

EL PASO COUNTY



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SF-21-21 Retreat at TimberRidge Filing No. 2
Final Plat

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WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal by TimberRidge Development Group, LLC ("Applicant") for a subdivision of 90 single-family lots, plus 3 tracts for open space, drainage, utilities, and trails on 75.829 acres ("Property"). Seventy-eight lots ("urban lots") will be a minimum of 12,000 square feet in size and 12 lots ("rural lots") will be 2.5 acres in size. The property is zoned PUD (Planned Unit Development).

Estimated Water Demand

2. Urban Lots (78 lots). Pursuant to the Water Supply Information Summary ("WSIS"), the water demand is 0.353 acre-feet per residential lot for a total of 27.53 acre-feet/year for the 78 urban lots. Based on the total demand, Applicant must be able to provide a supply of 8,259 acre-feet of water (27.53 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement for the 78 urban lots.

3. Rural Lots (12 lots). Pursuant to the WSIS, the water demand is 0.32 acre-feet per residential lot for a total of 3.84 acre-feet/year for the 12 rural lots. Based on the total demand, Applicant must be able to provide a supply of 1,152 acre-feet of water (3.84 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement for the 12 rural lots.

Proposed Water Supply

4. Urban Lots. The source of water for the 78 urban lots will be supplied by the Sterling Ranch Metropolitan District No. 1 ("District"). The District President provided a letter dated April 1, 2021, committing to serve "the urban lot water and wastewater needs of 78 lots in the Retreat at

TimberRidge Filing No. 2 of 27.52 Acre-Feet of annual water supply.” The District President further stated that their system includes “water rights sufficient to supply the needs of the urban lots within the proposed Retreat at TimberRidge residential development.” The District’s water supply originates from the Arapahoe and Laramie-Fox Hills aquifer wells through the following decrees granted in District Court Water Division 2:

Decree	Annual Allocation (acre-feet) 300 years
86CW18	191.67 acre-feet
86CW19	179.67 acre-feet
08CW113	0.13 acre-feet

Applicant provided a *Water Resources Report for Retreat at TimberRidge Filing No. 2* dated April 2021 by JDS-Hydro (“*Report*”). The *Report* notes that the water supply for the subdivision would be met using Arapahoe and Laramie-Fox Hills aquifer wells. Further, the District’s water is supplied through an agreement between the District and The Retreat Metropolitan District dated December 3, 2020.

5. **Rural Lots.** The source of water for the 12 rural lots will derive from individual on-lot wells, as adjudicated in District Court Water Division 2 Case No. 17CW3002 dated May 31, 2017 concerning a 225.97-acre parcel which includes the 75.829 acres of this filing. The Court approved the Augmentation Plan in Case No. 18CW3002 dated August 9, 2018. The Augmentation Plan allows diversion of 9.32 acre-feet/year from the Dawson aquifer for a period of 300 years from Timber Ridge Wells Nos. 1 through 29, which includes the 12 rural lots of this subdivision. Each well may pump up to 0.32 acre-feet of water per year. The 0.32 acre-feet includes 0.26 acre-feet for each residence with additional pumping available for landscape irrigation, stock watering or other beneficial uses. The Augmentation Plan requires the use of septic return flows for replacement water through the installation and use of a septic system on each residential lot which has a Dawson aquifer well. The Applicant must also reserve up to 2,796 of Laramie-Fox Hills aquifer water to replace post-pumping depletions for the subdivision.

Applicant intends to convey the Dawson Aquifer water to The Retreat Metropolitan District No. 1 (RMD) and, in turn, RMD will issue a Water Certificate to the owner of each lot for the purpose of obtaining a well permit from the State Engineer’s Office. Applicant also intends to convey the Laramie-Fox Hills water needed to replace post-pumping depletions to RMD.

State Engineer’s Office Opinion

6. In a letter dated June 9, 2021, the State Engineer reviewed the proposal to subdivide the 75.829-acre parcel into 90 lots. The State Engineer identified that water for 12 of the lots would be supplied by individual on-lot wells and water for 78 lots will be supplied by “the proposed TimberRidge Metropolitan District via an IGA with the Sterling Ranch Metropolitan

District using the SRMD Well Site #1” The Engineer reviewed the WSIS and noted that the water demand for the 12 lots using individual wells would be 0.32 acre-feet/year/lot and the water demand for the 78 lots on the central water system would be 0.353 acre-feet/year/lot for a total of 31.50 acre-feet/subdivision.¹ The State Engineer cites that the water adjudicated in Case No. 17CW3002 includes 40.7 acre-feet/year from the Dawson aquifer for the 225.97-acre property that includes the 75.829-acre property in this proposal. The Augmentation Plan allows withdrawal of 9.32 acre-feet/year based on water demand of 0.32 acre-feet/lot. The State Engineer further states that the District has “58.95 acre-feet per year of obligation to deliver for the proposed development ... The Preliminary Plan estimated a demand of 57.89 acre-feet per year, of which 20.827 acre-feet/year is committed in Filing 1, and 31.05² acre-feet/year is committed in Filing 2, the subject of this submittal.”

Finally, the State Engineer stated that “[b]ased upon the above, and pursuant to CRS 30-28-136(1)(h)(l), it is our opinion that the proposed water supply can be provided without causing material injury to decreed water rights, and is adequate, so long as the plan for augmentation is operated according to its decreed terms and conditions.”

Recommended Findings

7. **Quantity and Dependability.** Applicant’s water demand for Retreat at TimberRidge Filing 2 is 31.37 acre-feet per year for a total demand of 9,411 acre-feet for the subdivision for 300 years.

