

# 2424 GOTG Rd Project Opposition to 2<sup>nd</sup> Proposal

February 8, 2023

Presentation

# INTRODUCTION

Legality of application for 2424 GOTG Former application is still in litigation at the applicants choice

No significant change, as Area B can be the lowered unit count or 200,00sf of commercial space

Project Statement – Jan. 2023; Evacuation expert / Traffic analyst  
7.5.603.B1 – Public Safety

Imagery not current – 7.3.504 F2 Hillside Overlay

Has the PLDO / Alternative Use agreement been executed?  
PLDO Criteria Manual Section 5.3.B

Bighorn Sheep – Vail Colorado denied a 61 unit complex  
7.3.504.C Wildlife habitat Analysis

Colorado Springs City Attorney has Strongly upheld the opinion of Council and the District Judge agreed 7.5.603.B1

Submitted a large list of documentation

6,690 Petition signatures opposing the Rezone

# Neighborhood Concerns

**TRAFFIC:** Reduced 2424 projected population from 950 to 650 but added Weidner 456 people = 1,106 people.

**NET GAIN OF 156 PEOPLE**

**PLDO:** **NO IMPROVEMENT** for over 2 years with a **very poor 2.0/5.5** LOS.

**BIGHORN SHEEP:** **NO IMPROVEMENT**. The CO AG and District Court **acknowledge the presence of bighorn sheep**.

**HILLSIDE OVERLAY:** **NO IMPROVEMENT**. The 2424 Project to rezone to PUD is not in compliance with **10** criteria in City Code 7.3.504 and **22** criteria in the Hillside Development Guidelines NOTE: (Pg 2) **“This Manual incorporates code standards”**

**EVACUATION SAFETY:** **DETRIMENTAL SOLUTION**. Zonehaven **does not** 1) identify traffic chokepoints to expedite an evacuation, 2) identify contra flow scenarios to prevent backups, and 3) does not calculate evacuation times. **85 lives lost in Paradise using zones**.

**TECHNOLOGY CHALLENGED** – Minimal Cell coverage on the westside of town - Key Issue

**WILDFIRE MITIGATION STRATEGIC PLAN:** There is a “Wildfire Mitigation TABOR Fund Cost Breakdown” (**Doc36**) but no strategic plan quantifying the amount of mitigation, the areas to mitigate, and a timeline for mitigation. **Without a Strategic Plan, it can not be demonstrated that \$20M is sufficient to address the concerns**.

**ROAD CAPACITY:** **NO IMPROVEMENT** to throughput on the already congested egress routes GOG Rd & Vindicator Rd.

**IMPACTS TOURISM:** The entrance to the Garden of the Gods corridor will be massive apartment buildings.

# The PUD Zone Change Does NOT Comply

## **STATE STATUTE: Powers of Local Governments** (as advised by the CO AG) (**Doc04**)

- §29-20-104(1)(b) protect significant wildlife habitat
- §29-20-104(1)(g) regulate based on the impact to the community

## **COLORADO 2015 STATE WILDLIFE ACTION PLAN:** Prevent bighorn sheep from endangered listing status.

## **COLORADO EXECUTIVE ORDER:**

- D-2019-011 Protect iconic wildlife habitat and migration corridors

## **DISTRICT COURT:** Order Following Rule, “DENIED, DONE and ORDERED” May 20, 2022

- At least **25** concerns were upheld by Judge Prince.

## **CITY CODE:** REZONE REQUIREMENTS

- **7.5.603.B.1** The action WILL NOT be detrimental to the public interest, health, safety, convenience, or general welfare.
- **7.5.603.B.2** The proposal IS CONSISTENT with the Comprehensive Plan.

## **CITY CODE:** Hillside Area Overlay (**Meets the spirit and intent of the hillside design manual.**)

[https://codelibrary.amlegal.com/codes/coloradospringsco/latest/coloradosprings\\_co/0-0-0-8797](https://codelibrary.amlegal.com/codes/coloradospringsco/latest/coloradosprings_co/0-0-0-8797)

**“applicants are strongly encouraged and requested to meet the spirit and intent of the hillside design manual”**

- 7.3.504.A.3.g. To preserve wildlife habitat
- 7.3.504.B.1. **Predominant development is single-family detached housing.**
- 7.3.504.C.4.b(3) **Analysis shall show wildlife habitat and migration corridors. < - - Provided by the neighborhood.**
- 7.3.504.D.2.d(2)(D) Yard setbacks should be sufficiently varied to avoid a repetitious appearance
- 7.3.504.D.3. a. Does the plan meet **the spirit and intent** of the hillside design manual?
- **\*\* 7.3.504.F.2. Height shall be determined at the time of zoning and based on visual analysis < - - Provided by the neighborhood.**
- 7.3.504.H. Lot grading will be evaluated for consistency **with the spirit and intent** of the hillside design manual.
- 7.3.504.H.d. **Have visual impacts upon off site areas been avoided** or reasonably mitigated?
- 7.3.504.H.d(1) **Has the structure been sited so that there is a mountain or hillside backdrop?**
- 7.3.504.H.d(2) Has the structure been sited away from the ridgeline?

# The PUD Zone Change Does NOT Comply (continued)

## **HILLSIDE DEVELOPMENT GUIDELINES: (Doc06)**

<https://coloradosprings.gov/sites/default/files/planning/dab/hillside.pdf>

- (Pg 2) **This manual applies to lands within the hillside areas that are characterized by significant natural features that include ridgelines, bluffs, rock outcroppings, wildlife habitat, geologic conditions, and slopes that contribute to the attractiveness of the community.** NOTE: The City has identified these areas and placed them within the HS -Hillside Overlay Zone.
- (Pg 2) The provisions of this manual **shall apply** to any and all of the following activities: **Any lands in which new or enlarged building activity will occur**
- (Pg 2) **This Manual incorporates code standards**
- (Pg 3) The City has recognized that areas which are characterized by **ridgelines, bluffs, view corridors, foothills, mountain backdrop, excessive slope, unique vegetation, natural drainage, rock outcroppings, geologic conditions, wildlife habitats, and other physical factors, are significant natural features worthy of preservation. Performance standards for hillside development have been developed and are incorporated into the Zoning Code** as an overlay zone, referred to as the "Hillside Area Overlay". This manual is intended to serve as the design guidelines for the development of hillside areas.
- (Pg 3) If development occurs in accordance with this Manual, **it will be done** in a manner sensitive to the natural functions of the land and **preserve and protect one of the City of Colorado Springs most significant attributes -- its mountain gateway into the Rockies.**

# The PUD Zone Change Fails to Honor the District Court

From the City Attorney's District Court Brief, April 8, 2022 (Doc01)

"City Council ultimately found that rezoning was not appropriate. Their decision finds support in a robust record containing thousands of pages of documents, and hours of testimony and evidence."

The District Court denied the 2424 Rezone. "DONE and ORDERED May 20, 2022 BY THE COURT" "not appropriate under the City's rezoning code" "The record supports a finding that the project was detrimental to the public interest, health, safety, convenience, or general welfare."

1. "The consideration of the public health, safety, and welfare criterion may include a review of issues relating to traffic Whitelaw v. Denver City Council also W. Paving Const. Co. v. Jefferson Cty. Bd. Of Cty. Comm'rs residents living nearby testified that rezoning would create a life-threatening "chokepoint" at a critical junction point at Garden of the Gods Road and 30th St."
2. "increasing density at the site would exacerbate traffic back-ups, cause delays, and strain first responder resources"
3. "the risk of wildfire at the site is undoubtedly elevated"
4. "rezoning ... compounded problems encountered during the fire"
5. "traffic studies ... were too narrow ... to fully embrace the impact of the project"
6. "30th Street ... narrows to two-lanes heading southbound ... regularly becomes overwhelmed with ... traffic"
7. "rezoning request was inconsistent with the hillside overlay criteria"

# Court of Appeals

## A 2<sup>nd</sup> Zone Request Usurping City Council

City Attorney's Court of Appeals Answer Brief, Nov. 18, 2022 (Doc03)

2. **2424GOTG Does Not Have A Right To A Rezone.**
  4. **City Council's Interpretation Of § 7.5.603.B Was Reasonable** And Its **Decision Was Based On The Criteria In The Ordinance.**
  5. City Council's Decision Was **Supported By Substantial Evidence** In The Record.
    - 5.1. The record contains **competent evidence** that **adding close to 1,000 people to a key intersection would increase health and safety risks, especially in the event of a future wildfire.**
    - 5.2. Residents' evidence shows the **Rezone Request was detrimental** to the convenience, health, safety, and general welfare of the community **in several ways.**
      - 5.2.1 Residents presented **competent evidence** about the area's **traffic problems.**
      - 5.2.2 **Competent evidence** was presented to show that the Project would be **detrimental to the area's bighorn sheep.**
      - 5.2.3 **Competent evidence** was presented to show that **the Project violated the Hillside Overlay.**
      - 5.2.4 **Competent evidence** related to **bicycle safety** and the proximity of the Garden of the Gods was presented to show that **the Project was detrimental to the public interest, convenience, and general welfare** of the area.
- "Conclusion: Because the Certified Record clearly demonstrates that **City Council denied the Rezone Request**"

# Neighborhood Visual Impact Analysis

## Applicants Unsubstantiated Diagram (continued)

This is the NES Visual Impact Analysis diagram showing a 33-foot tall, 2-story building next to a 32 foot light pole. The yellow horizontal line is the top of the building. The red horizontal line is the top of the 32 foot light pole. Using a “ratio” calculation, **the building depicted by NES is actually 13.5 feet tall.**



(REVISED CONCEPT FOR 220 UNITS IN PHASE 2; 420 TOTAL UNITS)

2.2 PHASE 2 CONCEPT B



# Neighborhood Visual Impact Analysis Inconsistent with Hillside Criteria

NOTE: The height of the light pole is 32 feet. This setback is where the 45 foot tall buildings will be placed.

NOTE: The 28-foot line demonstrates that 100% of the hillside will be blocked from this public right-of-way.



# 7.5.603.B.1

## Public Safety: Evacuation

The Rezone request is in Mountain Shadows – the focal point of the 2012 Waldo Fire – **the worst fire in Colorado history** – so bad the President of the U.S. came onsite to assess the **total destruction to 347 homes and two people that burned to death.**

[https://gazette.com/news/waldo-canyon-fire-obama-tours-devastation/article\\_bbe981a6-d093-59b3-9589-a8b611a14a55.html](https://gazette.com/news/waldo-canyon-fire-obama-tours-devastation/article_bbe981a6-d093-59b3-9589-a8b611a14a55.html)The Gazette, Andrew Wineke, June 29, 2012, "**WALDO CANYON FIRE: Obama tours devastation**"



# 7.5.603.B.1

## Public Safety: Evacuation

Traffic was backed up 2.5 to 3.0 miles on Woodman Rd and Garden of the Gods Rd – the only two eastbound escape routes.

With more than 15% additional development and 0% road throughput improvement since the 2012 Waldo Fire, the escape time will be longer.

District Court upheld; “The consideration of the public health, safety, and welfare criterion may ... include a review of issues relating to traffic ... Whitelaw v. Denver City Council ... also W. Paving Const. Co. v. Jefferson Cty. Bd. Of Cty. Comm’rs ... **residents living nearby testified that rezoning ... would create a life-threatening “chokepoint” at a critical junction point at Garden of the Gods Road and 30<sup>th</sup> Street.**”

# 7.5.603.B.1

## Public Safety: Evacuation (cont.)

- Subject matter experts in the field of evacuation recommended FLEET which is a **strategic modeling and simulation evacuation** tool used by the Federal Government and other States for hurricane, flood, fire, nuclear, and other evacuation scenarios. The City rejected FLEET and selected the **tactical** Zonehaven evacuation tool.

