Introduction

MSCA Appeal of the Planning Commission Approval of the 2424 GOTG Rezoning and Concept Plan

City Council Hearing March 28, 2023

2424 GOTGR **Rezoning and Concept Plan** is DETRIMENTAL to PUBLIC SAFETY **City Council Hearing** March 28, 2023

WALDO CANYON FIRE 2 lives lost

On June 26, 2012, 74-year-old William Everett and his 73year-old wife, Barbara burned to death in the Waldo Canyon Fire.

https://kdvr.com/news/couple-killed-in-waldo-canyon-fire-identified/

It could have been much, much worse!



High-density development in a WUI location is economically **DETRIMENTAL**

 The Waldo Canyon Fire resulted in insurance claims totaling more than US \$453.7 million.

https://en.wikipedia.org/wiki/Waldo Canyon Fire#:~:text=T he%20Waldo%20Canyon%20Fire%20resulted,more%20than %20US%20%24453.7%20million

 Hidden costs of the Waldo Canyon Fire are estimated to be at least equal or more to the insurance costs.



EXPERTS WARN:

High-Density Development is WRONG for Our Wildland Urban Interface (WUI) Neighborhoods

FEMA:

"The greater the structural density, or **how close structures are to one another, the faster the wildfire will spread**. Weather has an impact on the spread of a wildfire. High temperatures, low humidity, and high winds increase the likelihood that a wildfire will spread from wildlands to inhabited areas."

- Parkside is an example 147 / 178 homes burned
- Colorado Springs had 45 RED FLAG DAYS in 2022!
- Climate change will mean more RED FLAG DAYS in the future!

LOW-DENSITY DEVELOPMENT BY DESIGN How Colorado Springs' Cedar Heights Neighborhood Survived The WCF Fire

"In 2003 Colorado Springs coordinated with its Cedar Heights subdivision and a local land trust to protect a 295-acre park with a conservation easement to prevent any new residential development and create an open-space buffer between the Pike-San Isabel National Forest and the community. The easement allowed for fire mitigation work to take place on 100 acres of the park which, in combination with defensible space around homes, was credited with helping to save the neighborhood from the 2012 Waldo Canyon Fire" (League, 2012) https://planningforhazards.com/conservation-easement

6

PUBLIC SAFETY Appeal: 2424GOTG LLC v. City of CO Springs, et al **THE CURRENT ZONING IS THE RIGHT ZONING**

City Attorney's Brief 4/8/22:

"The record supports a finding that the project was detrimental to the public interest, healthy, safety, convenience, or general welfare. **The property sits in a unique place** at the western end of Garden of the Gods Road and backs up to undeveloped wildland. Situated at the edge of the urban-wildland interface, the risk of wildfire at this site is undoubtedly elevated." The 2424 Project is in violation of City Code 7.5.603.B.1. Not be detrimental to public interest, health, safety, convenience or general welfare.

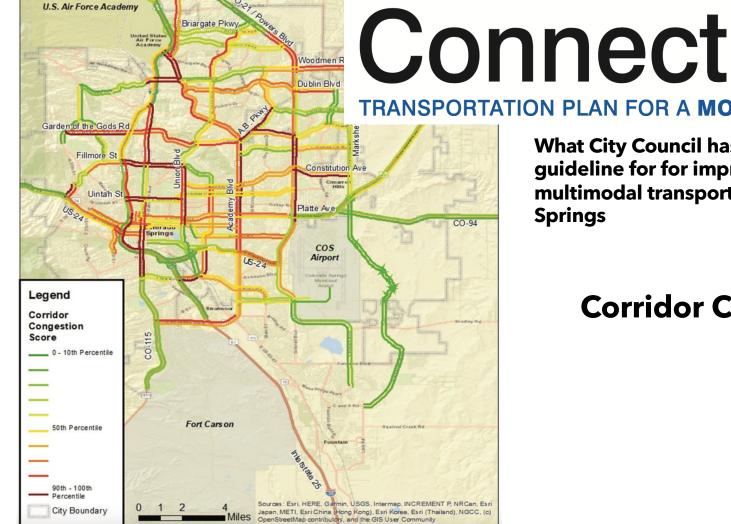
Mayor Suthers:

"It is not a question of if, but when we will have another major wildfire."

"Public safety is THE number 1 priority. That's why government exists frankly." 2424 GOTGR Rezoning and Concept Plan is DETRIMENTAL

to the

SAFETY OF THE RESIDENTS IN THE COLORADO SPRINGS WUI CITY COUNCIL HEARING MARCH 28, 2023



ConnectCOS

TRANSPORTATION PLAN FOR A **MOBILE** COMMUNITY

What City Council has approved as the guideline for for improvement multimodal transportation in Colorado

Corridor Congestion

Figure 11. Corridor Congestion Analysis (2019)

