed(s) identified on the property, a notice of violation shall be sent

via certified U.S. mail to the subject property owner's mailing address as listed in the records of the El Paso County Assessor's Office and to the occupant, if different from the owner.

The notice of violation shall specifically describe the nature of the violation and shall require that either:

- (a) The violation be corrected within ten (10) days; or
- (b) Acknowledge the terms of the violation and submit an acceptable plan and schedule for the completion of the plan for compliance.

If the violation is not corrected within the time period established in the notice of violation, the Executive Director of the El Paso County Community Services Department ("Director") may issue an executive determination to the owner or occupant authorizing the County Attorney's Office to pursue remedies under the Colorado Noxious Weed Act subject to appeal as set forth below.

The Director shall mail the executive determination to the owner in the same manner as the notice of violation. The executive determination shall specify the nature of the violation and provide ten (10) calendar days from the date of the executive determination for the owner to request an appeal, at no cost to the alleged violator, to the Board of County Commissioners of El Paso County prior to the County Attorney's Office pursuing remedies under the Colorado Noxious Weed Act.

The executive determination shall state that the owner may appeal the Director's decision to the Board of County Commissioners of El Paso County. The owner or occupant must submit an appeal in writing to the Director. Any written appeal must be received by the Director within ten (10) calendar days after the date of the executive determination. Any such appeals received beyond the ten (10) calendar days shall be deemed untimely.

If no appeal is received within ten (10) calendar days after the date of the Director's executive determination, then the Director's executive determination shall be final and the County Attorney's Office may proceed with litigation to seek remedies available under the Colorado Noxious Weed Act and Section VI, below.

b. LIST B NOT ERADICATE OR LIST C

If, following inspection, land is found to contain List B species which are not designated to eradicate, or List C species, the landowner or occupant shall be given written notice by certified mail. The notice shall name the noxious weed(s), advise the landowner or occupant to manage the noxious weed(s), and specify the best available control methods of integrated management. Where possible, Environmental Staff shall consult with the affected landowner or occupant in the development of a plan for the management of noxious weeds on the premises or lands. Within a reasonable amount of time after receipt of the notification, which at no time shall exceed ten (10) days, the landowner shall either:

- (a) Comply with the terms of the notification; or

- (b) Acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of the plan for compliance; or
- (c) Request an arbitration panel to determine the final management plan.

If the landowner or occupant chooses action option (a), Environmental Staff will re-inspect the land to confirm compliance.

If the landowner or occupant chooses action option (b), Environmental Staff will review the proposed weed management plan and determine its adequacy. If the plan is acceptable, no further action will be taken except to monitor compliance, including re-inspection.

If the landowner or occupant chooses action option (c), the arbitration panel shall be comprised of a weed management specialist or weed scientist, a landowner of similar land in the same county, and a third panel member chosen by agreement of the first two panel members. The landowner or occupant shall be entitled to challenge any one member of the panel, and Environmental Staff shall name a new panel member from the same category. The decision of the arbitration panel shall be final.

Following the arbitration panel determination of a final management plan, Environmental Staff shall act accordingly. Environmental Staff shall give the property owner a reasonable period of time, not to exceed ten (10) business days, to begin implementation of said plan.

Failure to comply with the arbitration panel's final management plan may result in court proceedings and cost recoupment.

Should the property owner or occupant fail to respond to the notification letter, or fail to submit a management plan, fail to follow the arbitration panel's decision, or otherwise show an unwillingness to cooperate in the eradication of noxious weed(s) identified on the property, a notice of violation shall be sent via certified U.S. mail to the subject property owner's mailing address as listed in the records of the El Paso County Assessor's Office and to the occupant, if different from the owner.

The notice of violation shall specifically describe the nature of the violation and shall require that either:

- (a) The violation be corrected within ten (10) days; or
- (b) Acknowledge the terms of the violation and submit an acceptable plan and schedule for the completion of the plan for compliance.

If the violation is not corrected within the time period established in the notice of violation, the Executive Director of the El Paso County Community Services Department ("Director") may issue an executive determination to the owner or occupant authorizing the County

Attorney's Office to pursue remedies under the Colorado Noxious Weed Act subject to appeal as set forth below.

The Director shall mail the executive determination to the owner in the same manner as the notice of violation. The executive determination shall specify the nature of the violation and provide ten (10) calendar days from the date of the executive determination for the owner to request an appeal, at no cost to the alleged violator, to the Board of County Commissioners of El Paso County prior to the County Attorney's Office pursuing remedies under the Colorado Noxious Weed Act.

The executive determination shall state that the owner may appeal the Director's decision to the Board of County Commissioners of El Paso County. The owner or occupant must submit an appeal in writing to the Director. Any written appeal must be received by the Director within ten (10) calendar days after the date of the executive determination. Any such appeals received beyond the ten (10) calendar days shall be deemed untimely.

