

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

First Assistant County Attorney
Diana K. May

Amy R. Folsom, County Attorney

Assistant County Attorneys

M. Cole Emmons
Lori L. Seago
Kenneth R. Hodges
Lisa A. Kirkman
Steven A. Klaffky
Peter A. Lichtman

June 21, 2018

SF-18-010 Reserve at Corral Bluffs Filing 2
(Final Plat)

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

FINDINGS AND CONCLUSIONS:

1. This is a proposal by Corral Ranches Development Company c/o Howard J. Kunstle for a Final Plat to permit development of 6 single family dwellings on 33.11 acres of land within the Reserve at Corral Bluffs subdivision. This request reflects the second of two filings within the Reserve at Corral Bluffs Preliminary Plan. The preliminary plan was previously approved to subdivide 186.38 acres of land into 31 single family lots plus an open space tract. The property is currently zoned RR-5 (Rural Residential).

2. The Applicant has provided for the source of water to derive from individual on-lot wells withdrawing from the not-nontributary Arapahoe and Denver aquifers pursuant to Determination of Water Right Nos. 516-BD (Arapahoe) and 517-BD (Denver). Applicant estimates its annual water needs to serve household use at 0.3 acre-feet, irrigation of lawn and gardens at 0.16 acre-feet, and watering of 4 large domestic animals at 0.04 acre-feet for a total of 0.5 acre-feet per lot or a total of 3.0 acre-feet annually for the 6 lots. Based on Applicants' demand, Applicants must be able to provide a supply of 900 acre-feet of water (3 acre-feet/year x 300 years) to meet the County's 300 year water supply requirement.

3. The State Engineer's Office provided a letter in response to the proposal dated April 6, 2018. The letter referred to their previous correspondence dated June 4, 2013, in which they provided review of Reserve at Corral Bluffs Preliminary Plan and the 6-lot Final Plat Filing 1. As noted in their earlier review, the State Engineer stated that the allowed average annual withdrawal under Determination of Water Right No.

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



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

516-BD (Arapahoe aquifer) is 55.1 acre-feet and under Determination of Water Right No. 517-BD (Denver aquifer) is 31.5 acre-feet for a combined annual total of 86.6 acre-feet. Applying the County's 300 year rule, the reduced annual withdrawals would be 18.4 acre-feet from the Arapahoe aquifer and 10.5 acre-feet from the Denver aquifer, for a combined annual total withdrawal for 300 years of 28.9 acre-feet. The Applicant previously identified that Lots 1-21 will access either the Denver or Arapahoe aquifers and Lots 22-31 will access only the Arapahoe aquifer. Based on these designations, the Engineer further stated that the 18.4 acre-feet annual supply from the Arapahoe aquifer is more than the 15.5 acre-feet annual demand for all 31 lots in the preliminary plan if all 31 lots used the Arapahoe aquifer. The Engineer stated that the 10.5 acre-feet annual supply from the Denver aquifer would meet the annual demand should all of Lots 1-21 use the Denver aquifer. **As noted in the State Engineer's letter dated April 6, 2018, the Applicant has stated that Lots 1 – 6 of this Filing 2 are lots 10 and 17-21 of the preliminary plan.** Therefore, based on the foregoing, the State Engineer indicated its previous findings dated June 4, 2013 remain in effect, and based on that letter and pursuant to C.R.S. § 30-28-136(1)(h)(I) and (II), "it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights."

4. Analysis: There is a previously committed amount of 3.0 acre-feet/year and 900 acre-feet total for 300 years from the Denver aquifer for Filing 1 of the Reserve at Corral Bluffs subdivision. Since the Applicant's total annual demand for this Filing 2 is 3.0 acre-feet and 900 acre-feet total for 300 years, and the combined allowed average annual amount of withdrawal for the entire 31 lots of the preliminary plan is 28.9 acre-feet or 8,670 acre-feet total, there appears to be a sufficient water supply based on the combined aquifers. Based on the State Engineer's analysis, there is sufficient water for this Filing 2 to be served either by water from the Denver and Arapahoe aquifers or from the Arapahoe aquifer alone.