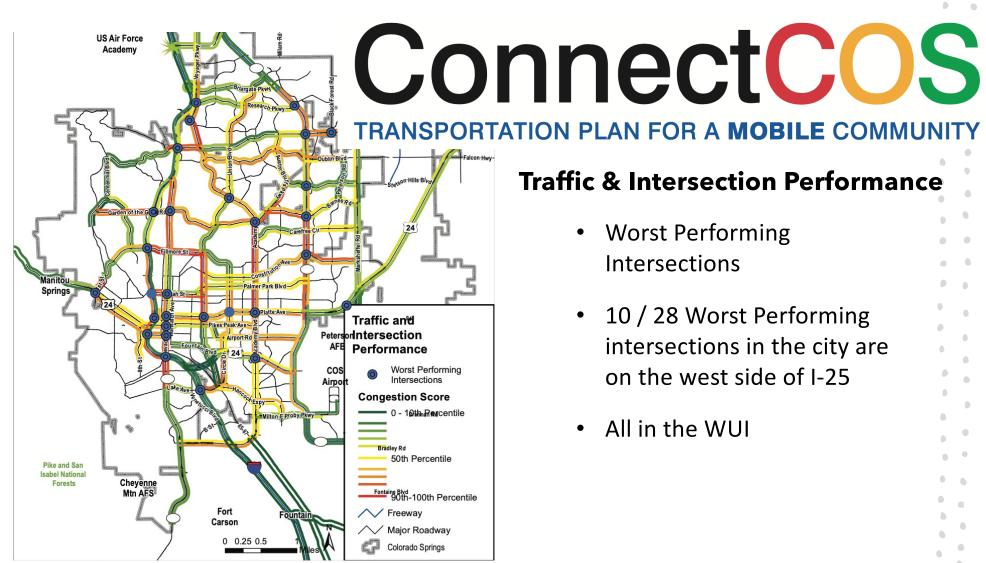


Figure 13. Traffic and Intersection Performance (2019 data)

Colorado Springs Wildfire Evacuation Planning

Public Safety

PPACG City of Colorado Springs 2010 Study

District 1 ockrimmor Miles

District 1 is bounded by the US Air Force Academy on the north, I-25 on the east, Garden of the Gods Road on the south and the foothills on the west.

The estimated number of households is 12,300.

The distance across the district west-east is about 4 miles; the distance north-south is about 4 miles.

Major portals for egress are 30th, Street, Centennial Boulevard, Chestnut Street, Garden of the Gods Road, the Nevada/Rockrimmon Interchange and Woodmen Road.

I-25 will play a vital role in providing exit routes to the evacuation traffic from District 1.

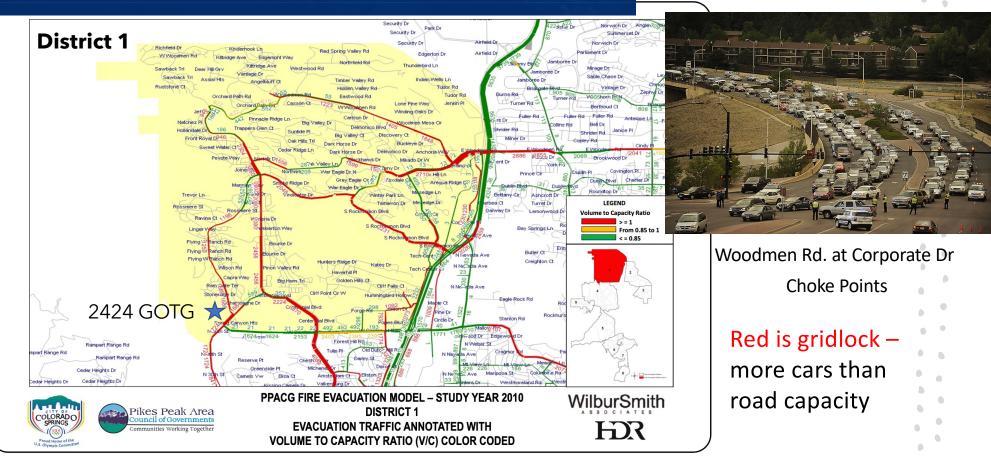
Colorado Springs Wildfire Evacuation Planning

