

EL PASO COUNTY



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Silverado Ranch Subdivision

SF-18-011 Final Plat, Filing No. 1

Reviewed by: M. Cole Emmons, Senior Assistant County Attorney
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Note: The County Attorney's Office prepared a previous review for the Silverado Ranch Subdivision, encompassing a PUD Preliminary Plan Amendment and Final Plat for Filing 1 dated October 17, 2017. This review supersedes and replaces the October 17th review and analysis pertaining to the then-proposed PUD Preliminary Plan Amendment and Final Plat for Filing 1.

FINDINGS AND CONCLUSIONS:

1. This is a proposal by Silverado Ranch, Inc. ("Applicant") for a Final Plat to subdivide approximately 106 acres of land into 10 single-family lots, plus 3 open space tracts. This final plat is the first phase of the proposed 320 acre parcel encompassing 64 single-family homes. The property is zoned PUD.

2. The Applicant has provided for the source of water to come from individual on-lot wells via ground water from the Laramie-Fox Hills Aquifer. Applicant estimates its water demand for the 10 lots in Filing No. 1 at 4.0 acre-feet per year or 0.4 acre-feet per lot annually, including in-house use and irrigation of lawns and gardens. No resident horses are permitted in the subdivision; therefore, there is no accommodation for stock watering. In addition, no water supply is provided for the open space tracts. Based on the 4% replacement requirement of Colorado Ground Water Commission Determination of Water Rights Case No. 325-BD and an annual demand of 4.0 acre-feet for 10 lots, Applicant will have to provide an additional 0.16 acre-feet per year for replacement of 10 lots (or 0.016 acre-feet per lot based on a per lot demand of 0.4 acre-feet per year). Therefore, Applicant must provide a total supply of 1,248 acre-feet of water (4.16 acre-feet/yr. x 300 yrs.) to meet the County's 300-year water supply requirement.

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3. The water rights for this property were originally owned by Space Center, LLP pursuant to the Nontributary Ground Water Landownership Statement dated January 30, 2002, which water rights were adjudicated by the Colorado Ground Water Commission in Determination of Water Rights Case No. 325-BD in 2002. The water rights were subsequently transferred to Stan Searle via Special Warranty Deed on June 28, 2005, but did not specify that water rights were included. Mr. Searle subsequently obtained an Affidavit from the agent for Space Center, LLP affirming that “all water rights under Determination of Water Rights 325-BD for the Laramie-Fox Hills Aquifer, comprising 76.8 acre-feet” were included in the 2005 Deed. On November 4, 2016, Mr. Searle conveyed the subject property to Silverado Ranch, Inc., via a Quitclaim Deed. Unfortunately, that Quitclaim Deed was silent as to the water rights. In order to complete and clarify the chain of title for the water rights, Mr. Searle executed and had recorded on September 14, 2017, a Special Warranty Deed for all of the water and water rights in the Laramie-Fox Hills aquifer underlying the property as adjudicated in the Colorado Ground Water Commission Findings and Order in Determination No. 325-BD.

4. In a letter dated May 21, 2018, the Colorado Division of Water Resources State Engineer noted that the subdivision will be served by the not non-tributary Laramie-Fox Hills Aquifer in accordance with the Colorado Ground Water Commission Determination of Water Rights Case No. 325-BD (“Water Right 325-BD”). The State Engineer indicated that the allowed average annual amount of withdrawal provided for in Water Right 325-BD is 76.8 acre-feet from bedrock aquifer allocations from the Denver Basin as well as alluvial sources. This amount is reduced by one third due to El Paso County’s 300 year water supply requirement, resulting in an available supply of 25.6 acre-feet annually for the 64-lot subdivision (which equates to a supply of 4.0 acre-feet for the 10 lots in Filing 1).

With an annual water demand of 4.0 acre-feet for this Filing 1, the Engineer’s opinion is that there is a sufficient water supply to meet the County’s 300-year water supply requirement. Pursuant to C.R.S. § 30-28-136(1)(h)(I), the Engineer offered the opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights.

Note: While not mentioned by the State Engineer, a report provided by Curtis Wells & Co. dated May 4, 2007, notes that even though “the Laramie Fox Hills ground water is considered not non-tributary, no formal Commission issued replacement plan is needed.” **Notwithstanding, Water Right 325-BD provides “that at least four percent (4%) of the amount of water withdrawn annually must be returned to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal.”**

5. The water quality requirements of Section 8.4.7(10) of the Land Development Code must be satisfied.

6. Decree. The Determination of Water Rights in Case No. 325-BD was approved in the name of Space Center, LLP in 2002. The Commission determined there was 7,680 acre-feet of Laramie-Fox Hills Aquifer water available under the 320 acres of property, which resulted in a maximum annual appropriation or amount of water that can be withdrawn of 76.8 acre-feet based on the State's 100 year aquifer life requirement. As the State Engineer noted, this amount must be reduced to meet the County's 300-year rule, which results in a maximum annual appropriation of 25.6 acre-feet. The Commission required "at least four percent (4%) of the amount of water withdrawn annually must be returned to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal."

