

EL PASO COUNTY



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SP-18-001 Rollin Ridge Estates
(Preliminary Plan)

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

1. This is a proposal by TC&C, LLC, Carl Turse, Managing Member ("Applicant") for approval of a preliminary plan to subdivide approximately 57 acres of land into 16 single family residential lots, plus 1 tract for future commercial development. The property is currently zoned RR-5 (Rural Residential) with a concurrent proposal to change zoning to RR-2.5 (Rural Residential) on 48.84 acres and PUD (Planned Unit Development) on 8.17 acres

2. The Applicant has provided for the source of water to derive from individual on-lot wells withdrawing from the not nontributary Dawson aquifer, pursuant to the groundwater decreed in Case No. 08CW164 (Division No. 1). Pursuant to the Water Supply Information Summary and correspondence from Petrock & Fendel, P.C., the Applicant estimates its annual water requirements for 16 lots as follows: household use and irrigation at 8.8 acre-feet per year total (0.35 acre-feet/lot for in-house use, plus 0.2 acre-feet/lot for irrigation). Applicant also estimates its annual water requirements for the commercial tract at 4.4 acre-feet per year total (4.0 acre-feet for in-building commercial use and 0.4 acre-feet for irrigation) for a total water demand of 13.20 acre-feet for the subdivision. Applicant will need to provide a supply of 3,960 acre-feet of water (13.20 acre-feet /year x 300 years) to meet the County's 300 year water supply requirement.

3. In a letter dated March 21, 2018, the State Engineer's Office reviewed the proposed water supply for this preliminary plan. The State Engineer's Office indicates that the proposed source of water for the subdivision is the Denver Basin with the water

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supply withdrawing from the Dawson aquifer operating pursuant to the plan for augmentation decreed in Consolidated Water Court Case Nos. 2017CW3076 (Division No. 1) and 2017CW3027 (Division No. 2) (“Decree”). The following chart delineates the available water supply pursuant to the groundwater decreed in Case No. 08CW164.

Aquifer	Annual amount available for the 57 acre parcel	
	100 year allocation	300 year allocation
Dawson (NNT)	44.34 a/f	14.78 a/f
Denver (NNT)	54.82 a/f	18.27 a/f
Arapahoe (NT)	22.72 a/f	7.57 a/f
Laramie–Fox Hills (NT)	16.99 a/f	5.66 a/f

The Engineer noted that the “decreed augmentation plan in Division 1 Water Court Case no. 17CW3076 allows for the annual withdrawal of 13.2 acre-feet from the not nontributary Dawson aquifer for 16 individual lots, based on a 300 year allocation approach. The augmentation plan states the ground water allocation for each residential lot is 0.55 acre-feet per year for 300 years ... and 4.4 acre-feet shall be used for in building commercial use ... and irrigation....” The Engineer notes further that “there are two existing wells on the property identified as well permit nos. 81767-F and 81768-F” operating pursuant to the augmentation plan. The existing wells “may withdraw 0.55 acre-foot/year for ordinary household purposes inside one single family dwelling and the irrigation of not more than 3,500 square-feet of home lawns, gardens and trees.” The Engineer also advised that applications for permits submitted by “entities other than the water court Applicants must include evidence that the Applicant has acquired the right to the portion of the water being requested on the application.”

Finally, pursuant to C.R.S. § 30-28-136(1)(h)(I) and (II), the State Engineer’s Office stated that “it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights.”

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

5. Plan for Augmentation. The Decree in Consolidated Water Court Case Nos. 2017CW3076 (Division No. 1) and 2017CW3027 (Division No. 2) provides a plan for augmentation permitting the withdrawal of 13.20 acre-feet per year for over 300 years and no more than 3,960 acre-feet total of not nontributary Dawson aquifer groundwater. Water to be used for augmentation are return flows from the not nontributary Dawson aquifer.