Public Safety

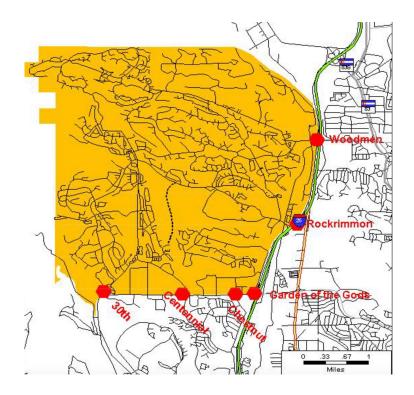
City of Colorado Springs

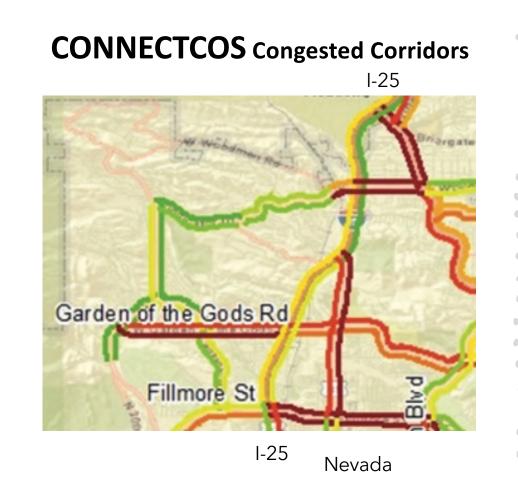
PPACG

2010 Study

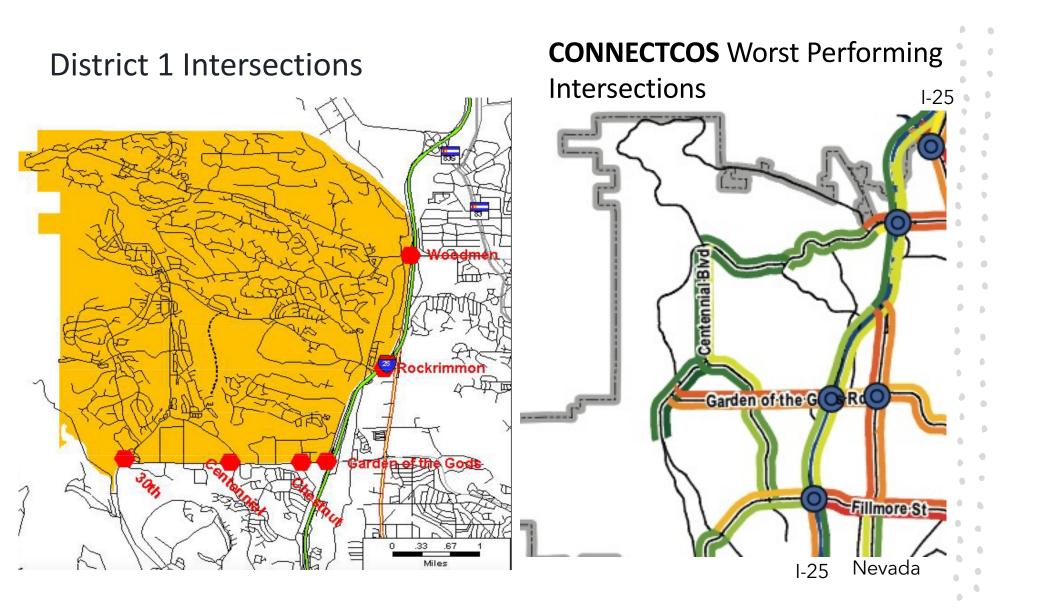


District 1 / Northwest





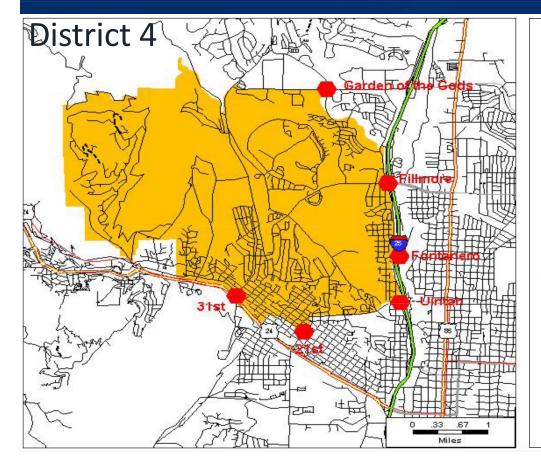
"During this process, a set of 14 Critical Corridors were identified as the streets most critical to safely, comfortably, and efficiently move people throughout the city". ConnectCOS



Public Safety

Colorado Springs Wildfire Evacuation Planning

PPACG City of Colorado Springs **2010 Study**



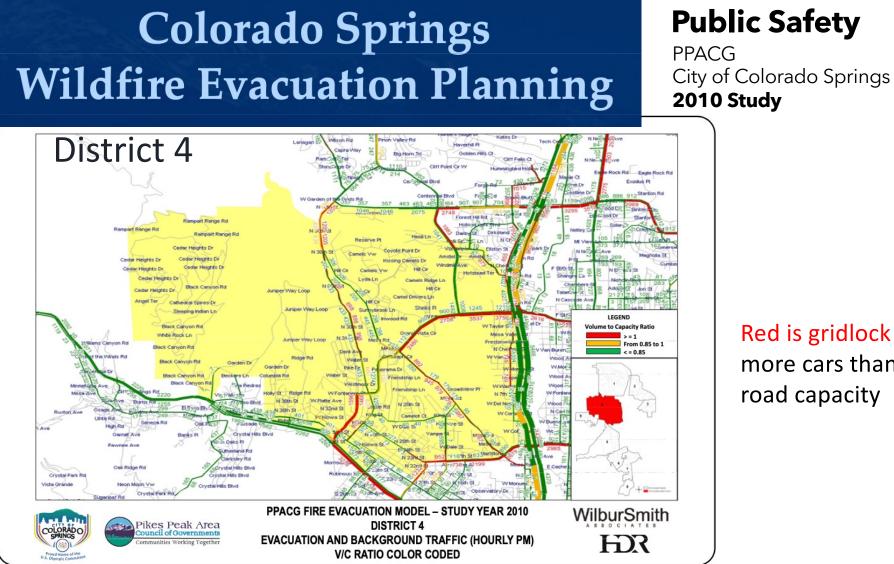
Bounded by Garden of the Gods Road on the north, I-25 on the east, US 24 on the south, and the foothills on the west.

The estimated number of households is 9,800.

The district extent west-east is about 4 miles; the extent north-south is about 3.5 miles. The households are generally located near the southern and eastern boundaries of the district.

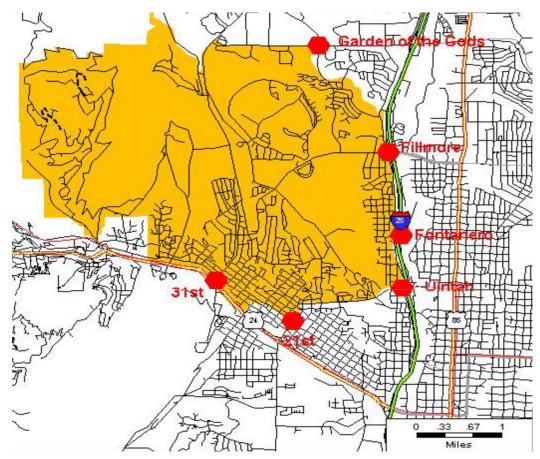
Major portals for egress are Garden of the Gods Road, Fillmore Street, Fontanero Street, Uintah Street, and 21st and 31st Streets.

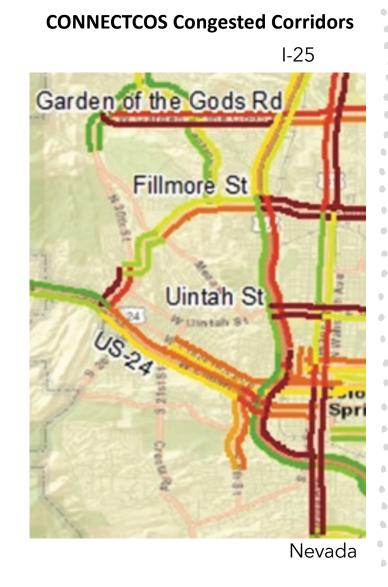
I-25 will play a vital role in providing exit routes to the evacuation traffic from District 4. Mesa and Fillmore are key internal exit routes.



