

EL PASO **COUNTY**
COLORADO

COMMISSIONERS:
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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

TO: El Paso County Planning Commission
Brian Risley, Chair

FROM: Ryan Howser, Planner II
Lupe Packman, El Engineer I
Craig Dossey, Executive Director

RE: Project File #: MS-21-006
Project Name: Skyfall Subdivision Filing No. 1
Parcel No.: 52212-00-027

OWNER:	REPRESENTATIVE:
Ramses II Properties, LLC 312 Weber Street, Suite 260 Colorado Springs, CO 80903	M.V.E., Inc. 1903 Lelaray Street, Suite 200 Colorado Springs, CO 80909

Commissioner District: 2

Planning Commission Hearing Date:	12/16/2021
Board of County Commissioners Hearing Date	1/4/2022

EXECUTIVE SUMMARY

A request by Ramses II Properties, LLC for approval of a minor subdivision to create three (3) single-family residential lots. The 19.49-acre property is zoned RR-5 (Residential Rural) and is located on the south side of Burgess Road, approximately three-quarters (3/4) of a mile west of Vollmer Road and is within Section 21, Township 12 South, Range 65 West of the 6th P.M.

A. REQUEST/WAIVERS/DEVIATIONS/AUTHORIZATION

Request: A request by Ramses II Properties, LLC for approval of a minor subdivision to create three (3) single-family residential lots.

2880 INTERNATIONAL CIRCLE, SUITE 110
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127
FAX: (719) 520-6695

Waiver(s)/Deviation(s): The applicants are requesting a waiver to Section 8.4.3.B. of the El Paso County Land Development Code (2021) to allow for a lot to be created without having access and 30 feet of frontage along a public road.

Section 8.4.3.B, *Minimum Frontage*, of the Code states: “Lots shall have a minimum of 30 feet of frontage on and have access from a public road, except where private roads are approved by the BoCC pursuant to waiver granted under Section 8.4.4 (E).”

The applicant is proposing to create three (3) lots. Two (2) of the lots are proposed to have direct access to Burgess Road, an existing public road. The third lot, which is identified as Lot 3, is proposed to have access to Burgess Road via an access easement, as depicted on the proposed plat.

PCD Executive Director Recommendation:

The PCD Executive Director recommends approval of the requested waiver. Adequate access can be provided to Lot 3 via the proposed access easement. The applicant has depicted a layout that accommodates lot access to Burgess Road, an existing public road.

Authorization to Sign: Final plat and any other documents necessary to carry out the intent of the Board of County Commissioners.

B. PLANNING COMMISSION SUMMARY

Request Heard:

Recommendation:

Waiver Recommendation:

Vote:

Vote Rationale:

Summary of Hearing:

Legal Notice:

C. APPROVAL CRITERIA

In approving a minor subdivision, the BoCC shall find that the request meets the preliminary plan and final plat criteria for approval outlined in Section 7.2.1 (Subdivisions) of the El Paso County Land Development Code (2021):

Preliminary Plan Criteria for Approval:

- The proposed subdivision is in general conformance with the goals, objectives, and policies of the Master Plan;
- The subdivision is consistent with the purposes of this Code;
- The subdivision is in conformance with the subdivision design standards and any approved sketch plan;
- A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in the water supply standards [C.R.S. § 30-28-133(6)(a)] and the requirements of Chapter 8 of this Code (this finding may not be deferred to final plat if the applicant intends to seek administrative final plat approval);
- A public sewage disposal system has been established and, if other methods of sewage disposal are proposed, the system complies with state and local laws and regulations, [C.R.S. § 30-28-133(6) (b)] and the requirements of Chapter 8 of this Code;
- All areas of the proposed subdivision, which may involve soil or topographical conditions presenting hazards or requiring special precautions, have been identified and the proposed subdivision is compatible with such conditions. [C.R.S. § 30-28-133(6)(c)];
- Adequate drainage improvements complying with State law [C.R.S. § 30-28-133(3)(c)(VIII)] and the requirements of this Code and the ECM are provided by the design;
- The location and design of the public improvements proposed in connection with the subdivision are adequate to serve the needs and mitigate the effects of the development;
- Legal and physical access is or will be provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with this Code and the ECM;
- The proposed subdivision has established an adequate level of compatibility by (1) incorporating natural physical features into the design and providing sufficient open spaces considering the type and intensity of the subdivision; (2) incorporating site planning techniques to foster the implementation of the County's plans, and encourage a land use pattern to support a balanced transportation system, including auto, bike and pedestrian traffic, public or mass transit if appropriate, and the cost effective delivery of other services consistent with adopted plans, policies and regulations of the County; (3) incorporating physical design features in the subdivision to provide a transition between the subdivision and adjacent land uses; (4) incorporating identified environmentally sensitive areas, including but not limited to, wetlands and wildlife corridors, into the design; and (5) incorporating public

- facilities or infrastructure, or provisions therefore, reasonably related to the proposed subdivision so the proposed subdivision will not negatively impact the levels of service of County services and facilities;
- Necessary services, including police and fire protection, recreation, utilities, open space and transportation system, are or will be available to serve the proposed subdivision;
 - The subdivision provides evidence to show that the proposed methods for fire protection comply with Chapter 6 of this Code; and
 - The proposed subdivision meets other applicable sections of Chapter 6 and 8 of this Code.

Final Plat Criteria for Approval:

- The subdivision is in conformance with the goals, objectives, and policies of the Master Plan;
- The subdivision is in substantial conformance with the approved preliminary plan;
- The subdivision is consistent with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analyses, studies, reports, plans, designs, documents, and other supporting materials;
- A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in the water supply standards [C.R.S. §30-28-133(6)(a)] and the requirements of Chapter 8 of this Code;
- A public sewage disposal system has been established and, if other methods of sewage disposal are proposed, the system complies with State and local laws and regulations, [C.R.S. §30-28-133(6)(b)] and the requirements of Chapter 8 of this Code;
- All areas of the proposed subdivision which may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified and that the proposed subdivision is compatible with such conditions [C.R.S. §30-28-133(6)(c)];
- Adequate drainage improvements are proposed that comply with State Statute [C.R.S. §30-28-133(3)(c)(VIII)] and the requirements of this Code and the ECM;
- Legal and physical access is provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with this Code and the ECM;

- Necessary services, including police and fire protection, recreation, utilities, and transportation systems, are or will be made available to serve the proposed subdivision;
- The final plans provide evidence to show that the proposed methods for fire protection comply with Chapter 6 of this Code;
- Off-site impacts were evaluated and related off-site improvements are roughly proportional and will mitigate the impacts of the subdivision in accordance with applicable requirements of Chapter 8;
- Adequate public facilities or infrastructure, or cash-in-lieu, for impacts reasonably related to the proposed subdivision have been constructed or are financially guaranteed through the SIA so the impacts of the subdivision will be adequately mitigated;
- The subdivision meets other applicable sections of Chapter 6 and 8; and
- The extraction of any known commercial mining deposit shall not be impeded by this subdivision [C.R.S. §34-1-302(1), et seq.]

D. LOCATION

North: RR-5 (Residential Rural)	Black Forest Section 16
South: RR-5 (Residential Rural)	Residential
East: RR-5 (Residential Rural)	Residential
West: RR-5 (Residential Rural)	Residential

E. BACKGROUND

The parcel was zoned A-4 (Agricultural) on September 21, 1965, when zoning was first initiated for this portion of El Paso County (BoCC Resolution No. 434870). Due to changes in the nomenclature of the Land Development Code, the A-4 zoning district was renamed as the RR-5 (Residential Rural) zoning district.

The 19.49-acre property was legally created by warranty deed on March 22, 1972 (Book 2476, Page 109) and the existing dwelling was constructed in 1978. The construction date of the two (2) accessory structures is unknown.

The applicant is requesting approval of a minor subdivision to create three (3) single-family residential lots from the existing 19.485-acre parcel. Lot 1 is proposed to be 5.00 acres, Lot 2 is proposed to be 4.75 acres, and Lot 3 is proposed to be 9.43 acres. The existing dwelling is proposed to remain on proposed Lot 1 and has an approved well and septic system that will be fully contained within the boundaries of Lot 1. The existing dwelling and accessory structures on proposed Lot 1 would comply with all setback, lot coverage, and height standards of the RR-5 (Rural Residential) district as depicted on the final plat.

The property is also encumbered by a 100-foot Colorado Interstate Gas Company easement, which bisects the property from north to south. The easement will not preclude the lot from being developed and leaves adequate buildable area for a single-family dwelling.

F. ZONING ANALYSIS

1. Land Development Code Compliance

The minor subdivision application meets the final plat submittal requirements, the preliminary plan submittal requirements, the standards for Divisions of Land in Chapter 7, and the standards for Subdivision in Chapter 8 of the El Paso County Land Development Code.

2. Zoning Compliance

The subject parcel is zoned RR-5 (Rural Residential). The RR-5 zoning district is intended to accommodate low-density, rural, single family residential development. The density and dimensional standards for the RR-5 zoning district are as follows:

- Minimum lot size: 5 acres *
- Minimum width at the front setback line: 200 feet
- Minimum setback requirement: front 25 feet, rear 25 feet, side 25 feet *
- Maximum lot coverage: 25 percent
- Maximum height: 30 feet

* In the event that the land to be partitioned, platted, sold or zoned abuts a section line County road, the minimum lot area for lots abutting the road shall be 4.75 acres and minimum lot width shall be 165 ft.

*Agricultural stands shall be setback a minimum of 35 feet from all property lines.

The existing structure meets the required 25-foot setback from all property lines and is under 30 feet in height. The applicant has provided a site plan depicting the locations of the single-family dwelling and two (2) accessory structures. The structures comply with the RR-5 zoning district density and dimensional standards. The applicant is not proposing any setback encroachments or dimensional variances. The applicant is not proposing to construct of any new structures at this time.

