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**COLORADO**

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**PLANNING & COMMUNITY DEVELOPMENT**

**TO:** El Paso County Planning Commission  
Thomas Bailey, Chair

**FROM:** Ashlyn Mathy, Planner II  
Hao Vo, P.E., Engineer II  
Meggan Herington, AICP, Executive Director

**RE:** Project File Number: SF245  
Project Name: Ivilo Heights Final Plat  
Parcel Number: 5206000138

<b>OWNER:</b>	<b>REPRESENTATIVE:</b>
Pawel Posorski 9533 Newport Court Colorado Springs, CO 80920	SMH Consultants Brett Louk 411 S Tejon St., Suite I Colorado Springs, CO 80903

**Commissioner District: 1**

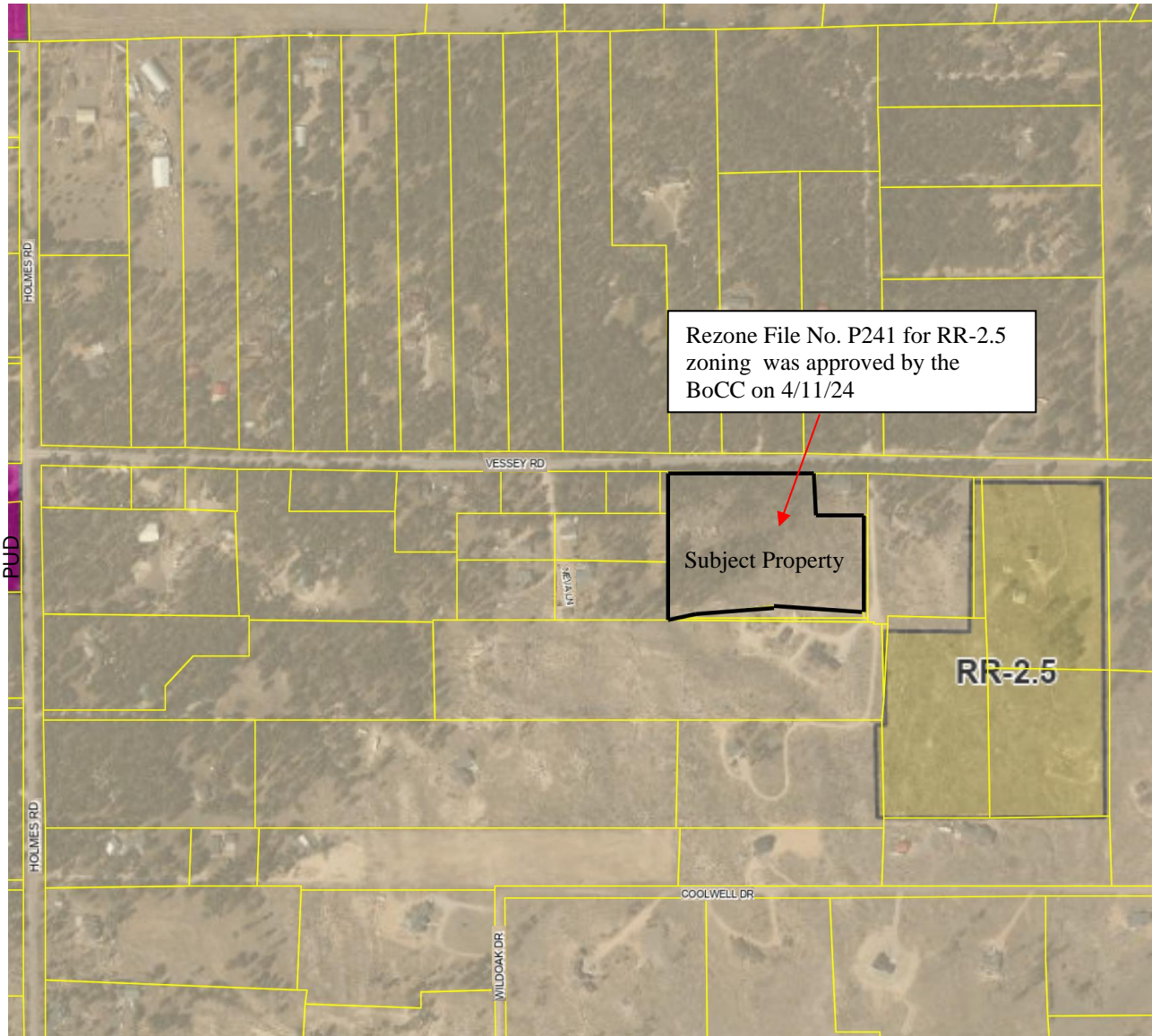
<b>Planning Commission Hearing Date:</b>	<b>6/20/2024</b>
<b>Board of County Commissioners Hearing Date:</b>	<b>7/25/2024</b>

**EXECUTIVE SUMMARY**

A request by Pawel Posorski for approval of a 6.02-acre Final Plat creating two single-family lots. The property is zoned RR-2.5 (Residential Rural) and is located approximately 0.38 miles east of the intersection of Vessey Road and Holmes Road.



## Zoning Context Map



### A. WAIVERS/DEVIATIONS/AUTHORIZATION

**Waiver(s)/Deviation(s):** There are no waivers associated with this project.

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

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OFFICE: (719) 520 – 6300



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PLNWEB@ELPASOCO.COM

## B. APPROVAL CRITERIA

In approving a Final Plat, the BoCC shall find that the request meets the criteria for approval outlined in Section 7.2.1 (Subdivisions) of the El Paso County Land Development Code (“Code”) (as amended):

- 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 the Land Development Code.
- The subdivision is in conformance with the subdivision design standards and regulations and meets all planning, engineering, and surveying requirements of the County for maps, data, surveys, analysis, 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 the 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 the 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 the Code and the Engineering Criteria Manual (“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 and in compliance with the 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 the Code.
- The proposed subdivision meets other applicable sections of Chapters 6 and 8 of the 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 of the Code.
- 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 extraction of any known commercial mining deposit shall not be impeded by this subdivision [C.R.S. § 34-1-302(1), et seq.].