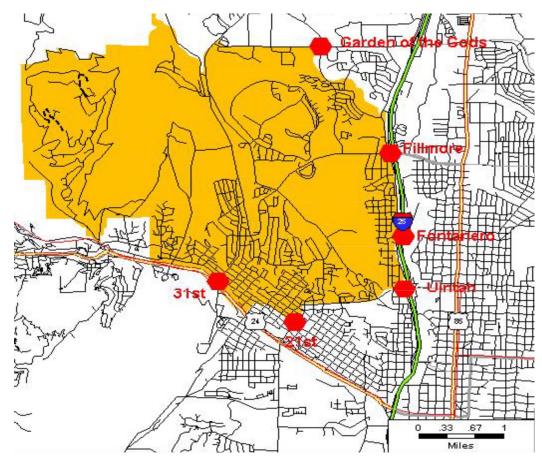
Red is gridlock more cars than

District 4 Intersections





District 4 Intersections

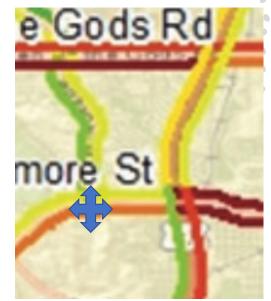




Major Projects Planned / Under Development-Infill

- Centennial & Filmore –
 Crestone At Filmore up to 462 units
 Overlook At Centennial up to 576 units
- Centennial south of Filmore Centennial North – 44 units The Preserve At Mesa Creek – 123 SF Homes, 300 units Mesa Valley Springs / Centennial & Van Buren - 411 units
- Filmore west of Centennial
 - The Preserve At Mesa Creek < 365 units Overlook At Mesa Creek – 91 units Pike View – up to 373 units
- Other –

777 Vondelpark Ellston Park– up to 174 units 2424 GOTG – 320 units ArrowsWest (Weidner Apartments) – 228 units Creekside at Rockrimmon – 43 SF Lots



Sub Total = 2,745 Units

Sub Total = 765 Units

Total = 3,510 Units

Few Significant Road Improvements in the last 10 years in the NW WUI

- Centennial Extension: Filmore St. to Fontanero Ext. 2
 lanes each way
- 30th Street widening: Mesa to Gateway / to Fontmore Rd
 - 1 lane each way Major Garden of the God Park access

with new Roundabout

PPRTA 3 – 2025 - 2034

Only Major Projects on the west side

 30th – Mesa to GOGrd; \$21,300,000 – Shoulders only, no additional traffic lanes

- Colorado Ave. 21st Limit; \$760,000 With Traffic Calming
- Colorado Ave. 21st 28st; \$10,800,000 With Traffic Calming

Conclusion

Increased Density is an Undeniable Increased Risk To Public Safety

- 7.5.603.B.1 The Action Will Not Be Detrimental To The Public Interest, Health, Safety, Convenience or General Welfare.
- This development <u>will be</u> Detrimental! How/Why

Cities Own traffic evacuation Study in 2010 – 13 years ago; = Risk to Public Safety.

Cities ConnectCOS, Corridor Congestion & Intersection Congestion; = Increased Risk to Public Safety

Very little PPRTA funds have been or will be spent on the west side – **No improvement; =**

Increased Risk to Public Safety

3,510 new units / 7,000 new residents; = Increased Risk to Public Safety

Mayor Suthers: "Public safety is THE number 1 priority. That's why government exists frankly".

Vote No

2424 GOTGR Rezoning and Concept Plan are DETRIMENTAL to the Public Interest & General Welfare INCONSISTENT with PlanCOS Majestic Landscapes City Council Hearing March 28, 2023

Hillside Area Overlay Ordinance/City Code 7.3.504

Purpose:

- To specify conditions for any type of development to ensure hillside areas retain their unique characteristics
- > To safeguard the natural heritage of the City
- > To protect public health, welfare and safety
- To ensure development is compatible with and complements the natural environment



> Objectives:

- > To conserve unique natural features and <u>esthetic qualities</u> of the hillside areas
- > To preserve wildlife habitat areas which provide migration corridors
- > To meet the spirit and intent of the of the Hillside Design Manual
- Applicability: For multi-family and nonresidential development, review criteria shall be addressed recognizing that <u>these requirements apply on a sitewide basis</u> rather than lot by lot
- > Hillside Building Height: For single-family, multi-family and nonresidential (commercial) uses:
 - > Maximum height shall be determined at time of zoning and development plan review
 - Height may be <u>reduced based upon consideration of site factors including visual</u> <u>analysis</u>

Hillside Design Manual

Purpose:

The Manual incorporates Code Requirements with recommended design <u>Standards and Guidelines</u>

> Where a Standard is define as:

- An idea or thing used as a measure, norm, or model in comparative evaluations
- Something set up and established by authority as a rule for the measure of quantity,...value or quality



Manual Objective (same as HSO City Code): To preserve and protect the unique and special features and esthetic qualities of these hillside areas

Design Standards and Guidelines that Incorporate HSO City Code Requirements:

- >#4 Insure that rooflines will be located below the natural ridgeline
- #10 Based on max permitted height, roofline <u>should not extend above the line-of-sight</u> between a ridgeline and <u>any public right-of-way</u> (reference Navigators and Verizon siting)
- #12 Significant views of the natural ridge silhouette from public rights-of-way and other public spaces should be retained

Comparison of prior & current NES Visual Analyses

Prior NES Area B Visual with MSCA rebuttal



<u>Andrea Barlow City Council Testimony (May 25, 2021)</u>: "Our Visual Analysis is based on Computer Modeling, not a photo with a light pole in its forefront. We stand by our renderings as being accurate...in terms of height, they are an accurate representation."

