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August 22, 2023

SP-22-7 Retreat at TimberRidge Filing No. 3
Final Plat

Reviewed by: Lori Seago, Senior Assistant County Attorney
April Willie, Paralegal

WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a Final Plat proposal by TimberRidge Development Group LLC (“Applicant”), to subdivide an approximately 44.578 +/- acre tract of land into 33 single-family lots (“Property”). The subdivision is comprised of 3 lots that will utilize individual wells and 30 lots served by a central water system. The property is zoned PUD (Planned Unit Development).

Estimated Water Demand

2. The Applicant has provided for the source of water for Lots 1-3 to derive from individual wells. As described in the *Water Supply Information Summary* (“WSIS”), the Applicant estimates its annual water requirements to serve 3 single-family lots at 0.96 acre-feet annually (0.32 acre-feet per lot). The Applicant would need to provide a supply of 288 acre-feet of water (0.96 acre-feet/year x 300 years) to meet El Paso County’s 300-year water supply requirement.

The Applicant has provided for the source of water for Lots 4-33 to derive from a central water system – Falcon Area Water & Wastewater Authority (“FAWWA or Authority”). As described in the WSIS the Applicant estimates its annual water requirements to serve 30 single-family lots at 10.59 acre-feet annually (0.353 acre-feet per lot). The applicant will need to provide a supply of 3,177 acre-feet of water (10.59 acre-feet/year x 300 years) to meet El Paso County’s 300-year water supply requirement.

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Proposed Water Supply

3. The Applicant has provided for the source of water for 30 lots (Lots 4-33) to derive from FAWWA. The Authority was recently created to serve Sterling Ranch and The Retreat at TimberRidge, previously served by Sterling Ranch Metropolitan District. The *Water Resources Report* (“Report”) indicates the Authority’s water supply is sourced from a variety of water rights, including on-site water from non-tributary and not non-tributary Denver, Arapahoe and Laramie-Fox Hills aquifer wells pursuant to the Water Decree in 20CW3059 and on-site rights at the Retreat at Timber Ridge. The *Report* indicates that the current total water commitment for FAWWA is currently at 900.76 annual acre-feet/300 years which includes active water commitments current through May 31, 2023. The current available water supply for FAWWA is now 1,930.03 annual acre-feet/300 years.

4. The Authority provided a letter of commitment for Retreat at TimberRidge Filing No. 3 dated May 15, 2023, in which FAWWA committed to providing water service for the 30 single family lots, for an annual water requirement of 10.59 acre-feet/year.

5. For the rural lots (Lots 1-3), the anticipated source of water is to be provided by on-lot wells producing from the Dawson aquifer that will operate pursuant to augmentation plans as provided in Findings of Fact, Conclusions of Law, Ruling of Referee and Decree Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Division 2 Water Court Case Nos. 18CW3002 (“Case No. 18CW3002” or “Decree” or “Augmentation Plan”). The augmentation plan decreed by the Division 2 Water Court in Case No. 18CW3002 uses water adjudicated in Case No. 17CW3002. The Applicant estimates its annual water requirements to serve 3 single-family lots at 0.96 acre-feet annually (0.32 acre-feet per lot). The Applicant would need to provide a supply of 288 acre-feet of water (0.96 acre-feet/year x 300 years) to meet El Paso County’s 300-year water supply requirement.

The Property is a portion of a larger parcel subject to the decree issued by District Court Water Division 2 in 17CW3002. The following allocations were decreed for the larger parcel in that case:

| | |
|---------------------------|-----------|
| Dawson Aquifer | 12,202 AF |
| Denver Aquifer | 11,909 AF |
| Arapahoe Aquifer | 9,796 AF |
| Laramie-Fox Hills Aquifer | 6,440 AF |

In 18CW3002, the Water Court authorized the use of Dawson Aquifer water decreed in 17CW3002 and approved an augmentation plan therefor. The Decree approves 29 wells for the identified property, a portion of which includes the proposed 3 lots at issue here. The Decree authorizes each well to pump up to 0.32 acre-feet/year, for a total annual withdrawal from the Dawson Aquifer of 9.32 acre-feet for all 29 wells. Depletions during pumping will be replaced by residential return flows from non-evaporative septic systems. The Decree further requires that

2,796 acre-feet of water in the Laramie-Fox Hills Aquifer be reserved to provide for replacement of injurious post-pumping depletions.

Based upon the Decree in 18CW3002, Applicant must provide a supply of 288 acre-feet of water from the Dawson Aquifer (.32 acre-feet/lot x 3 lots x 300 years) for the 3 lots to be served by individual wells.

