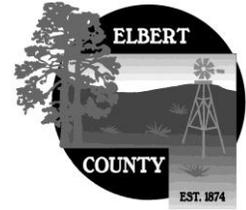




COUNTY OF ELBERT

COMMUNITY & DEVELOPMENT SERVICES OFFICE

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Date: June 16, 2017

For the Elbert County Planning Commission meeting of June 27, 2017

TO: ELBERT COUNTY PLANNING COMMISSION

FROM: VINCE HOOPER, PMP (BASELINE CORPORATION)

THRU: VINCE HARRIS, AICP & ETHAN WATEL, AICP (BASELINE CORPORATION)

APPROVED: KYLE FENNER, DIRECTOR OF CDS

RE: INDEPENDENCE SPECIAL DISTRICTS SERVICE PLANS -

Case # SR-17-0020 THE INDEPENDENCE WATER & SANITATION DISTRICT;

Case # SR-17-0021, THE INDEPENDENCE OVERLAY METROPOLITAN DISTRICT

Case # SR-17-0022, THE INDEPENDENCE METROPOLITAN DISTRICT NO. 1

Case # SR-17-0023, THE INDEPENDENCE METROPOLITAN DISTRICT NO. 2

Case # SR-17-0024, THE INDEPENDENCE METROPOLITAN DISTRICT NO. 3

Case # SR-17-0025, THE INDEPENDENCE METROPOLITAN DISTRICT NO. 4

A REQUEST TO APPROVE THE 6 SPECIAL DISTRICT SERVICE PLANS FOR THE INDEPENDENCE WATER & SANITATION SPECIAL DISTRICT; THE INDEPENDENCE OVERLAY METROPOLITAN DISTRICT; AND INDEPENDENCE METROPOLITAN DISTRICTS NO. 1, NO. 2, NO. 3, and NO. 4 LOCATED IN SECTIONS 14 & 15, TOWNSHIP 7 SOUTH, RANGE 65 WEST OF THE 6TH P.M. IN ELBERT COUNTY.

APPLICANTS: Craft Bandera Acquisition Company, LLC (Property Owned by Bluegreen Investments LLC)

REPRESENTATIVE: Tim Craft, Craft Bandera Acquisition Company, LLC

SUMMARY OF REQUEST

The applicant proposes to create 6 metropolitan districts to provide community infrastructure and services to the future residents of the Independence PUD community. Zoning for the property was approved in February 2009 to allow residential development. The applicant has recently submitted a Preliminary Plat for the entire ownership and a Final Plat for the first phase of development. Those applications are also in process. The applicant requests the approval of the District 'Service Plans' to establish the Independence Metropolitan Districts 1, 2, 3 and 4; the Overlay Metropolitan District; and the Water & Sanitation District. Together these 6 districts are intended to provide

community infrastructure and services to the future residence of the Independence Planned Unit Development/Community. The Districts would be authorized to acquire, construct, finance and maintain public improvements for the use and benefit of users of the District's systems and users within the Independence residential development. Such public improvements could include, without limitation, streets, water, sanitary sewer, traffic and safety controls, street lighting, park and recreation, landscaping and storm drainage facilities. The definition of "Improvements" would include any regional public improvements located outside of the boundaries of the Development, but which also serve the residents and taxpayers of the District. The applicant proposes that upon their completion, the Districts may dedicate a portion or all of certain infrastructure to the County or other appropriate governmental or quasi-governmental entity. The Districts would have all of the powers of a metropolitan district as set forth in §§ 32-1-1001 and 1004, C.R.S., as amended, except that the District shall not provide emergency medical or fire protection services or facilities.

PERTINENT DATA

Address: 1001 CO RD 158, Elizabeth, CO 80107

Section, Township, Range: A 1,011.94 acre parcel of land in the SW1/4SW1/4 of Section 14 and the SE1/4SE1/4 of Section 15, in Township 7 South, Range 65 West of the 6th P.M., County of Elbert, State of Colorado.

Site Description: The Independence PUD, formally known as Bandera West and Bandera East PUD, is a 1,011.94 acre residential development approved for 920 single-family lots, passive open space, a community school, parks and associated community amenities. The property is bound by Hilltop Road (CR 158) on its southern border. The western border of Independence is coextensive with the Elbert County/Douglas County line. There is currently an existing homestead and several accessory buildings on the site.

Topography: The property is composed of rolling hills with grasslands and sparse trees. Slopes of 20% or greater exist on the site. No residential development will occur in the few locations with slopes greater than 20%. Such areas are in the proposed open space tracts. There are no year-round streams on the property.

Wetlands: The property has recently been investigated by a wetlands specialist, CORE Consultants. Wetlands were observed at 14 locations within the Project. Most of these sites were very small (less than a tenth of an acre) isolated sites. Two sites were determined to be potentially jurisdictional. Based on recent field reconnaissance and document review by CORE an unnamed tributary to Cool Creek, an unnamed tributary to Henderson Gulch, and the stretch of the main channel of Henderson Gulch within the Project exhibit characteristics of jurisdictional wetlands. Per Section 404 of the Clean Water Act, a US Army Corp of Engineers permit is required for the discharge of dredged or fill material into Waters of the United States, including wetlands. It is anticipated that Project impacts to jurisdictional waters would result from development of the Project.

Permanent impacts to jurisdictional waters would result from the development of the permanent access road. It is likely that impacts would be permitted through the nationwide permit (NWP) program under the jurisdiction of the US Army Corps of Engineers.

Floodplain: There is a small area, approximately one acre, located in the extreme southeast corner of the property that has been determined to be within Zone-A of the 100-year floodplain. No development is planned for this area and there is no need for any improvements or requirements associated with it at this time.

Existing Zoning: The property is zoned Planned Unit Development (PUD) – Bandera East PUD and Bandera West PUD approved in 2009 by the Elbert County Board of County Commissioners (BOCC).

Proposed Zoning: No Change to zoning is proposed.