"I don't believe that taking the light pole as the primary measure of how tall these buildings will be is accurate – no counter evidence or visual analysis has been provided by the neighbors."

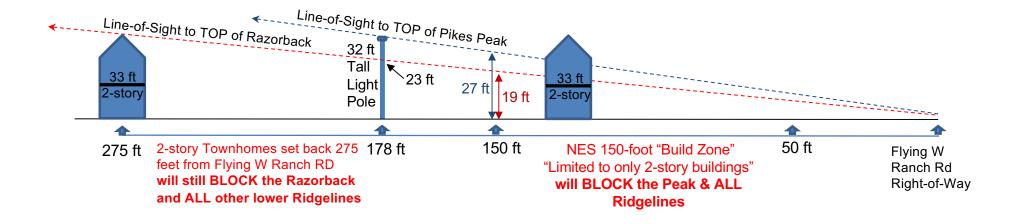
Current NES Area B Visual Projection

MSCA Visual Analysis – Area B (Flying W Ranch Rd)

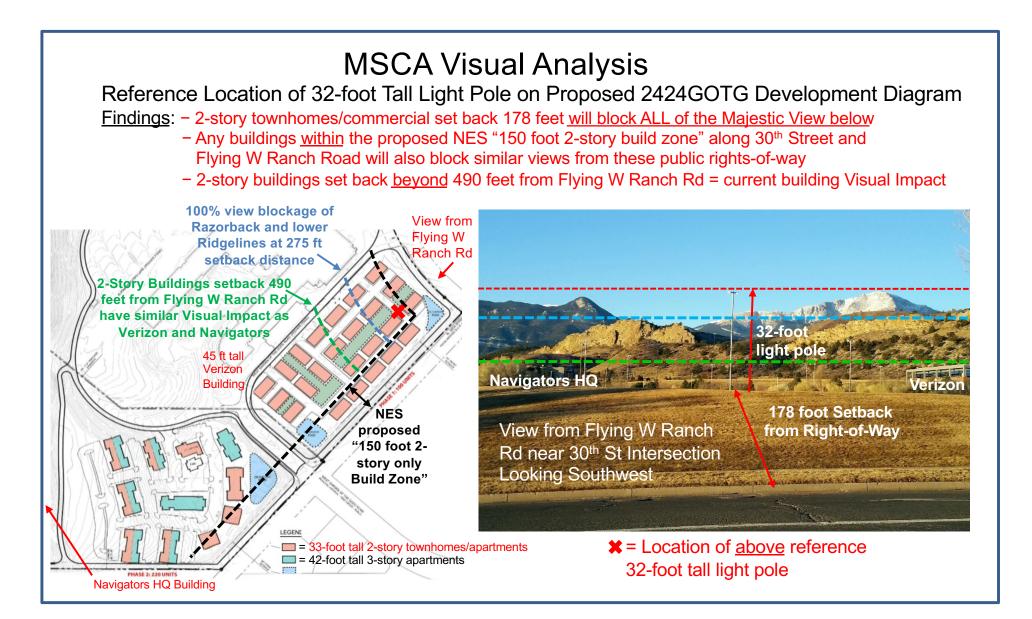
Reference Location of 32-foot Tall Light Pole on Proposed 2424GOTG Development Diagram <u>Findings:</u> Even 2-story townhomes set back 178 feet <u>will block ALL of this Majestic View</u> The Verizon & Navigators buildings were intentionally set back to protect these very views



MSCA Visual Analysis – a critical "to-scale" Perspective (View from Flying W Ranch Road Right-of-Way Looking Southwest Towards Pikes Peak, Mount Rosa, Razorback and Ridgelines)



The HSO Ordinance/City Code imposed height restrictions apply to any buildings on this property (Townhomes, Apartments or Commercial) even if zoned PIP1/HS or PUD/HS with a max allowable height up to 45 feet.



NES Visual Analysis – Area B (30th St)

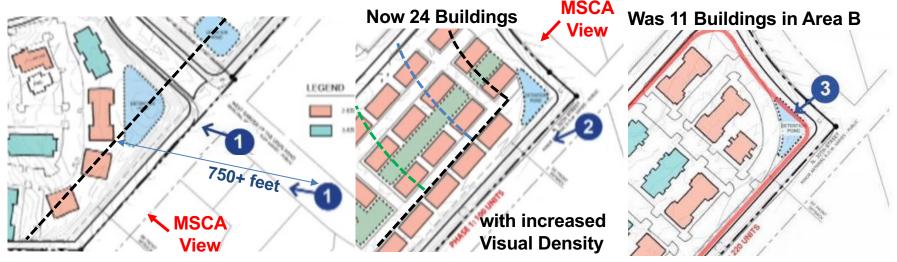
The REVISED NES Visual Analysis (photo on the left) clearly shows that views to <u>the hillside are blocked</u>. HSO Manual that incorporates Code requirements states: "Homes <u>must be</u> sited and designed with the following in mind: A mountain or other <u>landform should act as the backdrop</u> ... this is highly preferable to having the building project into a <u>blue sky</u> <u>background</u>." Photo on the right demonstrates how Verizon (at 45 feet tall) was properly sited.

