

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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Pine View Estates  
SP-20-4 Preliminary Plan

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

1. This is a preliminary plan proposal by Alice Owens ("Applicant") for a subdivision of 7 single-family lots on 38.8 acres of land (the "Property"). The Property is zoned RR-5 (Rural Residential).

2. The Applicant has provided for the source of water to derive from individual on-lot wells as provided in the Findings and Order No. 1588-BD approved by the Colorado Ground Water Commission dated May 20, 2008 ("Determination"). On January 24, 2020, the Commission approved the Replacement Plan – Determination of Water Right No. 1588-BD ("Replacement Plan") for the subdivision. The Replacement Plan allows 3.36 acre-feet per year of ground water to be withdrawn from the Dawson aquifer for a period of 300 years through 7 wells located on 7 single-family lots. Pursuant to the Water Supply Information Summary ("WSIS"), the water demand is 0.25 acre-feet for each lot for household use and 0.23 acre-feet for irrigation and stock watering for a total of 0.48 acre-feet of water demand for each lot for a total of 3.36 acre-feet per year for the subdivision. Based on the total demand of 3.36 acre-feet per year for the subdivision, Applicant must provide a water supply of 1,008 acre-feet (3.36 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement.

3. In a letter dated September 23, 2020, the State Engineer reviewed the submittal to subdivide the 38.8 acre parcel into a 7-lot subdivision. The Engineer stated that the "water supply is individual on-lot wells producing from the not-nontributary (actual replacement) Dawson aquifer pursuant to the Replacement Plan for Determination of Water Right No. 1588-BD." The State Engineer further states that the Replacement Plan "allows for the withdrawal of 3.36 acre-feet per year of ground water from the Dawson aquifer for 300 years, through seven wells to be located on seven residential lots on 38.8 acres which is the subject property of this referral. Each well may withdraw 0.48 acre-feet per year of groundwater to be used for use in

one single family dwelling, irrigation, stock watering, commercial and replacement. These allowed uses are consistent with the proposed uses specified in the Water Supply Report.”

The State Engineer noted that the amount of withdrawal of 3.36 acre-feet per year permitted by the Replacement Plan “is sufficient to supply the requirement of 3.36 acre-feet/year” for the Pine View Estates subdivision. The State Engineer acknowledged the existence of several other water determinations referenced in Applicant’s *Water Resources Report for the Owens Subdivision, dated December 2019*, as prepared by JDS-Hydro (“*Water Resources Report*”). Those determinations include Nos. 1587-BD, 1586-BD, and 1585-BD; however, since those water rights are not identified as sources of water for this subdivision, they are not analyzed further in either the State Engineer’s letter or in this review.

Finally, the State Engineer stated that “[b]ased upon the above and pursuant to Section 30-28-136(1)(h)(II), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights.”

4. Determination of Water Right No. 1588-BD. The Colorado Ground Water Commission approved the Determination of Water Right in the Dawson aquifer on May 20, 2008, which quantified an amount of water from beneath 74.5 acres of overlying land. The quantity of water in the aquifer underlying the 74.5 acres of land is 2,235 acre-feet or 22.4 acre-feet/year for a period of 100 years. This amount was reduced to 19.4 acre-feet due to withdrawal by a small capacity well (Permit No. 260301). As described in the *Water Resources Report*, the Applicant sold approximately 35.7 acres of the original 74.5 acres as noted in the Special Warranty Deed dated May 18, 2018, thus leaving a total of 38.8 acres for the Pine View Estates Subdivision.<sup>1</sup> The remaining Dawson aquifer water supply available to Applicant was 1,011 acre-feet. The beneficial uses permitted by the Determination are: domestic, stock watering, irrigation, commercial and replacement.

5. Replacement Plan – Determination of Water Right No. 1588-BD. On January 24, 2020, the Commission approved the Replacement Plan – Determination of Water Right No. 1588-BD, which referred to the earlier Determination permitting withdrawal of 19.4 acre-feet for a period of 100 years. As noted above, the Applicant sold approximately 35.7 acres of the original 74.5 acres and the water supply was reduced proportionally. Based on the reduced acreage, the Replacement Plan permits 3.36 acre-feet of withdrawal per year of water for the subdivision or 0.48 acre-feet for use in 1 single family dwelling, irrigation, stock watering, commercial, and replacement for each of 7 wells located on 7 lots on the parcel of 38.8 acres. The source of the replacement water is return flows through individual on-lot non-evaporative septic systems from the in-house use of the ground water to be pumped pursuant to the Replacement Plan.