Lot 1 is proposed to be 5.00 acres, Lot 2 is proposed to be 4.75 acres, and Lot 3 is proposed to be 9.43 acres. Per the dimensional standards outlined above, the minimum lot area for lots abutting a section line County road shall be 4.75 acres; Burgess Road is a section line County road. Therefore, the applicant is allowed to create a lot(s) along Burgess Road with a minimum lot size of 4.75 acres, which in this instance would apply to the platting of Lot 2 with only 4.75 acres as discussed above.

Any proposed additional structures will require site plan review and approval and will need to include confirmation that all site improvements (existing and proposed) comply with the dimensional standards included in Chapter 5 as well as the Development Standards of Chapter 6 of the Code.

G. MASTER PLAN ANALYSIS

1. Your El Paso Master Plan

a. Placetype: Large-Lot Residential

Placetype Character:

The Large-Lot Residential placetype consists almost entirely of residential development and acts as the transition between placetypes. Development in this placetype typically consists of single-family homes occupying lots of 2.5 acres or more, and are generally large and dispersed throughout the area so as to preserve a rural aesthetic. The Large-Lot Residential placetype generally supports accessory dwelling units as well. Even with the physical separation of homes, this placetype still fosters a sense of community and is more connected and less remote than Rural areas. Large-Lot Residential neighborhoods typically rely on well and septic, but some developments may be served by central water and waste-water utilities. If central water and wastewater can be provided, then lots sized less than 2.5 acres could be allowed if; 1.) the overall density is at least 2.5 acres/lot, 2.) the design for development incorporates conservation of open space, and 3.) it is compatible with the character of existing developed areas.

Conservation design (or clustered development) should routinely be considered for new development within the Large-Lot Residential placetype to provide for a similar level of development density as existing large-lot areas while maximizing the preservation of contiguous areas of open space and the protection of environmental features. While the Large-Lot Residential placetype is defined by a clear set of characteristics, the

different large-lot areas that exist throughout the County can exhibit their own unique characters based on geography and landscape.

Recommended Land Uses:

Primary

- Single-family Detached Residential (typically 2.5-acre lots or larger)

Supporting

- Parks/Open Space
- Commercial Retail (Limited)
- Commercial Service (Limited)
- Agriculture

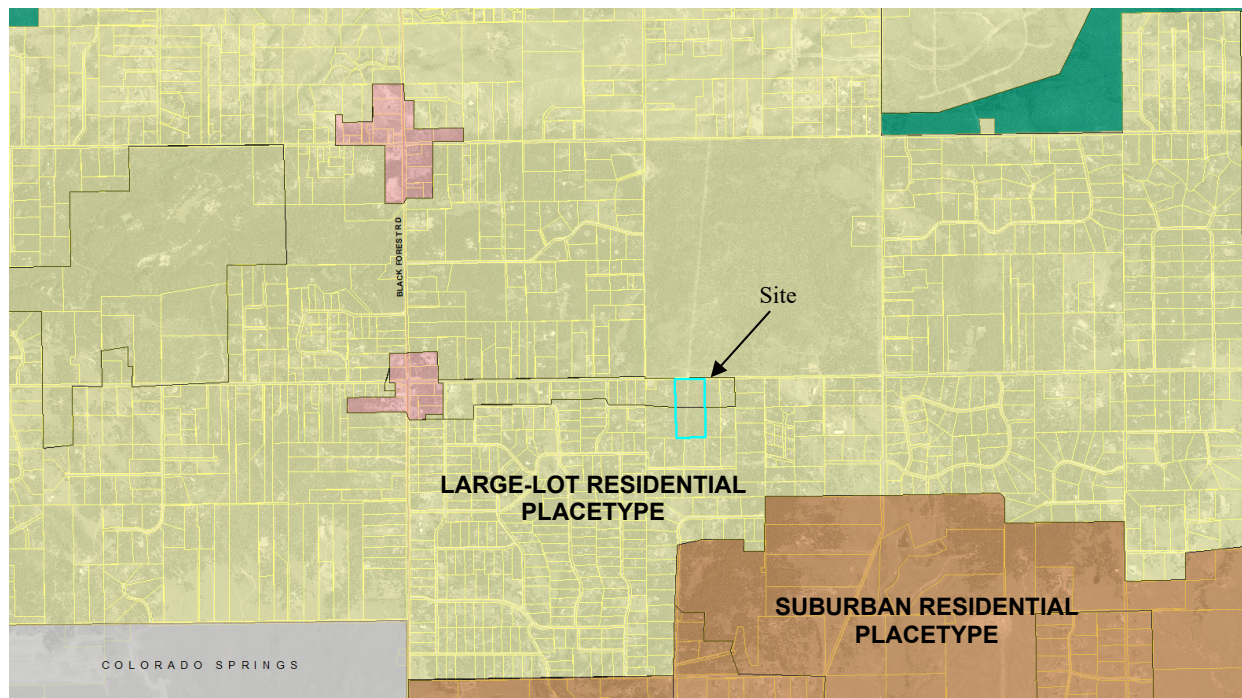


Figure G.1: Placetype Map

Analysis:

The property is located within the Large-Lot Residential placetype. The Large-Lot Residential placetype supports the rural character of the County while providing for unique and desirable neighborhoods. Relevant goals and objectives are as follows:

Goal LU1 – Ensure compatibility with established character and infrastructure capacity.

Objective HC1-5 – Focus detached housing development in Large-Lot Residential and Suburban Residential areas given the increasing infrastructure and environmental constraints associated with such development to help maintain the established character of rural communities.

Goal HC2 – Preserve the character of rural and environmentally sensitive areas.

The proposed subdivision would create three (3) single-family detached residential lots. The proposed use and lot size are consistent with the character and intent of the Large-Lot Residential placetype. The three lots are 5 acres (Lot 1), 4.75 acres (Lot 2), and 9.43 acres (Lot 3). By maintaining a larger lot size than the recommended 2.5 acres identified as suitable within the Large-Lot Residential placetype, the proposed subdivision is helping to preserve the rural character of the area. The increased lot size also accommodates the large electrical easement that bisects the property.

b. Area of Change Designation: Minimal Change: Undeveloped

The character of these areas is defined by a lack of development and presence of significant natural areas. These areas will experience some redevelopment of select underutilized or vacant sites adjacent to other built-out sites, but such redevelopment will be limited in scale so as to not alter the essential character. New development may also occur in these areas on previously undeveloped land, but overall there will be no change to the prioritized rural and natural environments.

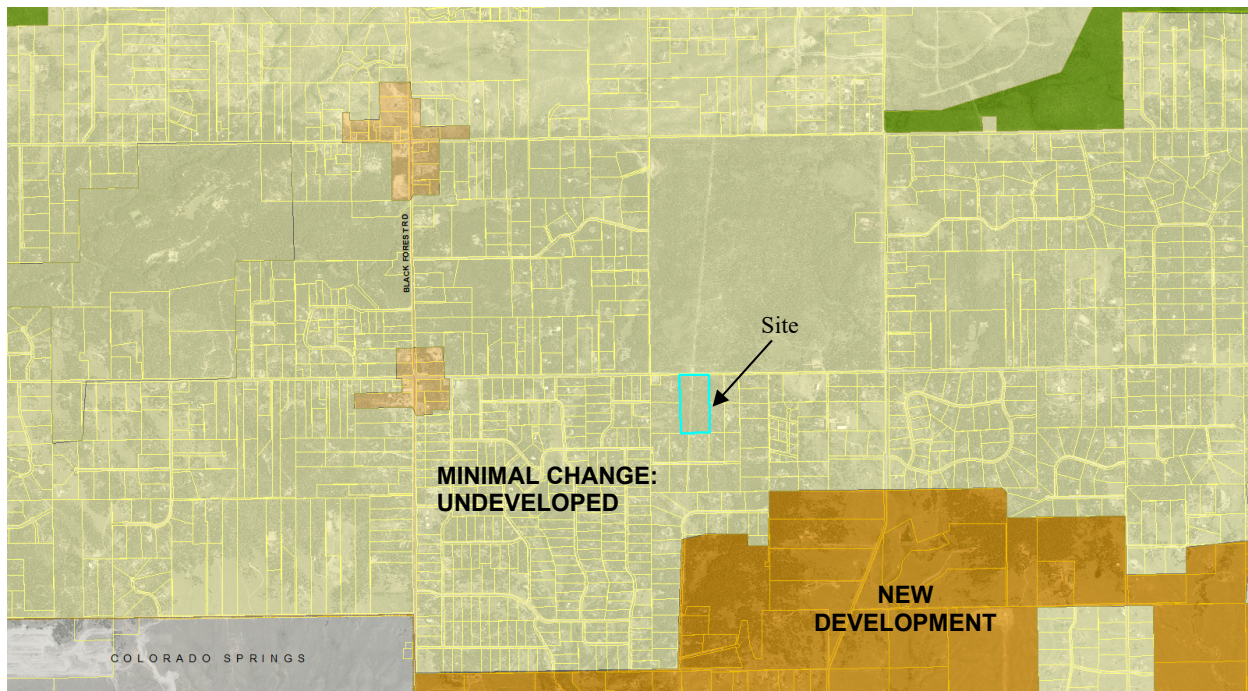


Figure G.2: Area of Change Map

Analysis:

The subject property is adjacent to rural residential properties to the south, east, and west. The properties to the west of the subject property are unplatted, are 10.27 acres and 8.17 acres in size, and are used for single-family detached residential purposes. To the south of the subject property are two platted lots, which are 6.81 acres and 6.3 acres in size and are used for single-family detached residential purposes. To the east of the subject property are two (2) unplatted 5-acre parcels, which are also used for single-family detached residential purposes. To the north of the subject property, on the north side of Burgess Road, is the Black Forest Section 16 park land and trail, which is owned by the State of Colorado.

