

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

**Diana K. May, County Attorney**

### Assistant County Attorneys

M. Cole Emmons  
Lori L. Seago  
Lisa A. Kirkman  
Steven A. Klaffky  
Peter A. Lichtman  
Mary Ritchie

July 31, 2019

SF-18-34 Walden Preserve 2, Filing No. 4  
Final Plat

Reviewed by: M. Cole Emmons, Senior Assistant County Attorney   
Edi Anderson, Paralegal

### FINDINGS AND CONCLUSIONS:

1. This is a proposal by Matthew Dunston, Custom Castles Building Company, Inc., and Walden Holdings 1, LLC (collectively "Applicant") to subdivide 45.27 acres of land into 23 single-family residential lots at a minimum of 1 acre per each lot, plus 18.16 acres of open space. The property is zoned Planned Unit Development (PUD).

2. The Applicant has provided for the source of water to derive from a private central water supplier known as the Walden Corporation ("Corporation"). The Corporation operates its central water supply system primarily pursuant to Water Court Decrees in Case Nos. W-7843-74 and W-6220 (Division 1). The Applicant estimates its annual water needs to serve household use of 6.21 acre feet annually and outside irrigation at 1.61 acre-feet annually for a total of 7.82 acre-feet per year (0.34 acre-feet per lot per year). Applicant must be able to provide a total water supply of 2,346 acre-feet (7.82 acre-feet x 300 years) to meet the County's 300 year water supply requirement.

3. In letters dated November 1, 2018, April 2, 2019, and June 7, 2019, the State Engineer's Office reviewed the demand and supply for this Final Plat of 45.27 acres subdivided into 23 lots, plus 18.16 acres of open space. The Engineer explained the several sources of the Corporation's water supply.

First, the Corporation operates a central water supply system, fed by 7 Denver Basin ground water wells; 6 wells are completed into the Dawson Aquifer as decreed in Case Nos. W-7843-74 and W-6220, and 1 well (Permit No. 32697-F) is completed into the Denver Aquifer. The Engineer stated that the withdrawal capacity of the 7 Denver Basin wells is 406.5 acre-feet/year. The water supply consists of 166.5 acre-feet/year

200 S. CASCADE AVENUE  
OFFICE: (719) 520-6485



COLORADO SPRINGS, CO 80903  
FAX: (719) 520-6487

from the Dawson aquifer and 240 acre-feet/year from the Denver aquifer. The State Engineer noted that they previously stated that:

“Dawson Well No. 6 is currently capable of producing 26 gallons per minute or 41 acre-feet/year and indicated that the Corporation could obtain a permit and re-drill the Dawson Well No. 6 to show that the well can produce the decree amount of 148 gallons per minute or 238 acre-feet/year. In addition, the Denver aquifer well is currently capable of producing 105 acre-feet per year. The Corporation has the ability to seek permits to construct additional wells into the Denver aquifer to withdraw the full allowed annual amount permitted to be withdrawn of 240 acre-feet per year. The Corporation’s total annual amount of water that could be withdrawn would accordingly increase to 604 acre-feet.”

The Corporation has supplemental water pursuant to an augmentation plan decreed in Case No. 02CW187 that originally allowed for the development of 93 individual on-lot not nontributary Dawson aquifer wells using a 300 year water supply plan approach. That augmentation plan was revised in Case No. 2015CW3007, in which Custom Castles, Inc., obtained approval of a water right to reduce the number of wells from 93 to 22, with the balance of the water (33.37 acre-feet/year for 300 years) transferred to the Corporation for use in its central water system.

Finally, the Engineer explained that up to 155 acre-feet per year for 100 years of not nontributary Dawson aquifer water decreed in Consolidated Case Nos. 02CW187 (Div. 1) and 02CW117 (Div. 2) may be withdrawn pursuant to the plan for augmentation approved in Consolidated Case Nos. 2016CW3103 (Div. 1) and 2016CW3048 (Div. 2). This provides an additional water supply for the Corporation’s central water supply system allowing for withdrawal of up to 51.67 acre-feet/year based on the County’s 300-year rule.

The State Engineer noted, which the Water Resources Report dated September 11, 2018 from JPS Engineering confirmed, “the Corporation has approximately 27,720 acre-feet (based on the actual amount determined by SEO) of Denver Basin ground water available for additional commitments” including this Walden Preserve 2 Filing 4. Pursuant to C.R.S. §30-28-136(1)(h)(II), the Engineer is of the opinion that “the proposed water supply is adequate and can be provided without causing injury to decreed water rights.”