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<sup>1</sup> Applicant sold 35.7 acres of the parcel, including the pro-rata portion of the water rights to Mirmohammad Adili and Madonna Lee Suarez, as further described in Special Warranty Deed dated on May 18, 2018, and recorded in the records of the El Paso County Clerk and Recorder at Reception No. 221003336 on January 7, 2021.

Replacement of Depletions. The Replacement Plan provides a pumping period of 300 years. For the wells constructed into the not-nontributary Dawson aquifer, the Applicant is required to replace depletions on an annual basis during the 300 years of pumping by residential return flows from non-evaporative septic systems. As stated in the Replacement Plan: "Return flows from in-house use of ground water shall occur through individual on-lot non-evaporative septic systems located within the above described 38.8 acres ... Replacement of depletions must be provided annually in the acre-feet amounts shown in Exhibit A.<sup>2</sup> Annual replacement requirements may be computed by pro-rating between the values given on Exhibit A, or for simplicity may be taken as the amount shown in the next succeeding 5 years increment." Further, the "Applicant must provide the required annual amount of replacement water for the first 100 years, or for as long as a well is operated pursuant to this plan, whichever is longer. To assure adequate return flows, at least one well must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system before any irrigation or animal watering is allowed to be served by any of the wells."

6. Analysis. Applicant's water demand for the Pine View Estates Subdivision is 0.48 acre-feet per lot/year or 3.36 acre-feet/year for the entire subdivision using Dawson aquifer water which is allowed under Replacement Plan No. 1588-BD for the 7-lot subdivision for a total demand of 1,008 acre-feet for 300 years. JDS-Hydro's *Water Resources Report* dated December 2019 states the annual supply for the Pine View Subdivision is 3.37 acre-feet<sup>3</sup> for 300 years. With an annual demand of 3.36 acre-feet and a total available supply of 3.36 acre-feet there appears to be a sufficient water supply to meet the water demands of the Pine View Estates Subdivision.

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

8. Therefore, based on the Water Supply Information Summary, based on the finding of sufficiency and no injury by the State Engineer, based on the Determination of Water Right and Replacement Plan No. 1588-BD, and based on the requirements below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. El Paso County Public Health shall provide a recommendation as to water quality.

#### REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with all requirements of Determination of Water Right and Replacement Plan, No. 1588-BD, specifically, that water use shall not exceed 0.48 acre-feet annually for each of 7 wells located on each of the 7 lots in the subdivision; and that all stream depletions will be replaced with non-evaporative septic system return flows for a period of 300 years.

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<sup>2</sup> Exhibit A was attached to the Replacement Plan and is also incorporated into this water review as Attachment A.

<sup>3</sup> This may reflect a rounding difference. All other documentation, including the Replacement Plan, refers to 3.36 acre-feet.

B. The County requires that when there is a replacement plan, Applicant must create a homeowners' association ("HOA"). 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 Determination of Water Right and Replacement Plan No. 1588-BD, as well as their obligations to comply with the Replacement Plan, including, but not limited to, ensuring that return flows by the use of non-evaporative septic systems are made to the stream systems, pursuant to Exhibit A to the Replacement Plan; and that such return flows shall only be used to replace depletions and shall not be separately sold, traded, or assigned in whole or in part for any other purpose. The Covenants more specifically shall require the Dawson aquifer wells to serve on each lot 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 wells. In addition, the Covenants shall advise future lot owners of this subdivision and their successors and assigns of their obligations regarding any costs of operating the Replacement Plan. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the Replacement Plan; and shall protect the viability of the water supply by placing limitations in the Covenants as to amendments and termination as applied to said water supply.

The covenants shall address the following:

- 1) Identify the water rights associated with the property. The Covenants shall reserve 1,008 acre-feet of not-nontributary Dawson aquifer water pursuant to Determination of Water Right and Replacement Plan No. 1588-BD to satisfy El Paso County's 300-year water supply requirement for the 7 lots of the Pine View Estates Subdivision.
- 2) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace 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) 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 the Determination of Water Right and Replacement Plan No. 1588-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.”

4) 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 aquifer wells.

5) 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 Pine View Estates Subdivision, pursuant to Determination of Water Right and Replacement Plan No. 1588-BD. 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 Determination from 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 adjudication.”