NOTE: We are not talking about blocking the views from GoG Rd. These majestic views are seen and evaluated from two public rights-of-way along 30th St. and Flying W. Ranch Rd. <u>However, NES has selectively chosen oblique view angles like below as well as views from a greater distance down GoG Rd, and avoided all other critical views, to minimize the true visual impact whereas "these (review) requirements apply on a sitewide basis" (City Code HS 7.3.504 B.1)</u>



Deceptive & Misleading NES Visual Analyses

- ALL NES Visual Depictions from Area C and B are designed to minimize any visual impact – NONE view directly into the complex but instead view over foreground water features, at a distance (NES Views 1 & 3), or obliquely down 30th street (NES View 2).
- HSO City Code Applicability: For multi-family and nonresidential development, review criteria shall be addressed recognizing that these requirements apply on a sitewide basis rather than lot by lot – the NES Visual Analysis IS NOT COMPLIANT

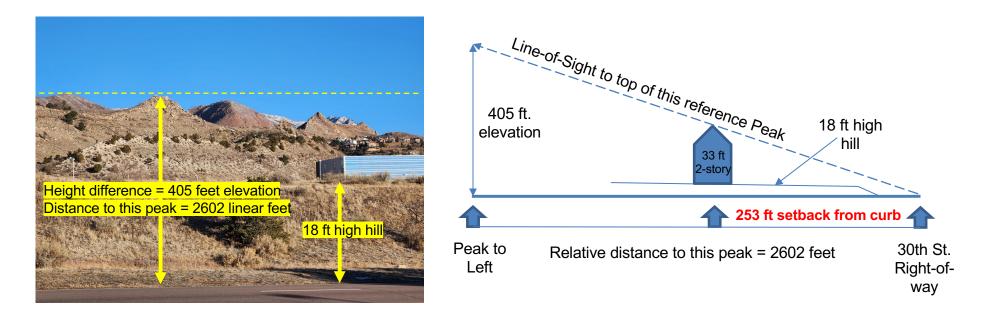


MSCA Visual Analysis – Area C

This Area C hill is 18 feet tall based on Google Earth Pro. Even 23 foot tall buildings constructed within the NES 150 foot "2-story only Build Zone" will block this hillside 100%. HSO Manual: "Homes <u>must be</u> sited and designed with the following in mind: A mountain or other <u>landform should act as the backdrop</u> …. This is highly preferable to having the building project into a <u>blue sky background</u>."



MSCA Visual Analysis – Area C with Google Earth Pro (diagram not to scale)



<u>Findings</u>: The reference Google Earth peak in this photo serves as an equivalent "light pole" height reference. Any 33-foot 2-story building within the NES "150 foot 2-story build zone" will block 100% of this viewshed. AND 2-story buildings out to a setback of 250+ feet from the curb will do the same 100% visual damage.

One Other Observation

➤The 45-foot tall Verizon Building expansion was originally sited using a Balloon Study resulting in proper hillside setbacks following the Purpose and Objectives of the Hillside Overlay Ordinance/City Code 7.3.504

➢As shown in this presentation, these effective Verizon setbacks ensured retention of all Majestic Views from Flying W Ranch Road and 30th Street

Based on current zoning, the property owner can construct up to 45-foot tall buildings as long as such is compliant with the HSO requirements, including Visual Analysis

➢ To avoid another flawed/incomplete NES Visual Analysis, a similar objective Balloon Study should be accomplished before other consideration is given to new development on this property

SUMMARY: Hillside Overlay/City Code 7.3.504

- > Maximum building height is to be determined at the time of this Zoning Review decision
- The HS Design Manual incorporates City Code requirements and provides the necessary Standards to assess Visual Impact and associated limits on maximum building height
- The NES Visual Analysis misrepresents and grossly <u>understates the true 2-story visual impact</u> to these unique natural features and ridgelines when viewed from adjacent public rights-of-way
- > <u>As set forth in City Code</u>, the NES proposed concept <u>does not</u> meet HSO Purpose & Objectives:
 - Fails to safeguard the natural heritage of the City
 - Fails to protect public welfare
 - ✤ Fails to ensure development is compatible with and complements the natural environment
 - Fails to preserve/protect unique natural features and <u>esthetic qualities</u> of the hillside areas
- > <u>As set forth in Zoning Approval Criteria</u>, the proposed development:
 - ✤ Is Detrimental to the Public Interest and General Welfare (Approval Criteria B.1)
 - ✤ Is Inconsistent with the Goals, Policies & Recommendations of the PlanCOS (Criteria B.2)
 - Majestic Landscapes Topology #3 Garden of the Gods: Limit Development Encroachment that Threatens the Integrity of the Natural Landscape
 - Majestic Landscapes Goal ML-4: <u>Preserve and Protect our Viewsheds</u>

Not enforcing the Hillside Area Overlay Ordinance/City Code 7.3.504 and its implementing Design Manual Standards for 2424 GOTGR will Eliminate these Iconic Views and they will be Lost Forever.

Thus, are not in compliance with 7.5.603.B1; B2

Vote No

2424 GOTGR **Rezoning and Concept Plan** İS DETRIMENTAL to the Public Interest, General Welfare, and the **RAMPART RANGE HERD OF ROCKY MOUNTAIN BIGHORN SHEEP City Council Hearing** March 28, 2023

54 Bighorn Sheep Area D (2424 Open Space), 1/13/23 3:45pm



EXPERTS WARN: Rocky Mountain Bighorn Sheep Need Special Consideration

- <u>Federal classification</u>: **Sensitive Species** are "those species requiring special management consideration to promote their conservation and reduce the likelihood and need for future listing under the Endangered Species Act." (Bureau of Land Management)
- <u>State classification</u>: **Species of Greatest Conservation Need** "Conservation of Colorado's wildlife is too big a task for one agency." (CPW State Wildlife Action Plan)

"Wildlife experts who made careers studying bighorn herds say; It's not just the direct contact; there's impact from indirect contact. Sheep don't graze just anywhere. They graze where they have historically grazed. Disturb the pattern, and they don't just move somewhere else. They decline, get sick, mate less, and produce fewer lambs. Add severe winters, and the biologists concur this could lead to the extermination of a herd."

