

EL PASO COUNTY



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SF-20-12 Reserve at Corral Bluffs Filing No. 5
(Final Plat)

Reviewed by: Lori Seago, Senior Assistant County Attorney
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FINDINGS AND CONCLUSIONS:

1. This is a proposal by Corral Ranches Development Company ("Applicant") for a final plat to permit development of 8 single-family dwellings and 1 tract of open space on 60.99 acres of land within the Reserve at Corral Bluffs subdivision (the "Property"). This request reflects the fifth filing 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 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 aquifer pursuant to Colorado Ground Water Commission Determination of Water Right No. 516-BD ("Determination"). Applicant estimates its annual water needs to serve household use at 2.40 acre-feet/year (0.30 acre-feet per lot), plus irrigation of lawn and gardens at 1.24 acre-feet/year and watering of 4 large domestic animals on each lot at 0.36 acre-feet/year for a total of 4.0 acre-feet annually for the subdivision (0.5 acre-feet/lot). Based on Applicant's demand, Applicant must be able to provide a supply of 1,200 acre-feet of water (4.0 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 dated July 6, 2021 in which they reviewed the proposal for 8 single-family lots on 60.99 acres identified as Reserve at Corral Bluffs Filing No. 5. The letter referred to previous correspondence dated June 4, 2013, in which they reviewed the Reserve at Corral Bluffs Preliminary Plan and the 6-

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lot final plat for Filing 1. As noted in their earlier review, the State Engineer stated that the allowed average annual withdrawal under Determination of Water Right No. 516-BD (Arapahoe aquifer) is 55.1 acre-feet for a period of 100 years. Applying the County's 300-year rule, the reduced annual withdrawals would be 18.4 acre-feet from the Arapahoe aquifer as detailed in the table below. In their 2013 letter, the State Engineer's Office also identified water rights in the Denver aquifer; however, that water supply will not be used in this Filing No. 5.

Aquifer	Determination No.	Total acre-feet available	Acre-Feet available (100 years)	Acre-Feet available (300 years)
Arapahoe (NNT)	No. 516-BD	5510	55.1	18.4
Denver (NNT)	No. 517-BD	3150	31.5	10.5
Total		8,660 A/F	86.6 A/F	28.9 A/F

The overall preliminary plan project for Corral Bluffs encompasses a total of 31 lots. Applicant identified that Lots 1-21 would access either the Denver or Arapahoe aquifers and Lots 22-31 would access only the Arapahoe aquifer. The current 8 lots of Filing No. 5 reflects lots 22 through 29 of the preliminary plan. In the 2013 State Engineer's Office letter, they 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 water demand is described as 0.50 acre-feet/year/lot for household use, irrigation, and stock watering. The State Engineer indicated its previous findings dated June 4, 2013 remain in effect. Based on the letter dated June 4, 2013, 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. Colorado Ground Water Commission Determination 516-BD. Determination No. 516-BD was issued to Robert Solberg, HJK Family Partners, Ltd, and Corral Ranches Development Co. on June 16, 2004. The Determination provided that the annual amount of ground water to be withdrawn from the Arapahoe aquifer shall not exceed 55.1 acre-feet for a period of 100 years which equals a total water supply of 5,510 acre-feet (18.4 acre-feet for a period of 300 years). As noted in the Water Resources Report dated November 29, 2011, by Wm. Curtis Wells, CPG, "[s]ince the property is more than one mile from the aquifer/alluvium contact, no formal replacement plan is required, only that four percent of the water pumped is released to shallow sandy soils." The Determination states that the "use of ground water from this allocation shall be limited to the following uses: domestic, livestock watering, irrigation commercial and replacement supply." Finally, the Determination states that the "total combined annual

withdrawal of the wells shall not exceed the allowed average annual amount described in this Order.”

5. Analysis: The combined allowed average annual amount of withdrawal for the entire 31 lots of the Reserve at Corral Bluffs preliminary plan is 15.5 acre-feet or 4,650 acre-feet total. There is a total water supply of 18.4 acre-feet from the Arapahoe aquifer alone. This proposal identifies that Filing No. 5 (lots 22 – 29 of the preliminary plan) will be supplied by Arapahoe aquifer water pursuant to Determination No. 516-BD. Based on the State Engineer’s analysis, there is sufficient water for this Filing No. 5 to be served by the Arapahoe aquifer.

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 Determination of Water Right No. 516-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 water quality.

REQUIREMENTS:

- A. The County requires that for subdivisions of 4 lots or more, the Applicant shall create a homeowners’ association (“HOA”). Applicant and its successors and assigns shall create restrictive covenants upon and running with the Property. The covenants shall advise and obligate future lot owners and their successors and assigns regarding all applicable requirements of Colorado Ground Water Commission Determination of Water Right No. 516-BD, including the 4% replacement requirements to be met by returning to the uppermost aquifer in the vicinity of the permitted points of withdrawal. The covenants shall also include their obligations to comply with the Determination and their responsibility for any metering and data collecting that may be required regarding water withdrawals from wells.
- B. 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 Declarations shall cross-reference Determination of Water Right No. 516-BD and shall recite the obligations of the individual lot owners, and shall reference the water conveyance requirements for each lot as described in paragraph B above.
- C. Applicant and their successors and assigns shall record all applicable documents including, but not limited to, Determination of Water Right No. 516-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.

The covenants shall address the following:

1) Identify the water rights associated with the Property. Applicant or its successors and assigns shall reserve in the covenants and in any deeds of the Property the decreed amount of at least 0.50 acre-feet per lot annually and shall reserve a total decreed amount of at least 4.0 acre-feet/year of Arapahoe aquifer water for the 8 lots in the subdivision for 300 years for a total of 1,200 acre-feet. 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 requirements. Applicant shall convey by recorded warranty deed these reserved Arapahoe aquifer water rights to the individual lot owners pursuant to Colorado Ground Water Commission Determination 516-BD. 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 Arapahoe aquifer underlying the lots to satisfy El Paso County's 300-year water supply requirement. Arapahoe aquifer requirements for each lot are as follows: 150 acre-feet for each lot (0.5 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 and replacement requirements during pumping for the respective lots. Applicant shall provide said covenants or other such reservation instrument and 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 of the subdivision plat.

2) 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 Colorado Ground Water Commission Determination 516-BD and the water rights 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."

3) 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 Arapahoe aquifer wells.

4) 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 Reserve at Corral Bluffs subdivision pursuant to Colorado Ground Water Commission Determination 516-BD. Further, written approval of the 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 Determination from the Colorado Ground Water Commission, with prior notice to the El Paso County Planning and Community Development for an opportunity for the County to participate in any such adjudication.”

5) The covenants shall address termination using the following language:

“These covenants shall not terminate unless the requirements of Colorado Ground Water Commission Determination 516-BD are also terminated by order of the Commission, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

6) 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. Applicant 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 Applicant and 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.”

- D. Prior to recording the final plat, Applicant shall upload to eDARP an updated Water Supply Information Summary ("WSIS") indicating water supply for Filing No. 5 will be provided by the Arapahoe aquifer pursuant to Colorado Ground Water Commission Determination 516-BD. Applicant shall also remove all inaccurate WSIS's from eDARP, including the letter dated September 1, 2020 indicating the subdivision will be supplied by both the Arapahoe and Denver aquifers.

CC. Ryan Howser, Planner II