Surrounding Zoning

West: Large Rural Residential (LRR) (Douglas County)

South: Residential Agriculture 1 (RA-1), Residential Agriculture (RA), PUD (Hilltop Landing), and Agriculture (A)

East: Agriculture (A)

North: Agriculture (A)

Surrounding Land Use

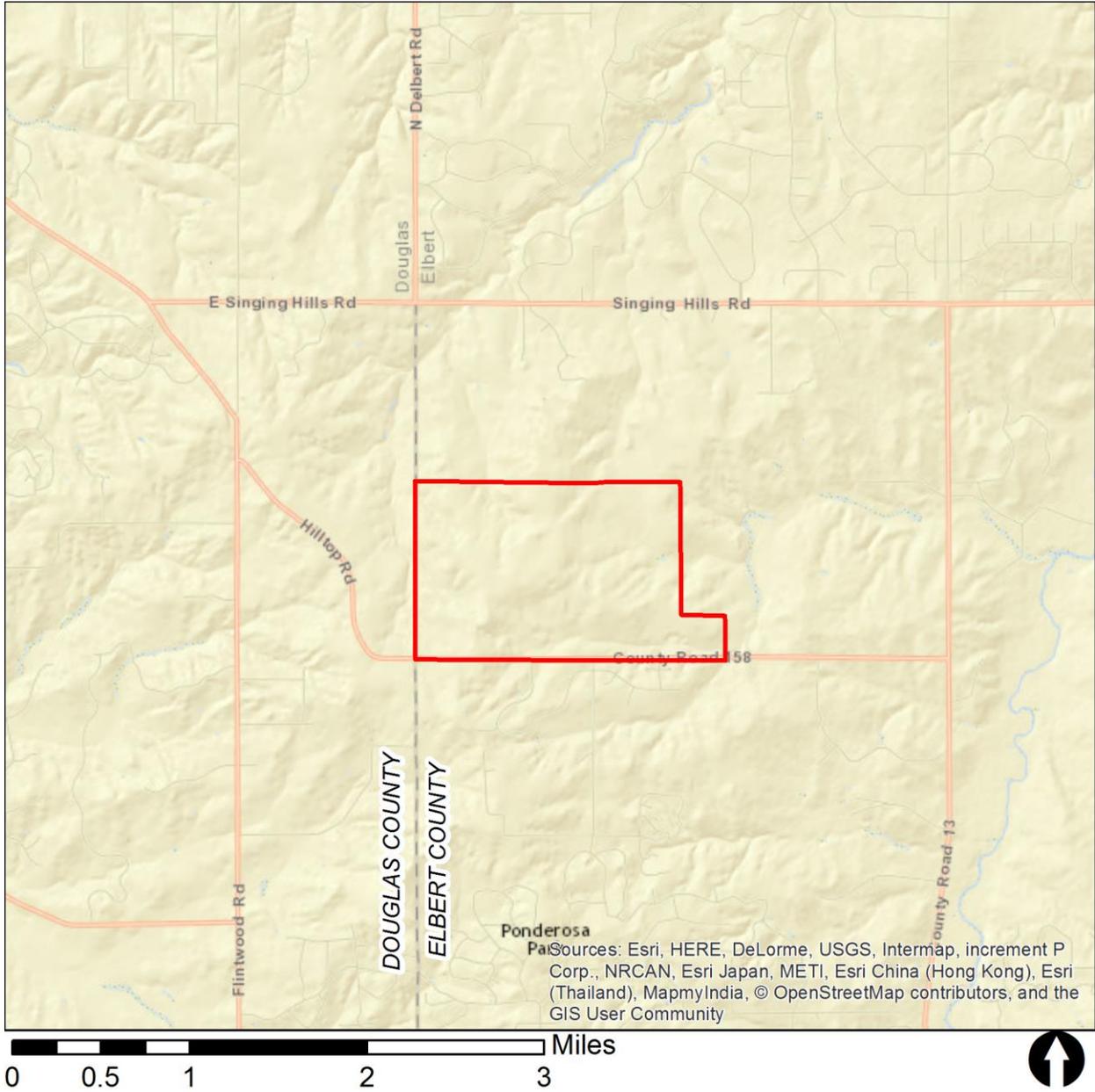
West: Agriculture/ranching – no improvements

South: Single family residences, television radio tower, agriculture

East: Agriculture/ranching – no improvements

North: Agriculture with residences and agriculture without improvements

Site Vicinity Map



BACKGROUND

On April 24, 2013 the Elbert County Board of County Commissioners adopted Regulation 13-13 which was intended to further govern the formation of Special Districts within the County. The six Independence Special District applications under consideration by the Planning Commission and BOCC are being processed and evaluated pursuant to this Resolution as well as applicable state statutes. This Resolution amended Part II, Section 26, Special District Service Plans of the Elbert County Zoning Regulations.

The first Pre-Application meeting for these Special District applications was held on September 20 2016.

The 2nd Pre-Application meeting for these Special Districts was held on May 3, 2017.

Pre-Application Review Findings based on Elbert County Resolution No. Regulation 13-13

Part II, Section 26 D.6.c. contains criteria for review of the Special Districts Pre-Application request. The Pre-Application Review Committee made the following findings:

- i. Completeness of Information:** The submitted information was found to be complete for Pre-Application level review.
- ii. Validity of Assumptions:** The assumptions that were presented were found to be valid for Pre-Application level review.
- iii. Being Factually Correct:** The Pre-Application information submitted was found to be factually correct.
- iv. Identifying risks to health, safety & welfare of Elbert County residents:** The only identified risk to Elbert County was the potential for economic and financial implications to the County budget. However, staff concerns have been addressed to date and the document is being updated as requested from legal staff and county staff. See section below on the additional professional services with the evaluation.
- v. Professional analysis/opinion related to the project feasibility:** It is the professional opinion of the Review Committee that based upon the Pre-Application level information and analysis; the proposed Districts could be made to be feasible and warranted more detailed review and analysis of the application of a Formal Submission of the Service Plans.

With these preliminary findings the Planning and Development Services Department recommended that the Applicant proceed with submittal of the necessary application materials for Formal Submission of the Service Plans as defined in Resolution 13-13 Exhibit A, Section E.

