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January 25, 2023

SP-21-6 Eagleview Preliminary Plan Reconsideration
Replat

Reviewed by: Lori L. Seago, Senior Assistant County Attorney
April Wilie, Paralegal

WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal for approval of a reconsideration of a Preliminary Plan for Eagleview Subdivision by PT Eagleview LLC (“Applicant”) for a 38-lot subdivision on a parcel of 121.21 acres of land (the “property”). The property is zoned RR-2.5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary (“WSIS”), the water demand for the subdivision is 17.86 acre-feet/year, comprised of 9.88 acre-feet/year for 38 single-family dwellings, 4.30 acre-feet/year for irrigation, and 3.68 acre-feet/year for watering of 4 horses. Based on this total demand, Applicant must be able to provide a supply of 5,358 acre-feet of water (17.86 acre-feet per year x 300 years) to meet the County’s 300-year water supply requirement.

Proposed Water Supply

3. The Applicant has provided for the source of water to derive from the not-nontributary Dawson aquifer as provided in the Determination of Water Right and Replacement Plan No. 746-BD (“Determination”). In the Determination, the Colorado Ground Water Commission approved the withdrawal of up to 53.7 acre-feet per year from the Dawson aquifer for a period of 100 years, subject to approval of a replacement plan. The Replacement Plan allows 38 wells, each of which may withdraw 0.47 acre-feet of groundwater for household use, the irrigation of up to 2,000 square feet of lawn and garden, and the watering of four domestic animals. The Replacement Plan covers

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diversions for a period of 300 years. The water rights under the Determination and Replacement Plan were granted to PT Eagleview, LLC, by Special Warranty Deed on December 30, 2022.

State Engineer's Office Opinion

4. In a letter dated November 22, 2022, the State Engineer stated that “[t]he Water Supply Information Summary, Form No. GWS-76, that was included with the referral materials indicates 17.86 acre-feet/year will be required to supply the development.... The proposed source of water is individual on-lot wells producing from the not-nontributary Dawson aquifer that will operate pursuant to the Determination of Water Rights No. 746-BD and Replacement plan 746-RP. The Replacement Plan allows 38 wells, each of which may withdraw 0.47 acre-feet of groundwater household use, the irrigation of up to 2,000 square-feet of lawn and garden, and the watering of four domestic animals. The Replacement Plan covers diversions for a period of 300 years.”

Finally, the State Engineer provided their opinion that “[p]ursuant to 30-28-136(1)(h)(II) C.R.S., it is the opinion of this office that the proposed water supply can be provided without causing injury to decreed water rights, and the supply is expected to be adequate.”

Recommended Findings

5. Quantity and Dependability. Applicant's water demand for the Eagleview Preliminary Plan Reconsideration is 17.86 acre-feet per year for a total demand of 5,358 acre-feet for the subdivision for 300 years. The Determination of Water Right No. 746-BD and allows for 38 wells limited to an annual withdrawal of 0.47 acre-feet for household use.

Based on the water demand of 17.86 acre-feet/year for the Eagleview Preliminary Plan Reconsideration and the Determination of Water Rights and Replacement Plan permitting withdrawals in that amount, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for the Eagleview Preliminary Plan Reconsideration.

6. The water quality requirements of Section 8.4.7.B.10.g. of the El Paso County Land Development Code must be satisfied. **El Paso County Public Health shall provide a recommendation as to the sufficiency of water quality.**

7. Basis. The County Attorney's Office reviewed the following documents in preparing this review: a *Water Resources Report* August 2022, including the Water Supply Information Summary dated August 24, 2022, the State Engineer's Office Opinion dated November 22, 2022, and Colorado Ground Water Commission Findings and Order No. 746-BD entered on July 8, 2005; and Determination Nos. 471-BD, 470-BD, and 469-BD entered on April 22, 2004. The recommendations herein are based on the information contained in such documents and on compliance with the requirements set forth below. ***Should the information relied upon be found to be incorrect, or should the below requirements not be met, the County Attorney's Office reserves the right to amend or withdraw its recommendations.***

REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with all requirements of the Colorado Ground Water Commission Determination and Replacement Plan No. 746-BD, specifically, that water withdrawn from the aquifer by each of the proposed thirty-eight wells permitted shall not exceed 0.47 annual acre-feet based on a total combined annual withdrawal of 17.86 acre-feet. Depletions shall be replaced by individual on-lot non-evaporative septic systems.

B. The County requires that when there is an augmentation/replacement plan, Applicant create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water decrees and augmentation plans for the property.

C. Applicant shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision, their successors and assigns, and the HOA regarding all applicable requirements of the Colorado Ground Water Commission Determination and Replacement Plan No. 746-BD.

Covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 5,358 acre-feet of Dawson aquifer water pursuant to Colorado Ground Water Commission Determination and Replacement Plan No. 746-BD to satisfy El Paso County's 300-year water supply requirement for the 38 lots of the Eagleview Subdivision. The Covenants shall further identify that 141 acre-feet (0.47 AF/year) of Dawson aquifer water is allocated to each lot. Said reservations shall not be separated from transfer of title to the property and shall be used exclusively for primary water supply.

2) Advise of responsibility for costs. The Covenants shall advise the HOA, lot owners, and their successors and assigns of their obligations regarding the costs of operating the plans for augmentation, which include pumping of the Dawson wells in a manner to replace depletions during pumping.

3) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use a non-evaporative septic system to ensure that return flows from such systems are made to the stream system to replace actual 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 in the subdivision 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. 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.”

4) Address future lot conveyances. 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 Determination and Replacement Plan No. 746-BD 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.”

5) Advise of monitoring requirements. The Covenants shall advise the HOA, 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 existing and future wells in the Dawson aquifers.

6) Require well permits. The Covenants shall Require that well permits be obtained pursuant to the requirements of Determination and Replacement Plan No. 746-BD and C.R.S. § 37-90-137(4) and (10).

7) Address amendments to the covenants. 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 Eagleview Subdivision pursuant to Determination and Replacement Plan No. 746-BD. 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 the Colorado Ground Water Commission 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 determination.”

8) Address termination of the covenants. The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of Determination and Replacement Plan No. 746-BD are also terminated by the Colorado Ground Water Commission and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

D. Applicant and its successors and assigns shall reserve in any deeds of the Property Dawson aquifer water in the decreed amount of 141 acre-feet (0.47 acre-feet per year) per lot. 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.

E. Applicant and its successors and assigns shall convey by recorded warranty deed these reserved Dawson aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson aquifer underlying the respective lots to satisfy El Paso County’s 300-year water supply requirement.

Any and all conveyance instruments shall also 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 water supply, and replacement during pumping, for each of the lots of the Eagleview 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.”

F. Applicant and its successors and assigns shall submit a Declaration of Covenants, Conditions, and Restrictions, form deeds, 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 Determination and Replacement Plan No. 746-BD and shall identify the obligations of the individual lot owners thereunder.

G. Applicant and its successors and assigns shall record all applicable documents, including, but not limited to, Determination and Replacement Plan No. 746-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.

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. 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 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."

I. Prior to recording the final plat:

- 1) Record Determination and Replacement Plan 746-BD in the El Paso County Clerk and Recorder's Office.
- 2) Upload into eDARP the Certificate of Incorporation or other comparable proof of formation of a homeowner's association from the Colorado Secretary of State.

cc: Ryan Howser, Project Manager, Planner III