	FLEET	Zonehaven
Identifies <b>chokepoints</b> for expedited traffic control and evacuation	YES	NO
Correctly identifies where to place <b>contraflow</b> to prevent backups	YES	NO
Accurately calculates <b>evacuation times</b>	YES	NO

# 7.5.603.B.1

## Public Safety: Evacuation (cont.)

- During the 2012 Waldo fire, **traffic control demonstrated they could not efficiently evacuate traffic** (see photo).
- Placing the contra flow “clearance point” at the intersection of Woodmen Rd. & Corporate Center Dr. **caused a 2.7 mile backup to the entrance of the Peregrine subdivision.**
- Cars from secondary roads could not enter primary roads.
- **The City has not demonstrated that they have improved their skills.**
- Failure to use a modeling tool to efficiently evacuate traffic is 7.5.603.B.1 **detrimental to the public interest, health, safety, convenience, or general welfare.**



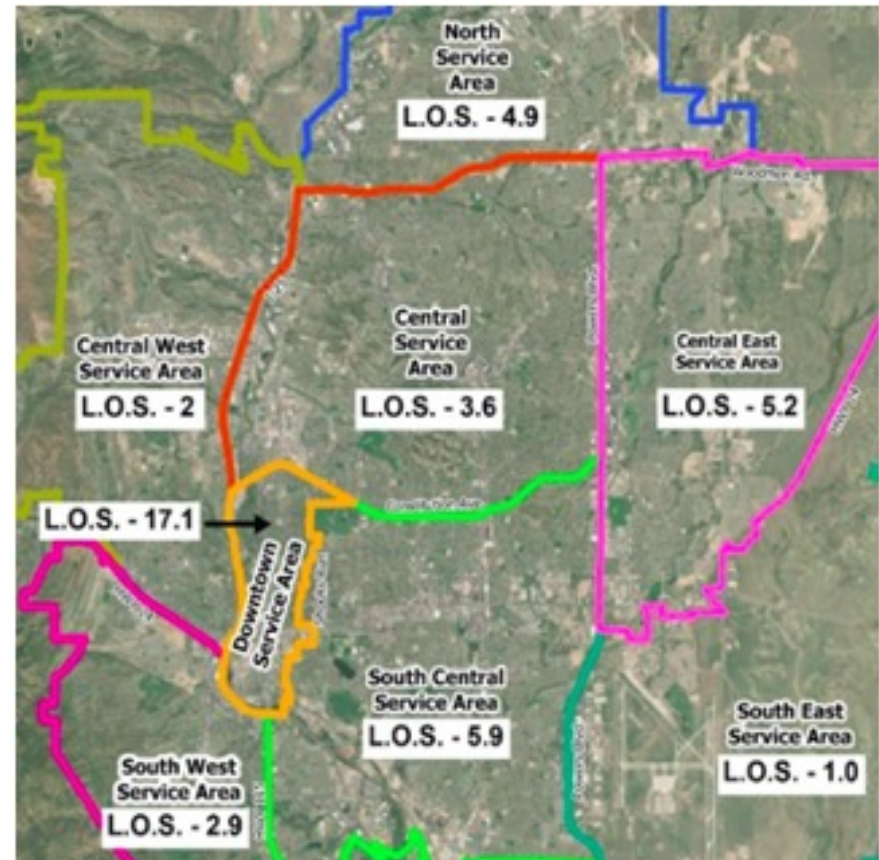
# PLDO

## A Very Poor 2.0 / 5.5 LOS

In the Planning Commission meeting Dec. 17, 2020, a decision was made to reduce the PLDO from 7.5 to 5.5 acres/1,000 people. This was clearly not in the interest of the public. Prior to the vote, Mr. Wysocki stated; "It will be a Priority to bring up the LOS". ~ (1:54 video) Planning Commission agreed, recommended that the PLDO be reduced from 7.5 to 5.5 acres/1,000 people.

Growth continues but the very poor 2.0 Level of Service (LOS) for the Foothills Service area (Central West Service Area) has not improved.

**7.5.603.B.1 The action WILL NOT be detrimental to the public interest, health, safety, convenience, or general welfare.**



Old naming convention used for service areas

# PLDO

## 7.7.1203: PARK STANDARDS

[https://codelibrary.amlegal.com/codes/coloradospringsco/latest/coloradosprings\\_co/0-0-0-13656](https://codelibrary.amlegal.com/codes/coloradospringsco/latest/coloradosprings_co/0-0-0-13656)

7.7.1203: PARK STANDARDS:

**In the interest of the health, safety and general welfare of the people** of the City, the park area standards set forth in this part are adopted to provide a guide **to facilitate adequate provision of park land as the City develops.**

B.1. **Neighborhood Parks** resulting in a **requirement** of two and one-half (2.5) acres per one thousand (1,000) persons.

B.2. **Community parks** resulting in a **requirement** of three (3.0) acres per one thousand (1,000) persons.

7.7.1205 ALTERNATIVE COMPLIANCE:

C. ....Open Space may be partially credited against the requirement of dedication for Neighborhood and Community park purposes up to a **maximum of fifty percent (50%)** of the park land dedication requirement.

B. If the Parks Department is willing to consider Alternative Compliance, then Department staff and Subdivider will negotiate the Alternative Compliance Agreement. The Alternative Compliance Agreement will include all material terms of the proposal, all terms that would be covenants which run with the land or which affect ownership of the land, and the number of acres of required dedication that the proposal satisfies. The Alternative Compliance Agreement shall be contingent on all other land use approvals. **In all instances, the Alternative Compliance Agreement shall be executed prior to approval of all related land use applications.**

7.5.603.B.1 **The action WILL NOT be detrimental to the public interest, health, safety, convenience, or general welfare.**

NOTE: **While acquired land increases in value over time due to inflation, cash in lieu of land (or cash in the bank) decreases in value. The "cash in lieu of land" strategy is detrimental to the public interest.**

# Bighorn Sheep

## Colorado Parks and Wildlife Letter to City Planning

Dec 17, 2020 Frank McGee, CPW to Ms. Wintz, City Planner;  
“Through all the work that CPW has done with the Rampart Range Bighorn Sheep herd there have been no observations of the sheep being on or using the proposed project area.”  
(Doc18)



Flying W Ranch Road



Photo by: Phillis Gius



# Bighorn Sheep

## Rezone is Detrimental

Colorado Bighorn Sheep Management Plan (Doc21), “Human disturbance: Wild sheep have habituated to human activity in many areas where **the activity is somewhat predictable temporally and spatially.**”

NOTE: The current zoning is ideal habitat. **Rezoning to PUD will be detrimental** to the bighorn sheep population.

“Specific activities may be more detrimental than others. ...**walking with dogs, and activity near lambing areas ... most detrimental.** ...at 440 m (1,400 feet) sheep fled the area.”

NOTE: Their main habitat is on the 2424 Open Space which is less than 600 feet from the proposed development. The lambing area is 700 feet from the 2424 Open Space. **The proposed development will be MOST detrimental to the Rampart Range Bighorn Sheep.**

# Traffic Analysis

- NES Project Statement – Revised January 2023
  - Page 5 Improved Road Infrastructure
    - The extension of Centennial Boulevard to I-25 at Fontanero has been completed and is operational. This provides greater capacity and an additional emergency egress option from this northwestern portion of the City. In addition, the City’s improvements to 30th Street are well underway and when complete will provide more capacity for emergency egress to the west.

Since the Developer has stated the evacuation / emergency egress has greater capacity, where is the evacuation / large scale traffic analysis?

7.5.603.B1 – Public Safety

# 2424 GOTG Rd Project Opposition to 2<sup>nd</sup> Proposal

February 6, 2023

Draft: V19

# No Significant Change

Email from Dan Sexton, city planner, to Bill Wysong, MSCA President (Doc16)

“there have been significant changes made to the project scope since it was last discussed with the community”, “**reduce residential from 420 to 320 units**”

## NEIGHBORHOOD CONCERNS:

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**TECHNOLOGY CHALLENGED** as demonstrated 3 times by the City. 1) On May 12, 2022 **issued a mass evacuation for the City for a small fire** – shutting down businesses and **showed a blacked-out evacuation route** on handheld devices, 2) On January 25, 2023 issued a notice of “**a delay in the Colorado Springs Utilities system upgrade**”, 3) For at least 2 years, continues to use MS Teams for official government meetings that **prevents the public from joining the calls and limits the number of callers to 250 people**.

**BICYCLE SAFETY:** Dick Timberlake was **struck and killed by a car** at a nearby intersection with a similar configuration. The city was informed of this **very dangerous crossing** on January 15, 2021 (Doc17) and **has not mitigated the situation**. The west side is the prime training area for the Olympic cyclists.

**WILDFIRE MITIGATION PROGRAM:** (Reported by Dan Beedie June 17, 2022) The Fire Marshall purchased 125 acres and built trails for \$500,000. **Why did the Fire Marshall perform the duties of TOPS?**

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# The PUD Zone Change Does NOT Comply (continued)

- (Pg 4) Intent/Purpose: **The Hillside Manual incorporates code requirements**
- 1.) **To enhance the quality of life of existing and future residents** by **the preservation and protection of the City's most significant natural feature**. Note: Same as **CRS §29-20-104(1)(g)** impact on the community.
- 2.) **To contribute to the natural hillside character of the existing neighborhoods and developments in the area by limiting the alteration to topography...**
- 3.) **To preserve and protect the unique and special natural features** and aesthetic qualities of the hillside areas.
- 4.) To ensure that **new development is sensitive to the existing natural setting** and that the protection design **minimizes the removal of significant vegetation and natural features to the greatest extent possible**.
- 5.) **To preserve and protect wildlife habitat**. Note: Same as **CRS 29-20-104(1)(b)** protect significant wildlife habitat.
- 7.) **To respect the existing views to the mountains and foothills**, and privacy of the adjacent homes.
- 10.) **To recognize community concerns related to development and its impact upon visually significant hillsides, ridgelines, bluffs, and landforms**.
- (Pg 14) Is the proposed development **compatible and consistent with the character of the area and neighborhood?** Land use in the Hillside zone is determined during the zoning classification.
- (Pg 17) 6. **DESIGN your project to maintain the Hillside character** of the site by: **keeping structures below ridgelines**... and **minimizing the height of structures**.

# The PUD Zone Change Does NOT Comply (continued)

- (Pg 20) Because the foothills are such a special area, **there are a set of rules that apply to everyone** .... Whether building a new home or you are in a house that has been around for 20 years, **there are strictly enforced guidelines** that regulate how you may treat your lot.
- (Pg 20) Homes in prominent locations **must be sited and designed with the following in mind: A mountain or other landform should act as the backdrop** .... This is highly preferable to having the building project into a blue sky background
- **(Pg 21) BUILDING MULTI-FAMILY, OFFICE, INDUSTRIAL AND COMMERCIAL PROJECTS IN THE HILLSIDES**  
Multi-family, commercial, office and industrial projects can also be appropriate **if care is taken** in the design of these projects **to insure that important hillside characteristics are maintained**.  
**The following is a list of design standards and guidelines which should be addressed**
- (Pg 22) For building sites in proximity to ridgelines, **additional height restrictions may be necessary to insure that rooflines will be located below the natural ridgeline**.
- (Pg 22) **Building sites should be selected so that construction occurs below the ridgeline**.
- (Pg 22) The roofline, based upon maximum permitted height, **should not extend above the line of sight between a ridgeline and any public right-of-way**, whether the ridgeline is above or below the right-of-way.
- (Pg 22) **Significant views of the natural ridge silhouette from public rights-of-way and other public spaces should be retained**.

**NOTE:** The two adjacent public right-of-ways, N. 30<sup>th</sup> St. and Flying W. Ranch Rd, **will no longer have significant views of the natural ridge silhouettes**.



# The PUD Zone Change Fails to Honor the District Court

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The District Court denied the 2424 Rezone. **"DONE and ORDERED May 20, 2022 BY THE COURT"** **"not appropriate under the City's rezoning code"** "The record supports a finding that **the project was detrimental** to the public interest, health, safety, convenience, or general welfare."