Assistance From Additional Outside Subject Matter Experts

The law firm of White Bear Ankele Tanaka & Waldron has been retained by Elbert County to provide additional legal and technical services in the review, analysis and comment on the Special District Service Plan applications for the six new metropolitan districts.

The firm Anderson Analytics has also been retained to review, analyze and comment on the finance, development phasing and buildout assumptions, market studies prepared to support the buildout projections and general master plan and infrastructure plans for the Independence development.

Staff suggests that, with the additional professional services and consultants who are experts in this subject matter, a very professional review of the service plans has occurred.

PURPOSE OF PROPOSED DISTRICTS

Each district's Service Plan describes the proposed purposes for each of the 6 Special Districts. However, the proposed public improvements cross over between the various districts. For example multiple districts have the ability to construct streets, water and sewer, parks, landscaping, and storm drainage facilities. But the Water & Sanitation District is expected to be the sole provider/owner of services for water and sewer facilities. The Overlay District will operate and maintain certain public park, recreation, open space and landscaping improvements, and provide covenant design control, review and enforcement services. Districts 1, 2, 3, and 4 are collectively known as the Infrastructure Districts. Some or all of the Infrastructure Districts may cooperate to coordinate construction of some or all of the improvements with each other, but each of the Infrastructure Districts may choose to proceed with construction and financing of the Improvements on its own.

The following district descriptions and chart are intended to help clarify general differences in district purposes.

Independence Water & Sanitation District

The purpose of the Water and Sanitation District is to acquire, construct, finance and maintain public water, sewer and storm drainage improvements for the use and benefit of service users of the District's systems. The District shall have all of the powers of a typical water and sanitation district. An exclusive purpose includes the sole provider of services to water and sewer facilities within the Independence Community.

Independence Metropolitan District No. 1

District No. 1 will be authorized to acquire, construct, finance and maintain streets, water, sanitary sewer, traffic and safety controls, street lighting, park and recreation, landscaping and storm drainage facilities.

Between and among the Infrastructure Districts, District 1 may be the entity responsible for coordinating the acquisition, financing and construction of the Improvements throughout the Development, excepting those that are anticipated to be provided by the Water District.

Independence Metropolitan Districts No. 2, No. 3, & No. 4

These three districts will be authorized to acquire, construct, finance and maintain streets, water, sanitary sewer, traffic and safety controls, street lighting, park and recreation, landscaping and storm drainage facilities.

Independence Overlay Metropolitan District

The primary purpose of the Overlay District is to own, operate and maintain certain public park, recreation, open space, storm drainage and landscaping improvements, and to provide covenant design control, review and enforcement services. The Overlay District is not anticipated to design, construct or install any improvements, as described above, this is the anticipated responsibility of the Infrastructure Districts. The Overlay District would ultimately own and operate the improvements which are not dedicated to the County, or other applicable public or private entity. The Overlay District will not have debt authorization to issue bonds or finance the construction or provision of any services. The primary source of District revenue shall be from the imposition of an operational and maintenance mill levy upon all taxable real and personal property.

Emergency Medical and Fire Protection Exclusions

Each Infrastructure District has a specific exclusion to not provide emergency medical or fire protection services or facilities. These services are to be provided via the Elizabeth Fire Protection District.

DISTRICT POWERS, SERVICES AND FACILITIES						
			Infrastructure Districts			
	Overlay District	Water & Sanitation District	District-1	District-2	District-3	District-4
Street Improvements	Operate and Maintain. Not Construct.	No	Acquire, Construct & Install. May potentially coordinate the acquisition, financing and construction of the Improvements throughout	Acquire, Construct & Install.	Acquire, Construct & Install.	Acquire, Construct & Install.

			the Development			
Traffic and Safety Signals	Operate and Maintain. Not Construct.	No	Acquire, Construct & Install. May potentially coordinate the acquisition, financing and construction of the Improvement s throughout the Development	Acquire, Construct & Install.	Acquire, Construct & Install.	Acquire, Construct & Install.
Storm Drainage Improvements	Operate, Maintain & Own. Not Construct.	No	Acquire, Construct & Install. May potentially coordinate the acquisition, financing and construction of the Improvement s throughout the Development	Acquire, Construct & Install.	Acquire, Construct & Install.	Acquire, Construct & Install.
Sanitation Improvements	Operate and Maintain. Not Construct.	Acquire, Construct & Install. Operate, Maintain & Own	Acquire, Construct & Install Sewer Collection & Transmission System.	Collection & Transport Systems	Collection & Transport Systems	Collection & Transport Systems
Park and Recreation Improvements	Operate, Maintain & Own. Not Construct.	No	Acquire, Construct & Install. May potentially coordinate the acquisition, financing and construction of the Improvement s throughout the	Acquire, Construct & Install.	Acquire, Construct & Install.	Acquire, Construct & Install.

			Development			
Water Improvements	Operate and Maintain. Not Construct.	Acquire, Construct & Install Improvements & Facilities. Operate, Maintain & Own	Acquire, Construct & Install Water Distribution System.			
Indebtedness	No Debt Authorization	Yes	Yes	Yes	Yes	Yes

TRANSFER OF FACILITIES AND SERVICES

The Infrastructure Districts Service Plans (Districts 1, 2, 3, & 4) propose that certain facilities and services may be transferred to the Elbert County. Generally street improvements and traffic and safety signals and signs are proposed to be transferred. More specifically these improvements could include curbs, gutters, culverts, and other drainage facilities, alleys, sidewalks, bike paths and pedestrian ways, median islands, paving, parking facilities, lighting, grading, landscaping and irrigation. Retention and detention ponds (“storm sewer, flood and surface drainage facilities and systems, including detention/retention ponds and associated irrigation facilities”) may or may not be retained by the Infrastructure Districts or transferred to the County.

Water and sewer infrastructure, parks and open space are not proposed for transfer to the County.

