PARK COUNTY BOARD OF ADJUSTMENTS
PLANNING DEPARTMENT STAFF REPORT

Board of Adjustments Hearing Date: November 8, 2016

To: Board of Adjustments Members

Date: October 17, 2016

Prepared by: John Deagan, AICP; Planner

Case Number: 16SET-06

Subject: Messing Variance

Request: The applicant is requesting a 20 foot variance from the front setback requirement, a 15 foot variance from the side setback requirement, and a 36 foot variance from the wetland-to structure setback requirement in order to construct a house.

Application Summary:

Applicant:	Ronald Messing
Owner:	Richard Kusek
Location:	Lot 970, Valley of the Sun Filing 21, addressed as 17 Johnston Court, Fairplay.
Current Zone District:	Residential
Surrounding Zoning:	Residential in all directions.
Lot Size:	2.74 Acres
Existing Use:	Vacant
Proposed Use:	Single Family Residential

Background:

The subject lot is located at the west end of Valley of the Sun. A Vicinity Map is included as Attachment 1. The applicant is requesting a 20 foot variance from the front setback requirement, a 15 foot variance from the side setback requirement, and a 36 foot variance from the wetland-to structure setback requirement in order to construct a house. See the applicant's site plan, Attachment 2.

Sacramento Creek runs through the subject lot. A wetlands delineation on the lot was done in June of this year. The delineation reveals that the lot consists entirely of

wetlands except for 0.2 of an acre at the southwest corner of the lot. Applying the current setback requirements results in a buildable area of 220 square feet.

Valley of the Sun Filing 21 was platted in 1981, a time in which the importance of wetlands ecosystems was apparently not understood in Park County. At that time there was not a required setback between structures and wetlands. Current subdivision review practice would not allow this lot to be created, as it is unbuildable with our current setback requirements without a variance

Land Use Regulations and Strategic Master Plan:

Each of the standards for approval of a variance (Land Use Regulation (LUR) Article III, Division 1, Section 3-100, page 2) is addressed below.

1. **A strict application of the Resolution causes peculiar and exceptional practical difficulties or exceptional and undue hardship by reason of exceptional narrowness, shallowness, or shape of a specific piece of land or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the land:**
   Exceptional practical difficulty in construction within the normally required setbacks is caused by the prevalence of wetlands within the lot. Only 220 square feet of the 2.74 acre lot would be buildable due to a strict application of the setback requirements.

2. **The applicant provided reasonable and adequate evidence that the variance request is not a self-imposed hardship that can be rectified by means other than relief through a variance:**
   The proposed structure is of modest size and has the portion closest to the wetlands elevated above existing grade by the use of cantilevers.

3. **There exists no substantial detriment to any neighbor or to the public by the granting of the variance:**
   Staff discerns no substantial detriment to any neighbor or the public that would be caused by granting the variance.

4. **The intent and purpose of the regulation being varied is not substantially impaired or defeated by the granting of the variance.**
   Setback regulations exist to provide privacy, light access, and air movement between structures. The house would be 190 feet from the nearest structure on the lot to the west. Setback regulations also exist to protect wetlands and watercourses. Given adequate erosion and sedimentation measures during construction, damage to the wetlands within the lot is not anticipated.