1. "The consideration of the public health, safety, and welfare criterion may include a review of issues relating to traffic *Whitelaw v. Denver City Council* also *W. Paving Const. Co. v. Jefferson Cty. Bd. Of Cty. Comm'rs* residents living nearby testified that **rezoning would create a life-threatening "chokepoint"** at a critical junction point **at Garden of the Gods Road and 30th St.**"
2. **"increasing density at the site would exacerbate traffic back-ups, cause delays, and strain first responder resources"**
3. "the risk of wildfire at the site is undoubtedly elevated"
4. **"rezoning ... compounded problems encountered during the fire"**
5. "traffic studies ... were too narrow ... to fully embrace the impact of the project"
6. "30th Street ... narrows to two-lanes heading southbound ... regularly becomes overwhelmed with ... traffic"
7. **"rezoning request was inconsistent with the hillside overlay criteria"**

# The PUD Zone Change

## Fails to Honor the District Court (continued)

8. “the proposed apartment complex would block the view of the nearby foothills and majestic landscape” **“This was not only inconsistent with the hillside overlay, but also the City’s comprehensive plan.”**
9. “the project had a **detrimental impact on a bighorn sheep** population that lived nearby”
10. **“The concern was one over safety, not over evacuation planning”**
11. **“traffic impacts ... particularly during an evacuation”**
12. “bicycle safety”
13. **“inconsistency of project with Comprehensive Plan”**
14. “increased potential for wildfires”
15. **“City Council correctly found that the applicant failed to carry its burden.** A. Evidence Supported Denial Based on the Project Being Detrimental to Public Interest, Health, Safety, Convenience, or General Welfare”
16. ““The consideration of the public health, safety, and welfare criterion may ... include a review of issues relating to traffic ...” Whitelaw v. Denver City Council ... also W. Paving Const. Co. v. Jefferson Cty. Bd. Of Cty. Comm’rs” ... residents living nearby testified that **rezoning ... would create a life-threatening “chokepoint” at a critical junction point at Garden of the Gods Road and 30th Street.**”
17. “the project would only increase traffic congestion”
18. **“increasing density at the site would exacerbate traffic back-ups, cause delays, and strain first responder resources”**

# The PUD Zone Change

## Fails to Honor the District Court (continued)

19. “Opponents also identified an elevated risk of a wildfire near the site. ... In this unique location, **the risk of a wildfire is elevated both day and night.**”
20. “Resident Dorian Lee ... “It seems inconceivable that with the seriousness of the yearly Colorado fire season we fail to consider that **another explosive fire will occur somewhere on the west side of our City possibly at night and that more casualties will happen due to the limited egress** many of these neighborhoods have.””
21. “The threat of wildfire near the site is not hypothetical.”
22. **“The neighborhood ... experienced unimaginable tragedy during the Waldo Canyon fire. Lives were lost and 347 homes were burned to the ground.”**
23. “Resident Polly Dunn testifying that “our home did not survive that fire.””
24. “(Resident Kim Fleck testifying “... it was a traumatic experience for our family getting out, just as it was for half of Mountain Shadows. ... We’re all still at some level traumatized.”)”
25. “Resident Caitlin Henderson ... over 300 homes burned in the fire ... **Residents waited for hours in gridlock to escape the raging fire**”

# Court of Appeals

## A 2<sup>nd</sup> Zone Request Usurping City Council

City Attorney's Court of Appeals Answer Brief, Nov. 18, 2022 (Doc03)

2. **2424GOTG Does Not Have A Right To A Rezone.**
4. **City Council's Interpretation Of § 7.5.603.B Was Reasonable And Its Decision Was Based On The Criteria In The Ordinance.**
5. City Council's Decision Was **Supported By Substantial Evidence** In The Record.
  - 5.1. The record contains **competent evidence** that **adding close to 1,000 people to a key intersection would increase health and safety risks, especially in the event of a future wildfire.**
  - 5.2. Residents' evidence shows the **Rezone Request was detrimental** to the convenience, health, safety, and general welfare of the community **in several ways.**
    - 5.2.1 Residents presented **competent evidence** about the area's **traffic problems.**
    - 5.2.2 **Competent evidence** was presented to show that the Project would be **detrimental to the area's bighorn sheep.**
    - 5.2.3 **Competent evidence** was presented to show that **the Project violated the Hillside Overlay.**
    - 5.2.4 **Competent evidence** related to **bicycle safety** and the proximity of the Garden of the Gods was presented to show that **the Project was detrimental to the public interest, convenience, and general welfare** of the area.
- "Conclusion: Because the Certified Record clearly demonstrates that **City Council denied the Rezone Request**"

# List of Supporting Documents

Submitted for the record with this Presentation

- Doc01, 2022-04-08 COS Answer Brief, District.pdf
- Doc02, 2022-05-20 Order RE Order Following Rule 106 Review.pdf
- Doc03, 2022-11-18 16-59-31 COS Answer Brief, Appeals.pdf
- Doc04, 20210816 AG letter re Colo Springs zoning complaint, Bighorn.pdf
- Doc05, AG admits bighorn are on the property.pdf
- Doc06, Hillside Development Guidelines Manual.pdf
- Doc07, Hillside Dev. Assessment to Planning Commission.pdf
- Doc08, Concept Buildings as defined by NES, Google Pro, with Parameters.pdf
- Doc09, NES Visual Impact Analysis INACCURACIES.pdf
- Doc10, MSCA Rebuttal to NES Visual Impact Analysis V2.pdf
- Doc11, Proposed Building Elevation Study (Area B&C).pdf
- Doc12, 2424 GOG PETITION REPORT to City Council 2021-05-25.3.pdf
- Doc13, 1980-10-10 Ridge to ROLM, Warranty Deed, Protective Covenants, Book 3362 Page 193.pdf
- Doc14, 1980 Covenants, (c) Typed.pdf
- Doc15, Wildfire-Mitigation-TABOR-Breakdown.pdf
- Doc16, 2023-01-25 Email Dan Sexton to Bill Wysong.pdf
- Doc17, Bicycle Safety to Planning Commission.pdf
- Doc18, 2020-12-17 CPW Colorado Springs 2424 GOG Concept Plan Sheep impact Letterhead.pdf
- Doc19, 2020-12-17 Development encroachment on bighorn sheep.pdf

# List of Supporting Documents

Submitted for the record with this Presentation (continued)

Doc20, BIGHORN SHEEP MGMT PLAN, Rampart Herd, RBS-14DAUPlanFinal.pdf

Doc21, ColoradoBighornSheepManagementPlan2009-2019.pdf

Doc22, 2023-01-25 Stormwater Billing Delay (redacted).pdf

Doc23, 2021-08-16 Sunshine Law, Report to the AG.pdf

Doc24, TBD

Doc25, Bighorn Sheep - Mountain Shadows Testimony to Planning Commission.pdf

Doc26, 2021-01-21.11 Public Comment 1.pdf

Doc27, 2021-01-21.12 Public Comment 2.pdf

Doc28, 2021-01-21.13 Public Comment 3.pdf

Doc29, Executive Order, D-2019-011.pdf

Doc30, John Almy, The largest number of comments.pdf

Doc31, Rampart\_Bighorn\_Sheep\_Bait\_Log\_1\_Redacted.pdf

Doc32, Rampart\_Bighorn\_Sheep\_Bait\_Log\_2\_Redacted.pdf

Doc33, Rampart\_Bighorn\_Sheep\_Bait\_Log\_3\_Redacted.pdf

Doc34, Rampart\_Bighorn\_Sheep\_Bait\_Log\_4\_Redacted.pdf

Doc35, TOPS, Application for Funding.pdf

VIDEO01, Traffic, Jeff escaping Waldo Fire.mp4

VIDEO02, Traffic, from GOG Park to Rt-24 on 31st St.mp4

VIDEO03, Traffic, Fillmore eastbound from Centennial.mp4

VIDEO04, Traffic, Driving North on 30th Street (Eddie H.).mp4

# Responsibility of the Planning Commission

## 7.5.103: CITY PLANNING COMMISSION (PC):

- A. Responsibilities: The Planning Commission shall serve as an advisory board to the City Council on major planning issues
2. The Planning Commission shall **provide recommendations** regarding the following applications **to the City Council**:
  - d. **Establishment or change of zone** district boundaries **with an accompanying concept plan**

Other Planning Commissions further define:

<https://www.pvestates.org/government/commission-and-committees/planning-commission/role-of-the-planning-commission>

**Individual Project Approvals**: Review individual projects for consistency with the general plan (**COMPREHENSIVE PLAN**), any applicable specific plans (**HILLSIDE OVERLAY**), the zoning ordinance (**COLORADO SPRINGS CITY CODE**), and other land use policies and regulations (**MAYOR SUTHERS SAID EXECUTIVE ORDERS ARE STATE LAW**).

**We are hopeful that this Planning Commission will uphold their duties and responsibilities.**

# DETAILS

## Neighborhood Visual Impact Analysis

**The following slides demonstrate that the 2424 Project for a Zone change to PUD does not meet the Hillside Overlay criteria.**

The following slides and documents (listed below) were prepared by John McLain, former professional surveyor, and was awarded 6 patents in modeling and simulation.

**Summary:** As demonstrated in this presentation and supporting documents, **32 foot tall structures at a 190 foot setback will block 100%** of the views of the ridgeline. **16 foot tall structures at an 80 foot setback will block 100%** of the ridgeline.

- The proposed plan **does not comply with City Codes:**  
7.3.504.B.1, 7.3.504.D.2.d(2)(D), 7.3.504.D.3. a., 7.3.504.F.2. 7.3.504.H., 7.3.504.H.d.
- Nor does it comply with, as stated in City Code 7.3.504  
**“the spirit and intent of the Hillside Development Guidelines”.**  
**22 criteria in the Hillside Development Guidelines will not be met.**

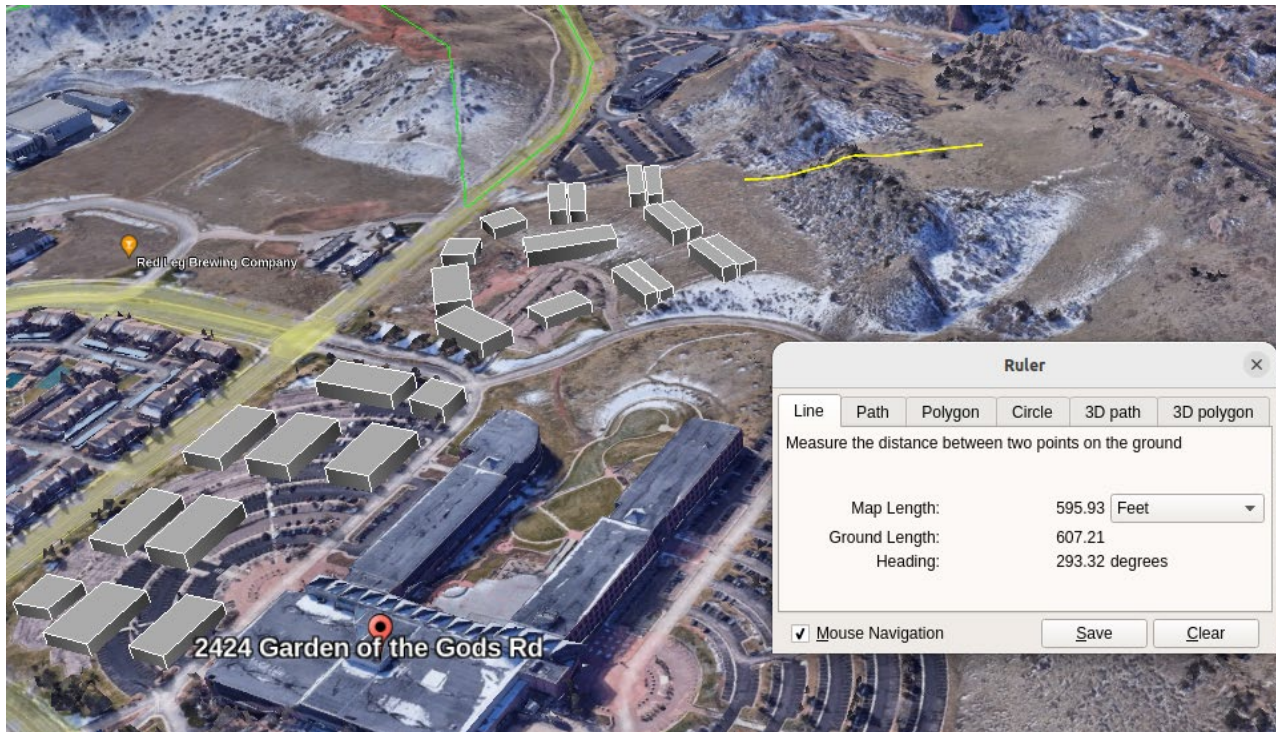
The following documents are supplied with this presentation and are used to substantiate our findings.

- Doc07, Hillside Dev. Assessment to Planning Commission.pdf
- Doc08, Concept Buildings as defined by NES, Google Pro, with Parameters.pdf
- Doc09, NES Visual Impact Analysis INACCURACIES.pdf
- Doc10, MSCA Rebuttal to NES Visual Impact Analysis V2.pdf
- Doc11, Proposed Building Elevation Study (Area B&C).pdf



# Neighborhood Visual Impact Analysis Inconsistent with Hillside Overlay Criteria

This is a Google Earth Pro visual analysis of the NES concept diagram. The buildings are **arranged as if they are a matrix of barracks on a military base**. City Code **7.3.504 D.2.d(2)(D)** Front and side yard setbacks should be sufficiently varied throughout the development to **avoid a repetitious appearance** along the street frontage. **NOTE: Townhomes fall in this category.**



# Neighborhood Visual Impact Analysis

## Applicants Unsubstantiated Diagram

**7.3.504.F.2.** Hillside Building Height: 2. **For multi-family uses, height shall be determined at the time of zoning.** Height will be based upon site factors including, but not limited to, **visual analysis.**

**NOTE:** The developers representative provided a photo (see next slide) **showing 45 foot tall buildings that are approximately 1/3 the height of the 32 foot light pole** that is adjacent to the depicted buildings. The representative has **ignored, multiple request, to provide the name of the software** used to generate the rendering. **Nor, has she supplied the input parameters** that will demonstrate that her photo is correctly represented.

**NOTE:** **The developers representative will not approve of a balloon study.** When the previous owner, MCI, developed the property circa 1990, they demonstrated, at that time, to the neighbors that the newly proposed buildings would NOT block the majestic views of the hillsides.

