

Procedures Manual

Procedure # R-FM-046-076

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Subject: COMBINATION AGREEMENT

Date Issued: 12/31/07
Revision Issued: N/A
Rescinded: N/A

1.1. PURPOSE

The purpose of this resource is to provide a consistent format for all voluntary combination of contiguous lots/parcels whereby conforming lots or parcels may be combined to create a new lot or parcel (i.e., zoning lot) for building permit issuance for new construction or habitable additions in conformance with the provisions of the LDC without necessitating a replat or variance (or the approval of statements rescinding a combination agreement). The combination of nonconforming lots may not result in the creation of a lot that is conforming for the purposes of building permit issuance and therefore is not allowed using a combination agreement. In a case where an owner wishes to voluntarily combine two or more nonconforming lots or parcels into a single parcel for the purposes of building permit issuance in conformance with Section 5.6.7 of the LDC, the merger by contiguity (P-AR-009-07 Merger of Contiguous Lots) shall be used.

1.2. BACKGROUND

Several provisions of the LDC allow for the combination of contiguous parcels of land or modification of lot or parcel boundaries in order to bring lots or parcels into conformance with or into closer conformance with zoning requirements or to allow a group of lots or parcels to be recognized as a zoning lot for purposes of the application of the zoning provisions contained in the LDC. The combination agreement may be used to join conforming lots to create a zoning lot for purposes of administration of the LDC. Section 7.2.2(E)(3) of the LDC governs the merger of nonconforming lots in accordance with the provisions and specific allowance provided by Section 5.6.7 of the LDC. A combination agreement may be rescinding by following the same procedure and filing a statement rescinding the combination agreement.

1.3. APPLICABLE STATUTES AND REGULATIONS

C.R.S. §§30-28-101 et seq. allows the BoCC to grant exemptions from the definition of the term "subdivision" for any division of land the BoCC determines is not within the purposes of this statute.

Section 7.2.2(E)(4) of the LDC governs the combination of contiguous lots/parcels.

Section 2.1.2 of the LDC provides the authority for the DSD Director to establish standards for processing development applications.

Section 2.2.4 of the LDC establishes the authorities of the DSD Director.

1.4. APPLICABILITY

The Combination Agreement may only be applied to any contiguous (see Section 7.2.2(E)(4)(c) of the LDC for conditions affecting contiguity) conforming lots or parcels of land where:

- Not more than one residential dwelling is located on the lots or parcels to be combined;
- The lots or parcels to be combined are located within the same zoning district; and
- The lots or parcels are owned in common ownership by the same person, persons or entity.

1.5. TECHNICAL GUIDANCE

1.5.1. Conditions Required for Processing

The Combination Agreement (or request for rescinding a combination agreement) will not be processed by the DSD unless it is complete and all information is typed. Handwritten forms will not be accepted for processing. The Combination Agreement (or statement rescinding a combination agreement) shall be accompanied by an Opinion of Title or Title Insurance Policy for all property identified in the Combination Agreement (R-SA-024-07 Property Ownership).

1.5.2. Rescinding the Agreement

DSD Director may rescind a combination agreement by filing a statement (see resource) rescinding the combination agreement. The statement shall be signed by the DSD Director. The statement shall authorize the sale or transfer of the parcels or lots as separate parcels or lots as they existed prior to the combination agreement provided the resulting parcels or lots and all uses and structures located thereon would conform to all requirements of the LDC (and all other rules, regulations, codes, and ordinances all upon the filing of the statement rescinding the combination agreement. This may require the removal or relocation of uses and structures. A joinder shall also be executed by any lender holding a mortgage or interest in the combined parcels or lots.

Where the parcels or lots would result in a violation of the LDC, or any other rule, regulation, code or ordinance as a result of approving the separate sale of the parcel or lots, a subdivision plat, variance, use variance, temporary use or other approval or permit may be required before the DSD Director may sign and file the statement rescinding the combination agreement required.

