

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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SF-20-26            Grandwood Ranch  
                         Final Plat

Reviewed by:    Lori L. Seago, Senior Assistant County Attorney  
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### **FINDINGS AND CONCLUSIONS:**

1. This is a proposal by Sylvan Vista, Inc. ("Applicant") for a 48-lot subdivision, plus 4 tracts on a parcel of approximately 147 +/- acres (the "Property"). The additional tracts will include a potential well site reserved for use by the Woodmoor Water and Sanitation District and/or Triview Metropolitan District and tract for open space, drainage, utilities, and emergency access. The property is zoned RR-2.5 (Rural Residential).

2. The Applicant has provided for the source of water to derive from individual on-lot wells, as provided in the decree and plan for augmentation in District Court Water Division 2, identified as Findings of Fact, Conclusions of Law, Ruling and Decree of Water Court Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Case No. 19CW3015 ("Decree and Augmentation Plan" or "Case No. 19CW3015"). Pursuant to the Water Supply Information Summary ("WSIS"), the water demand is 0.335 acre-feet for each lot for household use and irrigation, for a total water demand of 16.08 acre-feet/year for a period of 300 years. Based on this total demand, Applicant must be able to provide a supply of 4,824 acre-feet of water (16.08 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement.

3. In a letter dated March 22, 2021, the State Engineer reviewed the submittal to plat the 146.84 +/- acre parcel into a 48-lot minor subdivision. The State Engineer notes that the water demand for the development is "16.08 acre-feet/year for the entire development. This amount breaks down to 0.335 acre-foot/year for each of the forty-eight lots." The State Engineer states that the "anticipated source of water is to be provided by on-lot wells producing from the Dawson aquifer that will operate pursuant to the augmentation plan decreed in Division 2 Water Court Case No. 19CW3015."

The following amounts of water have been adjudicated and were determined to be available underlying the property:

Aquifer	Tributary Status	Volume (AF)	Annual Allocation 100 Year (AF/Year)	Annual Allocation 300 Year (AF/Year)
Dawson	NNT	9,805	98.05	32.68
Denver	NNT	12,495	124.95	41.65
Arapahoe	NT	6,763	67.63	22.54
Laramie-Fox Hills	NT	4,220	42.20	14.07

The State Engineer stated that the “plan for augmentation decreed in Division 2 Water Court case no. 2019CW3015 allows for diversion of 16.08 acre-feet annually from the Dawson aquifer for a maximum of 300 years.”

The State Engineer further noted that there are 2 existing wells on the Property (Permit Nos. 267286 and 2757). Pursuant to Well Abandonment Reports dated March 10, 2020, submitted with the proposal, both wells have been plugged and abandoned. The State Engineer directed that future well permits be issued pursuant to C.R.S. § 37-90-137(4). Finally, the State Engineer provided the opinion that “pursuant to CRS 30-28-136(1)(h)(I), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(4) and the plan for augmentation noted herein, for all wells in the subdivision and operates the wells in accordance with the terms and conditions of any future well permits.” And further, “the water supply can be provided without causing injury” and is adequate “based on our determination that the amount of water required annually to serve the subdivision is currently physically available, based on current estimated aquifer conditions.”

Note: As noted in the table above, Case No. 19CW3015 adjudicated water in the Denver and Arapahoe aquifers, but since that water supply will not be utilized in this subdivision, this review provides no analysis of the water rights in those aquifers.

4. Decree and Augmentation Plan, Division 2, Case No. 19CW3015 (“Decree and Augmentation Plan” or “Case No. 19CW3015”). The Decree and Augmentation Plan is in the name of Grandwood Enterprises, LLC,<sup>1</sup> and it adjudicates the water rights underlying the Property and approves the plan for augmentation to allow withdrawal from the not nontributary Dawson aquifer for this subdivision. The Dawson aquifer requires the use of septic return flows from indoor uses to meet the requirements to replace depletions to the stream system during 300 years of pumping. Such return flows may not be otherwise used, sold, traded, or assigned.

The augmentation plan allows withdrawal of 16.08 acre-feet/year (0.335 annual acre-feet per well) for the subdivision. Household use is estimated at 0.25 acre-feet of water per year/lot, with the remaining water supply available for other uses.

<sup>1</sup> Title to the property and all appurtenances was transferred from Grandwood Enterprises, LLC, to Sylvan Vista, Inc. via Special Warranty Deed on December 17, 2019.