**NOTE:** We have provided multiple approaches to demonstrate that the developers visual analysis (Doc09) is **GROSELY MISREPRESENTED.** The methods we used include: 1) laser measurements, obtained by a professional surveyor, of the light poles to within 1/16" of an inch, 2) verification of the light pole heights, by a professional with 6 U.S. patents in modeling and simulation, using Google Earth Pro – accurate to within 1 foot and provided building height configuration parameters that accurately shows the buildings blocking the ridgelines. (Doc08) 3) Trigonometry and ratio calculations were also used. (Doc10)

**WHY ISN'T THE PLANNING DEPARTMENT, PLANNING COMMISSION, AND CITY COUNCIL ASKING THE DEVELOPER TO PRODUCE THE EVIDENCE TO SUBSTANTIATE THE DEVELOPERS VISUAL ANALYSIS?**

# Neighborhood Visual Impact Analysis

## Applicants Unsubstantiated Diagram (continued)

This is the NES Visual Impact Analysis diagram showing a 33-foot tall, 2-story building next to a 32 foot light pole. The yellow horizontal line is the top of the building. The red horizontal line is the top of the 32 foot light pole. Using a “ratio” calculation, **the building depicted by NES is actually 13.5 feet tall.**



(REVISED CONCEPT FOR 220 UNITS IN PHASE 2; 420 TOTAL UNITS)

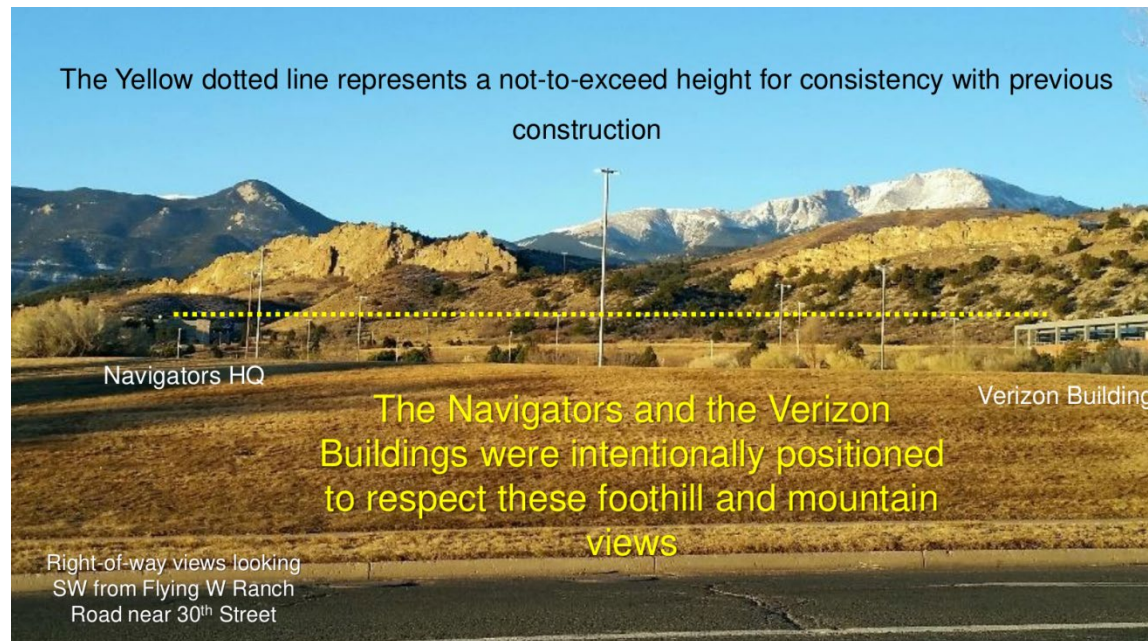
2.2

**PHASE 2 CONCEPT B**

# Neighborhood Visual Impact Analysis

## Current Development Complies with the Hillside Overlay Criteria

Below the YELLOW line, on the left is the Navigators HQ and on the right is the 2424 Facility (Verizon building). These two buildings are placed below the view of the ridgeline. NOTE: **It is not justifiable to argue that since the 2424 Facility is 45 feet tall; it would be acceptable to place 45 foot tall buildings where they would block the view of the ridgeline.**



# Neighborhood Visual Impact Analysis Inconsistent with Hillside Criteria

NOTE: The height of the light pole is 32 feet. This setback is where the 45 foot tall buildings will be placed.

NOTE: The 28-foot line demonstrates that 100% of the hillside will be blocked from this public right-of-way.



# Neighborhood Visual Impact Analysis

## Inconsistent with Hillside Criteria

**Even a 26 foot tall structure will completely block the views of the foothills and mountains.**

NOTE: The image of the building appears to be a 3 story building. However, it was scaled to 26 feet using ratio calculations and Google Earth Pro based on the height of the hill. (Doc10)



# Neighborhood Visual Impact Analysis Inconsistent with Hillside Criteria

The image on the left is from the public right-of-way on Flying W. Ranch Rd. looking south across the parking lot that is proposed to be developed. The community provided, artist rendering on the right represents high-density, multi-family, residential units as defined in the Project Statement. The Project Statement proposes a maximum height of 45 ft. Using Google Earth Pro, street level at this location is 6,496, the berm is at 6,504 or 8 feet above street level. **The depicted building height of approximately 22 feet** was calculated using the ratio height of the mound (yielding a building that is about than 3 times the height of the mound). (Doc07)



# Neighborhood Visual Impact Analysis Inconsistent with Hillside Criteria

## Hillside Development Guidelines Manual

“BEFORE YOU BUILD... The question of how to build in the hillsides should be addressed by **starting miles from your proposed home site**. Looking toward the mountains it is easy to see how the ecotones change as you head up the sides of the foothills. Prairie gives way to Scrub Oak and this in turn is replaced by Ponderosas, Cedars and other trees. It is not a smooth ascendance, rather hills top out in ridgelines and small peaks reach toward higher ones. Around here, all is ultimately capped by the grandeur of our most famous landmark, Pikes Peak.”

NOTE: Placing buildings that will be much higher, as seen from **“any public right-of-way”**, from the rest of the buildings in the area is contrary to the Hillside Development Guidelines Manual. (Doc11)

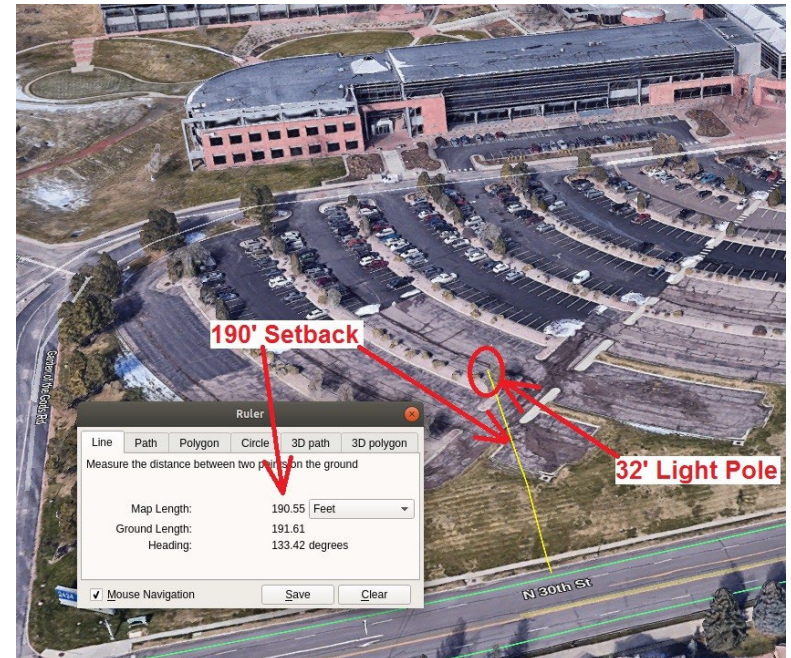
	A	B	C	D	E	F	G	H	I
1	Building	Address	Line of site to hills/mountains	Building Elevation	Street / Sidewalk Elevation	Street to Building Height	Ground Level	Proposed Building Height	Distance to N. 30 <sup>th</sup> St. (in feet)
2	2424 GOG Property	2424 Garden of the Gods Rd.	Yes	6,558	6,489	69	6,513	45	0
3	2424 GOG Property	2424 Garden of the Gods Rd.	Yes	6,539	6,489	50	6,513	26	0
4	Subway	4098 Arrowswest Dr	Partial	6,508	6,497	11			0
5	Artemis at Spring Canyon	4510 Spring Canyon Heights	No	6,511	6,483	28			61
6	SNIA Tech Center	2561 Garden of the Gods Rd	Partial	6,483	6,458	25			817
7	Gorman Auctions	2150 Garden of the Gods Rd	No	6,473	6,437	36			1,393
8	Broadcom Limited	4420 Arrowswest Dr.	No	6,460	6,432	28			1,543
9	Keysight Technologies	1900 Garden of the Gods Rd.	No	6,447	6,420	27			2,718
10	Space Foundation	4425 Arrowswest Dr	No	6,430	6,413	17			2,718
11	Citizens Center Parking	1675 Garden of the Gods Rd.	Partial	6,419	6,396	23			3,513
12	Citizens Center	1675 Garden of the Gods Rd.	Partial	6,444	6,390	54			3,882
13									
14						Average 26' (subtract lowest & highest)			



# Neighborhood Visual Impact Analysis Inconsistent with Hillside Criteria

190 foot setback and 32 foot tall buildings block 100% of the ridgeline. Parameters are provided and substantiated using Google Earth Pro. (Doc11)

Note: **Due to perspective, at closer setbacks** (such as the light pole on the right), **shorter buildings will block the hillside overlay 100%** (see the red horizontal line). In this case, half of the 32 foot light pole, or **a 16 foot tall building and 80 foot setback will block the hillside 100%**.



# 7.5.603.B.1

## Public Safety: Evacuation

The Rezone request is in Mountain Shadows – the focal point of the 2012 Waldo Fire – **the worst fire in Colorado history** – so bad the President of the U.S. came onsite to assess the **total destruction to 347 homes and two people that burned to death.**

[https://gazette.com/news/waldo-canyon-fire-obama-tours-devastation/article\\_bbe981a6-d093-59b3-9589-a8b611a14a55.html](https://gazette.com/news/waldo-canyon-fire-obama-tours-devastation/article_bbe981a6-d093-59b3-9589-a8b611a14a55.html)The Gazette, Andrew Wineke, June 29, 2012, "**WALDO CANYON FIRE: Obama tours devastation**"



# 7.5.603.B.1

## Public Safety: Evacuation

Traffic was backed up 2.5 to 3.0 miles on Woodman Rd and Garden of the Gods Rd – the only two eastbound escape routes.

With more than 15% additional development and 0% road throughput improvement since the 2012 Waldo Fire, the escape time will be longer.

District Court upheld; “The consideration of the public health, safety, and welfare criterion may ... include a review of issues relating to traffic ... *Whitelaw v. Denver City Council* ... also *W. Paving Const. Co. v. Jefferson Cty. Bd. Of Cty. Comm’rs* ... **residents living nearby testified that rezoning ... would create a life-threatening “chokepoint” at a critical junction point at Garden of the Gods Road and 30<sup>th</sup> Street.**”

# 7.5.603.B.1

## Public Safety: Evacuation (cont.)

- Subject matter experts in the field of evacuation recommended FLEET which is a **strategic modeling and simulation evacuation** tool used by the Federal Government and other States for hurricane, flood, fire, nuclear, and other evacuation scenarios. The City rejected FLEET and selected the **tactical** Zonehaven evacuation tool.