If no appeal is received within ten (10) calendar days after the date of the Director's executive determination, then the Director's executive determination shall be final and the County Attorney's Office may proceed with litigation to seek remedies available under the Colorado Noxious Weed Act and Section VI, below.

V. APPEAL HEARING

If the Director receives a timely appeal of his or her executive determination as set forth in Section IV, then the Director shall place the matter on the Board's next available land use hearing agenda.

The owner or occupant shall be notified of the date, time, and place of the hearing via first class mail to the owner's or occupant's mailing address as listed in the records of the El Paso County Assessor's Office no less than five (5) calendar days prior to the hearing.

At the hearing, the owner or occupant shall have the opportunity to present evidence and testimony to show cause why further enforcement action should not be taken. The Board shall consider all such evidence and testimony, along with any presentation, evidence, or testimony offered by Environmental Staff or other County staff, in reaching its decision to affirm or overturn the decision to issue the executive determination.

At the conclusion of the appeal hearing, the Board may decide to overturn the decision to issue the executive determination or may affirm the decision and instruct the Director to proceed with enforcement as provided in Section VI.

The Appeal Hearing shall not be considered a quasi-judicial or legislative action or matter under any circumstances.

VI. REMEDIES

In the event Environmental Staff is authorized to pursue legal remedies, either through executive determination or through an appeal hearing, then in addition to all remedies available under the Act, Environmental Staff may seek injunctive relief and/or may apply for an administrative entry and seizure warrant to the El Paso County courts.

In the event Environmental Staff pursues an administrative entry and seizure warrant, the following procedures shall apply:

Environmental Staff shall give written notice of noxious weed eradication or management by the County to the landowner or occupant by personal delivery or by certified mail. The notice will include:

- (a) Description of the land;
- (b) Name of the noxious weeds and their location(s) on the land;
- (c) Date Environmental Staff and/or Contractors will perform weed eradication or management on the land;
- (d) Method of eradication or management to be applied; and
- (e) A statement that the land will be assessed the entire cost of the weed eradication or management plus either a 100% surcharge for the cost of inspection and other incidental costs for species List A or List B eradicate, or a 20% surcharge for the cost of inspection and other incidental costs for species List B not eradicate or List C, which total will be a lien on the land (or the tract of which it is a part) until paid. Such an assessment under this section shall have priority over all other liens except general taxes and prior special assessments. Such assessment may be certified to the El Paso County Treasurer and collected and paid in the same manner as provided for collection of taxes.

VII. COST RECOUPMENT

In cases where the County has executed an administrative entry and seizure warrant to abate, manage, or mitigate noxious weeds, the County shall first mail a demand payment letter to the property owner or occupant after completion of the process. If the property owner or occupant fails to either pay the actual costs, or enter into an acceptable payment plan, within twenty (20) calendar days of the date of the letter, then the County may seek a judgment and assessment in court to be filed as a lien against the subject property and forwarded to the El Paso County Treasurer for collection in accord with the Act.

VIII. MISCELLANEOUS PROVISIONS

The Board hereby adopts the Noxious Weed Management Plan, which shall apply to both public and private properties located within the unincorporated portions of El Paso County, as set forth in Exhibit A, attached hereto and incorporated herein.

No private land management shall be compelled without first applying the same or greater management measures to County land or rights-of-way that are adjacent to the private property.

Compliance of lands owned by the state of Colorado, or its agencies, is governed by the Act.

It shall be the duty of El Paso County, through its representatives, and / or employees, to confirm that all county roads, highways, rights-of-way, and any easements appurtenant thereto, are in compliance with the Colorado Noxious Weed Act and this management plan, and any violations by the County of this article shall be the financial responsibility of the County.

Notice shall be deemed given by mail when deposited in a regular depository of the United States Postal Service, postage prepaid. Notice to landowners shall be mailed to the last known address as shown in the County's Assessment Roll unless the landowner has provided Environmental Staff a different address for notice. Notice to occupants shall be mailed to the land's physical address unless the occupant has provided El Paso County, through its representatives, and / or employees, with a different address for notice.


BE IT FURTHER RESOLVED that pursuant to C.R.S. § 35-5.5-108.5, the Board hereby declares all noxious weeds, at any and all stages, their carriers, and any and all premises, plants, and things infested or exposed to infestation therewith to be a public nuisance and that such nuisances are subject to all laws and remedies relating to the prevention and abatement of nuisances.

BE IT FURTHER RESOLVED, that Darryl Glenn, duly elected, qualified member and President of the Board of County Commissioners, or Mark Waller, duly elected, qualified member and President Pro Tempore, of the Board of County Commissioners, be and is hereby authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

DONE THIS 28th day of December, 2017, at Colorado Springs, Colorado.