https://www.summitdaily.com/opinion/opinion-susan-knopf-vail-developers-endanger-bighorn-sheep-herd/

Further Encroachment on the Bighorn is **DETRIMENTAL to the Local Economy**

- <u>Wildlife Watching</u> by tourists brings in over \$2.4B/yr to the State.
- The South Central Region (Colorado Springs) brings in \$277M/yr.

https://cpw.state.co.us/documents/trails/sco rp/2017economiccontributions_scorp.pdf



Further Encroachment on the **Bighorn** is **DETRIMENTAL** to the **Public Safety**

- Bighorn Sheep create a natural fire-break on the west side of Mountain Shadows by eating vegetation and woody shrubs.
 - GREEN: Documented habitat.
 - ORANGE: 2424 Project
 - RED: Area D, Largest grassland area
- Do we want another Hayman fire?





CPW's "little to no impact" Opinion

- CPW submitted **an opinion letter** by Frank McGee, CPW Area Wildlife Manager, Dec. 16 2020 letter to city planning.
- <u>Was NOT</u> an analyses!
- <u>Was NOT</u> a study!
- <u>They ignored</u> the *CPW Wildlife Species Map for Bighorn Sheep* This area is primary habitat. <u>https://www.arcgis.com/apps/instant/interactivelegend/index.html?appid</u> =b3e1f4c17e98481c85f9683b02e91250
 "This information was derived from CPW FIELD PERSONNEL."
- <u>They ignored</u> the *Rampart Range Mgmt Plan.* Many individuals have dogs off-leash and CPW has witnessed dogs pursuing lambs. Private land owners are working with the city to control these activities but the problem persists.
- <u>They ignored</u> citizen photos, videos, and <u>CPW's own radio</u> <u>tracking data!</u>
- <u>They ignored</u> USDA-FS study recognizing Glenn Eyrie and surrounding properties <u>as PRIMARY BIGHORN HABITAT!</u> <u>https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5181936.pdf</u>



Rezone to PUD Residential is **DETRIMENTAL** to the **Bighorn**

- Area D (Open Space) is documented habitat.
- <u>Colorado Bighorn Sheep Management Plan</u>
 - "In the presence of researchers, at 1,440 feet sheep fled the area."
 Area B & C are in the DETRIMENTAL area.
 - 2. "Walking with dogs may be the most detrimental impact."
- The proposed PUD zoning
 - Increased Area B from 11 to 24 buildings.
 - Increased Area C from 190 to 220 units.
 - Nearly 800 people with dogs and easy access to the bighorn sheep habitat will be detrimental to the herd.
 - "there's impact from indirect contact"
- **AG/PIP zoning:** Since 1980, the property has been used for light industry. People go to work, are mostly out of sight during the day, and then go home. Dog activity is rare.



Bighorn Sheep THE CURRENT ZONING IS THE RIGHT ZONING 106 Appeal: 2424GOTG LLC v. City of CO Springs, et al

• City Attorney's Brief 4/8/22:

- "Bighorn sheep evidence is relevant to the rezoning ordinance and the requirement of <u>7.5.603.B.1</u>. Not be detrimental to public interest, health, safety, convenience or general welfare".
- "Also relevant, the Hillside Overlay and the objective that wildlife habitat and migration corridors are preserved 7.3.504.A.3.g"
- Rezone is inconsistent with the Comprehensive Plan 7.5.603.B.2, Topology 3 providing wildlife habitat, ML-3.A-4 preserve significant wildlife corridors, ML-4.A-3 protect significant wildlife habitat in coordination with development proposals, ML-5.A-3 complete a comprehensive system of wildlife corridors.

• District Court Judge 5/20/22:

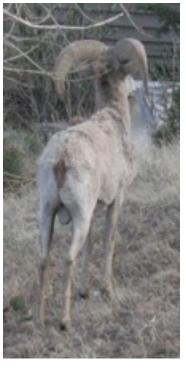
- "Council received a presentation addressing the detrimental impact on local bighorn sheep."
- "For the reasons stated above, Plaintiff failed to meet its burden of demonstrating the City Council exceeded its jurisdiction."
- **City code does not require wildlife to be on the Endangered Species List** to comply with it's directive to preserve and protect significant species habitat and corridors under 7.5.603.B.2.

Protect Our Bighorn Habitat From Further Encroachment

CPW Wildlife Species Map – CONCERNS

The habitat is important for <u>high quality forage</u>, security, and <u>lack of</u> <u>disturbance to meet the high energy demands of lactation</u>, lamb rearing, horn growth, and preparation for the rigors of winter.

Vote No



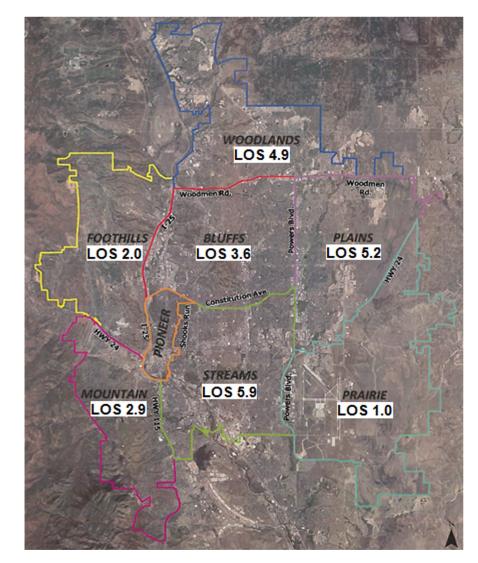
Limited food is Detrimental

2424 GOTGR **Rezoning and Concept Plan** is DETRIMENTAL То public interest, health, safety, convenience or general welfare

> City Council Hearing March 28, 2023

Parkland Dedication Ordinance (PLDO)

- Foothills Service Area Level Of Service (LOS) is 2.0
- The City's Goal for LOS is 5.5
- Park Fees in Lieu of Land Dedication or an Alternative Compliance will further reduce our LOS.
- 7.7.1203 PARK STANDARDS: "In the interest of the health, safety and general welfare of the people of the City".
- PlanCOS "Unique Places" Goal UP-02: The infill development must be "thoughtful and forward-thinking".
- The lack of neighborhood & community parks results in the overcrowding of all types of parks.