**C. LOCATION**

North:	RR-5 (Residential Rural)	Single Dwelling Residential
South:	RR-5 (Residential Rural)	Single Dwelling Residential
East:	RR-5 (Residential Rural)	Single Dwelling Residential
West:	RR-5 (Residential Rural)	Single Dwelling Residential

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## D. BACKGROUND

The subject property was rezoned by the Board of County Commissioners on April 11, 2024, from RR-5 to RR-2.5. The applicant is proposing a two-lot subdivision with each lot being over 2.5 acres in size. Lot One will be 2.81 acres and Lot Two will be 2.91 acres.

## E. ANALYSIS

### 1. Land Development Code Compliance

The Final Plat application meets the Final Plat 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 (as amended).

### 2. Zoning Compliance

The RR-2.5 (Residential Rural) zoning district is intended to accommodate low-density, rural, single-family residential development. The density and dimensional standards for the RR-2.5 (Residential Rural) zoning district are as follows:

- Minimum lot size: 2.5 acres
- Minimum width at the front setback line: 200 feet
- Minimum setback requirement: front 25 feet, rear 25 feet, side 15 feet<sup>3</sup>
- Maximum lot coverage: None
- Maximum height: 30 feet

<sup>3</sup> *Agricultural stands shall be setback a minimum of 35 feet from all property lines.*

In order to initiate any new residential uses on the property, the subdivision will need to be approved and the applicant will need to obtain site plan approval for each future building site.

## F. MASTER PLAN COMPLIANCE

The proposed Final Plat is consistent with the Master Plan analysis which was provided with the Map Amendment (Rezone) application File No. P241 and approved by the BoCC on April 11, 2024.

## G. PHYSICAL SITE CHARACTERISTICS

### 1. Hazards

There are no hazards associated with the project.

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## 2. Floodplain:

FEMA Flood Insurance Rate Map panel number FIRM Panels 08041C0315G, effective date December 7, 2018, shows the site is not within a regulatory floodplain.

## 3. Drainage and Erosion:

The proposed project is located within the Kettle Creek Drainage Basin (FOMO3000), which is included in the El Paso County Drainage Basin Fee program. Drainage basin fees shall be paid at the time of plat recordation. According to the Final Drainage Report, onsite runoff from the proposed project will sheet flow from the north to the south and the east, and then be conveyed to two offsite existing culverts in the south. A grading and erosion control plan, and water quality and detention are not required for this subdivision, as the increase in proposed runoff flow is negligible.

## 4. Transportation:

The property is being subdivided into two single family residential lots. A transportation impact study is not required. The project is not projected to cause a significant increase in traffic on County facilities or conflict with the El Paso County 2016 Major Transportation Corridors Plan Update (MTCP).

El Paso County Road Impact Fees (RIF) as approved by Resolution 19-471 apply to the development. The RIF will be assessed at the final land use approval.

## H. SERVICES

### 1. Water

Water will be provided by individual onsite wells. Water sufficiency has been analyzed with the review of the proposed subdivision. 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 there is an adequate water supply in terms of quality.

### Attorney's summary:

Water will be provided by onsite wells. Based on the water demand of 1.32 acre-feet/year for the Ivilo Heights Subdivision and Decree and Augmentation Plan in Case No. 2022CW3087 permitting withdrawals in that amount, the County's Attorney's



Office recommends a finding of sufficient water quantity and dependability for the Ivilo Heights Subdivision.

## **2. Sanitation**

Wastewater is provided by individual onsite wastewater treatment systems (OWTS). The applicant submitted an OWTS report which indicated that the lots are suitable for the construction of these systems.

## **3. Emergency Services**

The property is within the Black Forest Fire Protection District. The District was sent a referral and made comments that EPC is the Authority having Jurisdiction on the determination of cisterns at the site. Board of County Commissioners Resolution Number 13-503 is a resolution to approve the 2009 International Fire Code with amendments and additional provisions. One of those amendments' states that "detached one- or two-family dwellings on a lot platted as part of a subdivision containing four or fewer such platted lots is exempt from IFC coverage. This is a two-lot subdivision. Therefore, a cistern was not required.

## **4. Utilities**

Mountain View Electric Association (MVEA) will provide electrical service and Black Hills Energy will provide natural gas service. MVEA and Black Hills Energy were sent a referral for the Rezone application; MVEA and Black Hills Energy have no outstanding comments.

## **5. Metropolitan Districts**

The subject property is not located within a metropolitan district.

## **6. Parks/Trails**

The Park Advisory Board recommends that the Planning Commission and the Board of County Commissioners include the following conditions when considering and/or approving the Ivilo Final Plat:

- Designate and provide to El Paso County a 25-foot-wide public trail easement along the south side of the dedicated right of way for Vessey Road that allows for the construction and maintenance by El Paso County of the Palmer Divide Regional Trail, and



- o Dedicate the easement to El Paso County prior to the recording of the final plat.

The requested easement is depicted on the subdivision plat and will be dedicated as part of the plat recordation under "TE" (Trail Easement), which will fulfill the conditions of the Park Advisory Board.

Fees in lieu of park land dedication in the amount of \$1,010 for regional fees will be due at the time of recording the final plat.

**7. Schools**

Fees in lieu of school land dedication in the amount of \$612 shall be paid to El Paso County for the benefit of Academy School District No. 20 at the time of plat recording.