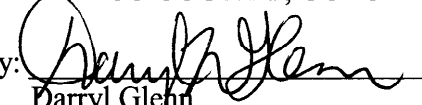
ATTEST:

By:


Chuck Broerman
Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By:


Darryl Glenn
President



NOXIOUS WEED MANAGEMENT PLAN

Noxious Weed Advisory Commission Endorsement
May 16, 2017

Board of County Commissioners' Approval
December 28, 2017

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SECTION I

INTRODUCTION

1.01 Overview

Several species of non-native invasive plants, categorized as “noxious weeds”, are known to exist in El Paso County. Without the natural controls that keep them in check, these weeds quickly dominate existing native and economic plant communities. Wildlife habitat deteriorates, water quality diminishes, erosion increases, fire regimes are altered, and recreation values are degraded. Native plant species play an integral role in all healthy ecosystems. They provide genetic material that strengthen our major food crops, provide food and shelter to animals, and enhance the landscape. In order to protect these ecosystems, invasive plant species must be controlled.

In the continuing effort to protect and restore the value of the land in the State of Colorado, the Colorado Noxious Weed Act¹ (Title 35, Article 5.5, of the Colorado Revised Statute, hereinafter “Act”) was developed. The objective of the Act is to curb the threat posed by noxious weeds to the natural resources of the State. In accordance with the Act, on or about February 7, 1991, the El Paso County Board of Commissioners established a local Noxious Weed Advisory Commission whose primary function is the development of an integrated management plan for noxious weeds within the area governed by the County.

1.02 Purpose of the Plan

The purpose of this El Paso County Noxious Weed Management Plan (“Plan”) is to provide guidelines for managing the noxious weeds that represent a threat to the natural and agricultural ecosystems of El Paso County. The Plan implements the mandates of the Act and strives to strengthen, support, and coordinate noxious weed management efforts between private, municipal, county, state, and federal entities. It is ultimately the responsibility of all landowners to employ methods and strategies to manage noxious weeds found on their property.

1.03 Enactment Authority

The Colorado Weed Management Act, (now known as the Colorado Noxious Weed Act), § 35-5.5-101, *et seq.*, C.R.S., was signed into state law in 1990. This article declares that there is a need to ensure that all lands of the state of Colorado, whether in private or public ownership, are protected by and subject to the jurisdiction of a local government empowered to manage undesirable plants (noxious weeds), as designated by the State of Colorado and the local governing body (El Paso County).

1.04 Noxious Weed List

The Act designates undesirable plant species as determined by 8 CCR 1206-2, Rules Pertaining to the Administration and Enforcement of the Act, as noxious weeds within the State of Colorado. "Noxious weed" means an alien plant or parts of an alien plant that have been designated by rule as being noxious or has been declared a noxious weed by a local advisory board, and meets one or more of the following criteria:

- Aggressively invades or is detrimental to economic crops or native plant communities.
- Is poisonous to livestock.
- Is a carrier of detrimental insects, diseases, or parasites.
- The direct or indirect effect of the presence of this plant is detrimental to the environmentally sound management of natural or agricultural ecosystems.

The Act further categorizes noxious weeds into three lists:

- "List A", which means rare noxious weed species that are subject to eradication wherever detected statewide in order to protect neighboring lands and the state as a whole.
- "List B", which means noxious weed species with discrete statewide distributions that are subject to eradication, containment, or suppression in portions of the state designated by the commissioner in order to stop the continued spread of these species.
- "List C", which means widespread and well-established noxious weed species for which control is recommended but not required by the state, although local governing bodies may require management.

This noxious weed list is updated annually and is available through El Paso County or the Colorado Department of Agriculture.

SECTION II

PLAN OF WORK

3.01 Objectives

The objectives of this plan are to prevent the establishment of noxious weeds in the County in concurrence with the management of existing populations. Countywide noxious weed management efforts will include:

- Prevention
- Inventory, Mapping, and Monitoring
- Control
- Restoration
- Education and Awareness

3.02 Prevention

Prevention is the highest priority weed management technique. Prevention ensures that noxious weed species are not introduced into un-infested areas. Noxious weed proliferation is most likely to occur where soil has been disturbed either by man-made means, (such as road and trail cuts, construction sites, and overgrazing), or naturally in the case of wildfire, avalanche, mudslide, or flood. Strategies to prevent the introduction of noxious weeds include:

- Identifying and eradicating small infestations.
- Monitoring and evaluating to prevent recurrence.
- Promotion of the Colorado Weed-Free Hay and Forage Program.
- Revegetating and reclaiming disturbed sites with appropriate native plant species.
- Restricting the unlawful sale of invasive ornamental plants and seed packets.