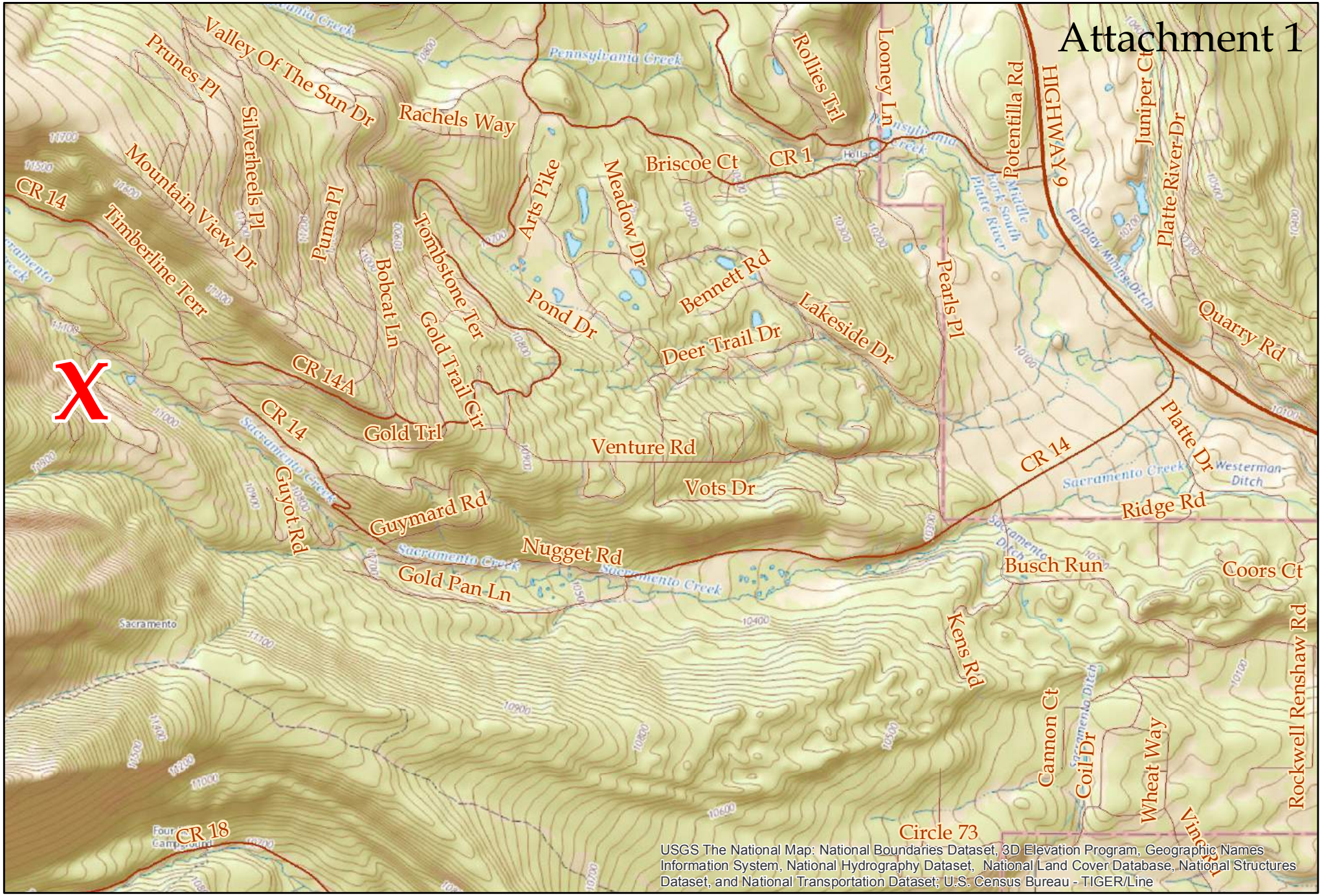
Staff does not find this variance request to be contrary to any of the Guiding Principles of the Strategic Master Plan.

Impact Analysis:
Given adequate erosion and sedimentation measures during construction, no physical or aesthetic impacts are anticipated.

Public Comment:
Written public comment was received from Michael Duncan. Mr. Duncan was concerned that construction on the lot subject to this application would encroach or already had encroached upon his lot. Since the subject lot is separated from Mr. Duncan's lot by a right-of-way and the proposed house location has been staked on the correct lot, this is not likely. Mr. Duncan's letter and the staff response can be seen as Attachment 3.

Recommendation:
Staff recommends approval of the application with the following condition:

1. Prior to issuance of a building permit for the residence, an erosion and sedimentation control plan to protect the wetlands within the lot shall be approved by Park County Development Services staff. Development Services staff shall monitor the implementation of the plan on a monthly basis until construction is complete. If staff detects sedimentation into the wetlands, construction shall cease until a revised plan is approved by staff and implemented by the applicant.