This potential transfer of facilities and services should be closely evaluated and discussed as to the appropriateness of Elbert County assuming operation, maintenance and ownership of the proposed facilities. The question of whether Elbert County has the financial resources, staffing, equipment and expertise to accommodate the needs of the Independence PUD should be considered. A Subdivision Improvements Agreement has been drafted and is being considered by the County to clarify ownership and maintenance responsibilities.

PUBLIC HEARING DATES

Public hearing dates were set for

- Planning Commission: June 27, 2017 (recommendation hearing)
- Board of County Commissioners: August 9, 2017 (decision hearing)

MASTER PLAN COMPLIANCE

Compliance with the Elbert County Master Plan is one of the defined criteria for BOCC action on Special District Service Plans. Part II, Section 26 F.10, states that the BOCC may disapprove the Service Plan if evidence satisfactory to the BOCC of any of the following, at the discretion of the Board, is not presented:

- c.) The proposal is in substantial compliance with the Elbert County Master Plan adopted pursuant to section CRS §30-28-106.

The Elbert County Master Plan contains extensive goals and policies for the review and analysis of Zoning applications. Many of these goals and policies focus on land use, development and subdivisions. There are some goals and policies that correspond to elements of facilities and services related to special districts in general and specific items proposed in the Independence Special District Service Plans.

The County Master Plan's land use, development and subdivision goals and policies have been used in the past to evaluate the appropriateness of the Independence PUD rezoning application. In approving the Independence PUD, the 2009 BOCC made a determination that the land use, development and subdivision related goals and policies were met. The current Planning department staff has relied upon these past approvals and need not re-evaluate those land use, development and subdivision goals and policies in consideration of the Special District Service Plans as such has already been accomplished in 2009 with the rezoning actions taken for this property.

What staff has included below is an analysis of the goals and policies of the existing Elbert County Master Plan related to new development and infrastructure which the Planning staff have found to relate to the consideration of the Independence Special District Service Plans.

SECTION V - GENERAL POLICIES

3. From the onset of development, new development shall pay its own way so that existing residents are not subsidizing the costs associated with new development through higher taxes or decreased levels of service. New development shall be required to demonstrate that necessary on and offsite infrastructure can be provided. Bonding or other security instruments for necessary improvements may be required by the County.

Staff Response: The Special District Service Plans are written to create the necessary infrastructure and services to meet the needs of Independence's future residents. The establishment of the new proposed Districts will provide the mechanism to fund the construction of the infrastructure and operation of the services by the residents of Independence and not by the existing residents of the County. The Finance Plans submitted with each District's Service Plan demonstrate the financing of the infrastructure and services. In addition, financial sureties will be required as part of the Subdivision Improvements Agreement for each Final Plat.

4. *To the extent that new development necessitates capital public improvements as a result of the impacts created by that development, the County shall require the developer to finance, in a timely fashion, construction of those capital improvements. This might include the construction of schools, parks, libraries and other needed public facilities. The County shall coordinate with the relevant special districts, authorities, and municipalities to determine the need for such facilities.*

Staff Response: The Service Plans demonstrate the financing and timely delivery of the required infrastructure and services. The nearby special districts have been notified of the proposed Special District Service Plans and no objections have been received to date. The applicants have reached agreements with the Elizabeth Parks and Recreation District, the Elizabeth Fire Protection District, the Elizabeth School District and the Elbert County Sheriff's Department. Land for parks, schools, a sheriff substation, and fire station will be dedicated as part of the subdivision platting process in the future.

5. *New development shall be subject to phasing restrictions based upon the capacity of schools, transportation systems and other public facilities and services*

Staff Response: The Special District Service Plans provide for phasing of the infrastructure and services based upon projected need and fiscal resources as the development progresses forward.

6. *New development is encouraged to locate in proximity to improved arterial roads or such roads shall be provided by the developer. These roads shall be paved, have adequate traffic carrying capacity and should not have serious adverse impacts on the existing roadway network.*

Staff Response: The Independence PUD is located on, and takes access from County Road 158, an arterial roadway. The internal roads of Independence have been designed to meet the carrying capacity of the future residents. The development calls for the improvement of Hilltop Road and dedication of public right of way to Elbert County for the future CR 1/Delbert Road.

7. *Land dedications to mitigate development Impacts shall include land for school sites, parks and open space, and other public uses. Where appropriate, the County shall allow cash-in-lieu to meet these requirements.*

Staff Response: Independence provides approximately 430 acres of parks and open space, a 27 acre school site, 2 acres for Elizabeth Fire District and 1 acre for the Elbert County Sheriff's Office. The Special District Service Plans provide for the capital to improve, and the revenue and structure to operate and maintain the parks and open space.

8. *The County shall require that public land dedications include adequate access, water and sewer service end facilities, and other utilities to serve the intended use.*

Staff Response: The documentation submitted with the Special District Service Plans demonstrates that the necessary community access, water and sewer infrastructure and services can be built and paid for to meet the needs of Independence's future residents.

RECREATION AND OPEN SPACE

1. Within existing and proposed residential, commercial and industrial development areas, major riparian areas, floodplains and woodlands should form the basis of an open space and trails system. This system should be limited to non-motorized vehicles, pedestrians, and equestrian uses.

Staff Response: The Special District Service Plans provide for parks, open space and trail system infrastructure and operational services to meet the needs of Independence's future residents. A small area of floodplain has been identified in the southeastern corner of the property and has been included within the proposed open space system.

6. The County shall require that parks and/or open space facilities are provided as part of each new subdivision.

Staff Response: The Special District Service Plans provide for the phased improvement of parks, open space and trail system infrastructure and their operation to meet the needs of Independence's future residents.

8. The County shall require the creation and maintenance of viable homeowners associations with covenants to maintain common open space in developments.

Staff Response: Parks, open space and a trail system, along with their operational needs, will be met through the proposed Special Districts.

ROADS

1. Proposed roadway systems shall be planned to minimize negative impacts on the environment and to adjacent land uses. Ample rights-of-way, buffer landscaping, and natural amenities shall be used to create a safe, attractive, and compatible roadway system.