The proposed minor subdivision to create three (3) rural residential lots is compatible with the surrounding lot sizes, which vary in size but are all a minimum of five (5) acres. The character of the surrounding area is consistent with the Area of Change designation, which identifies that existing vacant land may be developed in the future. Since the subject property is surrounded primarily by developed land, it is unlikely that the character of the area may change substantially in the future. The current minor subdivision proposal is consistent with the Area of Change designation and with the current development pattern of the surrounding properties.

c. Key Area Influences

El Paso County represents a vast area composed of many distinct areas. These “Key Areas” have their own unique identities and are generally localized into smaller geographic areas with distinct characteristics that distinguish them from other areas of the County. The subject property is potentially influenced by two (2) Key Areas: 1) Potential Areas for Annexation and 2) Forested Area.

Potential Areas for Annexation

A significant portion of the County’s expected population growth will locate in one of the eight incorporated municipalities. As the largest municipality in El Paso County, Colorado Springs is expected to grow in population over the next several decades. As a result of this growth, Colorado Springs, and other municipalities including Fountain and Monument, will need to annex parts of unincorporated County to plan for and accommodate new development. This will either occur through new development within existing municipal limits or the annexation of subdivisions in unincorporated parts of the County.

This Key Area outlines the portions of the County that are anticipated to be annexed as development occurs. It is imperative that the County continue to coordinate with the individual cities and towns as they plan for growth. Collaboration with the individual communities will prevent the unnecessary duplication of efforts, overextension of resources, and spending of funds. The County should coordinate with each of the municipalities experiencing substantial growth the development of an intergovernmental agreement similar to that developed with Colorado Springs.

Forested Area

This Key Area includes parts of the County where natural forests are the predominant feature such as Black Forest, areas north of Peyton, and areas along Highway 115 as well as lands within Pike National Forest. Pike National Forest is one of the County’s largest natural amenities and tourist destinations. Continued coordination with the U.S. Forest Service is critical to ensuring future development in areas adjacent to the Forest do not negatively impact the natural environment. There are also many established communities within Pike National Forest particularly in Ute

Pass and along Highway 115. New development and any redevelopment in these locations should be of a lower intensity to mitigate any impacts on the Forest, properly manage stormwater, provide safe access to major roads and state highways for the traveling public and emergency response vehicles and adhere to the strictest building codes to prevent any hazards such as fires and soil erosion related to poor planning, design, and construction.

Managed residential growth, along with supportive commercial uses, have helped the other forested areas preserve their natural amenities while supporting the daily needs of a thriving local community. The seamless connection between the natural environment and small-scale, low intensity development is critical to their identity. All new development and redevelopment in this Key Area should strictly adhere to the transportation and infrastructure, stormwater requirements, built form, and transition guidelines outlined in their appropriate placetypes. Each development proposal should also be reviewed on a case-by-case basis to determine its specific impact on the forested area and the established character of the individual community.

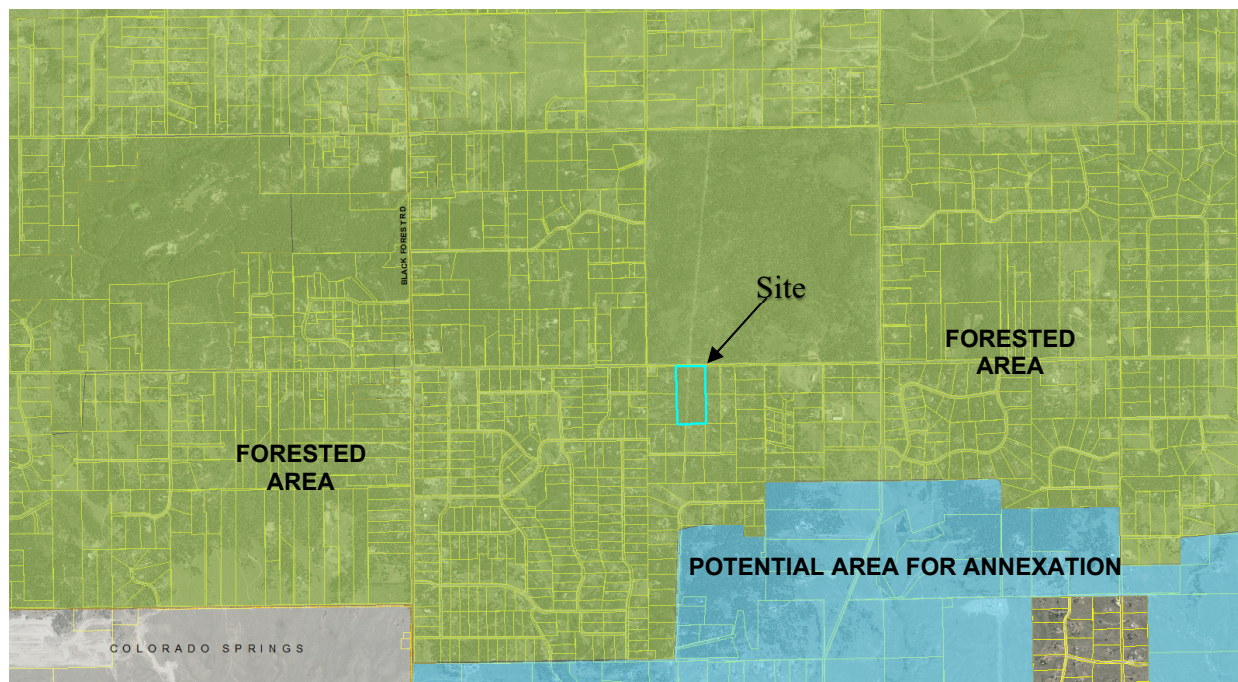


Figure G.3: Key Area Map

Analysis:

The subject property is not specifically included within the defined mapping of the Potential Areas for Annexation Key Area but is nevertheless within close proximity. As development and annexation continue to progress within the City of Colorado Springs, areas along the fringe of Potential Areas for Annexation or otherwise near the incorporated boundary of the municipality could be appropriately considered for annexation. With that said, the currently municipal boundary of the City of Colorado Springs is not contiguous with the subject property and annexation is not likely in the near future based upon the existing rural residential development pattern in the area.

The lot sizes and lot layout of the proposed subdivision are consistent with the existing development pattern in the area, which largely protects the character of the Forested Area, and specifically within Black Forest. In addition, the proposed subdivision will serve as an extension of the existing “small-scale, low intensity development” that has already occurred in area.

d. Other Implications (Priority Development, Housing, etc.)

The subject property is not located within a Priority Development Area.

2. Water Master Plan Analysis

The El Paso County Water Master Plan (2018) has three main purposes; better understand present conditions of water supply and demand; identify efficiencies that can be achieved; and encourage best practices for water demand management through the comprehensive planning and development review processes. Relevant policies are as follows:

Goal 1.1 – Ensure an adequate water supply in terms of quantity, dependability and quality for existing and future development.

Policy 1.1.1 – Adequate water is a critical factor in facilitating future growth and it is incumbent upon the County to coordinate land use planning with water demand, efficiency and conservation.

Goal 1.2 – Integrate water and land use planning.

Goal 4.3 – Collaborate with the State and other stakeholders to extend the economic life of the Denver Basin aquifers.

The Water Master Plan includes demand and supply projections for central water providers in multiple regions throughout the County. The proposed development will not be served by a central water system. The following has been included for informational purposes only as it pertains to water demands and supplies in Region 4a for central water providers:

The property is located within Planning Region 3 of the Plan, which is an area anticipated to experience growth by 2040. The Plan identifies the current demand for Region 3 to be 4,494 acre-feet per year (AFY) (Figure 5.1) with a current supply of 7,164 AFY (Figure 5.2). The projected demand in 2040 is at 6,403 AFY (Figure 5.1) with a projected supply of 7,921 AFY (Figure 5.2) in 2040. The projected demand at build-out in 2060 is 8,307 AFY (Figure 5.1) with a projected supply of 8,284 AFY (Figure 5.2) in 2060. This means that by 2060 a deficit of 23 AFY is anticipated for Region 3.

Water sufficiency has been analyzed with the review of the proposed minor subdivision. The augmentation decree for the property allows the subdivision to draw 3.83 acre-feet of water per year over a 300-year period from the Dawson Aquifer for the three (3) proposed lots. The applicant's water resources report indicates an estimated use of approximately 1.86 acre-feet per year.

The applicant's water resources report and augmentation plan include measures for recharging renewable water resources in the Dawson aquifer. The applicant has shown a sufficient water supply for the required 300-year period. The State Engineer and the County Attorney's Office have recommended that the proposed minor subdivision has an adequate water supply in terms of quantity and dependability. El Paso County Public Health has recommended that the proposed minor subdivision has an adequate water supply in terms of quality. Please see the Water section below for a summary of the water findings and recommendations for the proposed minor subdivision.

3. Other Master Plan Elements

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcel as having a low wildlife impact potential. El Paso County Environmental Services, Colorado Parks and Wildlife, and United States Forest Service were each sent a referral and have no outstanding comments.

The Master Plan for Mineral Extraction (1996) does not identify any deposits in the area of the subject property. A mineral rights certification was prepared by the applicant indicating that, upon researching the records of El Paso County, no severed mineral rights exist.

The El Paso County Parks Master Plan (2013) does not show any parks or trails within the vicinity of the project.

Please see the Transportation section below for information regarding the El Paso County 2016 Major Transportation Corridors Plan Update (MTCP).

H. PHYSICAL SITE CHARACTERISTICS

1. Hazards

No hazards were identified during the review of the minor subdivision.

2. Wildlife

The El Paso County Wildlife Habitat Descriptors (1996) identifies the parcels as having a low wildlife impact potential.