USGS The National Map: National Boundaries Dataset, 3D Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; U.S. Census Bureau - TIGER/Line

N

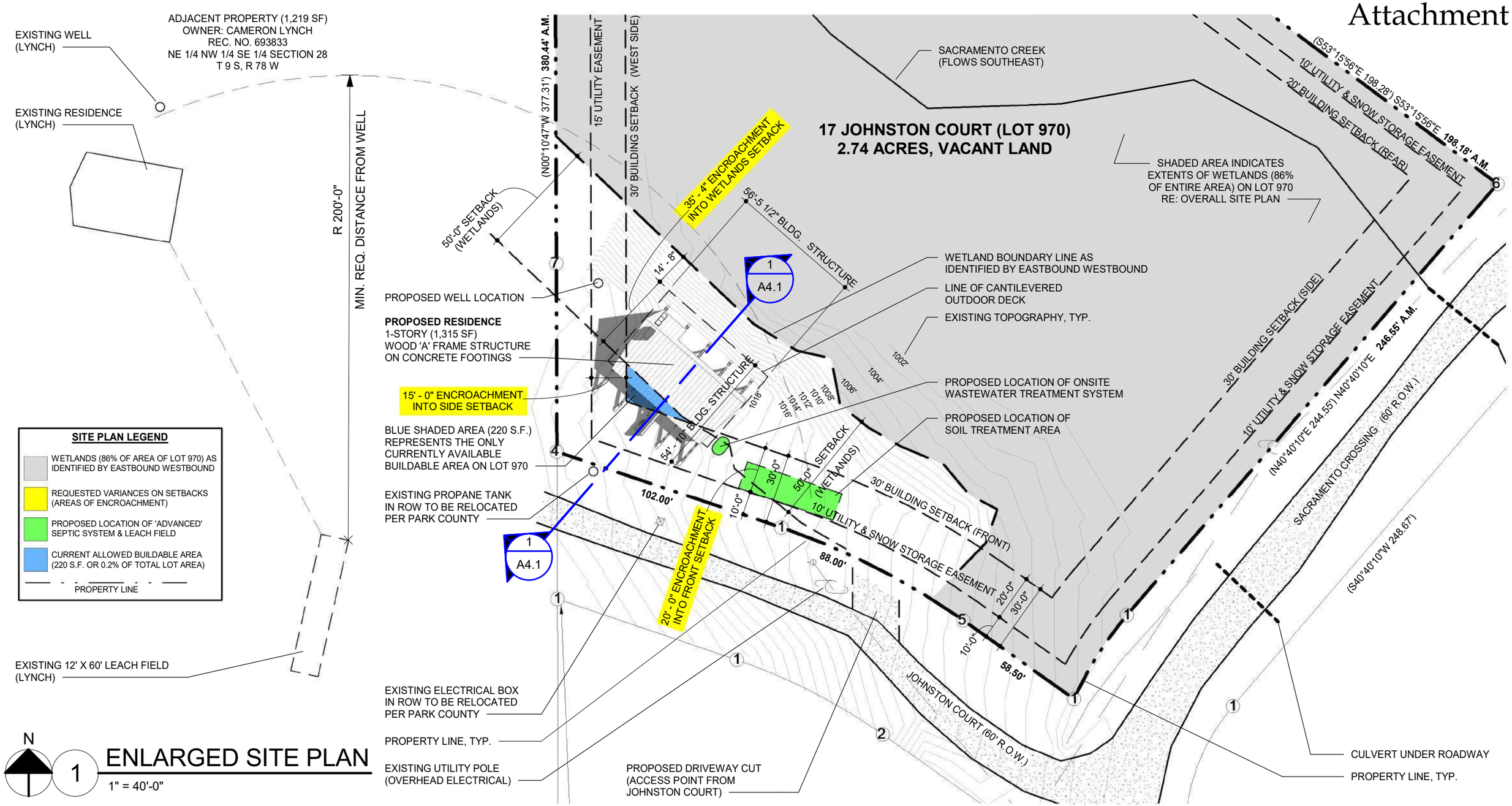
Vicinity Map

Contour Interval is Twenty Feet

0 0.5 1 2 Miles

Park County Planning Department

Attachment 2



1 ENLARGED SITE PLAN

1" = 40'-0"

*THIS SITE PLAN IS BASED ON ORIGINAL INFORMATION PROVIDED IN THE FORM OF AN ENGINEERING SURVEY FROM CROW HILL CONSULTING, LLC