1.6. RELATED PROCEDURES

1.6.1. Governing Procedures

P-AR-022-07 Combination Agreement (Conforming Lots or Parcels)

1.6.2. Other Related Procedures

P-AR-015-07 Vacation of Interior Lot Lines

P-AR-009-07 Merger by Contiguity

P-AR-021-07 Lot Line or Building Envelope Adjustment

P-AR-035-07 Plat Vacation with ROW

P-AR-046-07 Vacation and Replat

P-AR-061-07 Boundary Line Adjustment between Unplatted Parcels

1.7. RESOURCE

Attached is a Combination Agreement to be signed and returned by the owner where the owner wishes to combine one or more contiguous lots/parcels. A resources is also attached that shall serve as the statement rescinding a combination agreement to be signed and returned by the owner where the owner wishes to rescind a combination agreement.

Recording Requested by and When Recorded
Return to:
El Paso County
Planning and Community Development
Department
2880 International Circle
Colorado Springs, Colorado 80910

FOR RECORDER USE ONLY

COMBINATION AGREEMENT
File No. EXCMB-_____

This Combination Agreement is made and entered into this _____ day of _____, 20____, by and between _____, hereinafter referred to as "OWNER" which term shall include his or her heirs, beneficiaries, personal representatives, successors and assigns, and EL PASO COUNTY, a Colorado municipal corporation, hereinafter referred to as "COUNTY".

WHEREAS, OWNER owns and holds title to the following described real property (hereinafter referred to as "the PROPERTY"):

(ENTER LEGAL DESCRIPTION OF PROPERTIES)

WHEREAS, the PROPERTY comprises two or more conforming lots, tracts or parcels located within the unincorporated area of the COUNTY; and

WHEREAS, OWNER desires to combine the PROPERTY into a single lot or parcel in conformance with the combination of contiguous lots/parcels provisions of COUNTY regulations.

NOW THEREFORE, for and in consideration of the facts set forth herein:

1. OWNER agrees that the PROPERTY has been combined together and is considered one parcel for purposes of zoning administration and any future sale, mortgages, or other real estate-related actions; and
2. OWNER agrees and covenants that OWNER will not hereafter convey to any third party or otherwise divest title to any portion of the PROPERTY comprising less than the entirety of the PROPERTY without first recording among the Public Records of El Paso County, Colorado a document granting the express consent of COUNTY to such conveyance or divestiture. OWNER understands that said consent of COUNTY may require OWNER to remove the uses or structures that would be considered nonconforming or a violation of the COUNTY regulations as a result of such conveyance or divestiture, and may subject the OWNER to compliance with land development processes and approvals; and
3. OWNER agrees that any attempted conveyance or divestiture in violation hereof shall be void and of no effect; and
4. OWNER agrees that, in addition to all other available legal and equitable remedies, including injunctive relief, available to COUNTY for the violation hereof by OWNER, any such violation shall also constitute a violation of COUNTY regulations subject to all penalties and enforcement procedures provided for therein. In any litigation or enforcement proceeding arising out of violation of this Combination Agreement by OWNER,

COUNTY shall be entitled to an award of reasonable attorney's fees and costs incurred therein, including attorney's fees and costs incurred in appellate proceedings; and

5. OWNER understands and agrees that this Combination Agreement does not relieve the PROPERTY from compliance with regulations or criteria of other agencies or departments or the County's regulations, except as otherwise expressly provided for by the County's regulations; and

6. OWNER understands and agrees that the Combination Agreement does not eliminate lot lines or any easements associated with the PROPERTY; and

7. OWNER understands and agrees that this Combination Agreement does not guarantee that the PROPERTY will be considered a "buildable parcel"; and

8. OWNER agrees that this Agreement shall constitute a covenant running with the PROPERTY for the benefit of the COUNTY, and shall be binding upon the heirs, beneficiaries, personal representatives, successor and assigns of OWNER.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals this _____ day of _____, 20____.

OWNER

STATE OF _____)
)
COUNTY OF _____) s.s.

Owner

Print Name

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, COUNTY of _____. He/she is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

OWNER

STATE OF _____)
)
COUNTY OF _____) s.s.

Owner

Print Name

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, COUNTY of _____. He/she is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

MORTGAGE JOINDER

STATE OF _____)
)
COUNTY OF _____) s.s.

The undersigned holder of a Mortgage encumbering the Property dated _____, 20____, recorded with Reception # _____ in the Public Records of El Paso County, Colorado, hereby joins in this Combination Agreement for the sole purpose of subordinating the lien of said Mortgage to the covenants of OWNER more particularly set forth in this Combination Agreement.