Staff Response: The Special District Service Plans provide infrastructure for a roadway system, amenities, and landscaping which will be safe and compatible with the Elbert County roadway system. Specific construction designs and specifications are to be included within the Subdivision Improvements Agreement for the Independence Subdivision Filing 1 Final Plat.

4. The County shall require that new development dedicate adequate rights-of- way and provide improvements to any impacted County roads.

Staff Response: Right-of-way will be dedicated at the time of each final plat. The preliminary plat indicates and requires that right-of-way will be dedicated for CR 1/Delbert Road along the western property line. Right-of-way for Hilltop Road will be widened for acceleration and deceleration lanes. CR 5/Hancock Way will be dedicated through the site (100-foot wide).

WATER CONSERVATION

1. Existing and new development shall lease back open space to farmers and ranchers, and allow the reuse of domestic water for the irrigation of those open space lands.

Staff Response: The Special District Service Plans provide for the construction and operation of facilities which reuse treated sanitary sources for irrigation of landscaping, parks and open space. The District Service Plans do not address leasing open space lands to farmers or ranchers.

2. The County shall require water-conservation measures which prolong water supplies and the economic life of aquifers.

Staff Response: The Special District's implementation of a treated sanitary source for the irrigation of landscaping, parks and open space will assist in extending the water supplies of the Independence wells.

6. With lot sizes of 10 acres or less, a County approved central water system is needed which utilizes the Denver, Arapahoe, Laramie-Fox Hills aquifers and incorporates a recharge system to allow treated sewage to renew the aquifers.

Staff Response: The Colorado Division of Water Resources has issued Independence water decrees granting the right to withdraw from the Upper Dawson, Lower Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers. The Special District Service Plans provide for the construction and operation of facilities which reuse treated sanitary sources for irrigation of landscaping and open space. This reuse system is not designed as a "recharge system" and its application to Independence's landscaping, parks and open space will not recharge aquifers. However, it will reduce the amount of aquifer water utilization.

SECTION VI I – COMMUNITY RESOURCES COMMUNITY SERVICES

4. The County shall encourage cooperation and communication between special service districts.

Staff Response: The surrounding special districts have been notified of the applicant's proposal and invited to comment. The District Service Plans state that the "Districts will have an ongoing obligation to work closely and cooperate with the County to serve and promote the health, safety, prosperity, security and general welfare of its inhabitants." In addition, the applicant has negotiated and reached agreements with the Elizabeth Fire Protection District and the Elizabeth Parks and Recreation District.

SPECIAL DISTRICTS

11. The County shall encourage the formation of special districts to service rural subdivision.

Staff Response: The roads, traffic safety, water and sewer, parks and open space, and storm drainage facilities and services needs of the Independence subdivision will be met through the formation of the proposed six Special Districts.

11. The County shall ensure that a development with a proposed water and/or sanitation district or company has realistic growth phasing in addition to an adequate economic base.

Staff Response: The submitted application documentation contains extensive market and sales projections and future phasing analysis. Anderson Analytics has been retained to review, analyze and comment on the financing, development phasing, buildout assumptions, and market studies prepared to support the buildout projections and general master plan and infrastructure plans for the Independence development. Anderson Analytics is in the process of writing a summary report that will include the findings and analysis. As of the writing of this report and printing for distribution to the Planning Commission staff understands that there will be comments for staff consideration, the applicants' consideration, and ultimately the Planning Commission and the Board of County Commissioners, but will need to provide the Planning Commission an update about the findings. Please know an addendum to this staff report will be provided to the Planning Commission as soon as possible with more details.

12. The County shall encourage the expansion of an existing special district or company rather than the creation of a new one.

Staff Response: The applicant has negotiated agreements with the two special districts, the Elizabeth Fire District and the Elizabeth Park and Recreation District, within which the Independence property is located. The agreement with the Elizabeth Fire District states- that it will provide fire protection and emergency response services to the future residents for consideration of Independence providing financial contributions and land dedications to the District. The Elizabeth Park and Recreation District has consented to the formation of the Independence Districts and the provision of overlapping park- and recreation-related services and facilities. It is anticipated that the Overlay District will operate and maintain all park and recreation-related facilities located within the Development, subject to a separate intergovernmental agreement with the Elizabeth Park and Recreation District.

13. The County shall require that uniform standards be used throughout the districts and companies.

Staff Response: The County has adopted the Elbert County Construction Standards & Specifications, 2007 Edition which guide the design and construction of infrastructure in the County. The Special District Service Plans do not contain detailed construction plans that can be used to verify that the proposed District facility designs comply with the County's construction specifications. However, the Service Plans do contain statements that the facilities and infrastructure will be designed to the Elbert County Construction Standards and Specifications.

In recent, but separate applications, Craft Bandera Acquisition Company, LLC have submitted infrastructure related construction plans (Water & Sanitation Site Plan; Preliminary & Final Plat; and Subdivision Improvements Agreement). As part of the Subdivision Improvements Agreement documentation, Craft Bandera Acquisition Company, LLC have submitted a variance request seeking to allow for the modification of two road design specifications. Those two standards

relate to the Local Road Cross Sections and Rural Collector Cross Sections. This variance request is currently under review as part of those applications.

The Special District's construction standards, in so far as they are identified in these application documents, and subject to the two proposed requested changes to the road standards (Local Road Cross Sections and Rural Collector Cross Sections) commit to conformance with the Elbert County Construction Standards and Specifications.

WATER, SEWER AND WASTE DISPOSAL

14. The County shall require all new developments within an established district to receive services provided by the district.

Staff Response: The Independence property is not located within any existing water and sewer districts. The applicant has negotiated agreements with the two special districts, the Elizabeth Fire District and the Elizabeth Park and Recreation District, within which the Independence property is located. The agreement with the Elizabeth Fire District provides that the Elizabeth Fire District will provide fire protection and emergency response to the future residents for consideration of Independence providing financial contributions and land dedications to the District. The Elizabeth Park and Recreation District has consented to the formation of the District and the provision of overlapping park- and recreation-related services and facilities. It is anticipated that the Overlay District will operate and maintain all park and recreation-related improvements located within the Development, subject to a separate intergovernmental agreement with the Park District.