State Engineer's Office Opinion

6. In a letter dated January 10, 2023, the State Engineer's Office reviewed the application to subdivide the 44.578 +/- acres into 33 single-family lots. The proposed supply of water to the subdivision for 30 lots (Lots 4-33) will be served by FAWWA.

For the rural lots (Lots 1-3) the water is to be provided by on-lot wells producing from the Dawson aquifer pursuant to augmentation plans decreed by Division 2 Water Court.

Further, the State Engineer provided their opinion that “. . . pursuant to C.R.S. 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.”

Recommended Findings

7. Quantity and Dependability. Applicant's water demand for Lots 1-3 is 0.96 acre-feet per year for a total demand of 288 acre-feet for the 3 lots for 300 years. The Decree and Augmentation Plan in Case No. 18CW3002 permits withdrawal from the Dawson Aquifer of 9.32 acre-feet for all 29 wells which includes these lots.

Applicant's water demand for Lots 4-33 is 10.59 acre-feet per year for a total demand of 3,177 acre-feet for the subdivision for 300 years, to be supplied by FAWWA. **Based on the Authority's available water supply of approximately 1029.40 annual acre-feet, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for the Retreat at TimberRidge Filing No. 3.**

8. Quality. 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 for the 3 lots on wells.** Section 8.4.7(B)(10)(g) of the Code allows for a presumption of water quality when water is supplied from an existing Community Water Supply operating in conformance with the Colorado Primary Drinking Water Regulations unless there is evidence to the contrary. **This presumption applies to the 30 lots being served by FAWWA.**

9. Basis. The County Attorney's Office reviewed the following documents in preparing this review: the *Water Supply Information Summary*, the *Water Resources Report* dated May 2023, the *Falcon Area Water & Wastewater Authority* letter dated May 15, 2023, and the *State*

Engineer Office's Opinion dated January 10, 2023. 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:

Applicable to Lots 1-3

A. Applicant and its successors and assigns shall comply with all requirements of the Decree and Augmentation Plan in Case Nos. 18CW3002 and 17CW3002, specifically that water use shall not exceed 0.32 acre-feet/year annually for the 3 lots for a period of 300 years. Stream depletions shall be replaced by residential return flows from non-evaporative septic systems.

B. Applicant shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of the Decree and Augmentation Plan in Case Nos. 18CW3002 and 17CW3002.

Covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 288 acre-feet of Dawson aquifer water, 96 acre-feet per lot, pursuant to Case No. 18CW3002 to satisfy El Paso County's 300-year water supply requirement for Lots 1-3 of the Retreat at TimberRidge Filing No. 3. Said reservations shall not be separated from transfer of title to the property and shall be used exclusively for primary water supply. The Covenants must also reserve 289.23acre-feet in the nontributary Laramie-Fox Hills aquifer, 96.41 acre-feet per lot, to replace post-pumping depletions.

2) Advise of responsibility for costs. The Covenants shall advise the 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 and the cost of drilling Laramie-Fox Hills aquifer wells in the future to replace post-pumping depletions.

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 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 Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 2 Case No. 18CW3002 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 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 and Laramie-Fox Hills aquifers.

6) Require well permits. The Covenants shall require that well permits be obtained pursuant to the requirements of Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 2 Case No. 18CW3002 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 Retreat at TimberRidge Filing No. 3 Subdivision pursuant to the plan for augmentation in District Court Water Division 2, Case No. 18CW3002. 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 a Determination from the 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.”

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 the plan for augmentation in District Court Water Division 2, Case No. 18CW3002, are also terminated by order of the Division 2 Water Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

C. Applicant and its successors and assigns shall reserve in any deeds of the Property Dawson aquifer water in the decreed amount of 96 acre-feet (0.32 acre-feet per year) for each of the three lots individually. 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.

D. 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 Retreat at TimberRidge Filing No. 3. 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.”

E. Applicant shall convey by recorded warranty deed the reserved 96.41 per lot acre-feet of water in the Laramie-Fox Hills aquifer water rights allocated for use in the augmentation plan to replace post-pumping depletions. Applicant shall recite in the deed that this water shall be used exclusively for augmentation supply and shall not be sold, conveyed, traded, bartered, assigned, or encumbered in whole or in part for any other purpose.

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 Findings of Fact, Conclusions of Law, Ruling of the Referee and Judgment and Decree in Division 2 Case No. 18CW3002 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, Case No. 18CW3002, 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."

Applicable to Lots 4-33

I. Applicant and all future owners of lots within this filing shall be advised of and comply with the conditions, rules, regulations, limitations, and specifications set by the District.

cc: Kari Parsons, Senior Planner