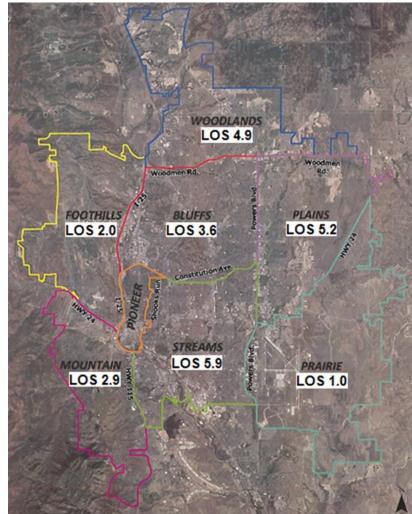
Parkland Dedication Ordinance (PLDO)

PLDO Parks are those which are "Developed Properties"

- The PLDO standard for Neighborhood Parks is 2.5 Acres per 1,000 people
- A <u>Neighborhood Park</u> is defined by section 3-3:
 - Developed area
 - Walk to location
 - Playgrounds

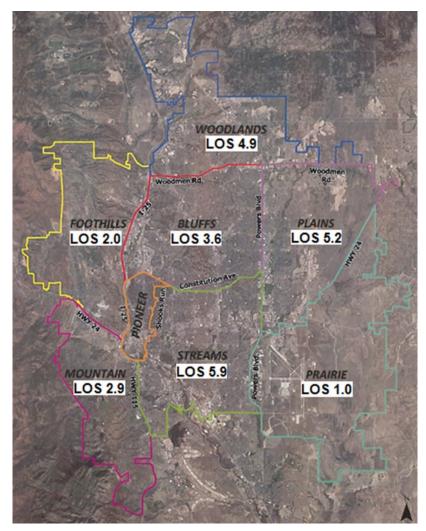
•

- Open grassed area for sports
- Every residence should have reasonable access



Parkland Dedication Ordinance (PLDO)

- The PLDO standard for Community Parks is 3.0 Acres per 1,000 people
- A <u>Community Park</u> is defined by section 3-2:
 - Larger Facilities
 - Athletic Fields
 - Drive to location within boundary
 - Larger Playgrounds with Pavilions
 - Tennis/Basketball courts



Parkland Dedication Ordinance "Loved To Death"

With under served Neighborhood & Community Parks, where do they go?

- Forces residents to Regional & Open Space Parks which are also overcrowded
- Cars must park on neighborhood streets, in school lots and often times illegally
- <u>7.5.408.C.2 Public Facilities:</u> Recreational uses are sited and sized to conveniently service the proposed population of the master plan area and the larger community
- <u>7.5.603.B.1</u> The action will not be detrimental to the public interest, health, safety, convenience or general welfare



Full Parking Lot



Overflow Parking in Adjacent School Lot

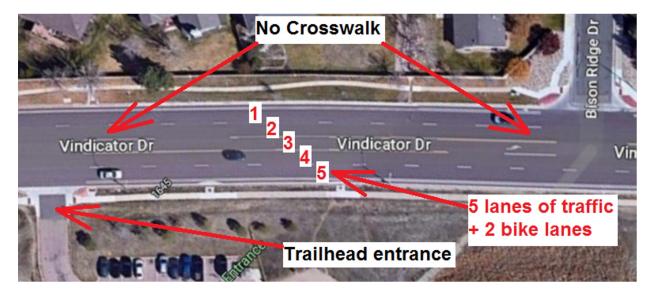


Overflow Parking on Adjacent Neighborhood Street

Parkland Dedication Ordinance Safety Issues

Overflow parking on side streets & bike lanes is a safety hazard to:

- Families wanting to play in their front yards
- Creates dangerous traffic crossings
- Creates more risk to pedestrians and cyclists







Foothills PLDO LOS is already at or Below 2.0 Acres/1000 People



Colorado Springs has dropped from 14th to 58th among American cities on its "ParkScore", according to the Trust for Public Land

www.tpl.org/parkscore

The National Quality of Life Standard for Park to People metric is 10 Acres/1000 Persons within a 10-minute walking distance.

Mountain Shadows Park is the ONLY Neighborhood Park within 2 miles of 2424 GOTGR



The proposed development does not include <u>any</u> new public park space.

Proposed High-density Residential units of ~800 persons will further <u>DECREASE</u> the current LOS Park to People ratio of 2.0 acres!

The Developer's offer to allow purchase of 55-acres of open space and/or money in lieu of park land – will NOT FIX the NEGATIVE DETRIMENTAL IMPACT TO OUR COMMUNITY and Quality of Life - it will leave us with LESS than 2.0 acres per 1000 persons!!!

Parkland Dedication Ordinance

City Code

- 7.5.408.C.2 Public Facilities: Recreational uses are sited and sized to conveniently service the proposed population of the master plan area and the larger community.
- 7.5.603.B.1 The action will not be detrimental to the public interest, health, safety, convenience or general welfare.

Parkland Dedication Ordinance

Adding density to an area with already inadequate parks space is detrimental to those of us living in the Foothills Service Area.

Vote No