	FLEET	Zonehaven
Identifies <b>chokepoints</b> for expedited traffic control and evacuation	YES	NO
Correctly identifies where to place <b>contraflow</b> to prevent backups	YES	NO
Accurately calculates <b>evacuation times</b>	YES	NO

# 7.5.603.B.1

## Public Safety: Evacuation (cont.)

- During the 2012 Waldo fire, **traffic control demonstrated they could not efficiently evacuate traffic** (see photo).
- Placing the contra flow “clearance point” at the intersection of Woodmen Rd. & Corporate Center Dr. **caused a 2.7 mile backup to the entrance of the Peregrine subdivision.**
- Cars from secondary roads could not enter primary roads.
- **The City has not demonstrated that they have improved their skills.**
- Failure to use a modeling tool to efficiently evacuate traffic **is 7.5.603.B.1 detrimental to the public interest, health, safety, convenience, or general welfare.**



# 7.5.603.B.1

## Public Safety: Evacuation (cont.)

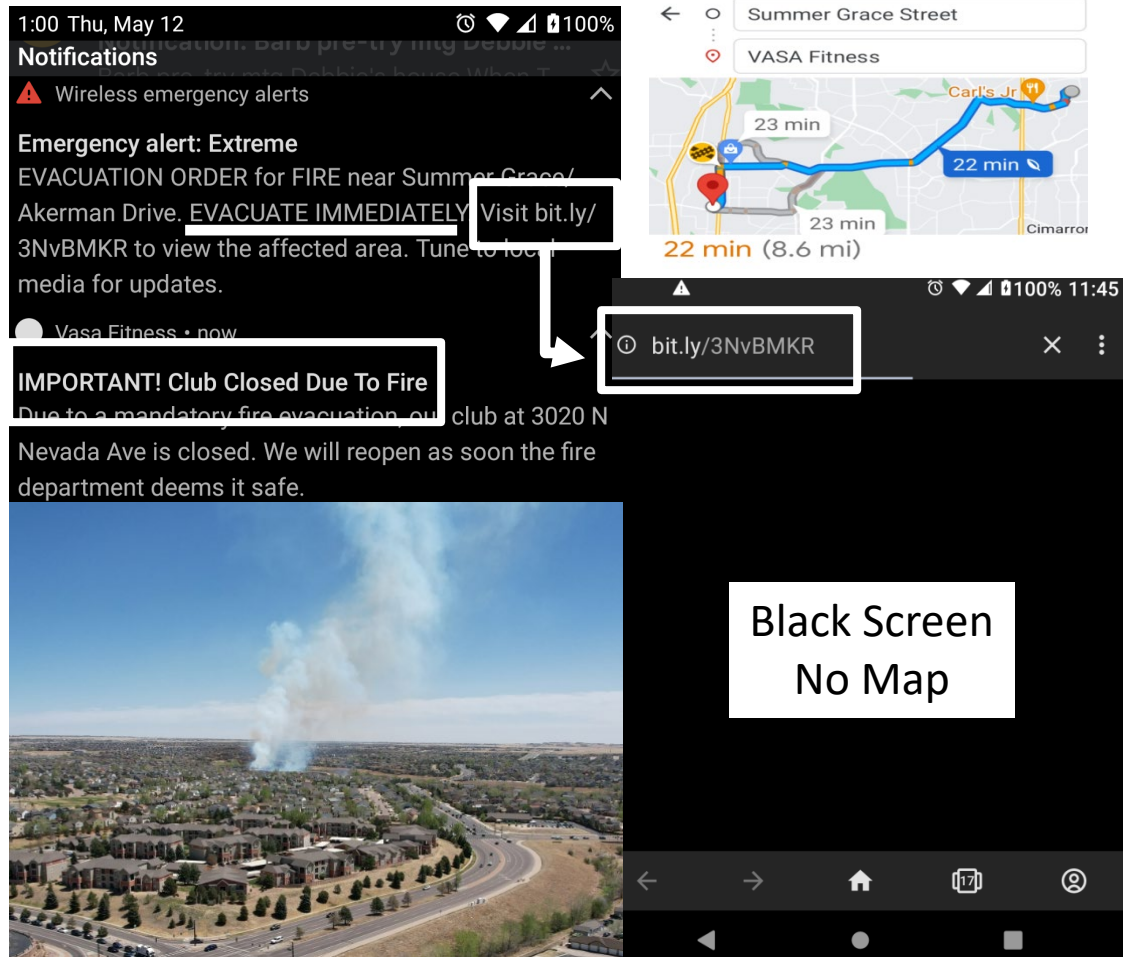
The City of Colorado Springs has demonstrated that they are **technology challenged**, which places a **high level of doubt that the City will conduct a successful evacuation** with their new Zonehaven tool.

### Examples:

1. On May 12, 2022 the City issued a very confusing evacuation order over smart phones.

### Problems:

- a) The small house fire, in the northeast, caused an evacuation order to everyone in the City including Woodland Park.
- b) The map of the location of the fire was blank on the smart phones. People evacuating did not know what direction to go.
- c) Businesses shut-down to prevent liability issues. This caused a significant impact to their revenue.
- d) The evacuation notice was never lifted via the smart phone interface.



# 7.5.603.B.1

## Public Safety: Evacuation (cont.)

2. The City has demonstrated multiple times that it **can not successfully conduct a meeting with their MS Teams technology**. Meetings are **limited to 250** participants and there are frequent technical issues with connections and sound quality (even when the caller eliminates background noise). (Doc23)
3. The City issued a notice on January 25, 2023; “Unfortunately, there has been **a delay in the Colorado Springs Utilities system upgrade...**” (Doc22)

How do you expect the citizens to rely on the City's evacuation technology when so many other systems are failing?

# 7.5.603.B.1

## Public Interest: People Opposing the Rezone

- 6,690 Petition signatures opposing the Rezone (**Doc12**)  
Note: The Petition to City Council, May 25, 2021 contained 6,520 people opposing the rezone. At the time the Petition was closed, 6,690 people opposed the rezone.  
<https://survey.zoho.com/survey/newui#/portal/731948759/department/1qbUby/mysurveys>  
PETITION to Stop the Zone Change at 2424 Garden of the Gods Rd. **6690** Responses
- 1,738 Comments from people that signed the Petition opposed the Rezone
- **1,363 Emails sent to City Planning** oppose the Rezone  
(**Doc26** 700 pages, **Doc27** 500 pages, **Doc28** 592 pages) = **1,792 pages**
- People from 41 Zip Codes in COS oppose the Rezone.
- 86 Personal experiences with the 2012 Waldo Fire oppose the Rezone
- 2,150 E-mail addresses that asked to be kept up-to-date on this project
- January 21, 2021 Planning Commission Meeting: **Commissioner John Almy stated; “This is probably the largest number, at least in my tenure here, the largest number of comments we have gotten out of the community on any given subject.”** (**Doc30**)
- March 18, 2021, 2<sup>nd</sup> Planning Commission Meeting: About 1,900 people were invited to the meeting. Only 250 people could attend due to technical difficulties with MS Teams. (**Doc23**)



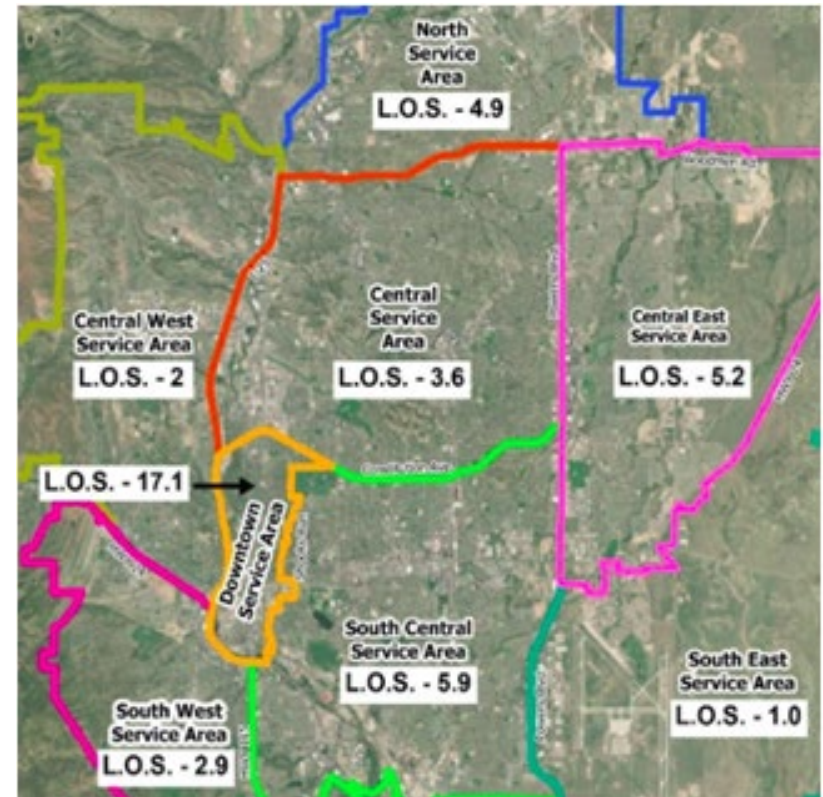
# PLDO

## A Very Poor 2.0 / 5.5 LOS

In the Planning Commission meeting Dec. 17, 2020, a decision was made to reduce the PLDO from 7.5 to 5.5 acres/1,000 people. This was clearly not in the interest of the public. Prior to the vote, Mr. Wysocki stated; "It will be a Priority to bring up the LOS". ~ (1:54 video) Planning Commission agreed, recommended that the PLDO be reduced from 7.5 to 5.5 acres/1,000 people.

Growth continues but the very poor 2.0 Level of Service (LOS) for the Foothills Service area (Central West Service Area) has not improved.

**7.5.603.B.1 The action WILL NOT be detrimental to the public interest, health, safety, convenience, or general welfare.**



Old naming convention used for service areas

# PLDO

## Overcrowded Parks – Ute Valley



**Ute main parking. Note car at the end waiting for an open parking place.**



**Ute Overflow parking #1 at Eagleview Middle School**



**Ute Overflow across from designated parking on Bison Ridge Dr.**

# PLDO

## Overcrowded Parks – Blodgett

Cars parked in the bike lane – detrimental to public safety.

7.5.603.B.1 The action WILL NOT be detrimental to the public interest, health, safety, convenience, or general welfare.



# PLDO

## 7.7.1203: PARK STANDARDS

[https://codelibrary.amlegal.com/codes/coloradospringsco/latest/coloradosprings\\_co/0-0-0-13656](https://codelibrary.amlegal.com/codes/coloradospringsco/latest/coloradosprings_co/0-0-0-13656)

7.7.1203: PARK STANDARDS:

**In the interest of the health, safety and general welfare of the people** of the City, the park area standards set forth in this part are adopted to provide a guide **to facilitate adequate provision of park land as the City develops.**

B.1. **Neighborhood Parks** resulting in **a requirement** of two and one-half (2.5) acres per one thousand (1,000) persons.

B.2. **Community parks** resulting in a **requirement** of three (3.0) acres per one thousand (1,000) persons.

7.7.1205 ALTERNATIVE COMPLIANCE:

C. ....Open Space may be partially credited against the requirement of dedication for Neighborhood and Community park purposes up to a maximum of fifty percent (50%) of the park land dedication requirement.

B. If the Parks Department is willing to consider Alternative Compliance, then Department staff and Subdivider will negotiate the Alternative Compliance Agreement. The Alternative Compliance Agreement will include all material terms of the proposal, all terms that would be covenants which run with the land or which affect ownership of the land, and the number of acres of required dedication that the proposal satisfies. The Alternative Compliance Agreement shall be contingent on all other land use approvals. **In all instances, the Alternative Compliance Agreement shall be executed prior to approval of all related land use applications.**

7.5.603.B.1 **The action WILL NOT be detrimental to the public interest, health, safety, convenience, or general welfare.**

NOTE: **While acquired land increases in value over time due to inflation, cash in lieu of land (or cash in the bank) decreases in value. The "cash in lieu of land" strategy is detrimental to the public interest.**

# Bighorn Sheep

## Colorado Parks and Wildlife Letter to City Planning

Dec 17, 2020 Frank McGee, CPW to Ms. Wintz, City Planner; “Through all the work that CPW has done with the Rampart Range Bighorn Sheep herd there have been **no observations of the sheep** being on or using the proposed project area.” (Doc18)

Dec 9, 2020 Frank McGee, CPW; “In your email you ask if the Governor's Executive Order or any other directives protected the proposed development area. **There are no executive orders, directives**, or any other instrument at a state level that I am aware of that would impact or supersede this local land use decision.” (Doc19)

# Bighorn Sheep

## Colorado Executive Order D-2019-011 (**Doc29**)

**Executive Order D2019-011:** <https://www.trcp.org/wp-content/uploads/2020/04/D-2019-011.pdf>

II **Directives**, **To conserve** Colorado's big game {bighorn sheep} **winter range and wildlife migration corridors**, B.2. {DNR} Opportunities to work with private landowners, **local governments**, ... **to sustain migration corridors;**" C. DNR shall work with **CPW** to incorporate information **concerning big game migration corridors** ... and **shall meet with; stakeholders to discuss big game migration corridors** **to implement this Executive Order**.

**NOTE: Mayor Suthers said "an Executive Order IS LAW".**

<https://www.koaa.com/news/covering-colorado/explaining-the-power-of-an-executive-order>

**NOTE: Why isn't City Planning, the Planning Commission, and City Council working with CPW to comply with the Executive Order D-2019-011, to work with local governments to protect the bighorn sheep and their migration corridors?**

**NOTE: Allan Hahn, District Ranger, U.S. Forest Service; "These are species for which **population viability is a concern**, as evidenced **by significant** current or predicted **downward trends in population** numbers or density, **or habitat capability that would reduce a species existing distribution**. Forest Service directives emphasize **working cooperatively** with state agencies for the management and conservation of populations and/or their habitat of **sensitive species**." (**Doc20**)**

# Bighorn Sheep

## TOPS 2424 Open Space Acquisition

Why isn't the City Planner, the Planning Commission, and the City Council working with TOPS to enforce the Executive Order to protect bighorn sheep and their habitat?