**I. APPLICABLE RESOLUTIONS**

See attached resolution.

**J. STATUS OF MAJOR ISSUES**

There are no major issues associated with this request.

**K. RECOMMENDED CONDITIONS AND NOTATIONS**

Should the Planning Commission and Board of County Commissioners find that the request meets the criteria for approval outlined in Section 7.2.1 (Subdivisions) of the El Paso County Land Development Code (as amended) 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. 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 Parks and 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.
5. 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.
6. 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.
7. Drainage fees in the amount of \$6,859.22 shall be paid for the Kettle Creek (FOMO3000) drainage basin at the time of plat recording.
8. Applicant shall comply with all requirements contained in the Water Supply Review and Recommendations as provided by the County Attorney's Office on February 2, 2024.

#### **L. NOTATION**

1. Final plats not recorded within 24 months of Board of County Commissioner approval shall be deemed expired unless an extension is approved.

#### **M. PUBLIC COMMENT AND NOTICE**

The Planning and Community Development Department notified 18 adjoining property owners on June 4, 2024, for the Planning Commission and Board of County Commissioners meetings. Responses will be provided at the hearing.

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## **N. ATTACHMENTS**

Map Series

Letter of Intent

Plat Drawing

County Attorney's Letter

Draft Resolution

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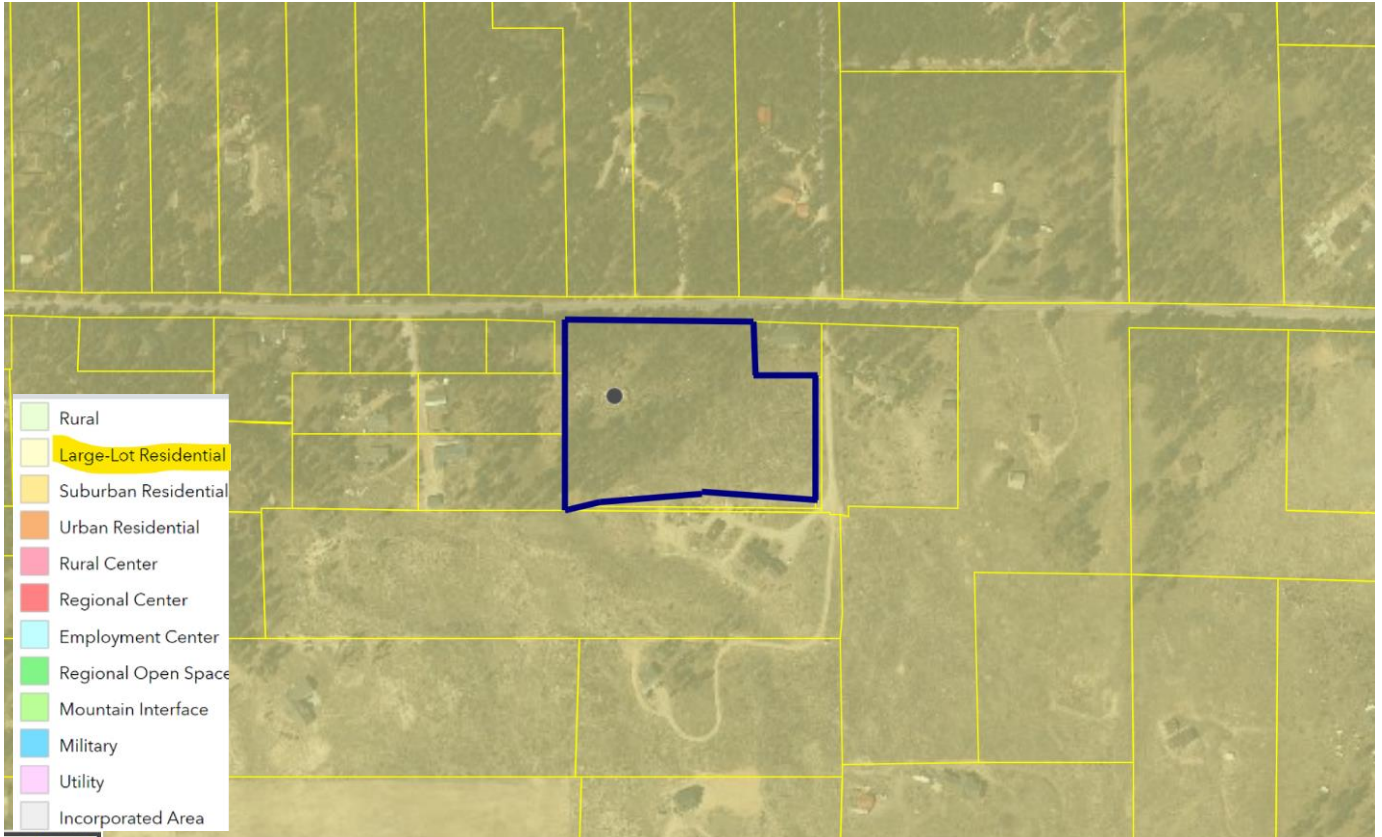