7. Analysis: The Colorado Ground Water Commission issued Determination of Water Rights No. 325-BD, which results in an available water supply of 76.8 acre-feet per year for 100 years or 25.6 acre-feet per year when reduced by one-third to meet the County's 300-year rule. With an annual supply available of 25.6 acre-feet, and an annual demand of 4.16 acre-feet (including 4% replacement) for the 10 lots of Filing 1, the quantity of the water supply appears to be sufficient to meet the County's 300-year aquifer life requirement.

8. Therefore, at this time, based upon the finding of no injury and sufficiency by the State Engineer, the Colorado Ground Water Commission Determination of Water Rights in Case No. 325-BD, and based on the requirements listed below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability for the Filing 1 Final Plat. The El Paso County Health Department shall provide an opinion as to quality.

REQUIREMENTS:

A. Applicants, their successors and assigns, shall create an HOA, and advise the HOA and all future owners of these lots of all applicable requirements of the Colorado Ground Water Commission's Determination of Water Right entered in Case No. 325-BD, as well as their obligations to comply with the Water Determination.

B. Applicants shall assign or convey to the HOA, Applicant's interests, rights, and obligations in Determination of Water Right No. 325-BD and shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owner(s) of this filing, their successors and assigns, and the HOA regarding all applicable requirements of the Determination of Water Right No. 325-BD. Such assignment or conveyance shall be accomplished by an appropriate agreement and assignment or conveyance instrument that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording final plats.

C. The restrictive covenants specifically shall advise the following (other conditions in the Decree also may be appropriate to state in the covenants):

1. Applicant's successors and assigns shall be advised that watering of horses or other stock watering is not allowed and no water is provided for such.
2. Applicant's successors and assigns, including the HOA, shall be advised of their obligation to return at least four percent (4%) of the amount of water withdrawn annually to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal. Based on the demand of 4.0 acre-feet per year for the 10 lots in Filing No. 1, an additional 0.16 acre-feet per year will have to be provided to meet the replacement requirement.
3. Applicant's successors and assigns shall be advised that the use of the ground water shall be limited to the following uses: domestic, irrigation, commercial and replacement supply as provided for in Determination of Water Right No. 325-BD.
4. Applicant's successors and assigns shall be advised of their responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to Determination of Water Right No. 325-BD.

D. Applicant, its successors and assigns, at the time of lot sales, shall convey by warranty deed to individual lot owners sufficient water rights in the Laramie-Fox Hills Aquifer underlying each lot to satisfy El Paso County's 300-year water supply requirement: 0.4 acre-feet annually and at least 120.0 acre-feet total for 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 water for the lot. Applicant shall provide a form warranty deed for review and approval to the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat.

E. If the HOA will be responsible for making the annual 4% replacement per Determination of Water Right No. 325-BD, then Applicant shall convey at least 48 acre-feet of Laramie-Fox Hills Aquifer water (0.16 acre-feet/yr. x 300 yrs.) to the HOA to make the replacements. If the individual lot owners will be responsible for making the annual 4% replacement per Determination of Water Right No. 325-BD, then Applicant shall convey an

additional 4.8 acre-feet of Laramie-Fox Hills Aquifer water (0.016 acre-feet/lot/yr. x 300 yrs.) to each lot for the lot owner to make the annual replacement. The covenants shall define the responsibility and allocation for make the annual replacements. In either case, the covenants and deeds shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for the purpose of replacement.

F. Applicant shall submit Declaration of Covenants, Conditions, and Restrictions as well as Bylaws and Articles of Incorporation of the HOA 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 Services Department and the County Attorney's Office prior to recording final plats. Said Declaration shall cross-reference Determination of Water Right No. 325-BD and shall recite the obligations of the individual lot owners and the HOA under each of these documents. Applicant shall provide a copy of the Certificate of Incorporation of the HOA by the Secretary of State to the Planning and Community Development Department and the County Attorney's Office.

G. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, the Determination of Water Rights in Case No. 325-BD, agreements, assignments, and warranty deeds regarding the water rights, Declaration of Covenants, By-laws, and Articles of Incorporation in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

H. 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 alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply."

cc: Kari Parsons, Project Manager/Planner II