4. In a letter dated July 12, 2019, Matthew Dunston, signing for Walden Corporation, committed to providing water and sewer service to Walden Preserve 2 Filing No. 4 based on 23 single-family residential lots. Mr. Dunston stated that “Walden Corporation hereby provides an unconditional commitment to serve 23 residential lots within Walden Preserve 2 – filing No. 4, with an estimated annual water demand of 7.82 acre-feet per year.” (Emphasis in original).

5. Section 8.4.7(B)(10)(g), of the El Paso County Land Development Code allows for the presumption of acceptable water quality for projects such as this where water is supplied by an existing Community Water Supply operating in conformance with Colorado Primary Drinking Water Regulations unless there is evidence to the contrary that may be provided by El Paso County Public Health (EPCPH).

6. Analysis: The State Engineer concluded that the Walden Corporation has 27,720 acre-feet of ground water available for additional subdivision commitments. JPS Engineering has provided a table of the current water supply and water commitments for Walden Corporation in their Water Resources Report dated September 11, 2018 (See attached Exhibit 1). The table indicates that there is a total water supply of 56,150 acre-feet with total water commitments of 28,430 acre-feet, which the Report indicates includes this Filing 4. Based on those numbers, there remains 27,720 acre-feet available for future commitments. Based on the foregoing, there appears to be a sufficient supply of water to meet the County's 300-year water supply rule as applied to this 7.82 acre-foot annual demand for 23 lots in Walden Preserve 2 Filing No. 4.

7. Therefore, based upon the State Engineer's finding that the proposed water supply using the central water supply is adequate and will not cause material injury, and based on the documentation provided by the JPS Engineering's Water Resources Report, and pursuant to Walden Corporation's firm letter of commitment, the County Attorney's Office recommends a finding of **sufficiency** as to quantity and dependability. El Paso County Public Health may wish to provide confirmation as to water quality.

Conditions of Compliance:

A. Applicant and all future owners of lots within this filing shall be advised of, and comply with, any conditions, rules, regulations, limitations, and specifications set by the District.

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

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

Alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply.”

cc: Nina Ruiz, Project Manager, Planner III

The Walden Corporation's current water supply commitment status is summarized in the following table:

**Walden Corporation - Water Supply Commitment Summary  
(Central Water System)**

	SFE	Ave. Day Dmd. (af/yr)	Total Water Demand (af)	Water Supply (af) <sup>1</sup>	Water Supply (af) <sup>2</sup>
Total Decreed Supply (Case No. W-78430 / W-6220)				60,400 <sup>1</sup>	40,650 <sup>2</sup>
Total Decreed Supply (Case No. 2016-CW3103)				15,500	15,500
<b>Total Water Supply</b>				<b>75,900</b>	<b>56,150</b>
Historic Commitments ('03)	245.2	83.36	8,336 <sup>3</sup>		
Walden Pines Subdivision	7	2.38	714 <sup>4</sup>		
Walden Preserve Filing No. 1 (73 lots + Tract A)	74	25.16	7,548 <sup>4</sup>		
Walden Preserve 2 PUD <sup>6</sup>	116	39.44	11,832 <sup>4</sup>		
<b>Total Water Commitments</b>	<b>442.2</b>	<b>150.3</b>	<b>28,430</b>		
<b>Remaining Central System Water Supply Available</b>				<b>47,470</b>	<b>27,720</b>

<sup>1</sup> Total Dawson/Denver groundwater supply authorized by decree or permit (W-78430 / W-6220) per Curt Wells & Co. report (and DWR letter dated 7/3/13)

<sup>2</sup> Total supply based on legal and physical well production (per DWR letter dated 8/15/14)

<sup>3</sup> Historic filings previously approved based on 100-year supply requirement

<sup>4</sup> New filings required to demonstrate 300-year water supply

<sup>5</sup> Walden Preserve 2 PUD (116 total lots) includes 12 lots previously identified as "Walden Preserve Filing No. 1A" in previous reports / correspondence

<sup>6</sup> WP2 Filing No. 4 comprises 23 lots that are a part of the Walden Preserve 2 PUD

As noted in the table above, the Walden Corporation has committed only 37.5 percent of its total decreed water rights, or 50.6 percent of the total currently available water supply based on legal and physical well production (per 8/15/14 DWR letter). As such, the system has ample capacity to provide service to the Walden Preserve 2 PUD with a significant balance of remaining water rights.

As previously noted, the proposed 23 lots within the Filing No. 4 final plat are part of the total of 116 lots previously approved in the Walden Preserve 2 PUD, so the total water demands remain unchanged. The State Division of Water Resources (DWR) provided a finding of sufficiency in the enclosed letter dated August 15, 2014 (Appendix A), verifying that the proposed water supply plan for the Walden Preserve 2 PUD meets state standards for subdivisions.