JM2 CONSTRUCTION
DESIGN | DRAFTING | CARPENTRY

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10326 W IDAHO PLACE | LAKEWOOD, CO 80232

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FAIRPLAY CABIN

LOT 970, VALLEY OF THE SUN
17 JOHNSTON COURT
FAIRPLAY, CO 80440

DATE PREPARED
8.25.2016

SHEET TITLE
ENLARGED SITE PLAN

SHEET NUMBER
A1.2

Attachment 3

Michael R. Duncan
200 Pinnacle Drive, Mansfield, Texas 76063 (308) 380-8893

Park County Board of Adjustment
501 Main Street
Fairplay, Colorado 80440

October 6, 2016

SUBJECT: Ronald Messing request for variance

To Whom It May Concern:

I am the owner of lot 971, Valley of the Sun Filing 21 and the property owner most affected by the variances. I am unable to attend the meeting as I will be in trial in Federal Court in Atlanta, Georgia from October 11 thru October 21, 2016. I would appreciate the comments and concerns I articulate in this letter would be treated with the same courtesy as if I was there in person.

I think some background is in order. I purchased my lot in November 1981. My wife and I bought it with the intention of building a cabin for our family upon our retirement. That date is close and the funds have been set aside for some time. My job has kept me moving around the country, but we always held on to what we call "the Land". One of my daughters was born in Colorado and as an adult she considers it the link to her home. This is not to play upon emotions, but our property is important to us which is why we have paid taxes on it for 35 years.

If you look at the county records, it appears we purchased the property in 2005, however that is in error. We had the same situation as what we now face, but the owner of Lot 972 had actually started construction of his house and had placed it upon the lot line and his well was 10 feet inside my property. Rather than commence litigation for unlawful taking, we made a deal where we adjusted the property lines. I only bring this up as it now appears this is a pattern or practice in the area for builders and or homeowners. The builder should have known he was on our property and no work should have commenced without a survey. Lot 972 had over half of its topography being the side of a hill so they knew they were approaching the lot line. They built knowing they were wrong and had approached the county for variances after the act was done. I don't know if there are any building inspectors that check for these items as you would in an urban setting so I have knowledge as to whether it was verified by the county before building.

I am now in the same situation. Someone wishes to encroach upon my property and diminish the value of same. I looked on google earth and it appears there is construction going on and probably completed by now. It would appear that once again you are being approached to ratify variances after the fact. I don't know if this construction encroaches past my property line, but a survey will be completed after I return. If there is encroachment, this time I don't think I will be as understanding as I was before and will look at other options. I tried to look at the documents on line, but was unable to locate them so I am making some assumptions based on the aerial views. I would request that you verify if construction has started or is complete and if so, reject the variances. Disregarding regulations and laws and then asking for forgiveness after the fact runs against everything the regulations are created for. I know rejecting the variances if a structure is complete would be difficult, but why should I pay for someone else's disregard for not only regulations and law, but common courtesy. I would expect the builder would have some liability owed for not verifying lot lines before commencing construction.

I can reached at the phone number above or at mduncan@cowtown.net or mduncan@fdic.gov.

Thank you in advance for your consideration and I would appreciate some type of confirmation as to what your decision was..