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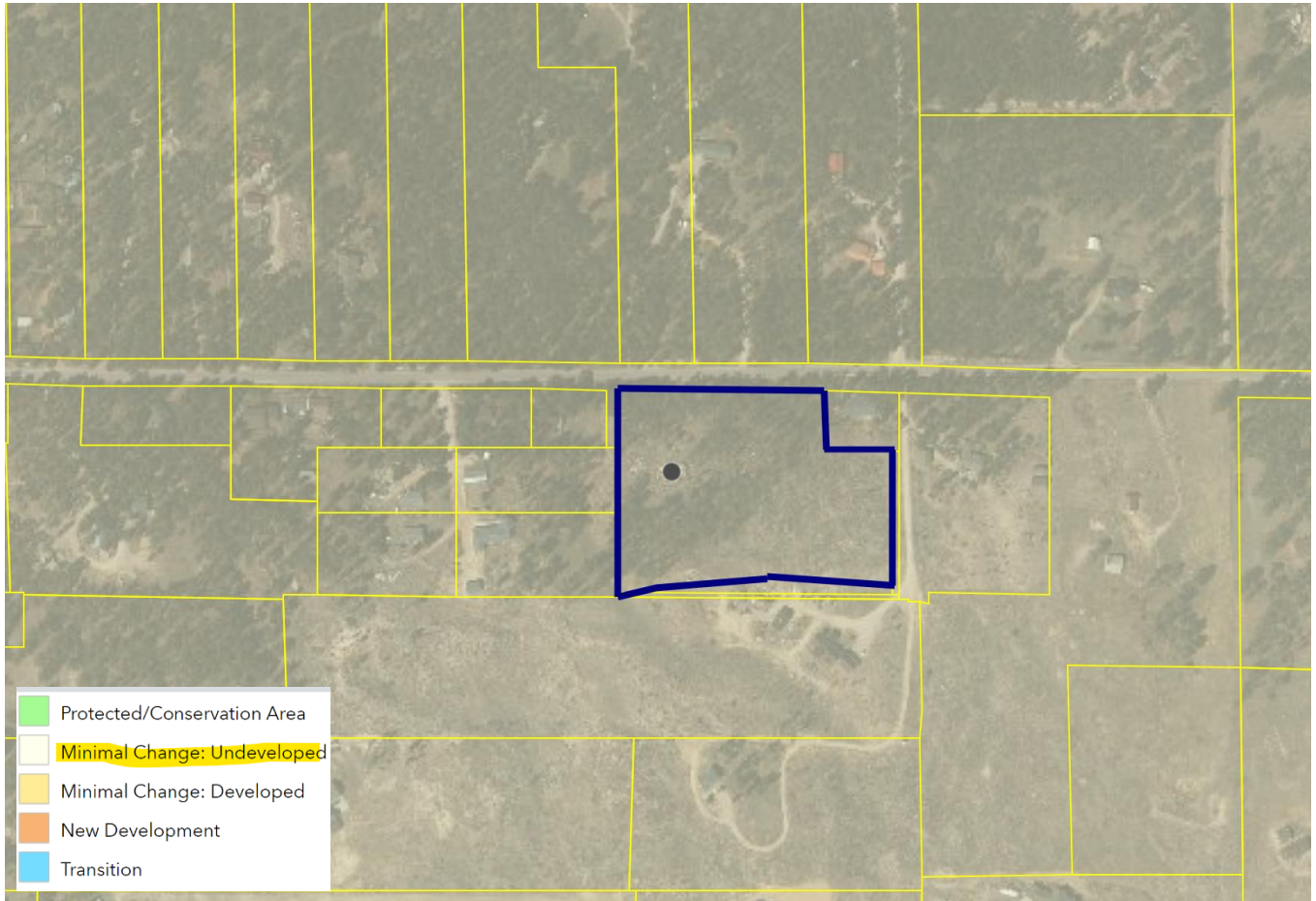
# Map Series