The Decree requires the Applicant, its successors and assigns, to reserve and dedicate to the plan for augmentation, 2,272 acre-feet of nontributary Arapahoe aquifer groundwater and 1,699 acre-feet of nontributary Laramie-Fox Hills aquifer groundwater for the purpose of replacing post-pumping depletions.

The Court ruled that withdrawal of up to 13.2 acre-feet per year and no more than 3,960 acre-feet total from the Dawson aquifer will not result in material injury to vested water rights pursuant to the provisions of the decreed plan for augmentation.

6. Analysis. The Court decreed a permitted withdrawal of 13.2 acre-feet of water annually for 300 years for a total of 3,960 acre-feet from the Dawson aquifer which can be withdrawn to serve 16 residential lots and a commercial tract through individual wells, including two existing Dawson aquifer wells. The 16 lots in this subdivision will use 8.8 acre-feet/year total (2,640 acre-feet total for 300 years) and the commercial tract will use 4.4 acre-feet/year total (1,320 acre-feet total for 300 years). With a total available supply of Dawson aquifer water of 14.78 acre-feet of water per year (4,434 acre-feet total for 300 years) and based on the foregoing, there should be sufficient supply to meet the County's 300 year water supply rule.

7. Therefore, at this time, based on the finding of no injury and sufficiency by the State Engineer, the decreed water rights and plan for augmentation in Consolidated Water Court Case Nos. 2017CW3076 (Division No. 1) and 2017CW3027 (Division No. 2), 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. The El Paso County Health Department shall make a finding as to water quality.

REQUIREMENTS:

Plat Notes and Documentation are required to address the following:

A. Applicant, its successors and assigns, shall create an HOA and advise the HOA and all future owners of these lots of all applicable requirements of the Decree entered in Consolidated Water Court Case Nos. 2017CW3076 (Division No. 1) and 2017CW3027 (Division No. 2), as well as their obligations to comply with the Decree and plan for augmentation, including but not limited to costs of operating the plan for augmentation, which will include the costs for construction and pumping of the Dawson wells and pumping of the Arapahoe and Laramie-Fox Hills aquifer wells to replace post-pumping depletions, and the responsibility for metering and collecting data regarding water withdrawals from said wells.

B. Applicant shall also assign or convey to the HOA, Applicant's interests, rights, and obligations in 2,272 acre-feet of nontributary Arapahoe aquifer groundwater and 1,699 acre-feet of nontributary Laramie-Fox Hills aquifer groundwater to be used for post-pumping depletions. Applicant shall create restrictive covenants upon and running with the property which shall obligate individual lot owners and the HOA to carry out the requirements of the plan for augmentation. 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 of the final plat.

C. Applicant shall require non-evaporative septic systems to replace depletions during 300 years of pumping from the Dawson aquifer.

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 underlying Dawson aquifer to satisfy El Paso County's 300 year water supply requirement: 165 acre-feet total for each of the 16 lots and 1,320 acre-feet total for the commercial tract, as well as sufficient water rights in the Arapahoe and Laramie-Fox Hills aquifers to accommodate post-pumping depletions. Said Deed shall provide that the water rights shall be appurtenant to the land, to be used for the benefit of the lot owner, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered. It is anticipated that these conveyances will satisfy the State Engineer's evidentiary requirement that an applicant for an individual on-lot well has acquired the right to the portion of water being requested on the application. Applicant shall provide a form deed for such conveyance 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 final plat.

E. Applicant shall submit a 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 Development Department and the County Attorney's Office prior to recording of the final plat. Said Declaration shall cross-reference the decreed plan for augmentation and the related water rights decrees, 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 prior to recording of the final plat.

F. Applicant, its successors and assigns, shall record all applicable documents including, but not limited to, the Decree and plan for augmentation in Consolidated Water Court Case Nos. 2017CW3076 (Division No. 1) and 2017CW3027 (Division No. 2), 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.

G. 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 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.”

cc: Gabe Sevigny, Planner I