3. Floodplain

The property is not located within a defined floodplain as determined by FEMA Flood insurance Rate Map panel number 08041C0535G, dated December 7, 2018.

4. Drainage and Erosion

The property is located on the border between the Cottonwood Creek Drainage Basin (FOMO2200) and Sand Creek Drainage Basin (FOFO4000), which are included in the El Paso County Drainage Basin Fee program. The approved Final Drainage Report calculates the fees for the Cottonwood Creek Basin at \$10,629.05 for drainage and \$581.18 for Bridge; fees for the Sand Creek Drainage Basin are calculated at \$3,695.35 for drainage, and \$2015.37 for bridge. The total amount of fees due at the time of recordation for both the Cottonwood Creek and Sand Creek Drainage Basins are \$11,667.14 for drainage and \$2,596.55 for Bridge fees. The applicant qualifies for a 25 percent drainage fee reduction per ECM 3.10.2a, which has been calculated in this total.

Per the submitted drainage letter, runoff flows away from the center of the site and sheet flows towards the east, south, and west.

No public improvements are required for this project. Water quality and detention facilities are not required due to the nature and size of the lots. The applicant is not proposing to change the natural direction of runoff on the property.

5. Transportation

The subdivision receives access off Burgess Road, which is owned and maintained by El Paso County. There will be a platted easement that will provide access to Lot 3 which is not proposed to be located adjacent to Burgess Road. A traffic study was not required as the proposed subdivision is not expected to generate 100 daily vehicle trips.

The El Paso County 2016 Major Transportation Corridors Plan Update does not depict roadway improvements in the immediate vicinity.

The development is subject to the El Paso County Road Impact Fee Program (Resolution No. 19-471, as amended). Road impact fees shall be paid in full at the time of subsequent building permits if not paid at the time of final plat recordation.

I. SERVICES

1. Water

Sufficiency:

Quality: Sufficient

Quantity: Sufficient

Dependability: Sufficient

Attorney's summary: Water will be provided by individual onsite wells. The State Water Engineer's Office has made a finding of adequacy and has stated water can be provided without causing injury to decreed water rights. The County Attorney's Office is recommending a finding of sufficiency with regard to water quantity and dependability. El Paso County Public Health is recommending a finding of sufficiency with regard to water quality

2. Sanitation

Individual onsite wastewater treatment systems (OWTS) are proposed to serve the residential lots. The applicant submitted an OWTS report which indicated that the lots are suitable for the construction of these systems. El Paso County Public Health was sent a referral and has no outstanding comments.

3. Emergency Services

The property is within the Black Forest Fire Protection District. The District was sent a referral and has no outstanding comments.

4. Utilities

Electrical service is provided by Mountain View Electric Association, Inc., (MVEA) and natural gas service is provided by Black Hills Energy. MVEA and Black Hills Energy were both sent a referral; MVEA has no outstanding comments and Black Hills Energy did not provide a response.

5. Metropolitan Districts

The property is not located within the boundary of a metropolitan district.

6. Parks/Trails

Fees in lieu of park land dedication in the amount of \$1,380 for regional fees (Area 2) will be due at the time of recording the final plat. Urban park fees will not be due at this time.

7. Schools

Fees in lieu of school land dedication in the amount of \$918 shall be paid to El Paso County for the benefit of Academy School District No. 20 at the time of recording the final plat.

J. APPLICABLE RESOLUTIONS

Approval Page 19

Disapproval Page 20

K. STATUS OF MAJOR ISSUES

There are no major issues.

L. RECOMMENDED CONDITIONS AND NOTATIONS

Should the Planning Commission find that the request meets the criteria for approval outlined in Section 7.2.1 (Subdivisions) of the El Paso County Land Development Code (2021) staff recommends the following conditions and notations:

CONDITIONS

1. All Deed of Trust holders shall ratify the plat. The applicant shall provide a current title commitment at the time of submittal of the Mylar for recording.

2. Colorado statute requires that at the time of the approval of platting, the subdivider provides the certification of the County Treasurer's Office that all ad valorem taxes applicable to such subdivided land, or years prior to that year in which approval is granted, have been paid. Therefore, this plat is approved by the Board of County Commissioners on the condition that the subdivider or developer must provide to the Planning and Community Development Department, at the time of recording the plat, a certification from the County Treasurer's Office that all prior years' taxes have been paid in full.
3. The subdivider or developer must pay, for each parcel of property, the fee for tax certification in effect at the time of recording the plat.
4. The applicant shall submit the Mylar to Enumerations for addressing.
5. The developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed species.
6. Driveway permits will be required for each access to an El Paso County owned and maintained roadway. Driveway permits are obtained from the El Paso County Planning and Community Development Department.
7. The Subdivision Improvements Agreement, including the Financial Assurance Estimate, as approved by the El Paso County Planning and Community Development Department, shall be filed at the time of recording the Final Plat.
8. Collateral sufficient to ensure that the public improvements as listed in the approved Financial Assurance Estimate shall be provided when the final plat is recorded.
9. The subdivider(s) agrees on behalf of him/herself and any developer or builder successors and assignees that Subdivider and/or said successors and assigns shall be required to pay traffic impact fees in accordance with the El Paso County Road Impact Fee Program Resolution (Resolution No. 19-471), or any amendments thereto, at or prior to the time of building permit submittals. The fee obligation, if not paid at final plat recording, shall be documented on all sales

documents and on plat notes to ensure that a title search would find the fee obligation before sale of the property.

10. Park fees in lieu of land dedication for regional parks (Area 2) in the amount of \$1,380 shall be paid at the time of plat recordation.
11. Fees in lieu of school land dedication in the amount of \$918 shall be paid to El Paso County for the benefit of Academy School District No. 20 at the time of plat recording.
12. Drainage fees in the amount of \$11,667.14 and bridge fees in the amount of \$2,596.55 for the Cottonwood Creek Drainage Basin (FOMO2200) and the Sand Creek Drainage Basin (FOFO4000), respectively, shall be paid to El Paso County at the time of recording the final plat.
13. The County Attorney's Conditions of Compliance shall be adhered to at the appropriate time.

NOTATIONS

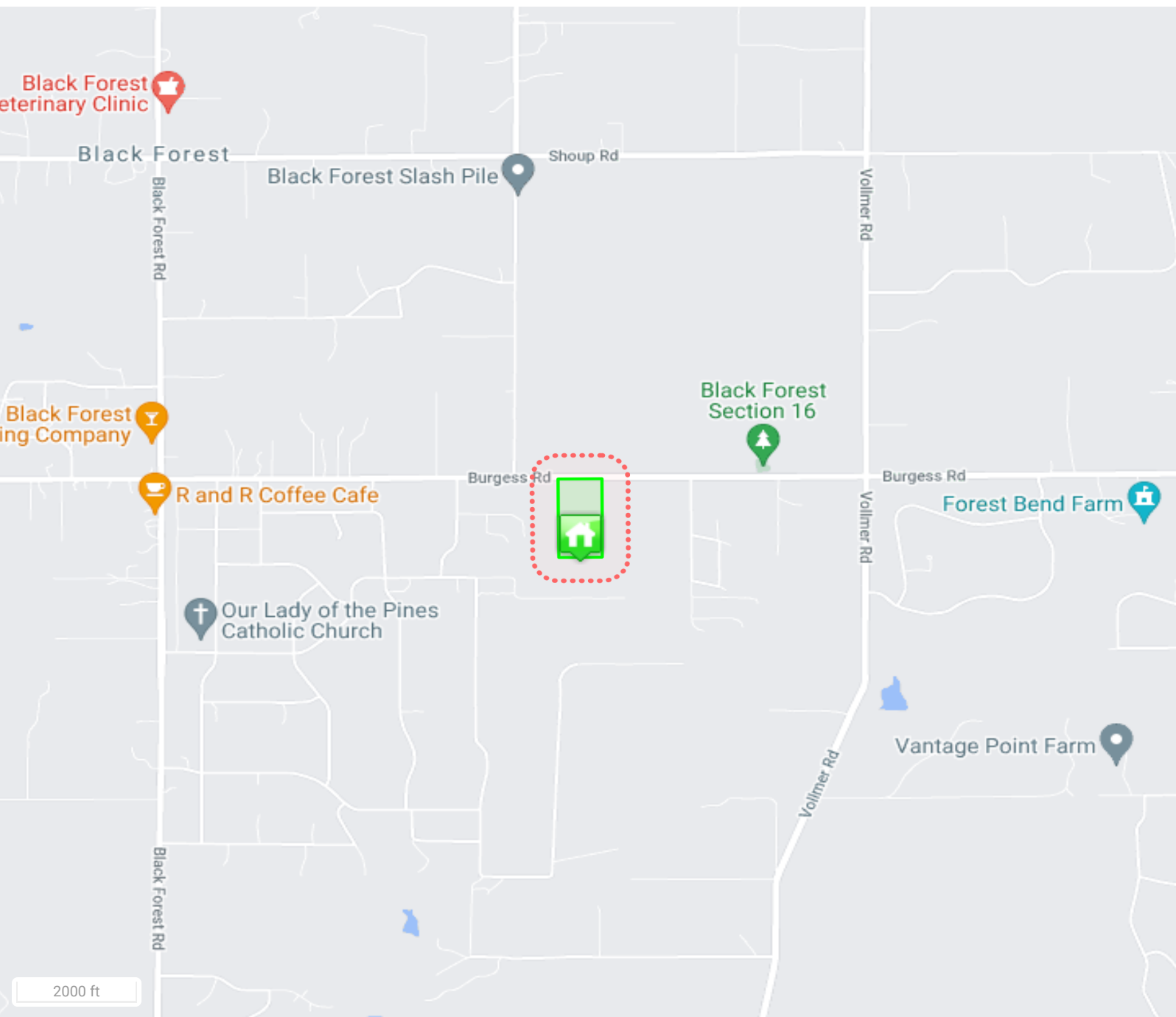
1. Final plats not recorded within 24 months of Board of County Commissioner approval shall be deemed expired, unless an extension is approved.
2. Site grading or construction, other than installation or initial temporary control measures, may not commence until a Preconstruction Conference is held with Planning and Community Development Inspections and a Construction Permit is issued by the Planning and Community Development Department.

M. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified twelve (12) adjoining property owners on December 1, 2021, for the Planning Commission meeting. Responses will be provided at the hearing.

N. ATTACHMENTS

Vicinity Map
Letter of Intent
Plat Drawing
State Engineer's Letter
County Attorney's Letter
El Paso County Public Health Recommendation Letter



7985 BURGESS RD

Market Value **\$583,327**

No Photo Available



5221200027
RAMSES II PROPERTIES LLC

Disclaimer

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August 6, 2021

PCD File No.: MS-21-006

**LETTER OF INTENT
SKYFALL SUBDIVISION FILING NO. 1
MINOR SUBDIVISION**

Owner:

Ramses II Properties, LLC
312 S. Weber St. Ste 260
Colorado Springs, CO 80903
(719) 599-7825
ramses2properties@gmail.com

Applicant:

M.V.E., Inc.
1903 Lelaray Street, Suite 200
Colorado Springs, CO
(719) 635-5736
Attn: David R. Gorman, P.E.
daveg@mvecivil.com

Site Location Size and Zoning:

The proposed subdivision to be known as “Skyfall Subdivision Filing No. 1” is located within the northwest one-quarter of the northwest one-quarter of Section 21, Township 12 South, Range 65 west of the 6th Principal Meridian in El Paso County, Colorado. The property has El Paso County Tax Schedule No. 52212-00-027. The current address of the site is 7985 Burgess Road. The northern portion of the site currently contains a residence, gravel drive, outbuilding, well and septic system. There is a utility easement that runs north-south through the central portion of the site. The site is 19.485± acres in area and is zoned RR-5 (Residential Rural – 5 Acre).

The site is situated south of Burgess Road, north of Toltec Lane, west of Pine Meadows Road and east of Wakely Road in the Black Forest area of El Paso County. Burgess Road, a public paved road, is adjacent to the northern edge of the site. Two (2) unplatted parcels (zoned RR5) each with an existing single-family residential development lie west of the site on the same side of Burgess Road. To the east of the site there are two (2) unplatted parcels (zoned RR-5) with existing single-family residential developments. Lots 2 and 3 Corinado Estates (zoned RR5) with existing single-family residential developments lie south of the site. Black Forest Section 16 (Zoned RR-5), owned by the State of Colorado and containing a looped tail, lies to the north of the site across Burgess Road.

Request and Justification:

The request is for approval of the Minor Subdivision plat of Skyfall Subdivision Filing No. 1, containing 19.485± acres. This proposed Minor Subdivision will create three (3) rural residential single-family lots

Engineers • Surveyors
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in the RR-5 zone (Residential Rural – 5 Acre). Proposed Lot 1 is to contain the existing single family residence and will be 5.000± acres in area. Proposed Lot 2 is adjacent to Burgess Road, an existing section line road. This lot will contain a future residence and will be 4.750± acres pursuant to El Paso Land Development Code Section 5.4.2, Table 5-4, Note 2, which provides “*In the event that the land to be partitioned, platted, sold or zoned abuts a section line County road, the minimum lot area for lots abutting the road shall be 4.75 acres and minimum lot width shall be 165 ft.*”. The plat will dedicate additional right-of-way for adjacent Burgess Road. Proposed Lot 3 will be 9.433± acres and contain a future single-family residence. A waiver from LDC section 8.4.3 (B) that “Lots shall have a minimum of 30 feet of frontage on and have access from a public road, except where private roads are approved by the BoCC” is also requested. Instead of road frontage, access to lots 1, 2, & 3 shall be through the proposed common access easement connecting the site to Burgess Road. The justification for the requested waiver is included in a separate section below.

This Minor Subdivision plat is consistent with the requirements of the existing RR-5 zoning with respect to the layout, land use (single-family residential), lot size, minimum building setbacks, water supply and wastewater disposal. The existing residence and auxiliary structures and facilities are to be contained within proposed Lot 2.

The proposed Minor Subdivision is compatible with the surrounding land uses and neighborhood listed above and coincides with the adjacent zoning and platted lot sizes on the north, south, east, and west, all being approximately 5 acres or larger. The proposed Minor Subdivision application is in conformance with the goals, objectives, and policies of the Master Plan and the applicable Topical Master Plan elements as discussed below.

This application meets the Minor Subdivision submittal requirements, the standards for Divisions of Land in Chapter 7, and the standards for Subdivisions in Chapter 8 of the El Paso County Land Development Code (2021). Minor Subdivisions are reviewed and approved in consideration of the review criteria found in the El Paso County Land Development Code. Each criteria is listed below followed by the appropriate justification.

1. *The subdivision is in conformance with the goals, objectives, and policies of the Master Plan.* “**Your El Paso Master Plan**” (2021) is a comprehensive document communicating a vision for many factors that influence the quality of in El Paso County, including Land Use. The Master Plan provides a strategy to achieve the vision by putting forth goals and policies that can be used as a framework for decision-making regarding development of the County.

The site is located in the “Forested Area” of the county located east of Highway 83, north of Woodmen Road, west of highway 24 and south of Walker Road. The site is designated to be a Large-Lot Residential Placetype. The Primary Land Use of this placetype is Single Family Detached housing with Agriculture, Commercial Retail, Commercial Service and Parks and Open Space as Supporting Land Uses. The location of this site and existing infrastructure is suited to single family residential use. The existing roadway layout in the immediate area is not suitable for Commercial Service and Commercial Retail uses. In the Land Use category, Goal 1.1 is “*Ensure compatibility with established character and infrastructure capacity*”. This area of the County is conducive to rural residential development that allows residential use of property but preserves the natural character of the landscape. The proposed subdivision is compatible and identical to the existing neighborhood and surrounding development. The existing community character is preserved with this proposed plat. The proposed density is less than allowed by zoning. The proposed density will not overburden the existing roadway infrastructure or capacity of the land to support the water and wastewater needs of the development. The proposed Minor

Plat will not create the need for additional roadways or public facilities. The site will remain rural residential and is surrounded by existing rural residential developments on the south, east, and west sides. Goal 2.2 is “*Preserve the character of rural and environmentally sensitive areas*”. The proposed subdivision will keep the forested nature of the area intact. The five-acre lot density has reduced impact on environmental conditions. Density and land use are compatible with the surrounding area and the natural features of the site will remain preserved, even with the addition of two more residences on the site. The private driveways to be used for access will have minimal impact on the existing terrain. No new roads are proposed with this subdivision since all access is proposed to be provided by a single low-impact driveway connecting to Burgess Road. In this way, lot access is provided while eliminating the need for additional access points and additional public roadway. The driveway will present a reduced impact on the natural terrain, land forms and vegetation. The project maintains the rural character of site and neighborhood.

The proposed Minor Plat is in compliance with the **Parks Master Plan**, which does not appear to call for trails or parks in the site. The site is located just south of the Black Forest Section 16 Loop Trail. Any required Park Fees will be paid at the time of plating.

The proposed subdivision is in compliance with the **2040 Major Transportation Corridors Plan (MTCP)**. An additional 20 feet of right-of-way is being dedicated for Burgess Road located on the north edge of the site. This dedication will allow for 50 feet of right-of-way from the existing road center line and allow for a total right-of-way width of 100 feet for the designated Rural Minor Arterial roadway.

The proposed subdivision is also in compliance with the **Master Plan for Mineral Extraction** as no separate mineral estate owners were found for the property and the existing development on surrounding properties is not compatible with any potential mineral extraction operations.

The proposed subdivision is in compliance with the **El Paso County Water Master Plan (2018)**. The District Court, Water Division 2 Colorado, has decreed certain water rights and approved a plan for augmentation as necessary to allow use of the existing well and the drilling of two additional wells for the subdivision in Case No. 20CW3070 recorded under reception number 221090454 of the records of El Paso County. The owner seeks a finding of sufficiency from the Colorado Division of Water Resources and the eventual granting of the additional well permits based on the decreed water rights.

Skyfall Subdivision Filing No. 1 is located at the northwest corner of Region 3 in the Water Master Plan. This region is comprised of the north central portion of the county including the Falcon area. The site is not located in a designated Growth Area as determined in the Water Master Plan. The Water Master Plan contains estimates of the demands and available supply by region at the years 2018, 2040 and 2060 Build-Out. The 2018/2040/2060 demands in Region 3 are estimated to be 4,494 acre-feet per year, 6,403 acre-feet per year, and 8,307 acre-feet per year, respectively. The 2018/2040/2060 supplies in Region 3 are estimated to be 7,164 acre-feet per year, 7,164 acre-feet per year, and 7,164 acre-feet per year, respectively, indicating adequate supplies until the year 2040 and a need of 1143 acre-feet by the 2060. Also, a portion of the supply is derived from non-renewable Denver Basin groundwater. Considering only the Skyfall Filing No. 1 subdivision, demands are estimated to be 1.86 acre-feet of water per year for the current, 2040 and 2060 time frames, respectively. Water supply available by decree to the subdivision is 1.86 acre-feet per year for each of the current, 2040 and 2060 time frames. The decree allows up to 1.11 acre-feet of water per year for irrigation and livestock. In practice,

landscape irrigation in the Black Forest is sparingly practiced due to the natural characteristics of the land and tendency for homes to take advantage of the natural vegetation.