SF245

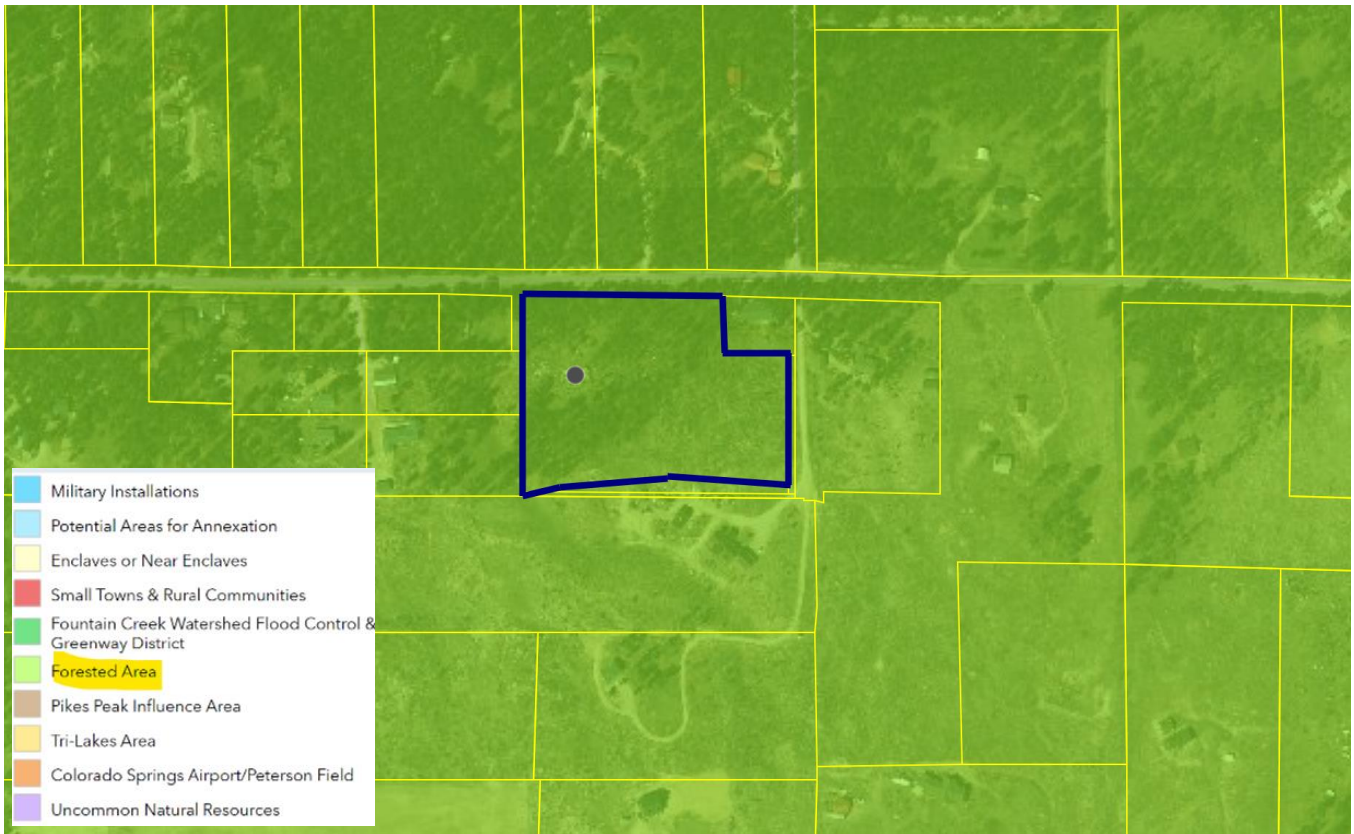
Placetype: Large-Lot Residential



Areas of Change: Minimal Change: Undeveloped



## Key Areas: Forested Area





March 06, 2024

Ashlyn Mathy, Planner  
El Paso County Planning & Community Development  
2880 International Circle, Suite 110  
Colorado Springs, CO 80910

Re: Ivilo Heights Minor Subdivision Letter of Intent

Dear Ms. Mathy:

The property owner would like to request approval of a minor subdivision for 6225 Vessey Road, Colorado Springs, CO 80908. The parcel number is 5206000107. The site is currently zoned RR-5, but an application to rezone to RR-2.5 has been submitted to the County. Approval of the minor subdivision would allow the property to be subdivided into 2 single-family residential lots.

The approved minor subdivision would consist of two single family residential lots of the following sizes: Lot 1: 2.82 acres and Lot 2: 2.91 acres. The proposed subdivision layout shown on the final plat meets the following criteria for approval of a final plat, as outlined in the El Paso County Land Development Code.

- This area is shown as Large-Lot Residential Placetype in the El Paso County Master Plan adopted in 2021. Large-Lot Residential Placetype is defined in the Master Plan as single-family detached typically 2.5-acres or larger. The subdivision is proposing lots greater than 2.5-acres. The proposed subdivision is located in the Forested Key Area and an area of minimal change in the Areas of Change section. Development in the Forested Key Area and Area of Minimal change allows for development of undeveloped land with minimal change to the prioritized rural and natural environments. The proposed subdivision meets this by proposing large-lot residential and maintaining large areas of undisturbed property to maintain the rural and natural environment. The proposed development fits within the 2040 Major Transportation Corridor Plan. Vessey Road is shown as being upgraded to a collector road by 2040. Sufficient right-of-way has been provided along the north property line of the proposed subdivision to accommodate the future improvements of Vessey Road. The proposed subdivision also fits within the Water Master Plan. The proposed subdivision will be served by individual wells. This is an acceptable method of providing water to a subdivision per the Water Master Plan.
- Minor subdivision is a process for smaller subdivisions in lieu of preliminary/final plat process.
- The proposed subdivision is consistent with the subdivision design standards and regulations and meets all planning, engineering, and survey requirements of the

County.

- The water rights and augmentation plan in place for the existing parcel are adequate to meet the needs of two (2) lots proposed for the subdivision on a 300-year basis. According to Water Court Decree Case Number 22CW3087, the property has water rights adjudicated in the Dawson Aquifer, the Denver Aquifer, the Arapahoe Aquifer, and the Laramie-Fox Hills Aquifer. The proposed water source for the development would be the Dawson Aquifer, for which the replacement plan contained in Water Court Decree Case Number 22CW3087 was prepared for allowing the property to set aside sufficient amounts from the Laramie-Fox Hills and Arapahoe groundwater to replace post-pumping depletions. Results from the water quality test have been submitted with the final plat application. These items satisfy the requirements outlined in Chapter 8 of the El Paso County Land Development Code.
- Individual lots within the proposed subdivision will be served by Onsite Wastewater Treatment Systems (OWTS), which complies with the requirements outlined in Chapter 8 of the El Paso County Land Development Code.
- A soils and geology report has been provided for the site and has been submitted with the final plat. Soil types found on the site include a mix of Type A, Type B and Type C materials as defined by OSHA. Geologic hazards found to be present at this site include faults/seismicity, radon, and ponding water, all of which can be mitigated through proper engineering, design, and construction practices. It was concluded that the proposed development is feasible.
- No drainage improvements have been proposed for the property. The proposed development is not anticipated to produce any adverse stormwater impacts to the surrounding properties.
- Access to the proposed subdivision will be via a new shared driveway off of Vessey Rd. The existing driveway off of Vessey Rd. will be relocated to the east. This new shared driveway will provide access to both lots. Maintenance and use responsibilities for the shared driveway have been outlined in the Access Maintenance Agreement that has been submitted with the minor subdivision application.
- The proposed subdivision will generate approximately 9 trips in the A.M. peak hour, 3 trips in the P.M. peak hour and 28 daily trips. Per the El Paso Engineering Criteria Manual, a Traffic Impact Study is not required if daily vehicle trip is less than 100 or the peak hour trip generation is less than 10.
- Necessary services including police and fire protection, recreation, utilities, and transportation systems are available to serve the proposed subdivision.
- A fire protection and wildfire mitigation report has been submitted with the final plat. The report outlines steps to be taken for fire protection and mitigation.
- There are no off-site improvements anticipated with the proposed subdivision.
- There are no adverse impacts to public facilities or infrastructure from the proposed subdivision.
- The proposed subdivision meets all other applicable sections of Chapter 6 and 8 of the El Paso County Land Development Code.
- The extraction of any known commercial mining deposit shall not be impeded by this subdivision.