The representative for the **Applicant announce that she is working with TOPS** to acquire the 2424 Open Space (55 acres) after the PUD zoning is approved.

TOPS has already prepared an "**Application for Funding**" (Doc35)

- "is a priority purchase for the City"
- "**internal trail opportunities**"
- "working with the owner to provide **trailhead parking** on their developed property"

At least one person {**name withheld to protect their job**} on the TOPS Working Committee did not know about this Application when brought up during a private conversation.

Why aren't people on the TOPS Working Committee informed?

Why isn't the City Planner, the Planning Commission, and the City Council working with TOPS to inform them of the recommendation in the CPW Statement? (Doc18)

"Included with this proposed project is a 55.43 acre open space that will be west of any new development that takes place. This open space will also sit between the development and any possible sheep use or movement. This open space will buffer any impact into areas where the sheep may pass through to get to more suitable habitat."

# Bighorn Sheep

## “Species of Greatest Conservation Need”

### Colorado 2015 State Wildlife Action Plan,

[https://cpw.state.co.us/Documents/WildlifeSpecies/SWAP/CO\\_SWAP\\_Chapter2.pdf](https://cpw.state.co.us/Documents/WildlifeSpecies/SWAP/CO_SWAP_Chapter2.pdf)

Chapter 2, **Species of Greatest Conservation Need**; (pg 17) “Tier 2 species remain important in light of forestalling population trends or habitat conditions that **may lead to a threatened or endangered listing status**. It is our hope and expectation that **our stakeholders will work together toward conservation of all SGCN**, including those on the Tier 2 list.”

Federal Level: (pg 27) USFS “Sensitive Species”, BLM “Sensitive Species” – **one step from Endangered Listing Status**.



# Bighorn Sheep

## Rezone is Detrimental

Colorado Bighorn Sheep Management Plan (Doc21), “Human disturbance: Wild sheep have habituated to human activity in many areas where **the activity is somewhat predictable temporally and spatially.**”

NOTE: The current zoning is ideal habitat. **Rezoning to PUD will be detrimental** to the bighorn sheep population.

“Specific activities may be more detrimental than others. ...**walking with dogs, and activity near lambing areas ... most detrimental.** ...at 440 m (1,400 feet) sheep fled the area.”

NOTE: Their main habitat is on the 2424 Open Space which is less than 600 feet from the proposed development. The lambing area is 700 feet from the 2424 Open Space. **The proposed development will be MOST detrimental to the Rampart Range Bighorn Sheep.**

# Bighorn Sheep

## Proving the CPW Letter is False

**CORA Request:** The radio tag collars match the photos taken of the bighorn sheep on the 2424 Open Space.

“Rampart Capture Log 2-5-2018\_Redacted.xlsx”

Collar #” N7 has been used on:

- 3.5 year old ewe with ear tag 53 and 1.5 year old ram with ear tag 13

“Rampart\_Bighorn\_Sheep\_Bait\_Log\_1\_Redacted.pdf” (Doc31)

**Collar #A0** was sited 8 times from 1/25/2021 to 2/2/2021.

NOTE: 2/1/2021 “\***One of the lambs were coughing**”

NOTE: 1/31/2021 “**3 may have some diheriea stained butts**”

“Rampart\_Bighorn\_Sheep\_Bait\_Log\_2\_Redacted.pdf” (Doc32)

NOTE: 1/11/2021 “**1 lamb has evidence of diherria**”

NOTE: 1/14/2021 “\*N6 collar placard is yellow; **All others are blue**”

“Rampart\_Bighorn\_Sheep\_Bait\_Log\_3\_Redacted.pdf” (Doc33)

**Collar #A0** was sited 5 times from 2/3/2021 to 2/13/2021

“Rampart\_Bighorn\_Sheep\_Bait\_Log\_4\_Redacted.pdf” (Doc34)

**Collar #A0** was sited 6 times from 1/19/2021 to 1/24/2021

NOTE: 1/24/2021 “**3/5 lamb w/ diarhia**”

Note: Bighorn Sheep have health issues; diarrhea and coughing which is usually caused from stress or disease.

Note, this is a stress factor: The Rampart Range Herd Management Plan “Recreational impacts: **Many people trespass through private property... Many of the individuals have dogs off-leash and CPW personnel have witnessed dogs pursuing lambs.** Private land owners are working with city and county officials to control these activities but **the problem persists.**” (Doc20)

Note: Increasing density at this location will be most detrimental to the bighorn sheep.

# Bighorn Sheep

## Proving the CPW Letter is False (continued)

December 12, 2022, Blue Collar A0, ewe on 2424 Open Space



# Bighorn Sheep

## Proving the CPW Letter is False (continued)

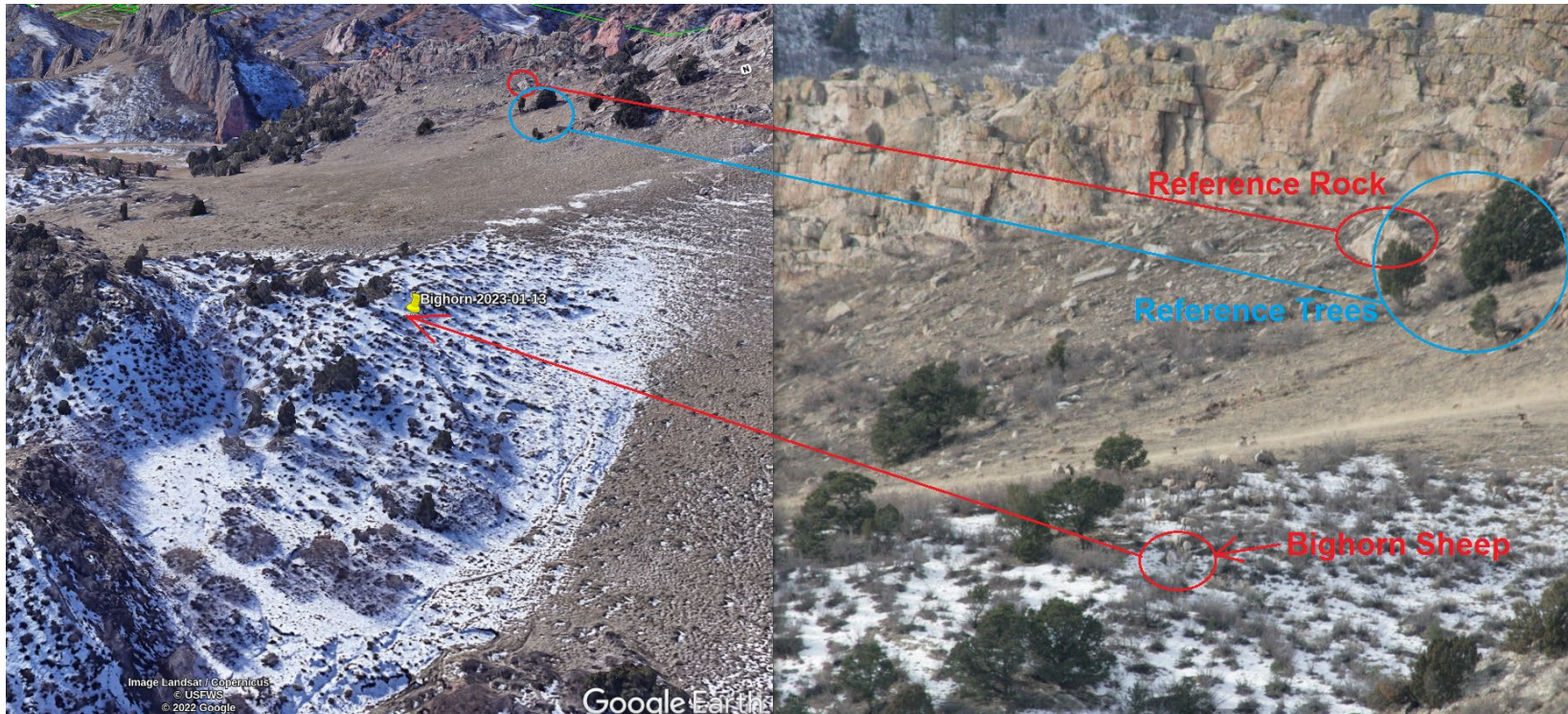
Blue Collar N3, ewe on 2424 Open Space with [2424 Facility in the background](#)



# Bighorn Sheep

## Proving the CPW Letter is False (continued)

Substantiating Photographic Evidence: Mountain profiles have “fingerprints”. No two are the same. **This image demonstrates the photos in this presentation are of bighorn sheep on the 2424 Open Space.** The image on the left is from Google Earth Pro. The image on the right is a representative photo taken of at least 30 bighorn sheep on the 2424 Open Space.



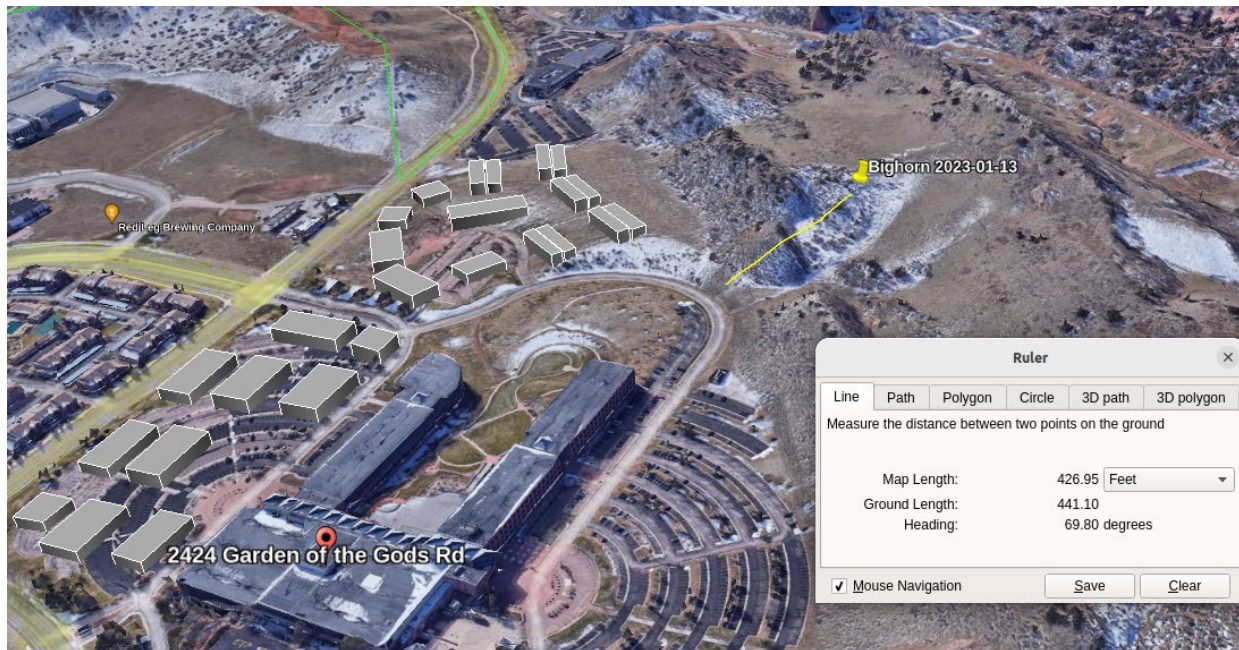
# Bighorn Sheep

## Proving the CPW Letter is False (continued)

The bighorn sheep are 427 feet from the proposed development area. The bighorn sheep habitat is inside the 2424 Open Space. **TOPS plan will devastate the herd.**