15. Infrastructure extensions and other necessary facilities shall be planned and designed to meet the appropriate municipal and/or district's standards.

Staff Response: Elbert County has adopted the Elbert County Construction Standards & Specifications, 2007 Edition which guide the design and construction of infrastructure in the County. The Special District Service Plans do not contain detailed construction plans that can be used to verify that the proposed District facility designs comply with the County's construction specifications. However, the Service Plans do contain statements that the facilities and infrastructure will be designed to the specifications. The following are examples of those statements:

"The storm drainage Improvements will be designed and constructed in accordance with the standards and specifications of the County and other local jurisdictions with applicable jurisdiction."

"Any Services that the Overlay District actually does provide shall be compatible with the facility and service standards of the County."

"The District will ensure that the proposed water and sanitation improvements are designed and constructed in accordance with the standards and specifications of the County and other governmental entities having applicable jurisdiction."

"The Organizers of the District have prepared a preliminary engineering report based upon the County's construction standards for facilities to serve the Development."

“Based on the types of improvements proposed, the District's facility and service standards either meet or exceed the County's facility and service standards.”

In recent, but separate applications, Craft Bandera Acquisition Company, LLC have submitted infrastructure related construction plans (Water & Sanitation Site Plan; Preliminary & Final Plat; and Subdivision Improvements Agreement). As part of the Subdivision Improvements Agreement documentation, Craft Bandera Acquisition Company, LLC have submitted a variance request seeking to allow for the modification of two road design specifications. Those two standards relate to the Local Road Cross Sections and Rural Collector Cross Sections. This variance request is currently under review.

The Special District's construction standards, in so far as they are identified in these application documents, and subject to the two proposed requested changes to the road standards (Local Road Cross Sections and Rural Collector Cross Sections) commit to conformance with the Elbert County Construction Standards and Specifications.

16. In areas where the water and/or sewer system is at capacity, new development shall provide appropriate facilities improvements to counteract the demand generated by that new development.

Staff Response: The Independence PUD is not within any existing district which provides water or sewer services. The proposed water and sanitation district will construct and service all of the required water and sewer facilities to meet the demands of the future Independence residents.

19. For developments with lots 5 acres or less, developers shall be required to provide a County approved water and sewer system. Central water systems are required for developments with lots 10 acres or less.

Staff Response: The proposed Water and Sanitation District will provide both water and sewer facilities and services to meet the needs of future residents of Independence.

20. The County shall approve the use of open space for sewer fields if the system meets all County requirements and reliable maintenance is provided.

Staff Response: The proposed Special District Service Plans propose the use of a treated sanitary sewer source reuse system for the irrigation of landscaping, parks and open space within the Independence PUD.

21. Development shall be encouraged to minimize consumption of water and maximize the efficient use of water.

Staff Response: The implementation of the proposed sanitary sewer reuse system will significantly reduce the consumption of potable water sources for Independence.

22. *As development occurs, the County and developer(s) shall cooperate to provide additional Sheriff's Department facilities in order to adequately cover the vast acreage and distances in the County.*

Staff Response: The Independence PUD has committed to dedicating a one acre site for a new Sheriff substation.

FIRE PROTECTION

24. *As development occurs, the County and developer(s) shall cooperate in updating existing facilities and constructing additional fire protection facilities - especially in rural areas where fire equipment and protection are not readily available.*

Staff Response: Independence has negotiated an agreement with the Elizabeth Fire District to provide financial contributions and 2 acres of land for use by the Fire District.

PARKS AND RECREATION

29. *Parks and recreation facilities which meet the recreational needs for the County's growing population shall be planned and provided for, including special district participation in a case by case basis.*

Staff Response: The proposed Special District Service Plans provide for the development and operation of parks and recreation facilities to meet the needs of the Independence residents and Elbert County citizens. These plans call for 420 acres of improved parks and open space.

30. *The County shall develop a public trail system for pedestrian use.*

Staff Response: The proposed Special District Service Plans include the development, operation and maintenance of a street sidewalk system and an open space trail system.

TRANSPORTATION AND UTILITIES

Roads

1. *Road design and planning shall minimize hazards and congestion by ensuring that road extensions are logical and economical.*

Staff Response: The Special District Service Plans provide for the road designs and traffic safety features which reduce road hazards and promote driver safety,

3. *The paving of major collectors in new and existing subdivision roads is encouraged.*

Staff Response: The Special District Service Plans provide for the paving of roads within the Independence PUD.

SECTION VIII – NATURAL RESOURCES

ENVIRONMENTAL QUALITY

6. *Wastewater systems which recycle or reuse effluent are encouraged for subdivisions with lot sizes of 5 acres or less.*

Staff Response: The Water and Sanitation District Service Plans contain plans for the construction and operation of a sanitary source reuse system.

7. *The County shall encourage connection to existing potable water and wastewater treatment systems when the project meets other goals and policies.*

Staff Response: There are no existing districts which have the capacity to provide water and sewer services to meet needs of the Independence PUD future residents.

8. *The County shall implement the Colorado Wellhead Protection Program on all new public water systems and require that all permit applications be reviewed in accordance with the Wellhead Protections Criteria. Private property owners shall be encouraged to follow the same criteria.*

Staff Response: CDS staff is unaware of any Wellhead Protections Criteria adopted by Elbert County. Wellhead Protections have not been addressed within the Special District Service Plans documentation.

SERVICE PLAN COMPLIANCE TO §32-1-202(2), C.R.S. AND RESOLUTION 13-13.

The law firm of White Bear Ankele Tanaka & Waldron has been retained by Elbert County to provide additional legal and technical services in the review, analysis and comment on the Special District Service Plan applications for the six new districts.