- The County’s Road Impact Fee will be paid at the time of building permit for each individual lot.
- The applicant will mail bulk certified letters to all adjacent property owners, within 500 feet of the subject property, and within 7 days of the application being accepted by the County.
- Utilities are available to serve the proposed subdivision. Water will be supplied by individual permit and sewer will be septic, both of which will be the responsibility of the future lot owners. Other utilities, such as phone, gas, electrical, etc. are available along Vessey Road adjacent to the proposed subdivision. It is the future lot owner’s responsibility to apply for service and extend these utilities from the public right-of-way to the individual residence. The subdivision will not include deferred sidewalks.

Questions regarding the proposed minor subdivision can be directed to the following individuals:

**Consultant**


Brett Louk, P.E.  
 SMH Consultants  
 620 N. Tejon Street, Suite 210  
 Colorado Springs, CO 80903  
 719-465-2145  
 blouk@smhconsultants.com

**Owner**

6225 Vessey LLC  
 Pawel Posorski  
 3515 N. Chestnut St., Ste. 100  
 Colorado Springs, CO 80907  
 630-302-7308  
 posorski@sbcglobal.net

The property owner would greatly appreciate your consideration of this request.

Sincerely,



Brett Louk, PE  
 SMH Consultants





County Attorney

Kenneth R. Hodges, County Attorney  
719-520-6485  
Centennial Hall  
200 S. Cascade, Suite 150  
Colorado Springs, CO 80903  
www.ElPasoCo.com

Board of County Commissioners  
Holly Williams, District 1  
Carrie Geitner, District 2  
Stan VanderWerf, District 3  
Longinos Gonzalez, Jr., District 4  
Cami Bremer, District 5

February 29, 2024

SF-24-5 Ivilo Heights Subdivision

Reviewed by: Lori L. Seago, Senior Assistant County Attorney  
April Willie, Paralegal

**WATER SUPPLY REVIEW AND RECOMMENDATIONS**

Project Description

1. This is a proposal for approval of Ivilo Heights Subdivision, an application by 6225 Vessey LLC (“Applicant”) to subdivide a parcel of 5.83 acres of land (the “property”) into two single-family residential lots. The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary (“WSIS”), the water demand for the subdivision is 1.32 acre-feet/year, comprised of 0.26 acre-feet/year for household use for each of the 2 residential lots totaling 0.520 acre-feet/year, 0.623 acre-feet for irrigation of up to 5,500 square-feet (0.0566 acre-feet/1,000 square-feet), and 0.176 acre-feet for the watering of up to 16 horses (8 horses/lot assuming 0.11 acre-feet/horse). Based on this total demand, Applicant must be able to provide a supply of 396 acre-feet of water (1.32 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 the not-nontributary Dawson aquifer as provided in the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 1 Case No. 2022CW3087 (“Decree”). The groundwater decreed underlying the property includes 480 acre-feet of water in the Dawson aquifer, 510 acre-feet of water in the Denver aquifer, 235 acre-feet of water in the Arapahoe aquifer and 171 acre-feet of water in the Laramie-Fox Hills aquifer. The Augmentation Plan approved the pumping of up to 1.32 acre-feet per year for 300

**ASSISTANT COUNTY ATTORNEYS**

years and 396 acre-feet total of Dawson aquifer water. The Court further awarded a vested right to use up to 2 wells on the property.

The approved augmentation plan has a term of 300 years and requires that non-evaporative septic system return flows be used for augmentation during the pumping period for the 2 approved wells. Applicant must reserve 171 acre-feet of its water rights in the Laramie-Fox Hills aquifer and an additional 235 acre-feet of Arapahoe aquifer which shall be used for replacement of post-pumping depletions. Each of the 2 wells may pump up to 0.66 acre-feet per year.

### State Engineer's Office Opinion

4. In a letter dated February 9, 2024, the State Engineer stated that “. . . the estimated annual water requirements totals 0.52 acre-feet for in-house use (0.26 acre-feet/lot), 0.623 acre-feet for irrigation of up to 5,500 square-feet per lot (0.0566 acre-feet/1,000 square feet) and 0.176 acre-feet for the watering of 16 horses (8 horses/lot assuming 0.011 acre-feet/horse). The total annual demand for the subdivision would be 1.32 acre-feet.” The State Engineer noted that the wells will produce from the Dawson aquifer pursuant to the augmentation plan decreed in Case No. 2022CW3087. The State Engineer further noted that one existing well is located on the property operating under permit no. 87817 and must be re-permitted pursuant to the new augmentation plan in Case No. 2022CW3087.

Finally, the State Engineer provided their opinion, “. . . pursuant to Section 30-28-136(1)(h)(l) C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights...”

### Recommended Findings

5. Quantity and Dependability. Applicant's water demand for the Ivilo Heights Subdivision is 1.32 acre-feet per year for a total demand of 396 acre-feet for the subdivision for 300 years. The Decree and Augmentation Plan allows for 2 wells to withdraw water from the Dawson aquifer up to 1.32 acre-feet per year, for a total of 396 acre-feet over 300 years, which is equivalent to the requested demand.