Very truly yours,

Michael R Duncan ss

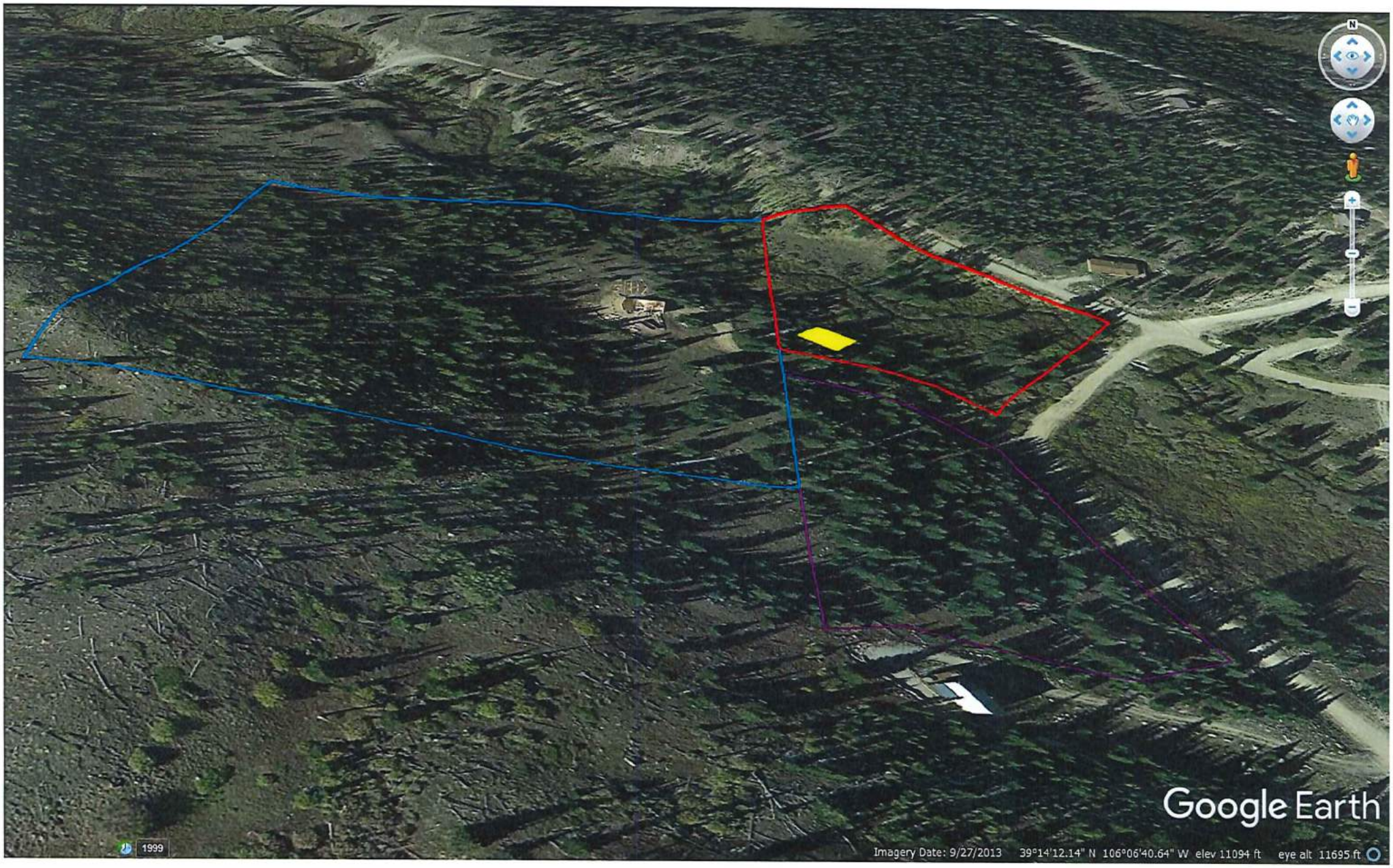
Michael R. Duncan

John Deagan

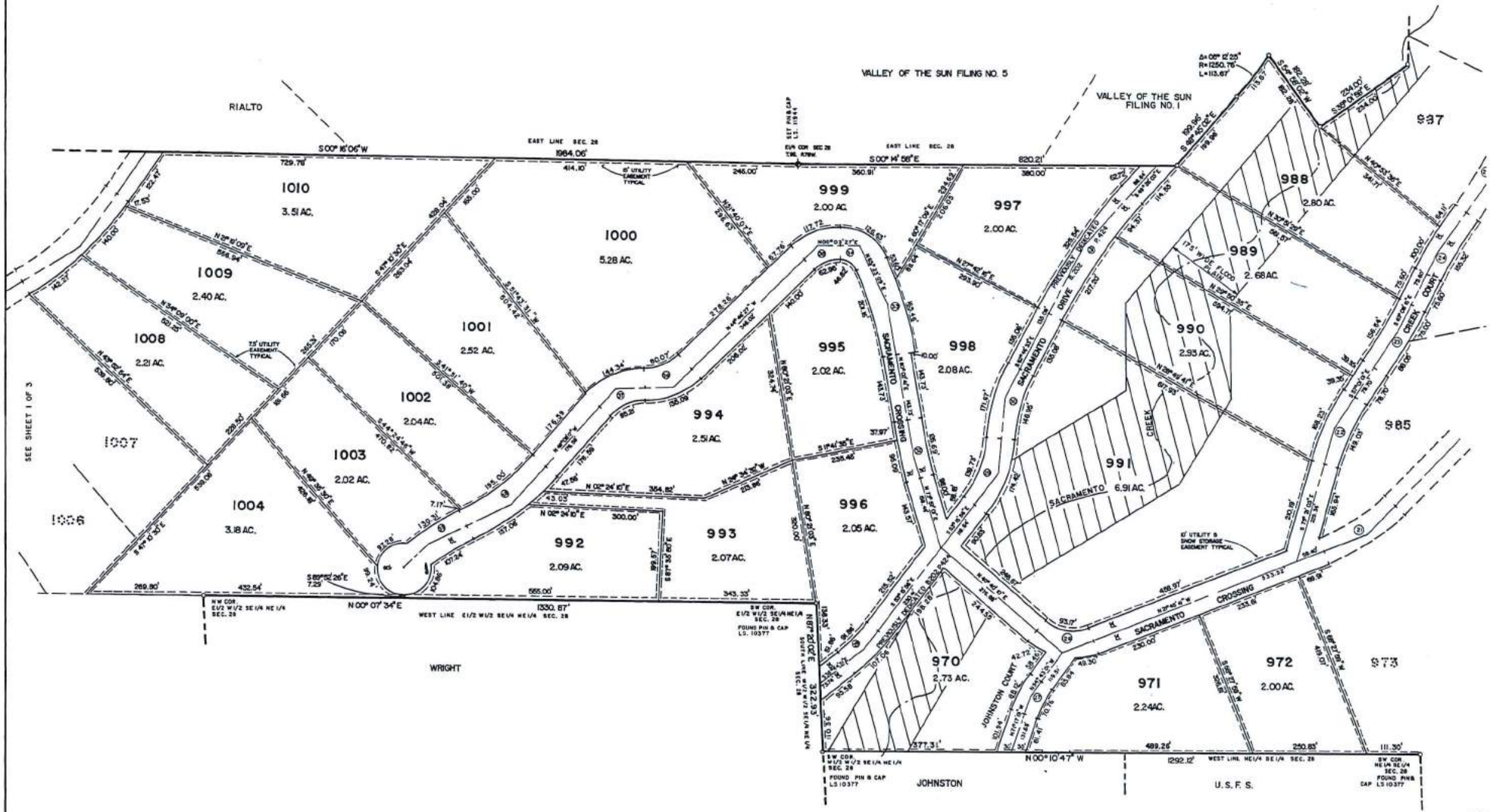
From:	John Deagan
Sent:	Monday, October 10, 2016 12:14 PM
To:	'Michael Duncan'
Cc:	'Ron Messing'
Subject:	Google Earth Files and Image
Attachments:	Duncan_LotLines_LayerToKML.kmz; Lynch_LotLines_LayerToKML.kmz; Messing_LotLines_LayerToKML.kmz; Messing_House_LayerToKML.kmz; Duncan Vicinity.jpg; VALLEY_OF_THE_SUN_FILING_21_2.tif

Dear Mr. Duncan,
The construction that you refer to was probably of a house on a lot owned by Cameron Lynch. I've attached .kmz files that can be opened in Google Earth to show the locations of your lot, the Lynch lot, and the Kusek/Messing lot and proposed house. I've also attached an image I made from Google Earth showing all of these. The final attachment is the Valley of the Sun plat (with north to the left). Since your lot is separated from the Kusek/Messing lot by a 60′ right-of-way that has had a vehicular access built within in, I do not think it would be possible for him to accidentally build on your lot. In addition, I have visited his lot and the house site is staked on it.
I hope that this allays your concerns. Please write or call with any other questions.
Sincerely, John

John Deagan, AICP
Park County Planner
719 836 4254


Google Earth
1999
Imagery Date: 9/27/2013 39°14'12.14" N 106°06'40.64" W elev 11094 ft eye alt 11695 ft

VALLEY OF THE SUN

FILING NO. 21

PARK COUNTY