Some ornamental plant species, available for purchase in the past, have now been designated as noxious weeds. These plants are capable of escaping yards and gardens. Other known methods of weed introduction include:

- Contaminated seed, feed grain, hay, straw, and mulch.
- Contaminated agricultural, construction, and recreation equipment.
- Animal fur, fleece, human clothing.
- Dried flower arrangements.

3.03 Inventory, Mapping, and Monitoring

Each year, with Board of County Commissioner approved funding, El Paso County conducts a systematic inventory of noxious weeds. Utilizing Global Positioning System technology (GPS), noxious weed infestations are noted and recorded. This inventory provides a database for enforcement and education efforts.

Mapping is employed to determine the location and extent of existing infestations. This information can be used to develop weed management strategies. Mapping is also useful to predict where new noxious weeds infestations are most likely to occur.

Monitoring of weed populations is used to establish baseline data and to record vegetation trends over time. The effectiveness of weed control efforts is determined by recording vegetation quantities prior to and following weed management strategies.

3.04 Control

The most effective way to control established noxious weeds is through Integrated Weed Management (IWM). IWM incorporates weed biology, environmental information, and available management techniques, to create a management plan that prevents unacceptable damage from weeds and poses the least risk to people and the environment. IWM is a combination of treatment options that, when used together, provide optimum control for noxious weeds; however, IWM does not necessarily imply that multiple control techniques have to be used or that chemical control options should be avoided. According to the Act, “it is the duty of all persons to use integrated methods to manage noxious weeds if the same are likely to be materially damaging to the land of neighboring landowners.” IWM methods include:

- **Cultural:** Establishing healthy native or other desirable vegetation. Methods include proper grazing management (prevention of overgrazing), re-vegetating or re-seeding, fertilizing, and irrigation.
- **Biological:** The use of an organism such as insects, diseases, and grazing animals to control noxious weeds; useful for large, heavily infested areas. Not an effective method when eradication is the objective, but can be used to reduce the impact and dominance of noxious weeds.
- **Mechanical:** Manual or mechanical means to remove, kill, injure, or alter growing conditions of unwanted plants. Methods include mowing, hand-pulling, tilling, mulching, cutting, and clipping seed heads.
- **Chemical:** The use of herbicides to suppress or kill noxious weeds by disrupting biochemical processes unique to plants.

3.05 Restoration

More than 10% of Colorado's native plant species have been displaced by non-native weeds. Following the implementation of noxious weed control methods, native and beneficial plant species should be re-introduced.

Establishing desirable plant communities, after noxious weeds have been removed, requires timely cultivation and reseeding. Seeds from noxious weeds may lay dormant for several years. Revegetation with native and beneficial species deters the germination of weed seeds. Re-introducing native plants or seeds to reclaim disturbed land minimizes degradation of native ecosystems, reduces the need for herbicides, and conserves water resources. When selecting native plant seed, consider the following:

- Water availability and the vegetative requirements.
- Selection of plant species adapted to climate, soil, and topographical conditions of the designated area.
- Establish a vegetative cover that is diverse and capable of self-regeneration.
- Landscape for wildlife by choosing native plants that provide cover and forage.
- Avoid commercial seed packets containing non-native plant species

3.06 Education and Awareness

Education plays a vital role in the implementation of this Plan. Continuation and expansion of current educational programs, along with the development of new programs, is a priority of the El Paso County Weed Management Plan. The Noxious Weed Advisory Committee, along with County staff, will work to develop and coordinate public outreach and education to promote the benefits it offers to all citizens of El Paso County and to explain the impacts of noxious weeds on our county's resources. The communications component for this Plan seeks to reach five major groups of stakeholders:

- Rural property owners with regulated noxious weed infestations.
- Urban property owners with regulated noxious weed infestations.
- Land managers and property owners without regulated weeds.
- Local, county and state government agencies.
- Avoid commercial seed packets containing non-native plant species
- Community and non-profit groups focusing on parks, conservation and restoration issues.

The education component is accomplished by organizing and participating in a wide range of outreach activities. The education and outreach tools used include: informational handouts and brochures, formal presentations, technical training classes, media alerts and press releases, staffing booths at community and regional events, helping with community restoration events, and the County website. The County welcomes opportunities to provide outreach and technical assistance with noxious weeds to community groups, homeowners, agencies, volunteers, students and others.

SECTION III

PLAN EVALUATION

The scope of work in the El Paso County Noxious Weed Management Plan will be reviewed, evaluated, and endorsed by the El Paso County Noxious Weed Advisory Commission and approved, by resolution, by the Board of County Commissioners of El Paso County, Colorado, before becoming final. The plan must be reviewed at least every three (3) years per § 35-5.5-107(4)(a), *et seq.*, C.R.S., and the management plan and any recommended amendments to the plan shall be transmitted to the Board of County Commissioners of El Paso County, Colorado, for approval, modification, or rejection.