The Decree and Augmentation Plan limits outdoor irrigation use of the water on each lot to 1,600 square feet and outdoor irrigation and stock watering uses are permitted only on lots with “occupied single-family residences and septic systems.”

Replacement of Depletions During Pumping. The Decree and Augmentation Plan provides for a pumping period of a minimum of 300 years. For any wells constructed into the nontributary Dawson aquifer, the Applicant is required to replace actual stream depletions on an annual basis during the 300 years of pumping by residential return flows from a non-evaporative septic system. The Augmentation Plan indicates “annual consumptive use for non-evaporative septic systems is 10% per year per residence. At the household use rate of 0.25 acre-feet per residence per year, an estimated 10.8 acre-feet is replaced to the stream system per year utilizing non-evaporative septic systems. Applicant will not cause stream depletions to exceed this amount during pumping.”

Replacement of Post-Pumping Depletions. The Decree requires the Applicant to replace any injurious post-pumping depletions by reserving all of the nontributary Laramie-Fox Hills aquifer water (4,220 acre-feet). Applicant must construct wells into the Laramie-Fox Hills aquifer to replace post-pumping depletions. The reserved Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions, and the Decree requires that these waters may not be severed from ownership of the overlying Property. The Decree and Augmentation Plan also require that Applicant maintain a financial reserve to “construct, equip, operate, and maintain the well(s) required to withdraw and deliver the nontributary water from the Laramie-Fox Hills aquifer required to satisfy its post-pumping augmentation obligations (“POPA Fund”).

5. Analysis. Applicant’s annual water demand for the Grandwood Ranch is 16.08 acre-feet per year from the Dawson aquifer for total demand of 4,824 acre-feet for the subdivision for 300 years. The Decree and Augmentation Plan authorizes withdrawal of 16.08 acre-feet/year of Dawson aquifer water for a period of 300. Based on the demand of 16.08 acre-feet/year for the 48-lot subdivision and the Decree and Augmentation Plan permitting withdrawals in that amount for a period of 300 years, there appears to be a sufficient water supply to meet the water demands of the Grandwood Ranch Subdivision.

6. The water quality requirements of Section 49.5 E of the Land Development Code must be satisfied.

7. Therefore, based upon the Water Supply Information Summary, a finding of sufficiency and no injury by the State Engineer, the Decree and Augmentation Plan in Case No. 2019CW3015, and based on the requirements below, the County Attorney’s Office recommends a finding that the proposed water supply is sufficient in terms of quantity and dependability. The El Paso County Health Department shall provide a recommendation as to water quality.

*REQUIREMENTS:*

A. Applicant, its successors and assigns, shall comply with all requirements of District Court Water Division 2, Case No. 19CW3015, specifically, that water use shall not exceed 16.08 acre-feet annually for the 48-lot subdivision and that all stream depletions will be replaced with non-evaporative septic system return flows for a period of 300 years, pursuant to the Court's augmentation plan.

B. The County requires that when there is an augmentation plan, Applicant must create a homeowners' association ("HOA"). Applicant shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of Case No. 19CW3015, as well as their obligations to comply with the plan for augmentation, including, but not limited to, ensuring that return flows by the use of non-evaporative septic systems are made to the stream systems, and that such return flows shall only be used to replace depletions and shall not be separately sold, traded, or assigned in whole or in part for any other purpose. The Covenants more specifically shall require that each lot served by a Dawson aquifer well have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. In addition, the Covenants shall advise future lot owners of this subdivision and their successors and assigns of their obligations regarding costs of operating the plan for augmentation, which will include pumping of the Dawson wells in a manner to replace depletions during pumping and the cost of drilling Laramie-Fox Hills wells in the future to replace post-pumping depletions. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the plan for augmentation and shall protect the viability of the water supply by placing limitations in the Covenants as to amendments and termination as applied to said water supply.

The covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 4,824 acre-feet of Dawson aquifer water and 4,220 acre-feet of Laramie-Fox Hills aquifer water pursuant to Case No. 19CW3015, to satisfy El Paso County's 300-year water supply requirement for the 48 lots of the Grandwood Ranch Subdivision.

2) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping, shall reserve said return flows to replace depletions during pumping, and shall state that said return flows shall not be separately sold, traded, assigned, or used for any other purpose. The Covenants more specifically shall require that each lot served by a Dawson aquifer well have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. The Covenants shall also include the

following or similar language to ensure that such return flows shall only be used for replacement purposes: "Return flows shall only be used for replacement purposes, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose."