A listing of some of the policies of the Water Master Plan that are supported by the proposed development follow: *Policy 4.1.3 – Support enhanced monitoring of sources of surface and tributary groundwater in the County.* The referenced decree requires use of metering for the wells to insure compliance with the terms of the permit; *Policy 6.2.1.2 – Encourage re-use of treated wastewater for irrigation and other acceptable uses when feasible.* Both the existing residence and the new single-family residences on the proposed 5 acre lots will utilize onsite wastewater treatment systems which will provide “Return Flows” the environment as a condition of the groundwater findings and order and the well permit.

2. *The subdivision is in substantial conformance with the approved preliminary plan.*

This is a proposed Minor Subdivision and requires no Preliminary Plan for Plat approval. The subdivision will be developed in accordance with the currently proposed land use applications.

3. *The subdivision is consistent with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analyses, studies, reports, plans, designs, documents, and other supporting materials.*

The proposed Minor Subdivision Plat is prepared in accordance with applicable subdivision design standards. No public improvements are required for this subdivision.

4. *A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in the water supply standards [C.R.S. §30-28-133(6)(a)] and the requirements of Chapter 8 of this Code.*

Water service is to be provided by individual on site wells operated under a State approved Water Augmentation Plan.

5. *A public sewage disposal system has been established and, if other methods of sewage disposal are proposed, the system complies with State and local laws and regulations, [C.R.S. §30-28-133(6)(b)] and the requirements of Chapter 8 of this Code.*

Waste water is intended to be treated via individual on site septic systems designed, constructed and operated under State and County Health Department rules and regulations and in accordance with the Water Decree.

6. *All areas of the proposed subdivision which may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified and that the proposed subdivision is compatible with such conditions [C.R.S. §30-28-133(6)(c)].*

A soils report has been prepared for the site and the owner will comply with the recommendations of the report. Areas were encountered where the geologic conditions will impose some constraints on development and land use. These include areas of potentially seasonal shallow groundwater, potential expansive soils and shallow bedrock which can be satisfactorily mitigated through avoidance or proper engineering design and construction practices. Based on the proposed plat, it appears that these areas will have minor impacts on the development. These conditions are discussed in further detail in the Soil, Geology, and Geologic Hazard Study produced by Entech Engineering, Inc.

7. *Adequate drainage improvements are proposed that comply with State Statute [C.R.S. §30-28-133(3)(c)(VIII)] and the requirements of this Code and the ECM.*

The proposed Minor Subdivision is consistent with the submitted Final Drainage Report. There are not Drainage facilities needed or proposed with this development. The the owner will comply with the requirements of the drainage report.

8. *Legal and physical access is provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with this Code and the ECM.*

All three proposed lots will be accessed via existing Burgess Road. The existing residence and two new lots will utilize the existing driveway access onto Burgess Road. New driveways will be extended form the existing connection giving access from Burgess Road. Access easements are provided on the Final Plat and a private access and maintenance agreement will be established to facilitate the common access.

9. *Necessary services, including police and fire protection, recreation, utilities, and transportation systems, are or will be made available to serve the proposed subdivision.*

The site is located within the jurisdiction of the El Paso County Sheriff's Office. The Sheriff's office currently provides police protection for the site and surrounding area. Skyfall Subdivision Filing No. 1 is located within the Black Forest Fire Protection District which is providing fire protection for the site and has agreed to serve this subdivision. Water and sanitary sewer provisions are discussed in items 4 & 5 above. The property is located within the service areas of Mountain View Electric Association, Blackhills Energy Corporation, Centurylink Telephone, and Academy School District 20, which will serve the subdivision. Transportation is being facilitated by the existing adjacent roadway system.

10. *The Minor Subdivision plans provide evidence to show that the proposed methods for fire protection comply with Chapter 6 of this Code.*

Skyfall Subdivision Filing No. 1 is located within the Black Forest Fire Protection District which is providing fire protection for the site and the surrounding area. The District has agreed to serve this subdivision. Building permits for each structure shall be in accordance with the requirements of the Fire District as administered by the Pikes Peak Regional Building Department. The owner is in the process of performing fire hazard mitigation measures in the site. The vegetation on approximately 40% of the site has been trimmed and thinned to reduce potential fire fuels.

11. *Off-site impacts were evaluated and related off-site improvements are roughly proportional and will mitigate the impacts of the subdivision in accordance with applicable requirements of Chapter 8.*

All offsite impacts are determined to be insignificant with the addition of two residences to the site already containing one residence. The owner will be responsible to pay park, school, drainage and Traffic Impact fees.

12. *Adequate public facilities or infrastructure, or cash-in-lieu, for impacts reasonably related to the proposed subdivision have been constructed or are financially guaranteed through the SLA so the impacts of the subdivision will be adequately mitigated.*

There are no public facilities or infrastructure required or proposed for this subdivision. The platting of the site will include the collection of the applicable School Fees, Park Fees, Drainage Fees and Traffic Impact fees due for this project.

13. The subdivision meets other applicable sections of Chapter 6 and 8.

Upon approval of a waiver to the LDC section 8.4.3 (B) stating “*Lots shall have a minimum of 30 feet of frontage on and have access from a public road, except where private roads are approved by the BoCC pursuant to waiver granted under Section 8.4.4 (E)*” the subdivision will meet the requirements of the Land Development Code. The subdivision is in accordance with the Land Development Code with respect to zoning, lot size, building setbacks, provision of utilities and storm drainage. The waiver is requested with this application to allow access by one common private driveway for the three lots without the required 30 feet of frontage for each lot. The code allows up to three lots to access one driveway, however the waiver is needed to address the lack of road frontage onto a public roadway for proposed lot 3. The waiver is more fully discussed below.

14. The extraction of any known commercial mining deposit shall not be impeded by this subdivision [C.R.S. §§34-1-302(1), et seq.]. Mineral estate owners have been notified of this application. It is unlikely that mineral extraction operations would be feasible in this area.

Requested Waiver:

As previously mentioned, a waiver from LDC section 8.4.3 (B) is requested. The provision requires that “*Lots shall have a minimum of 30 feet of frontage on and have access from a public road, except where private roads are approved by the BoCC*”. It is proposed that lots 1, 2, & 3 gain access by way of a common access easement connecting the site to Burgess Road on the north edge at the common lot line of proposed lots 1 and 2. An additional access easement for Lot 3 is provided along the north and east sides of Lot 1. The responsibility and maintenance of the access drives shall be carried out by the owners of Lots 1, 2 and 3 in accordance with a private access maintenance agreement.

The property is rectangular in shape with the shorter side oriented on the north adjacent to Burgess Road. The existing improvements and natural terrain on the site lends to two lots having frontage on Burgess Road and the third located to the south with no connection to Burgess Road. Due to the roadway classification of Burgess Road as a Minor Arterial in the 2040 MTCP, only one access point will be allowed for the property. The Land Development Code allows access for up to three lots from one private driveway, it is most practical for all lots to access by a single drive, rather than extending a public roadway into the site. The arrangement eliminates the need for additional public right-of-way and additional public maintenance to serve the three large lot rural residential single family lots. Private access drives, coupled with private maintenance agreements have been shown to be effective and efficient modes of access for up to three lots within the county. The driveway will also have a much diminished impact on the natural terrain and landscape of the site compared to a public roadway which would be much larger and require far more disturbance.

Each criteria for approval of waivers as stated in section 7.3.3 of the El Paso County Land Development Code (2021) is listed below followed by the appropriate justification.

1. *The waiver does not have the effect of nullifying the intent and purpose of this code;* The request for a waiver of the LDC section 8.4.3 (B) does not go against the intent and purpose of this code.

This request is in line with the requirements set forth in the LDC, and the shared driveway will comply with all applicable design standards.

2. The waiver will not result in the need for additional subsequent waivers; With the approval of this waiver the lots will each be provided the required access necessary for their development. There will be no need for additional waivers as all applicable requirements of the El Paso County Land Development Code will be met.
3. The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property; The proposed shared driveway will be constructed to provide safe and reliable access to each lot on the site. The responsibility and maintenance of said driveway shall be carried out as described in a private access maintenance agreement. The driveway will not pose a threat to the public safety, health, or welfare, nor will it be injurious to any other property.
4. The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable to other property; The Skyfall Subdivision Filing No. 1 contains 19.485± acres and three (3) lots. Because the site does not contain more than three lots, a single driveway may be used to provide access to the entire site in lieu of a public road.
5. A particular non-economical hardship to the owner would result from a strict application of this code; With strict application of this code, the subdivision would be required to access by a public roadway in a 60' right-of-way constructed to El Paso County standards. The public road would significantly increase disturbance of the natural terrain and forest as well as the impervious area of the site while increasing the maintenance responsibility of the county.
6. The waiver will not in any manner vary the zoning provisions of this code; The proposed shared driveway will comply with all zoning provisions of this code.
7. The proposed waiver is not contrary to any provision of the master plan; The proposed shared driveway is in harmony with the goals of the master plan with regard to preserving place type characteristics and preserving natural features.

Existing and Proposed Facilities:

Existing improvements within this parcel are related to the existing residential use of the site, located in the northeastern portion of the property. The new vacant lots will be located in the northwestern and southern portions. Existing facilities also include the adjacent public roadway of Burgess Road. There are no required public subdivision improvements required for this site.

Total Number Of Residential Units And Densities:

The gross area of Skyfall Subdivision Filing No. 1 is 19.485+/- acres and is proposed to contain 3 rural residential Single Family Units. An area of 19.183+/- acres will be single-family residential lots. The average lot size for the 3 proposed lots is 6.39 acres. The gross density of the site is 0.15 units per acre.

Fire Protection:

The Skyfall Subdivision Filing No. 1 property is located within the Black Forest Fire Rescue Protection District. The lots and homes are subject to the codes and policies adopted by the said District regarding fire protection.