**The District Court upheld:** “the project had a detrimental impact on a bighorn sheep”

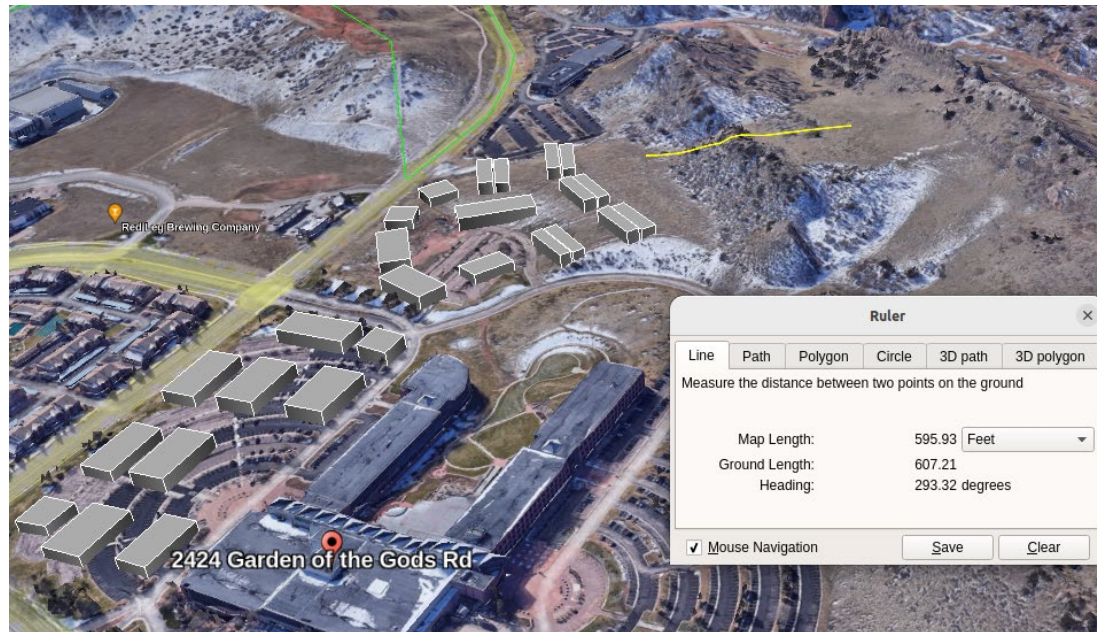
**7.5.603.B.1 The action WILL NOT be detrimental to the public interest, health, safety, convenience, or general welfare.**



# Bighorn Sheep

## CORA: CPW Documents & Photos (continued)

This reference photo shows the 2424 facility at the bottom, the proposed development to the left (using Google Earth Pro and NES location data to place the buildings), and the 2424 Open Space to the upper right. **The bighorn sheep are less than 600 feet from the proposed development.** The Colorado Bighorn Sheep Management Plan ([Doc21](#)) warrens that **people and dogs are most detrimental.** Bighorn flee the area when researchers are within 440 meters (1,440 feet).



# Bighorn Sheep

## CORA: CPW Documents & Photos (continued)

Substantiating Photographic Evidence: The image on the right shows the 2424 Open Space in GREEN, proposed development in RED, and YELLOW line to Chipeta School. Bottom left: YELLOW line to Chipeta School. Bottom right: Bighorn sheep in the path of the yellow line standing on the 2424 Open Space.





# Bighorn Sheep

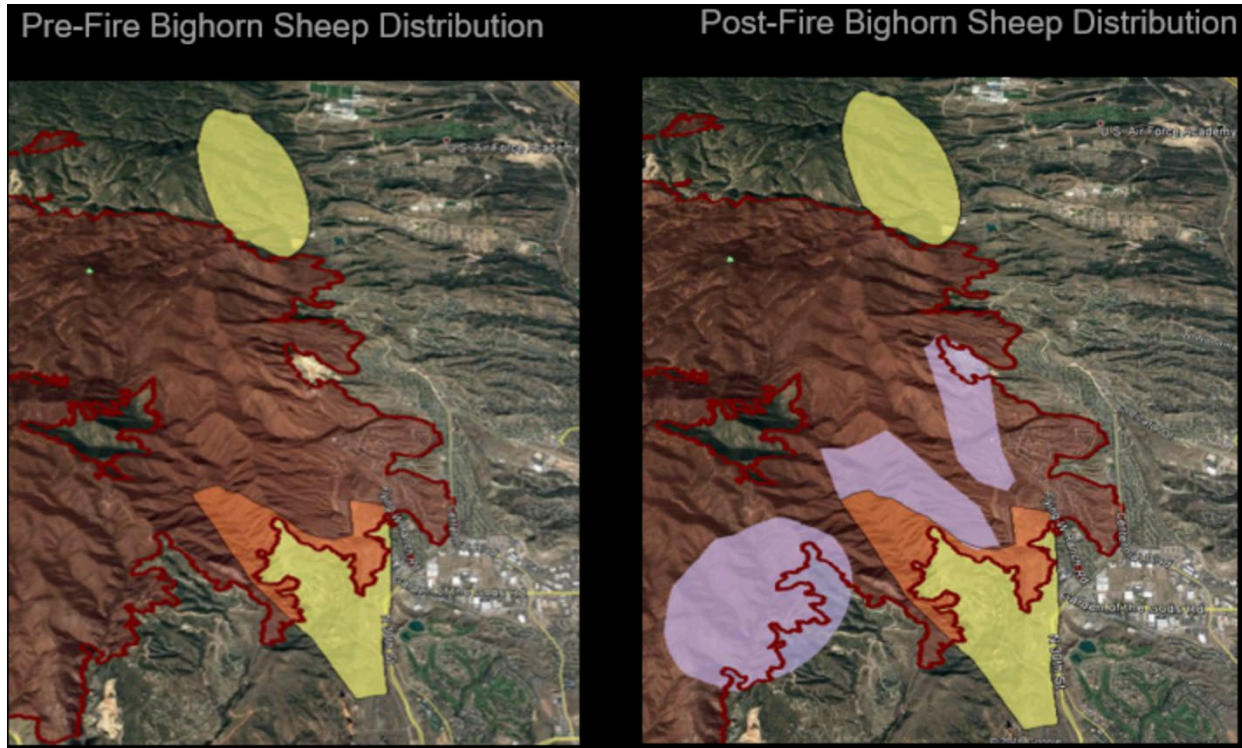
## CORA: CPW Documents & Photos (continued)

54 Bighorn Sheep on the 2424 Open Space, 2023-01-13 @ ~3:45pm



# Bighorn Sheep

## CPW Documents & Photos



*Light purple is the expanded range of the bighorn after the fire, the red is the fire-affected area, the yellow is the bighorn area before the fire.*

Along with their own city employee's statement and map that the area is indeed a corridor (Bret Tennis). Prove the property is what it is, and they cannot approve the zone change or any further development on 2424 without violating code!

This presentation demonstrates that bighorn sheep occupy the 2424 Property, it is their main habitat and migration corridor, and is used for foraging, bedding-down, escape, mating, and protecting lambs.

# Bighorn Sheep: CPW Statement Inconsistent with Vail, Colorado

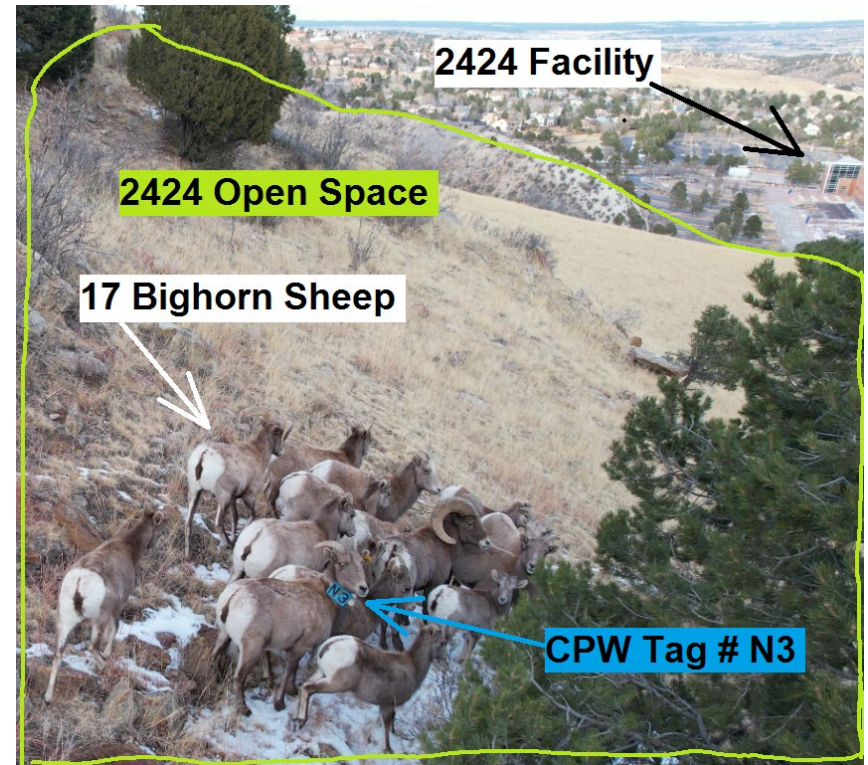
- Remember the Vail / Gore Range Big Horn Sheep in Vail? They may lose their historic winter range due to a proposed housing development. If approved, the controversial “high density” housing complex by Vail Resorts would **consist of 61 residential units** on a plot of land between I-70 and the Gore Range – also known as “critical winter grazing ground” for the Gore Range bighorn sheep herd.
- The Gore Range herd is iconic to the Vail area. Residents of the area as well as the Vail Town Council have requested that the project not go forward. Further, an assessment **by Colorado Parks and Wildlife found that the corporation shouldn’t move ahead with plans as “the impacts to this already struggling sheep herd as a result of this development might not be able to be mitigated.”**

The COS Sheep graze on lower slopes in sunny areas during the winter around 2424 GOTG. They will move up higher during the summer. So it is seasonal grazing habitat but a year-round corridor. And they will come down near the proposed open space to their birthing ground in late spring.

# 7.5.603.B.1

## Public Interest: Bighorn Sheep (cont.)

- Bighorn Sheep are considered “species of Greatest Conservation Need”
- At the Federal Level, USFS “Sensitive Species” – one step from Endangered Listing Status



Dear Commissioner Martin Rickett,

February 14, 2021

Subject: Incorrect & Misleading Information Provided to You at the Last Hearing

First of all, thank you and the other Planning Commissioners for conducting the hearing on the **proposed 2424 Garden of the Gods development** on Thursday, January 21<sup>st</sup>. We are 29-year residents of Mountain Shadows and we and hundreds of other concerned Citizens took great interest in the proceedings during this 5 hour and 40 minute marathon hearing. We appreciate you all giving the Mountain Shadows residents the opportunity to express our many concerns over this ill-proposed multi-family residential Rezoning and associated Major Amendment to our Mountain Shadows Master Planned Community. Among the many other concerns discussed during this hearing, the Hillside Overlay Ordinance (HSO) [Hillside Overlay | Colorado Springs](#) and its implementing Manual requirements were brought up on several occasions.

The Developer's agent has repeatedly dismissed our Mountain Shadows Community concerns about the HSO rightfully limiting this proposed development. She has stated that the new proposed residential development is simply "building on top of the already developed parking lots" along 30th street and not further disrupting the hillside, and that any additional development is not a concern.

During the hearing, you raised questions twice on this topic and were provided incorrect and misleading information by the Planning & Development Department staff on behalf of the Developer.

Specifically, you asked for clarification concerning existing PIP1/HS (Hillside Overlay) zoning height restrictions on this property: "If I'm correct, the current PIP1 has height restriction of 45 feet and the current owner could go build 45-foot office buildings on this site without any issues?" The Planning & Development staff response was "That is correct."

Later during your deliberations, you asked City Planning staff a more specific question whether the Hillside Overlay Ordinance addressed "views." The direct response to your question was that she was "not aware of any specific criteria in the code."

Here is what you and the other Commissioners should have been told starting with the City of Colorado Springs **Hillside Overlay webpage**:

- The Hillside Overlay seeks to **conserve the aesthetic qualities of hillside areas** within the City.
- The predominant development type in hillside areas is **single family detached housing**.
- Developing within the Hillside Overlay zone district **requires an environmental sensitivity above and beyond** that applied to general property within city limits.
- Development within the Hillside Overlay zone **requires additional attention** to slopes, grading, vegetation and **building height**.

### **COS Hillside Overlay Ordinance (96-80 14.1-2-504) & HSO City Code (7.3.504):**

- Certain areas of the City are characterized by significant natural features that include ridgelines, bluffs, rock outcroppings, vegetation...wildlife habitat...and slopes that contribute to the **attractiveness of the community**
- For multi-family uses, height shall be determined **at the time of zoning** and development plan review...based on considerations of site factors including, but not limited to, **visual analysis**,...
- For multi-family residential and nonresidential development proposals...requirements and review criteria shall be addressed, recognizing that these requirements will apply on a site-wide rather than a lot-by-lot basis
- **Visual impacts** upon offsite areas are to be reduced or reasonably mitigated including increased setbacks from ridgelines and special height restrictions
- Proposal **meets the spirit and intent of the Hillside Design Manual**

### **Applicable Hillside Design Manual Objectives (see attached Manual page 5):**

- To **enhance the quality of life of existing and future residents** by the preservation and protection of the City's most significant natural features.
- To preserve and protect the unique and special natural features and **aesthetic qualities** of the hillside areas.
- To preserve and protect wildlife habitat.
- To **respect the existing views to the mountains and foothills**, and privacy of the adjacent homes.
- To **recognize community concerns** related to development and its impact upon **visually significant hillsides**, ridgelines, bluffs, and landforms.