**Based on the water demand of 1.32 acre-feet/year for Ivilo Heights Subdivision and the Decree's allowable amount of up to 1.32 acre-feet per year, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for Ivilo Heights Subdivision.**

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

7. Basis. The County Attorney's Office reviewed the following documents in preparing this review: a *Water Resources Report* dated December 2023, the Water Supply Information Summary, the State Engineer's Office Opinion dated February 9, 2024, and Findings

of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 1 Case No. 2022CW3087 entered on April 6, 2023. 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 all requirements of the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 1 Case No. 2022CW3087, specifically, that water withdrawn from the Dawson aquifer by each of the proposed two wells permitted shall not exceed 0.66 annual acre-feet, based on a total combined annual withdrawal of 1.32 acre-feet. Depletions during pumping shall be replaced by individual on-lot non-evaporative septic systems.

B. The County prefers that when there is an 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 decrees and augmentation 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 shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision, their successors and assigns, and the HOA regarding all applicable requirements of the Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 1 Case No. 2022CW3087.

Covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 396 acre-feet of Dawson aquifer water, 171 acre-feet of Laramie-Fox Hills aquifer water, and 235 acre-feet of Arapahoe aquifer water pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 1 Case No. 2022CW3087 to satisfy El Paso County’s 300-year water supply requirement for the 2 lots of the Ivilo Heights Subdivision. The Covenants shall further identify that 198 acre-feet (0.66 acre-feet/year) of Dawson aquifer water, 85.5 acre-feet of Laramie-Fox Hills aquifer water, and 117.5 acre-feet of Arapahoe aquifer water is allocated to each of the 2 lots. Said reservations shall not be separated from transfer of title to the property and shall be used exclusively for primary water supply.

2) Advise of responsibility for costs. The Covenants shall advise the lot owners and their successors and assigns of their obligations regarding the costs of operating the plans for augmentation, which include pumping of the Dawson wells in a manner to replace

depletions during pumping and the cost of drilling Laramie-Fox Hills and Arapahoe aquifer wells in the future to replace post-pumping depletions.

3) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use a non-evaporative septic system to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping and shall state that said return flows shall not be separately sold, traded, assigned, or used for any other purpose. The Covenants more specifically shall require that each lot in the subdivision have 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) 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 Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 1 Case No. 22CW3087 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."

5) Advise of monitoring requirements. The Covenants shall advise the 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 existing and future wells in the Dawson, Laramie-Fox Hills and/or Arapahoe aquifers.

6) Require well permits. The Covenants shall require that well permits be obtained pursuant to the requirements of Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 1 Case No. 22CW3087 and C.R.S. § 37-90-137(4) and (10).

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 Ivilo Heights Subdivision pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 1 Case No. 22CW3087. Further, written approval of any such 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 the Division 1 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 determination.”

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 Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 1 Case No. 22CW3087 are also terminated by the Division 1 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 successors and assigns shall reserve in any deeds of the property Dawson aquifer water in the decreed amount of 198 acre-feet (0.66 acre-feet per year) per lot, as well as 85.5 acre-feet of Laramie-Fox Hills aquifer water and 117.5 acre-feet of Arapahoe aquifer water. Said reservation shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for primary and replacement supply.

E. Applicant and its successors and assigns shall convey by recorded warranty deed these reserved Dawson aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson aquifer underlying the respective lots to satisfy El Paso County’s 300-year water supply requirement.

Any and all conveyance instruments shall also recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson aquifer): “These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year water supply, and replacement during pumping, for each of the lots of Ivilo Heights Subdivision. 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 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.”

F. Applicant shall convey by recorded warranty deed the reserved 85.5 acre-feet of Laramie-Fox Hills and 117.5 acre-feet of Arapahoe aquifer water rights for use in the augmentation plan to replace post-pumping depletions. Applicant shall recite in the deed that this water shall be used exclusively for augmentation supply and shall not be sold, conveyed, traded, bartered, assigned, or encumbered in whole or in part for any other purpose.

G. Applicant and its successors and assigns shall submit a Declaration of Covenants, Conditions, and Restrictions, form deeds, and any plat notes required herein to the Planning and Community Development Department and the County Attorney’s Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney’s Office prior to recording the final plat. Said Declaration shall cross-reference Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 1 Case No. 2022CW3087 and shall identify the obligations of the individual lot owners thereunder.

H. Applicant and its successors and assigns shall record all applicable documents, including but not limited to agreements, assignments, warranty deeds regarding the water rights, and Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

I. The following plat note shall be added that addresses the State Engineer’s admonition to advise landowners of potential limited water supplies in the Denver Basin:

“Water in the Denver Basin aquifers is allocated based on a 100-year aquifer life; however, for El Paso County planning purposes, water in the Denver Basin aquifers is evaluated based on a 300-year aquifer life. Applicant and all future owners in the subdivision should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than either the 100 years or 300 years used for allocation indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers. Alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply.”

J. Prior to recording the final plat, Applicant shall provide proof that the well operating under permit no. 87817 has been re-permitted.

cc: Ashlyn Mathy, Project Manager, Planner

FINAL PLAT (RECOMMEND APPROVAL)

\_\_\_\_\_ moved that the following Resolution be adopted:

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF EL PASO

STATE OF COLORADO

RESOLUTION NO. SF245  
IVILO HEIGHTS FINAL PLAT

WHEREAS, Pawel Posorski did file an application with the El Paso County Planning and Community Development Department for approval of a Final Plat for the Ivilo Heights Subdivision for property in the unincorporated area of El Paso County as described in Exhibit A, which is attached hereto and incorporated herein by reference; and

WHEREAS, a public hearing was held by this Commission on June 20, 2024; and

WHEREAS, based on the evidence, testimony, exhibits, consideration of the Master Plan for the unincorporated area of the County, presentation and comments of the El Paso County Planning and Community Development Department and other County representatives, comments of public officials and agencies, comments from all interested persons, comments by the general public, and comments by the El Paso County Planning Commission members during the hearing, this Commission finds as follows:

1. The application was properly submitted for consideration by the Planning Commission;
2. Proper posting, publication, and public notice were provided as required by law for the hearing before the Planning Commission;
3. The hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters, and issues were submitted and that all interested persons and the general public were heard at that hearing;
4. All exhibits were received into evidence;
5. The proposed land use does not permit the use of an area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor;
6. All data, surveys, analyses, studies, plans, and designs as are required by the State of Colorado and El Paso County have been submitted, reviewed, and found to meet all sound planning and engineering requirements of the El Paso County Subdivision Regulations.