The White Bear Ankele Tanaka & Waldron Report concludes; “the proposed Service Plans satisfy the minimum statutory requirements and requirements of the Regulations in a manner sufficient to allow the proposed Service Plans to be presented to the County Planning Commission and the Board of County Commissioners in accordance with §32-1-202(2), C.R.S. and the Regulations. (Please reference Attachment A.)

FINANCE PLAN REVIEW

Anderson Analytics has been retained to review, analyze and comment on the financing, development phasing, buildout assumptions and market studies prepared to support the buildout projections and general master plan and infrastructure plans for the Independence development. As indicated earlier in this staff report, the Anderson Analytics report will be provided to the Planning Commission via an addendum to this staff report for review and consideration.

ELBERT COUNTY ZONING REGULATIONS

GENERAL STANDARDS OF APPROVAL FOR A SERVICE PLAN

Part II, Section 26 F.1. Page 11 of Resolution 13-13 states, “it is incumbent upon the Applicant to establish in the submitted Service Plan:

- There is existing or projected need for the services proposed, and
- Adequate service is not, or will not be, available to the area, and
- The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries, and
- The area within the proposed boundaries has, or will have, the financial ability to discharge the proposed indebtedness, and
- Creation of the proposed special district is in the best interest of the area proposed.”

APPLICANT’S STATEMENT OF COMPLIANCE TO STANDARDS OF APPROVAL

The applicant has provided the following responses to the Standards of Approval defined for BOCC action.

This Service Plan demonstrates that:

1. There is sufficient existing and projected need for organized service in the area to be served by the District;

At build-out, the Development will consist of approximately 920 residential units with a projected population of 2,337 persons (assuming 920 units and 2.54 person-equivalents per unit). There are currently no other entities in existence in the County that have the ability to undertake the design, financing, construction, operation and maintenance of the improvements designated herein that are needed for the Development. The Development also understands that the County does not consider it feasible or practicable to provide the necessary services and facilities for the Development.

2. The existing service in the area to be served by the District is inadequate for present and projected needs;

There are currently no other entities in existence in the County that have the ability or willingness to undertake the design, financing, construction, operation and/or maintenance of the capital improvements contemplated and necessary to serve the Development. The District also understands that the County does not consider it feasible or practicable to provide the necessary

services and facilities for the Development. The District is willing to assume responsibility for the improvements and services designated herein.

3. The District is capable of providing economical and sufficient service to the area within its boundaries;

As shown in the Financing Plan the District can support the improvements and services contemplated herein for the Development. As is also demonstrated herein, the District can provide these services economically under a single administrative and maintenance umbrella.

4. The area to be included in the District has, or will have, the financial ability to discharge the indebtedness on a reasonable basis;

As shown in the Financing Plan, the projected revenues of the district from capital and service fees will allow the District to discharge the proposed indebtedness on a reasonable basis, using reasonable mill levies.

5. Adequate service is not, or will not be, available to the area through the County or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis;

The County does not intend to provide improvements or services for the Development. No other existing municipal or quasi-municipal corporations, including existing special districts, intend to provide adequate service to the Development within a reasonable time or on a comparable basis. The scope of the improvements contemplated herein together with the long-term maintenance needs associated therewith makes the District the only logical provider of such service.

6. The facility and service standards of the District are compatible with the facility and service standards of each county within which the District is to be located and each municipality which is an interested party under C.R.S. § 32-1-204(1), as amended;

Based on the types of improvements proposed, the District's facility and service standards either meet or exceed the County's facility and service standards. There are no municipalities that constitute interested parties under Section 32-1-204(1), C.R.S. The District has or shall obtain the prior written consent of the Elizabeth Park and Recreation District to provide any overlapping services or facilities within its boundaries, to the extent that the District's physical and service area boundaries overlap with the Elizabeth Park and Recreation District. The Service Plan complies with the statutory criteria.

7. The proposal is in substantial compliance with the Elbert County Comprehensive Master Plan, as amended, adopted pursuant to C.R.S. § 30-28-106, as amended;

Based on the types of improvements proposed, the District's facility and service standards either meet or exceed the County's facility and service standards. There are no municipalities that constitute interested parties under Section 32-1-204(1), C.R.S. The Service Plan complies with the statutory criteria.

8. The proposal is in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area; and

All sanitary sewer and water facilities and services will be constructed, operated and maintained in accordance with all County, local, State and Federal water quality rules, regulations and/or laws. The Developer is not aware of any conflict with this statute provision under any duly adopted County, local, State or Federal long-range water quality management plan for the area.

9. The creation of the District is in the best interests of the area proposed to be served.

The District is initially planned to be coextensive with the planned community known as Independence and will be organized to assist in the funding, integration and coordination of water and sewer services and facilities within and without its boundaries. The creation of the District will thus be in the best interests of the existing and future service users of the District.

BOARD OF COUNTY COMMISSIONERS ACTIONS ON SERVICE PLAN APPLICATIONS.

Part II, Section 26 F.8. states that the BOCC may:

- a.) Disapprove the service plan submitted:
- b.) Approve, without condition or modification, the service plan submitted:
- c.) Conditionally approve the service plan subject to the submission of additional information relating to, or modification of, the proposed Service Plan.

Part II, Section 26 F.9. states that the BOCC shall disapprove the service plan unless evidence satisfactory to the BOCC of each of the following is present:

- a.) There is sufficient existing and projected need for organized service in the areas to be services by the proposed Special District.
- b.) The existing service in the area to be served by the proposed Special District is inadequate for the present and projected needs.
- c.) The proposed Special District is capable of providing economical and sufficient service to the area within its proposed boundaries.
- d.) The area to be included in the proposed Special District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

Part II, Section 26 F.10, states that the BOCC may disapprove the Service Plan if evidence satisfactory to the BOCC of any of the following, at the discretion of the Board, is not presented:

- a.) Adequate service is not, or will not be, available to the area through the County or other existing municipal or quasi-municipal corporations, including existing Special Districts within a reasonable time and on a comparable basis.
- b.) The facility and service standards of the proposed Special District are compatible with the service and facility standards of the county and each municipality which is an interested party under section CRS §32-1-204(1).
- c.) The proposal is in substantial compliance with the Elbert County Master Plan adopted pursuant to section CRS §30-28-106.
- d.) The proposal is in compliance with any duly adopted county, regional or state long-range water quality management plan for the area.
- e.) The creation of the proposed Special District will be in the best interest of the area proposed to be served.