3) The following or similar language shall be included in the Covenants to address future conveyances of the lots subsequent to the initial conveyance made by Applicant/Declarant: "The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not the plan for augmentation in District Court Water Division 2, Case No. 19CW3015, and the water rights therein are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."

4) The Covenants shall advise future lot owners of this subdivision and their successors and assigns of their responsibility for any metering and data collecting that may be required regarding water withdrawals from the wells in the Dawson aquifer and future wells to be constructed in the Laramie-Fox Hills aquifer.

5) The Covenants shall address amendments using the following or similar language:

"Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which would alter, impair, or in any manner compromise the water supply for the Grandwood Ranch Subdivision pursuant to the augmentation plan in District Court Water Division 2, Case No. 19CW3015. Further, written approval of any such proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioners, after review by the County Attorney's Office. Any amendments must be pursuant to a Decree from the Division 2 Water Court approving such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such adjudication."

6) The Covenants shall address termination using the following or similar language:

"These Covenants shall not terminate unless the requirements of the plan for augmentation in District Court Water Division 2, Case No. 19CW3015, are also

terminated by order of the Division 2 Water Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

7) The Covenants shall require the creation of a POPA Fund, recite that any moneys in such Fund shall not be spent, assigned, pledged, set aside, hypothecated or committed in any manner to satisfy obligations other than those set forth in Case No. 19CW3015, create a funding mechanism for the same, and require compliance with the annual reporting requirements for such Fund, all in accordance with 19CW3015.

C. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the Property the decreed amount of at least 16.08 acre-feet of Dawson aquifer water annually for the subdivision for a period of 300 years, for a total of 4,824 acre-feet for the 48-lot subdivision for 300 years. Said reservation shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for primary and replacement supply. Applicant shall convey by recorded warranty deed these reserved Dawson aquifer water rights to the individual lot owners. Applicant shall provide copies of said Covenants or other such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney’s Office prior to recording the minor subdivision plat.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson aquifer): “These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, and replacement during pumping, for each of the 48 lots of the Grandwood Ranch Subdivision, The water rights so conveyed, and the return flows therefrom, shall be appurtenant to each of the respective lots with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title.”

D. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the Property, all of the water available in the Laramie-Fox Hills aquifer for use in augmentation to replace post-pumping depletions. Pursuant to the Decree and Augmentation Plan, Applicant must also maintain a POPA Fund to ensure there is a financial reserve for the Laramie-Fox Hills wells. Applicant shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for augmentation supply. Applicant shall convey by recorded warranty deed these reserved Laramie-Fox Hills aquifer water rights to the HOA for use in the Augmentation Plan. Applicant shall also assign the POPA fund to the HOA. Applicant shall provide copies of such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney’s Office prior to recording the minor subdivision plat.

E. Applicant or its successors and assigns shall, at the time of lot sales, convey by warranty deed to individual lot owners sufficient water rights in the Dawson aquifer, pursuant to District Court Water Division 2, Case No. 19CW3015, underlying the respective lots to satisfy El Paso County's 300-year water supply requirement. Dawson aquifer requirements are 100.5 acre-feet per lot (0.335 acre-feet/year x 300 years). Said conveyance instruments shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for the primary supply and replacement during pumping for the respective lots. Applicant shall provide form deeds for such conveyances that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.

F. Applicant or its successors and assigns shall submit a Declaration of Covenants, Conditions, and Restrictions and any plat notes required herein to the Planning and Community Development Department and the County Attorney's Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. Said Declaration shall cross-reference District Court Water Division 2, Case No. 19CW3015 and shall identify the obligations of the individual lot owners thereunder.

G. Applicant or its successors and assigns shall record all applicable documents, including but not limited to the Decree and Augmentation Plan in District Court Water Division 2, Case No. 19CW3015, agreements, assignments, and warranty deeds regarding the water rights, and Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

H. As noted by the State Engineer's Office, the Applicant must obtain well permits pursuant to C.R.S. § 37-90-137(4) and pursuant to the Decree and Augmentation Plan in District Court Water Division 2, Case No. 19CW3015.

I. 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."

J. Prior to recording the final plat, Applicant shall upload an updated Water Resources Report to EDARP. Corrections shall include but are not limited to the number of lots, the water demand of each lot, the requirement that existing wells be abandoned pursuant to the decree entered Case No. 19CW3015, and the quantity of water available in each aquifer pursuant to the same decree.

cc: John Green, Planner II