Authorized Representative

Print Name

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, COUNTY of _____. He/she is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

MORTGAGE JOINDER

STATE OF _____)
)
COUNTY OF _____) s.s.

The undersigned holder of a Mortgage encumbering the Property dated _____, 20____, recorded with Reception # _____ in the Public Records of El Paso County, Colorado, hereby joins in this Combination Agreement for the sole purpose of subordinating the lien of said Mortgage to the covenants of OWNER more particularly set forth in this Combination Agreement.

Authorized Representative

Print Name

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, COUNTY of _____. He/she is personally known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

COUNTY APPROVAL

STATE OF _____)
)
COUNTY OF _____) s.s.

Planning and Community Development Department Director

Print Name

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
by _____, COUNTY of _____. He/she is personally
known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

Recording Requested by and When Recorded

Return to:

El Paso County

Planning and Community Development

Department

2880 International Circle

Colorado Springs, Colorado 80910

FOR RECORDER USE ONLY

STATEMENT RESCINDING COMBINATION AGREEMENT

This Statement Rescinding a Combination Agreement is entered into this _____ day of _____, 20____, by and between _____, hereinafter referred to as "OWNER" which term shall include his or her heirs, beneficiaries, personal representatives, successors and assigns, and EL PASO COUNTY, a Colorado municipal corporation, hereinafter referred to as "COUNTY".

WHEREAS, OWNER owns and holds title to the following described real property (hereinafter referred to as "the PROPERTY"):

(ENTER LEGAL DESCRIPTION OF PROPERTIES)

WHEREAS, the PROPERTY comprises two or more conforming lots, tracts or parcels located within the unincorporated area of the COUNTY; and

WHEREAS, OWNER desires to have the COUNTY release the PROPERTY from the requirements and obligations associated with the Combination Agreement filed with Reception # _____ in the Public Record of El Paso County.

NOW THEREFORE, for and in consideration of the facts set forth herein:

1. COUNTY agrees that, based on the information presented, rescinding the Combination Agreement will not result in a violation of the El Paso County Land Development Codes or any other County rules, regulations, codes, or ordinances; and
2. OWNER understands and agrees that rescinding the Combination Agreement does not relieve the PROPERTY from compliance with regulations or criteria of other agencies or departments or the County's regulations, and that if a violation of the El Paso County Land Development Codes or any other County rules, regulations, codes, or ordinances is identified, whether such violation is a result of rescinding said Combination Agreement or as a result of other actions by OWNER, in addition to all other available legal and equitable remedies, including injunctive relief, available to COUNTY for the violation hereof by OWNER, any such violation shall constitute a violation of COUNTY regulations subject to all penalties and enforcement procedures provided for therein, and that the COUNTY's approval of this Statement Rescinding Combination Agreement shall not be considered a defense against any action by COUNTY or any other agency concerning such violation; and
3. COUNTY agrees that in filing this Statement Rescinding the Combination Agreement that said Combination Agreement is hereby rescinded and all requirements and obligations established by said Combination Agreement shall have no effect on any future sale, mortgages, or other real estate-related actions; and
4. OWNER understands and agrees that this Statement Rescinding Combination Agreement does not guarantee that the resulting PROPERTY will be considered a "buildable parcel".

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals this _____ day of _____, 20____.

OWNER

STATE OF _____)
) s.s.
COUNTY OF _____)

Owner

Print Name

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
by _____, COUNTY of _____. He/she is personally
known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

OWNER

STATE OF _____)
) s.s.
COUNTY OF _____)

Owner

Print Name

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
by _____, COUNTY of _____. He/she is personally
known to me or has produced _____ as identification.

Notary Public
My Commission Expires:

MORTGAGE JOINDER

STATE OF _____)
) s.s.
COUNTY OF _____)

The undersigned holder of a Mortgage encumbering the Property dated _____, 20____, recorded
with Reception # _____ in the Public Records of El Paso County, Colorado, hereby joins in this

COUNTY APPROVAL

STATE OF _____)
)
 COUNTY OF _____) s.s.

 Development Services Department Director

 Print Name

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
 by _____, COUNTY of _____. He/she is personally
 known to me or has produced _____ as identification.

 Notary Public