- The water demand for the 78 “urban lots” will be met pursuant to the agreement between the Sterling Ranch Metropolitan District and The Retreat Metropolitan District and will include a water supply of 0.353 acre-feet/lot totaling 27.52 acre-feet/year for the 78 lots (8,256 acre-feet for 300 years).
- The water demand for the 12 “rural lots” will be met by individual on-lot wells pursuant to the Decree (17CW3002) and Augmentation Plan (18CW3002) which allows withdrawal from the Dawson aquifer in the amount of 0.32 acre-feet/lot totaling 3.84 acre-feet/year for the 12 lots (1,152 acre-feet for 300 years).

Based on the water demand of 31.37 acre-feet/year for Retreat at TimberRidge Filing No. 2 and the commitment from the District and the Decree and Augmentation Plan permitting withdrawals in that amount, the County Attorney’s Office recommends a finding of sufficient water quantity and dependability for Retreat at TimberRidge Filing No. 2.

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

¹ The State Engineer cites the subdivision water demand in various places as 31.50 acre-feet and 31.05 acre-feet. The correct water demand is 31.37 acre-feet/subdivision.

² See footnote 1.

9. Basis. The County Attorney's Office reviewed the following documents in preparing this review: the Water Supply Information Summary provided October 28, 2021, the *Water Resources Report* dated April 2021, the State Engineer Office's Opinion dated June 9, 2021, the commitment letter from the Sterling Ranch Metropolitan District dated April 1, 2021, and District Court Water Division Case Nos. 17CW3002 (Decree) and 18CW3002 (Augmentation Plan). 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. Prior to final plat recording, applicant shall upload the following documents to eDARP:

- 1) an updated WSIS that indicates under item no. 10 that new wells will be established in the Dawson aquifer for the 12 rural lots
- 2) the recorded quitclaim deed for water rights between Arroya Investments and Timber Ridge Development Group, recorded on February, 25, 2019
- 3) the IGA between RMD and SRMD dated November 6, 2020
- 4) the recorded quitclaim deed for water rights between RMD and SRMD dated November 23, 2020
- 5) the recorded quitclaim deed for water rights between Timber Ridge Development Group and RMD
- 6) an updated letter from the State Engineer's Office correcting the total water demand for the subdivision

B. Applicant and its successors and assigns shall comply with Division 2 Water Court Case Nos. 17CW3002 and 18CW3002 ("Decree" and "Augmentation Plan" respectively). Water use shall not exceed 0.32 acre-feet annually per well for the 12 "rural lots", and all stream depletions shall be replaced with non-evaporative septic system return flows for a period of 300 years.

C. Applicant has conveyed Dawson Aquifer water to RMD to own and, in turn, RMD will issue a Water Certificate to the owner of each lot who can then use the Certificate to obtain a well permit from the State Engineer's Office to drill an on-lot well for their primary supply of water. The Certificate will entitle the owner of each lot to withdraw an average annual amount of 0.32 acre-feet per year of Dawson Aquifer groundwater or a total of approximately 96 acre-feet for a 300-year supply. Applicant shall provide a form Water Certificate that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the plat for the subdivision.

D. Applicant and its successors and assigns shall create restrictive covenants upon and running with the property which shall advise and obligate RMD and future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of Division

2 Water Court Case Nos. 17CW3002 and 18CW3002.

The covenants shall specifically address the following:

1) Advise of responsibility for costs. The Covenants shall advise lot owners and their successors and assigns of their obligations regarding the costs of compliance with the Decree and Augmentation Plan, which include pumping of Dawson aquifer wells in a manner to replace depletions during pumping and Laramie-Fox Hills aquifer wells to replace post-pumping depletions.

2) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each residential lot owner to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping, shall reserve said return flows to replace depletions during pumping, and shall state that said return flows shall not be separately sold, traded or used for any other purpose. The Covenants more specifically shall require the Dawson aquifer well on each lot to be serving an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. 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."

3) Advise of monitoring requirements. 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 Dawson and Laramie-Fox Hills aquifer wells.

4) 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 Retreat at TimberRidge Filing No. 2 pursuant to Division 2 Water Court Case Nos. 17CW3002 and 18CW3002. 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 Decree from the Colorado Division 2 Water Court 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 adjudication."

5) 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 Division 2 Water Court Case Nos. 17CW3002 and 18CW3002 are also terminated by order of the Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

E. Applicant and its successors and assigns shall submit 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 Division 2 Water Court Case Nos. 17CW3002 and 18CW3002 and shall identify the obligations of the individual lot owners thereunder.

F. Applicant and its successors and assigns shall record all applicable documents, including, but not limited to, Division 2 Water Court Case Nos. 17CW3002 and 18CW3002, and any assignments thereof, any warranty deeds regarding the water rights, and the Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

G. Applicant and/or lot owners must obtain well permits pursuant to Division 2 Water Court Case Nos. 17CW3002 and 18CW3002.

H. Applicant and its successors and assigns and all future owners of lots within this filing shall be advised of, and comply with, any conditions, rules, regulations, limitations, and specifications set by the Sterling Ranch Metropolitan District No. 1 for the 78 “urban lots” in this subdivision.

I. Applicant shall add the following two plat notes to the face of the plat:

Individual wells for Lots 1-12 are the responsibility of each property owner. Permits for individual domestic wells must be obtained from the state engineer who by law has the authority to set conditions for the issuance of these permits.

Water rights available to serve individual wells on Lots 1-12 shall be owned by The Retreat Metropolitan District No. 1 and not the property owners. Each property owner must obtain a Water Certificate from the District granting the right to withdraw the water to support well permit applications.

J. 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.”

cc: Kari Parsons, Planner III