7. For the above-stated and other reasons, the proposed amendment of the El Paso County Zoning Map is in the best interest of the health, safety, morals, convenience, order, prosperity, and welfare of the citizens of El Paso County.

WHEREAS, when approving a Final Plat, the Planning Commission and Board of County Commissioners shall find that the request meets the criteria for approval outlined in Section 7.2.1.D.3.f of the Land Development Code ("Code") (as amended):

1. The Subdivision is in conformance with the goals, objectives, and policies of the Master Plan;
2. The Subdivision is in substantial conformance with the approved Preliminary Plan;
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;
4. Either 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 the Code, or, with respect to applications for Administrative Final Plat approval, such finding was previously made by the BoCC at the time of Preliminary Plan approval;
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 the Code;
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)];
7. Adequate drainage improvements are proposed that comply with State Statute [C.R.S. § 30-28-133(3)(c)(VIII)] and the requirements of the Code and the Engineering Criteria Manual ("ECM");
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 the Code and the ECM;
9. Necessary services, including police and fire protection, recreation, utilities, and transportation systems, are or will be made available to serve the proposed Subdivision;
10. The final plans provide evidence to show that the proposed methods for fire protection comply with Chapter 6 of the Code;
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 of the Code;

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 SIA so the impacts of the Subdivision will be adequately mitigated;
13. The Subdivision meets other applicable sections of Chapter 6 and 8 of the Code; and
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.].

WHEREAS, 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 the Code.

NOW, THEREFORE, BE IT RESOLVED, the El Paso County Planning Commission recommends that the petition of Pawel Posorski for approval of a Final Plat for the Ivilo Heights Subdivision be approved by the Board of County Commissioners with the following conditions and notation:

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. 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 Parks and 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.
5. 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.
6. 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.

- 7. Drainage fees in the amount of \$6,859.22 shall be paid for the Kettle Creek (FOMO3000) drainage basin at the time of plat recording.
- 8. Applicant shall comply with all requirements contained in the Water Supply Review and Recommendations as provided by the County Attorney’s Office on February 2, 2024.

NOTATION

- 1. Final plats not recorded within 24 months of Board of County Commissioner approval shall be deemed expired, unless an extension is approved.

AND BE IT FURTHER RESOLVED that this Resolution and the recommendations contained herein be forwarded to the El Paso County Board of County Commissioners for its consideration.

\_\_\_\_\_ seconded the adoption of the foregoing Resolution.

The roll having been called, the vote was as follows: (circle one)

Thomas Bailey	aye / no / non-voting / recused / absent
Sarah Brittain Jack	aye / no / non-voting / recused / absent
Jim Byers	aye / no / non-voting / recused / absent
Jay Carlson	aye / no / non-voting / recused / absent
Becky Fuller	aye / no / non-voting / recused / absent
Jeffrey Markewich	aye / no / non-voting / recused / absent
Brandy Merriam	aye / no / non-voting / recused / absent
Eric Moraes	aye / no / non-voting / recused / absent
Bryce Schuettpelz	aye / no / non-voting / recused / absent
Wayne Smith	aye / no / non-voting / recused / absent
Tim Trowbridge	aye / no / non-voting / recused / absent
Christopher Whitney	aye / no / non-voting / recused / absent

The Resolution was adopted by a vote of \_\_\_\_ to \_\_\_\_ by the El Paso County Planning Commission, State of Colorado.

DONE THIS 20th day of June 2024 at Colorado Springs, Colorado.

EL PASO COUNTY PLANNING COMMISSION

By: \_\_\_\_\_  
Thomas Bailey, Chair

EXHIBIT A

A tract of land in the Northwest Quarter of Section 6, Township 12 South, Range 65 West of the Sixth Principal Meridian, El Paso County, Colorado described as follows:

Beginning at a point that is N 00° 07' 30" E 3979.50 feet and S 88° 52' 30" E 1981.48 feet from the Southwest Corner of said Section 6; thence

N 88° 55' 06" E 466.84 feet; thence

S 00° 27' 57" E 160.00 feet to a found 1/2" rebar with Surveyor's Cap, P.L.S. #37631; thence

N 88° 55' 06" E 165.00 feet to a found 1/2" rebar with Surveyor's Cap, P.L.S. #37631; thence

S 00° 01' 52" W 315.08 feet to a found 1/2" rebar with Surveyor's Cap, P.L.S. #37631; thence

N 86° 26' 11" W 292.91 feet to a found 1/2" rebar with Surveyor's Cap, P.L.S. #37631; thence

S 84° 24' 14" W 245.64 feet to a found 1/2" rebar with Surveyor's Cap, P.L.S. #37631; thence

S 77° 52' 51" W 99.26 feet to a found 3/4" iron pipe; thence

N 00° 02' 37" E 10.00 feet to a found 1/2" rebar with Surveyor's Cap, P.L.S. #37631; thence

N 00° 01' 06" E 175.09 feet to a found 1/2" rebar with Surveyor's Cap, P.L.S. #37631; thence

N 00° 14' 10" E 145.17 feet to a found 1/2" rebar with Surveyor's Cap, P.L.S. #30106; thence

N 00° 07' 33" E 159.48 feet to the point of beginning, containing 6.2 acres.

Subject to easements and restrictions of record.