### **Applicable Design Manual Standards & Guidelines (Manual, pages 22-23) in siting multi-family, commercial, office or industrial projects within Hillside Areas:**

- For building sites in proximity to ridgelines, **additional height restrictions** may be necessary to **ensure that rooflines will be located below the natural ridgeline**.
- The roofline, based upon maximum permitted height, **should not extend above the line of sight between a ridgeline and any public right-of-way**, whether the ridgeline is above or below the right-of-way.
- **Significant views of the natural ridge silhouette from public rights-of-way and other public spaces should be retained.**

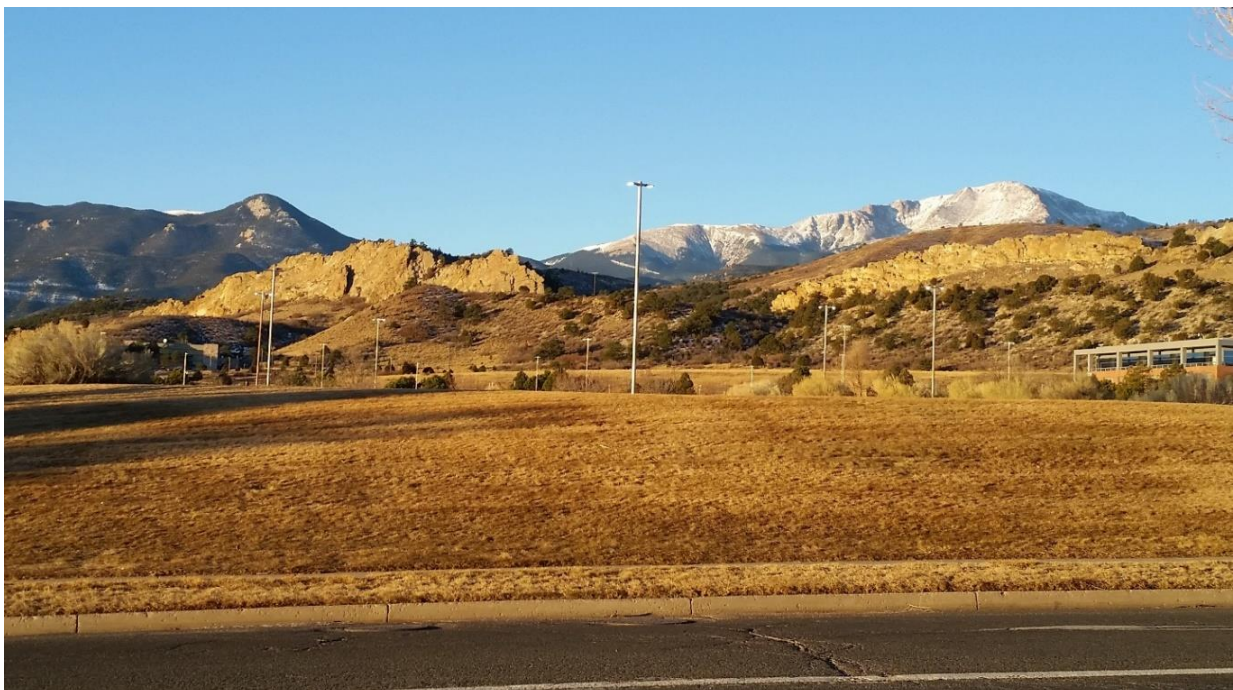
Obviously, the Hillside Overlay Ordinance, Code and Design Manual do in fact clearly state that preserving and protecting hillside and ridgeline **views** is a key factor relative to limiting any new PUD/HS multi-family OR existing PIP1/HS office building height at this key 2424GOTG location. **The HSO Ordinance, Code and Manual do apply even to the existing zoned property as it did when the original 45-foot tall office/commercial buildings were first constructed requiring many hundreds of feet of setback from the 30th Street and Flying W Ranch Road right-of-ways and strategic placement in the**

center of the property. This was the same point that Commissioner John Almy made during your deliberations. Contrary to what you were told by Staff, the current property owner would be subject to the same HSO Design Objectives, Standards and Guidelines for siting any new additional office/commercial building on this property--just as they would be for any new high-density multi-family apartment construction. **Based on code, views and street-level perspective at this location do matter.**

Please see the attached photo taken from Flying W Ranch Road just off of 30<sup>th</sup> Street looking southwest across the center of the proposed 'Area B' 45 foot tall multi-family residential development. The parking lot light pole in the foreground is 32 feet tall and setback from the Flying W Ranch Road right-of-way by approximately 225 feet. The developer's plan will fail to preserve these significant natural features and view corridors. Furthermore, it is inconsistent with the PlanCOS Majestic Landscapes goals, policies and recommendations by NOT "protecting our viewscapes" and "limiting development encroachment" at this impressive 2424 Garden of the Gods location.

In summary, during the Planning Commission meeting on January 21st, you and the other Commissioners were provided incomplete/misleading information that would negatively impact the quality-of-life and public interest of the Citizens of Mountain Shadows and that of the millions of annual visitors to this gateway location to Garden of the Gods. It troubles us and many other residents of Mountain Shadows that the Planning Department failed to correct these serious misconceptions during the hearing that bear directly and significantly on the legitimacy of this proposed development.

Respectfully,  
Jeff & Nicole Norton  
2455 Jenner Court, Mountain Shadows

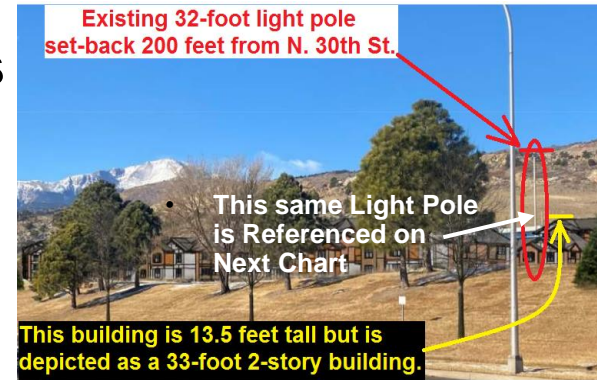


# Hillside Overlay Ordinance, City Code, HSO Design Manual & PlanCOS Majestic Landscapes

Proposed zone change: PUD/HS for entire 125-acre property including multi-family/commercial land use with building height up to 45 feet & 50-foot setback. Built on top of existing berm along 30<sup>th</sup> Street, building height above street level could be ~70 feet.

## The 2424GOTG Proposed development:

- **Zoning Approval Criteria B.1.** – Is Detrimental to the Public Interest and General Welfare.
- **Zoning Criteria B.2.** – Is Inconsistent with the Goals, Policies & Recommendations of the PlanCOS
  - **Majestic Landscapes Topology #3 Garden of the Gods:** Limit Development Encroachment that Threatens the Integrity of the Natural Landscape
  - **Majestic Landscapes ML-4:** Preserve and Protect our Viewsheds
- **City Code 7.3.504: HS – Hillside Area Overlay** – Does not conserve unique natural features and esthetic qualities of the hillside areas; avoid/mitigate visual impacts upon off-site areas
- **MP Approval Criteria E.1.** – Does not Preserve significant natural site features and View Corridors
- Is in Conflict with Hillside Overlay Ordinance (**96-80 14.1-2-504**) and City Code (**7.3.504: HS**)
- Fails to Meet the Spirit & Intent of the **HSO Design Manual Objectives, Standards and Guidelines**
  - ✓ Does Not Enhance the Quality of Life of existing and future residents of Mountain Shadows
  - ✓ Does Not Respect the Existing Views to the mountains and foothills
  - ✓ Does Not Retain Significant Views of the natural ridge silhouette from Public rights-of-way
  - ✓ Does Not Recognize Community Concerns related the impact upon visually significant hillsides

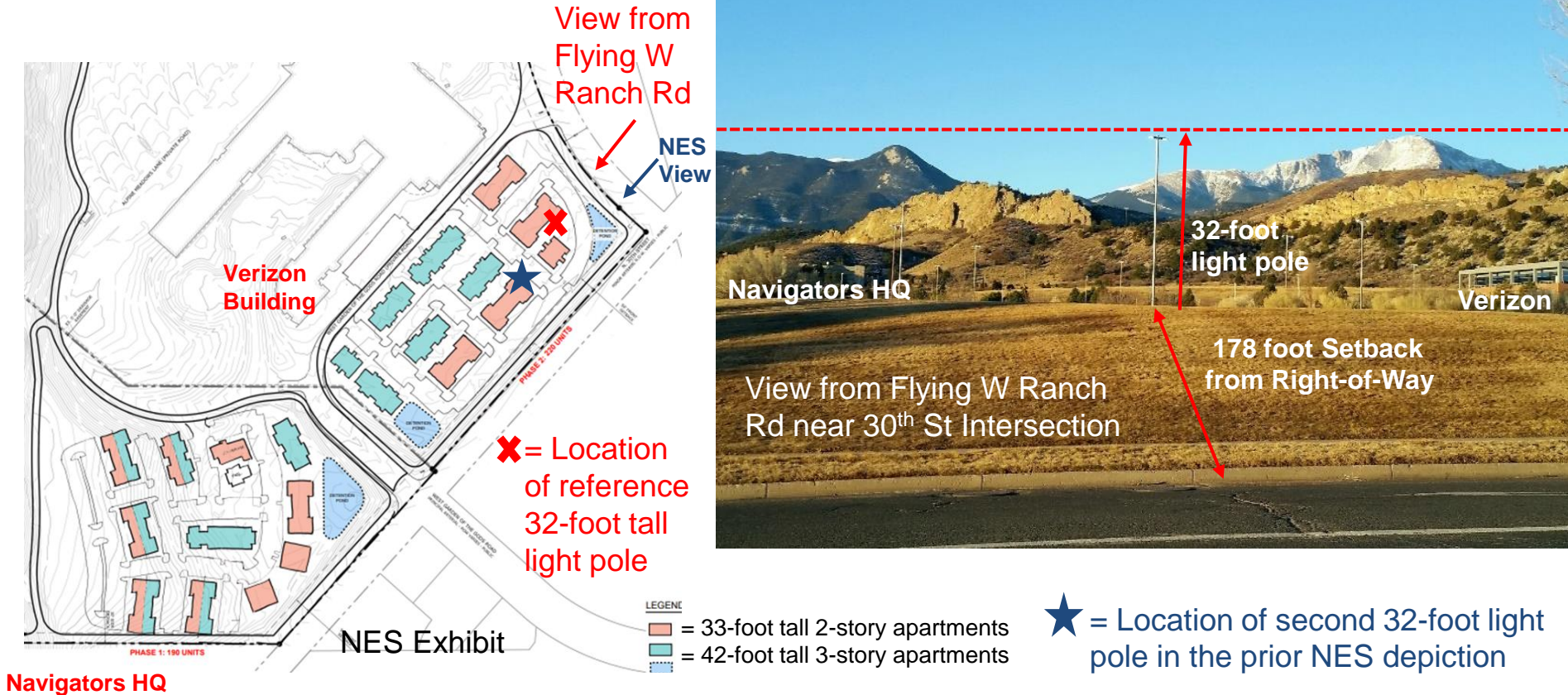




# MSCA Visual Analysis

## Reference Location of 32-foot Tall Light Poles on Proposed 2424GOTG Development Diagram

- ◆ Even 2-story buildings set back 150 feet will block ALL of this Majestic View
- ◆ The Verizon & Navigators buildings were intentionally set back to protect these very views



# HSO & Majestic Landscapes Summary

The 2424GOTG Proposed Development:

- ❖ Is not in “Substantial Conformance” with approval criteria
- ❖ Misrepresents the actual Visual Impact to Significant View Corridors
- ❖ And DOES NOT permit “the current owner to build 45-foot office buildings [e.g. like Verizon or Navigators] on this site without any issues” as was previously misrepresented to the Planning Commission by Planning Development (Reference attached letter to the Planning Commissioner Rickett dated February 14, 2021)

# Analysis: Wildlife Habitat and Migration Corridors

## Reference Diagram #2

The 2424 Property contains the “2424 Open Space” in GREEN, the “Proposed Development Areas B & C” in RED, and Area A in BLUE

The GREY blocks in the RED area are the proposed locations for development.



# Analysis: Wildlife Habitat and Migration Corridors

## Primary Migration Corridor Diagram #2

The YELLOW circles left of the “GOG Parking lot” insert is where the bighorn are frequently seen by people visiting GOG.

The GREEN line starting on the 2424 Open Space to the Yellow Circles represents one of their migration paths.