***M.V.E., Inc. • Engineers • Surveyors
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Proposed Access Locations:

The access location for Skyfall Subdivision Filing No. 1 is the existing driveway access for the existing residence at 7985 Burgess Road located near the center of the northern border of the site. Access for the proposed lot will be from Burgess Road in a location to be determined in accordance with the County's access policies.

Traffic Impact and Traffic Impact Fees:

The one (1) existing and two (2) proposed single family residential units will access public Burgess Road. The development is expected to generate a total of 28 trips per day (Average weekday trips ends) and 3 trips in the peak hour based on 9.44 trips per unit for Single Family Detached Housing (according to Trip Generation, 10th Edition, 2017 by the Institute of Transportation Engineers). This number of trips is below the County threshold of 100 trips per day or 10 trip during the peak hour. Therefore, a Transportation Impact Study (TIS) is not required for the project. This development is subject to fees established by the El Paso County Road Impact Fee Program per El Paso County Resolution Number 19-471. The owners have elected to not be included in any Public Improvements District. Traffic Impact Fees will be paid at time of building permit.

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October 28, 2021

Ryan Howser
El Paso County Development Services Department
2880 International Circle, Suite 110
Colorado Springs, CO 80910

RE: Skyfall Minor Subdivision, Filing 1
NW1/4 of NW1/4 of Sec. 21, Twp. 12S, Rng. 65W, 6th P.M.
Water Division 2, Water District 10
CDWR Assigned Subdivision No. 28779

To Whom It May Concern,

We have received the submittal concerning the above referenced proposal to subdivide a $19.485 \pm$ acre tract of land into three new lots. The first lot will be $4.750 \pm$ acres, the second lot will be $5.000 \pm$ acres, and the third lot will be $9.433 \pm$ acres. The proposed supply of water to the subdivision will be three individual on-lot wells operating pursuant to a court decreed plan for augmentation, with wastewater being disposed of through individual on-site septic disposal systems. An existing well (Permit no. 86032-F) is located on proposed Lot 1. This office previously provided comments regarding this referral on July 14, 2021. The comments included herein shall supersede those prior comments.

Water Supply Demand

According to the Water Supply Information Summary and Water Resources Report received in the submittal, the estimated water demand for the development is 1.86 acre-feet/year. Each lot will have one single family dwelling (0.26 AF/yr), with 0.69 af/yr remaining for use on Lot 3 and 0.20 af/yr remaining for use on each of Lot 1 and Lot 2, as described in the decree for irrigation and domestic animal watering.

It should be noted that standard water use rates, as found in the *Guide to Colorado Well Permits, Water Rights, and Water Administration*, are 0.3 acre-foot per year for each ordinary household, 0.05 acre-foot per year for fo-8-ur large domestic animals, and 0.05 acre-foot per year for each 1,000 square feet of lawn and garden irrigation.

Source of Water Supply

The anticipated source of water is to be provided by three on-lot wells, producing from the Dawson aquifer, that will operate pursuant to the augmentation plan decreed by the Division 2 Water Court in case no. 2020CW3070. The water underlying this property was adjudicated and the applicant is the owner of the Dawson, Denver, Arapahoe, and Laramie Fox-Hills aquifers.



According to the decree entered by the Division 2 Water Court in case no. 2020CW3070, the following amounts of water shown in Table 1, below, were determined to be available underlying the 19.485 ± acre tract of land owned by the applicant.

Table 1 - Denver Basin Ground Water Rights

Aquifer	Tributary Status	Volume (AF)	Annual Allocation 100 Year (AF/Year)	Annual Allocation 300 Year (AF/Year)
Dawson	NNT	1150	11.5	3.83
Denver	NNT 4%	1050	10.5	3.5
Arapahoe	NT	870	8.7	2.9
Laramie-Fox Hills	NT	571	5.7	1.9

The plan for augmentation decreed in Division 2 Water Court case no. 2020CW3070 allows for diversion of 0.46 acre-feet annually using the existing Ramses Well No. 1 (currently operating under well permit no. 86032-F, constructed under well permit no. 99861) on proposed Lot 1, 0.46 acre-feet annually using the proposed Ramses Well Nos. 2 on proposed Lot 2, and 0.69 acre-feet annually using the proposed Ramses Well Nos. 3 on proposed Lot 3, each from the Dawson aquifer for a maximum of 300 years

The proposed source of water for this subdivision is a bedrock aquifer in the Denver Basin. The State Engineer's Office does not have evidence regarding the length of time for which this source will be a physically and economically viable source of water. According to 37-90-137(4)(b)(I), C.R.S., "Permits issued pursuant to this subsection (4) shall allow withdrawals on the basis of an aquifer life of one hundred years." Based on this **allocation** approach, the annual amounts of water decreed is equal to one percent of the total amount available as determined by Rules 8.A and 8.B of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7. Therefore, the water may be withdrawn in those amounts for a maximum of 100 years.

In the El Paso County Land Development Code, effective November, 1986, Chapter 5, Section 49.5, (D), (2) states:

"Finding of Sufficient Quantity – The water supply shall be of sufficient quantity to meet the average annual demand of the proposed subdivision for a period of three hundred (300) years."

The State Engineer's Office does not have evidence regarding the length of time for which this source will "meet the average annual demand of the proposed subdivision." However, treating El Paso County's requirement as an **allocation** approach based on three hundred years, the annual estimated demand, for the entire subdivision, is 1.86 acre-feet as allowed by the augmentation plan. As a result, the water may be withdrawn in that annual amount for a maximum of 300 years.

State Engineer's Office Opinion

Based on the above, it is our opinion, pursuant to CRS 30-28-136(1)(h)(I), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(4) and the plan for augmentation noted herein, for all wells in the subdivision and operates the wells in accordance with the terms and conditions of any future well permits.

Our opinion that the water supply is **adequate** is based on our determination that the amount of water required annually to serve the subdivision is currently physically available, based on current estimated aquifer conditions.

Our opinion that the water supply can be **provided without causing injury** is based on our determination that the amount of water that is legally available on an annual basis, according to the statutory **allocation** approach, for the proposed uses is greater than the annual amount of water required to supply the demands of the proposed subdivision.

Our opinion is qualified by the following:

The Division 2 Water Court has retained jurisdiction over the final amount of water available pursuant to the above-referenced decrees, pending actual geophysical data from the aquifer.

The amounts of water in the Denver Basin aquifers, and identified in Division 2 Water Court case no. 20CW3070, was calculated based on estimated current aquifer conditions. For planning purposes, the county should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than the 300 years used for allocation due to anticipated water level declines. We recommend that the county determine whether it is appropriate to require development of renewable water resources for this subdivision to provide for a long-term water supply. Furthermore, that applicant will need to apply for, and obtain a new well permits issued pursuant to Section 37-90-137(4) C.R.S.

Should you or the applicant have questions regarding any of the above, please contact me at this office.

Sincerely,



Kate Fuller, P.E.
Water Resource Engineer

cc: Bill Tyner, Division 2 Engineer
Doug Hollister, District 10 Water Commissioner



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November 5, 2021

MS-21-6 Skyfall Subdivision Filing No. 1
Minor Subdivision

Reviewed by: Lori L. Seago, Senior Assistant County Attorney
Edi Anderson, Paralegal, ACP

A handwritten signature in black ink, appearing to be "LS", with a horizontal line underneath.

WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal by Ramses II Properties, LLC ("Applicant") for subdivision of 3 single-family lots from an existing 19.485-acre parcel (the "property"). The existing lot 1 will be 4.750 acres, lot 2 will be 5.0 acres, and lot 3 will be 9.433 acres. The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary ("WSIS"), the subdivision demand is 0.26 acre-feet/lot for in-house use, 0.36 acre-feet for irrigation, and 0.72 acre-feet for stock watering, for a total of 1.86 acre-feet/year for the 3-lot subdivision. Based on the total demand, Applicant must be able to provide a supply of 558 acre-feet of water (1.86 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement.

Proposed Water Supply

3. The Applicant has provided for the source of water to derive from individual on-lot wells, as provided in Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in District Court, Water Division 2, Case No. 20CW3070 dated July 23, 2021 ("Decree" and/or "Augmentation Plan"). The Decree adjudicates the following water supply beneath Applicant's property:

AQUIFER	Annual Average Withdrawal 100 Years (Acre Feet)	Annual Average Withdrawal 300 Years (Acre Feet)	Total Withdrawal (Acre Feet)
Dawson (NNT)	11.5	3.83	1150
Denver (NNT)	10.5	3.5	1050
Arapahoe (NT)	8.7	2.9	870
Laramie-Fox Hills (NT)	5.7	1.9	571

The Decree and Augmentation Plan provide that Ramses Wells Nos. 1 and 2 will each pump up to 0.46 acre-feet of water per year and Ramses Well No. 3 will pump up to 0.94 acre-feet per year. The Decree details that “[h]ouseholds will utilize an estimated 0.25 acre feet of water per year per residence, with remaining pumping entitlements available for other uses on the property, including, for example, irrigation of lawn and garden and the watering of up to four horses or equivalent livestock, per residence.” The Augmentation Plan requires the replacement of actual stream depletions during pumping which are to be “septic return flows of the not-nontributary Ramses Wells Nos. 1 through 3.” Further, Applicant must reserve 571 acre-feet of Laramie-Fox Hills aquifer water rights to replace post-pumping depletions.