6) The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of Determination of Water Right and Replacement Plan No. 1588-BD are also terminated by order of the Commission, 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 the Covenants and in any deeds of the Property the decreed amount of at least 0.48 acre-feet per lot annually and shall reserve a total decreed amount of at least 3.36 acre-feet of Dawson aquifer water for the subdivision for each year for a total of 1,008 acre-feet for the 7-lot subdivision for 300 years. 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. Applicant shall convey by recorded warranty deed these reserved Dawson aquifer water rights to the individual lot owners. Applicant shall provide copies of said Covenants or other such reservation and

conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.

Any and all conveyance instruments shall 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 supply, and replacement during pumping, for each lot of the Pine View 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."

D. Applicant or its successors and assigns shall at the time of lots sales, convey by warranty deed to individual lot owners sufficient water rights in the Dawson aquifer, pursuant to Determination of Water Right and Replacement Plan No. 1588-BD, underlying the respective lot to satisfy El Paso County's 300-year water supply requirement. Dawson aquifer requirements for each lot are as follows: 144 acre-feet for each lot (0.48 acre-feet/year x 300 yrs.). Said conveyance instruments 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 supply during pumping for the respective lots. Applicant shall provide form deeds for such conveyances that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.

E. Applicant or its successors and assigns shall submit Declaration of Covenants, Conditions, and Restrictions 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 Colorado Ground Water Commission Determination of Water Right and Replacement Plan No. 1588-BD and shall identify the obligations of the individual lot owners thereunder.

F. Applicant or its successors and assigns shall record all applicable documents, including, but not limited to, the Colorado Ground Water Commission Findings and Order Determination of Water Right and Replacement Plan No. 1588-BD, and any 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.

G. Applicant and/or lot owners must obtain well permits pursuant to Determination of Water Right and Replacement Plan, No. 1588-BD.

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. Applicants 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."

ATTACHMENT: Exhibit A

cc: John Green, Planner II

**Designated Basin Summary Table for Alice Jolene Owens**  
**Pumping Rate of 3.36-acre-feet per year for 300 Years from the Dawson aquifer**  
**Section(s): Section 13, T11S, R64W, 6th P.M.**

Year	Pumping (Q) (AF/YR)	Annual Depletion (q) (AF/YR)	Depletion as a % of Pumping (q/Q)	Year	Pumping (Q) (AF/YR)	Annual Depletion (q) (AF/YR)	Depletion as a % of Pumping (q/Q)
5	3.4	0.000	0.01	155	3.4	0.112	3.34
10	3.4	0.001	0.03	160	3.4	0.116	3.45
15	3.4	0.002	0.06	165	3.4	0.120	3.57
20	3.4	0.004	0.12	170	3.4	0.124	3.68
25	3.4	0.006	0.19	175	3.4	0.128	3.79
30	3.4	0.009	0.27	180	3.4	0.131	3.91
35	3.4	0.012	0.37	185	3.4	0.135	4.02
40	3.4	0.016	0.48	190	3.4	0.139	4.13
45	3.4	0.020	0.59	195	3.4	0.142	4.24
50	3.4	0.024	0.71	200	3.4	0.146	4.35
55	3.4	0.028	0.83	205	3.4	0.150	4.46
60	3.4	0.032	0.96	210	3.4	0.153	4.56
65	3.4	0.036	1.09	215	3.4	0.157	4.67
70	3.4	0.041	1.21	220	3.4	0.160	4.77
75	3.4	0.045	1.34	225	3.4	0.164	4.88
80	3.4	0.050	1.47	230	3.4	0.167	4.98
85	3.4	0.054	1.60	235	3.4	0.171	5.09
90	3.4	0.058	1.73	240	3.4	0.174	5.19
95	3.4	0.063	1.86	245	3.4	0.178	5.29
100	3.4	0.067	1.99	250	3.4	0.181	5.39
105	3.4	0.071	2.12	255	3.4	0.185	5.49
110	3.4	0.075	2.24	260	3.4	0.188	5.59
115	3.4	0.080	2.37	265	3.4	0.191	5.69
120	3.4	0.084	2.49	270	3.4	0.194	5.79
125	3.4	0.088	2.62	275	3.4	0.198	5.88
130	3.4	0.092	2.74	280	3.4	0.201	5.98
135	3.4	0.096	2.86	285	3.4	0.204	6.08
140	3.4	0.100	2.98	290	3.4	0.207	6.17
145	3.4	0.104	3.10	295	3.4	0.211	6.27
150	3.4	0.108	3.22	300	3.4	0.214	6.36

Created by Wenli Dickinson, E.I.T. on November 13, 2019  
 Values for 'Depletion as a % of Pumping' (q/Q) are not calculated when the pumping rate (Q) is changed to anything but zero