Part II, Section 26 F.11. states that the BOCC may conditionally approve the service plan of the proposed Special District if found not to comply with one or more of the criteria enumerated in subsection 3 of this section. Final approval shall be contingent upon modification of the service plan to include such changes or additional information as shall be specially stated in the finding of the BOCC.

Part II, Section 26 F. 13. Public Hearing Process, Board of County Commissioners:

d. states that: The Board of County Commissioners shall approve, disapprove, or conditionally approve the Service Plan, and may exclude territory from the proposed Special District prior to approval of the Service Plan in accordance with the procedure set forth in the Control Act. [CRS §32-1-204{4}, as amended].

FINDINGS & RECOMMENDATION

Findings and recommendation will be provided with a Staff Report Addendum which will include a summary of the Financial Report.

- CC. Kyle Fenner, Director of Community and Development Services
Vincent Harris, AICP, Planning Director Baseline Corporation
Gary R. White, Esq., White Bear Ankele Tanaka & Waldron PC
Zachary P. White, Esq., White Bear Ankele Tanaka & Waldron PC
Mike Anderson, Anderson Analytics, LLC

Attachments

A - White Bear Ankele Tanaka & Waldron Memorandum

B - Anderson Analytics Report (to come via an addendum to this staff report)

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MEMORANDUM

TO: Board of County Commissioners, Elbert County

FROM: White Bear Ankele Tanaka & Waldron, Attorneys at Law

DATE: June 14, 2017

RE: Proposed Service Plans for Special Districts to Serve Proposed Independence Project

We have reviewed the proposed service plans (the “Service Plans”) for the Independence Water and Sanitation District, the Independence Overlay Metropolitan District, and the Independence Metropolitan District Nos. 1-4 (the “Districts”) and the exhibits provided therewith. Based on our previous discussions with County Staff regarding interpretation of the Elbert County Special District regulations (the “Regulations”), we have reviewed the Service Plans primarily to determine whether they contain the basic information required by §32-1-202(2), C.R.S., together with those items indicated in the Regulations as “required” or otherwise required “as a condition of approval of the Service Plan”, including Exhibits A-G.

Our engagement as special counsel to the County is limited to assisting staff obtain Service Plans from the applicant that comply with law and the Regulations and NOT to make a recommendation to adopt a resolution to approve or disapprove the Service Plans. Accordingly, this memorandum is intended only to address whether the required information has been presented, not whether the information presented is sufficient to allow the Board of County Commissioners to make the necessary findings to approve the Service Plans. The burden is on the applicant to present sufficient evidence in the Service Plans and at the hearing to support the Board’s findings. Proposed findings in the format contemplated by the statutes will be presented to the Board for consideration at the hearing.

The form and contents of the Service Plans generally follow the form of other service plans previously approved by the County for other special districts within its jurisdiction prior to adoption of the current Regulations. We have found, in one form or another, that each of the proposed Service Plans includes at least one statement or exhibit intended by the applicant to fulfill the following requirements (with the exception of (h) below, which relates to evidence presented at the public hearing):

General Statutory Requirements (pursuant to §32-1-202(2)(a)-(i), C.R.S.):

- a) Description of the proposed services.
- b) Financial Plan showing how the proposed services are to be financed, including, the proposed operating revenue derived from property taxes for the first budget year of the district, which shall not be materially exceeded except as authorized pursuant to section 32-1-207 or 29-1-302, C.R.S. All proposed indebtedness for the district shall be displayed together with a schedule indicating the year or years in which the debt is scheduled to be issued. The Board of Directors of the district shall notify the board of county commissioners of the governing body of the municipality of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan.
- c) Preliminary Engineering or Architectural Survey Showing how the proposed services are to be provided.
- d) Map of the Proposed Special District Proposed special district boundaries and estimate of population and valuation for assessment.
- e) General Description of the Facilities to be constructed and the standards of such construction, including a statement of how the facility and service standards of the proposed special district are comparable with facility and service standards of the County, and interested special districts.
- f) General Description of the estimated cost of acquiring land, engineering services, legal services, administrative services, initial proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the district
- g) A description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed special district and such other political subdivision, and, if the form contract to be used is available, it shall be attached to the service plan.
- h) Information, along with other evidence presented at the hearing, satisfactory to establish that each of the criteria set forth in section 32-1-203, if applicable is met.
- i) Such information as the board of county commissioners may require by resolution on which to base its findings pursuant to section 32-1-203.

Required Service Plan Information Under County Regulations:

- a) Exhibits
- b) Annual Report Requirements
- c) Notice to Board of County Commissioners of Change in Debt Issuance

- d) Five Year Review Requirements
- e) Sunset Clause
- f) Emergency Clause
- g) Inclusion Procedures

In addition to the service plan requirements above, the applicant also provided supplemental information to the County in Appendix A and Appendix B which may be used by the Board of County Commissioners as information to help inform their decision to approve, deny, or conditionally approve one or more of the Service Plans.

As noted above and consistent with our engagement, our review of the Service Plans has focused on whether the applicant has met the basic statutory requirements and substantially complied with the Regulations. We have not evaluated whether the information presented in the Service Plans is factually accurate or whether it is sufficient to allow the Board of County Commissioners to make the necessary findings to approve the Service Plans. We leave such evaluation to the Board of County Commissioners.

In conclusion, we believe that the proposed Service Plans satisfy the minimum statutory requirements and requirements of the Regulations in a manner sufficient to allow the proposed Service Plans to be presented to the County Planning Commission and the Board of County Commissioners in accordance with §32-1-202(2), C.R.S. and the Regulations. We are available to discuss with the Board the nature of the evidence and testimony the applicant might be anticipated to present at the hearing on the Service Plans as well as the actions the Board might take at the conclusion of such hearing.