4. Applicant provided a *Water Resources Report for Skyfall Subdivision Filing No. 1* dated September 10, 2021 by MVE, Inc. (“Report”). The Report summarizes the wells and water demands as follows:

Currently constructed Ramses Well No. 1 (Lot 1) – Well Permit No. 86032-F¹

In-house use: 0.26 acre-feet per year
 Irrigation and stock-watering use: 0.20 acre-feet per year
 (Total = 0.46 acre-feet/year for 300 years or 138 acre-feet total for 300 years)

To be constructed Ramses Well No. 2 (Lot 2)

In-house use: 0.26 acre-feet per year
 Irrigation and stock watering use: 0.20 acre-feet per year
 (Total = 0.46 acre-feet/year for 300 years or 138 acre-feet total for 300 years)

To be constructed Ramses Well No. 3 (Lot 3)²

In-house use: 0.25 acre-feet per year³
 Irrigation and stock-watering use: 0.69 acre-feet per year
 (Total = 0.94 acre-feet/year for 300 years or 282 acre-feet total for 300 years)

¹ The original Permit No. 99861 was re-permitted to Permit no. 86032-F on September 10, 2021.

² Note: The Report, page 1, paragraph 3, incorrectly states the Ramses Well No. 3 is “currently constructed” and that Ramses Well No. 1 is “proposed”.

³ This amount differs from the WSIS which indicates household use of 0.26 acre-feet for all 3 lots.

The *Report* states that the “water supply for the residential lots using three (3) Dawson aquifer wells pursuant to the augmentation plan ... is sufficient” Further, it states that the Augmentation Plan requires replacement of actual stream depletions and reservation of all of Applicant’s available Laramie-Fox Hills aquifer water (571 acre-feet).

State Engineer’s Office Opinion

5. In a letter dated October 28, 2021, the State Engineer reviewed the proposal to subdivide the 19.485 +/- acre parcel into 3 single-family lots. The State Engineer stated that the “source of water is to be provided by three on-lot wells, producing from the Dawson aquifer, that will operate pursuant to the augmentation plan decreed by the Division 2 Water Court in case no. 2020CW3070. The water underlying this property was adjudicated and the applicant is the owner of the Dawson, Denver, Arapahoe, and Laramie Fox-Hills aquifers.” The State Engineer identified the total estimated water requirement at 1.86 acre-feet/year (0.26 acre-feet/year per residential lot, “with 0.69 a/f remaining for use on Lot 3 and 0.20 af/yr remaining for use on each of Lot 1 and Lot 2, as described in the decree for irrigation and domestic animal watering.”

The State Engineer noted that there is a currently operating well permit no. 86032-F which was re-permitted from the previous permit no. 99861 and which operates on Lot 1.

The State Engineer stated that the “annual estimated demand, for the entire subdivision, is 1.86 acre-feet as allowed by the augmentation plan. And finally, “[b]ased on the above, it is our opinion, pursuant to CRS 30-28-136(1)(h)(I), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(4) and the plan for augmentation noted herein, for all wells in the subdivision”

Recommended Findings

6. Quantity and Dependability. Applicant’s water demand for the Skyfall Subdivision Filing No. 1 is 1.86 acre-feet per year from the Dawson aquifer for a total demand of 558 acre-feet for the subdivision for 300 years, with replacement water occurring through non-evaporative septic systems to replace actual stream depletions, and with post-pumping depletions being met by the 571 acre-feet of Laramie-Fox Hills water owned by the Applicant.

Based on the water demand of 1.86 acre-feet/year for Skyfall Subdivision Filing No. 1 and the Decree and Augmentation Plan permitting withdrawals in that amount, the County Attorney’s Office recommends a finding of sufficient water quantity and dependability for Skyfall Subdivision Filing No. 1.

7. Quality. The water quality requirements of Section 8.4.7.B.10 of the Land Development Code must be satisfied. **El Paso County Public Health shall provide a recommendation as to the sufficiency of water quality.**

8. Basis. The County Attorney's Office reviewed the following documents in preparing this review: the Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree, Case No. 20CW3070 dated July 23, 2021, the Water Supply Information Summary provided September 30, 2021, the Water Resources Report dated September 10, 2021, Well Permit No. 86032-F dated September 10, 2021, and the State Engineer Office's Opinion dated October 28, 2021. The recommendations herein are based on the information contained in such documents and on compliance with the requirements set forth below. ***Should the information relied upon be found to be incorrect, or should the below requirements not be met, the County Attorney's Office reserves the right to amend or withdraw its recommendations.***

REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree, Case No. 20CW3070 ("Decree and Augmentation Plan"). Water use shall not exceed 1.86 acre-feet annually for the 3-lot subdivision. Withdrawals from Ramses Well Nos. 1 and 2 shall not exceed 0.46 acre-feet/year and withdrawals from Ramses Well No. 3 shall not exceed 0.94 acre-feet/year. Stream depletions shall be replaced with non-evaporative septic system return flows for a period of 300 years and post-pumping depletions will be replaced by Laramie-Fox Hills aquifer water pursuant to the Augmentation Plan.

B. The County prefers that when there is a augmentation plan, Applicant create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water determinations and replacement plans for the property. For minor subdivisions such as this, however, Applicant may elect to solely rely on the covenant provisions required below and forego creation of an HOA.

C. Applicant and its successors and assigns shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of the Decree and Augmentation Plan, including their obligations to comply with the augmentation plan.

The covenants shall specifically address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 558 acre-feet of not nontributary Dawson aquifer water pursuant to Decree and Augmentation Plan to satisfy El Paso County's 300-year water supply requirement for the 3 residential lots of the Skyfall Subdivision Filing No. 1. The Covenants shall further identify that 282 acre-feet (0.94 AF/year) of Dawson aquifer water is allocated to Lot 3 and 138 acre-feet (0.46 AF/year) of Dawson aquifer water is allocated to each of Lots 1 and 2.

2) Advise of responsibility for costs. The Covenants shall advise lot owners and their successors and assigns of their obligations regarding the costs of compliance with the

Decree and Augmentation Plan, which include pumping of the Dawson wells in a manner to replace depletions during pumping and drilling Laramie-Fox Hills aquifer wells in the future to replace post-pumping depletions.

3) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each residential lot owner to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping, shall reserve said return flows to replace depletions during pumping, and shall state that said return flows shall not be separately sold, traded or used for any other purpose. The Covenants more specifically shall require the Dawson aquifer well on each lot to be serving an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. The Covenants shall also include the following or similar language to ensure that such return flows shall only be used for replacement purposes: "Return flows shall only be used for replacement purposes, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose."

4) Require reservation of 571 acre-feet of Laramie-Fox Hills aquifer water to replace post-pumping depletions pursuant to the Decree and Augmentation Plan. The Covenants shall further identify that 288.57 acre-feet of Laramie-Fox Hills aquifer water is allocated to Lot 3 and 141.215 acre-feet of Laramie-Fox Hills aquifer water is allocated to each of Lots 1 and 2. The Covenants shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for augmentation supply.

5) Address future lot conveyances. The following or similar language shall be included in the Covenants to address future conveyances of the lots subsequent to the initial conveyance made by Applicant/Declarant:

"The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree, Case No. 20CW3070 and the water rights therein are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."

6) Advise of monitoring requirements. The Covenants shall advise future lot owners of this subdivision and their successors and assigns of their responsibility for any metering

and data collecting that may be required regarding water withdrawals from Dawson aquifer wells.

7) Address amendments to the covenants. The Covenants shall address amendments using the following or similar language:

“Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which would alter, impair, or in any manner compromise the water supply for the Skyfall Subdivision Filing No. 1 pursuant to the Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree, Case No. 20CW3070. Further, written approval of the proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioners, after review by the County Attorney’s Office. Any amendments must be pursuant to an Order from the Division 2 Water Court approving such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such adjudication.”

8) Address termination of the Covenants. The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of the Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree, Case No. 20CW3070 are also terminated by order of the Division 2 Water Court and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

D. Applicant and its successor assigns shall reserve and convey by recorded warranty deed the reserved Dawson and Laramie-Fox Hills aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson and Laramie-Fox Hills aquifers underlying the respective lots pursuant to the Decree and Augmentation Plan. Sufficient water rights are 138 acre-feet of Dawson aquifer water and 141.215 acre-feet of Laramie-Fox Hills aquifer each for Lots 1 and 2 and 282 acre-feet of Dawson aquifer water and 288.57 acre-feet of Laramie-Fox Hills aquifer water for Lot 3.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson and Laramie-Fox Hills aquifers): “These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, replacement during pumping, and replacement of post-pumping depletions for each lot of the Skyfall Subdivision Filing No. 1. The water rights so conveyed, and the return flows therefrom, shall be appurtenant to each of the respective lots with which they are conveyed, shall not be separated from the

Skyfall Subdivision Filing No. 1, (7985 Burgess Road), MS-21-6

Please accept the following comments from El Paso County Public Health regarding the project referenced above:

- The proposed 20-acre, 3-lot residential development site is/will be served water by individual private wells and wastewater through onsite wastewater treatment systems (OWTS). There is an existing, approved OWTS on lot 1 installed in 1978. Lots 2 and 3 are undeveloped and require compliance with Chapter 8 (OWTS Regulations) of the El Paso County Board of Health Regulations.
- The Entech Engineering 15June2021, Soil, Geology, and Geologic Hazard Study, was reviewed for site suitability for the use of onsite wastewater treatment systems for wastewater service. Based on the report findings of the use of OWTS's is acceptable.
- Please make sure the existing well and OWTS on Lot 1 meets the minimum horizontal setbacks from the new property lines and will meet the setbacks from future wells and OWTS's.
- There is a finding for sufficiency in terms of water quality for the proposed development based upon the review of reports from Colorado Analytical Laboratories dated 09February2021, and the Hazen Research Report dated 22February2021. The Hazen Research Report found the combined radium-226 and radium-228 sample result exceeded the maximum contamination limit (MCL) of the Colorado Primary Drinking Water Regulations established by the Colorado Department of Public Health and Environment (CDPHE), Water Quality Control Division (WQCD). As recommended in the MVE, Inc. Water Quality Report dated 04June2022, water from the existing well and the proposed wells be treated at each individual residence by way of reverse osmosis or ion exchange water softening before use. Both treatment methods are available for residential installation.

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