5. As with Filing 1 in 2013, the Upper Black Squirrel Creek Ground Water Management District ("UBS") has submitted comments/concerns regarding the water supply and the septic systems. UBS's attorney, Lisa Thompson, submitted a letter dated May 11, 2018. She raised concerns that the supply relies on non-renewable Denver Basin groundwater, and stated "the County should consider requiring the Applicant to develop renewable water resources for a long-term water supply to serve the Corral Bluffs Development." Regarding use of septic systems, she expressed concerns that a monitoring well should be installed and that systems should be designed to accommodate high water tables. She also states, "the District believes that a central wastewater treatment system must be required for this development to prevent contamination of the aquifer. However, if onsite wastewater treatment systems are permitted, these systems and associated discharges must comply with the state's Water Quality Control Commission's water quality standards set forth in Regulation Nos. 41 and 42." The Health Department and the Applicant will have to address the concerns related to water quality and use of septic systems. As to any concerns the UBS has

regarding the sufficiency or legality of the water supply, it had an opportunity to address those issues during the water rights determination process and elected not to do so. In both of the Determinations of Water Rights Nos. 516-BD (Arapahoe) and 517-BD (Denver), the UBS did not submit written recommendations to the Ground Water Commission, but did file objections; however, when Applicant filed a motion for summary judgment, UBS elected to withdraw its objections.

6. The water quality requirements of Section 8.4.7.B.10 of the Land Development Code must be satisfied.

7. Therefore, based upon the State Engineer's finding that the proposed water supply is adequate and will not cause material injury, pursuant to the Determination of Water Right Nos. 516-BD and 517-BD, and based on the requirements listed below, the County Attorney's Office recommends a finding of sufficiency as to quantity and dependability. **The El Paso County Health Department shall provide an opinion as to quality, and should address specific concerns regarding use of septic systems raised by the Upper Black Squirrel Creek Ground Water Management District.**

REQUIREMENTS:

- A. Applicants, their successors and assigns, shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owner(s) of this filing and future filings, their successors and assigns, regarding all applicable requirements of the Colorado Ground Water Commission Determination of Water Right Nos. 516-BD and 517-BD, **including the 4% replacement requirements to be met by returning to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal**, as well as their obligations to comply with the Determinations and their responsibility for any metering and data collecting that may be required regarding water withdrawals from wells.
- B. Should Applicants, their successors and assigns, convey the Property, then at the time of each lot sale, they shall convey by warranty deed to individual lot owner(s) sufficient water rights in the appropriate aquifer (Denver or Arapahoe) pursuant to Determination of Water Right Nos. 516-BD and 517-BD underlying the property to satisfy El Paso County's 300 year water supply requirement: Denver or Arapahoe aquifer requirements for each lot are 150 acre-feet (0.5 acre-feet/lot/year x 300 years). Said conveyance instrument 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 requirements for the lot.
- C. Applicant shall submit Declaration of Covenants, Conditions, and Restrictions to the Planning and Community Development Department and the County

Attorney's Office prior to recording the final plat. Said Declaration shall cross-reference the Determination of Water Right Nos. 516-BD and 517-BD and the replacement requirements therein, shall recite the obligations of the individual lot owners under both, and shall reference the water conveyance requirements for each lot as described in paragraph B above.

- D. Applicant, their successors and assigns, shall record all applicable documents including, but not limited to, the Determination of Water Right Nos. 516-BD and 517-BD, 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.
- E. 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, which is based on an allocation approach. Applicants, the Home Owners Association, 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 indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers, and Applicants, their successors and assigns, including individual lot owners in the subdivision and the HOA may be required to acquire, develop, and incorporate alternative renewable water resources in a permanent water supply plan that provides future generations with a water supply."

CC. Kari Parsons, Project Manager, Planner II