

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

Amy R. Folsom, County Attorney

First Assistant County Attorney
Diana K. May

Assistant County Attorneys

M. Cole Emmons

Lori L. Seago

Diana K. May

Kenneth R. Hodges

Lisa A. Kirkman

Steven A. Klaffky

Peter A. Lichtman

December 27, 2017

SF-17-016 Jackson Ranch, Filing No. 4
(Final Plat)

Reviewed by: M. Cole Emmons, Senior Assistant County Attorney
Edi Anderson, Paralegal

MCE

FINDINGS AND CONCLUSIONS:

1. This is a proposal by Four Gates Land Development, LLC ("Applicant") for approval of a Final Plat to subdivide approximately 31.18 acres into 8 single family residential lots with minimum lot size of 2.5 acres, public street right-of-way, and an open space and drainage parcel. The property is zoned RR-2.5 (Residential Rural).

2. The Applicant has provided for the source of water to derive from individual on-lot wells withdrawing from the not nontributary Dawson Aquifer. Applicant estimates its annual water requirements for 8 lots as follows: household use at 2.8 acre-feet, irrigation of lawn and gardens at 2.4 acre-feet, and a water feature at 0.40 acre-feet for a total of 5.6 acre-feet or 0.70 acre-feet per lot. Applicant will need to provide a supply of 1,680 acre-feet of water (5.6 acre-feet /yr. x 300 yrs.) to meet the County's 300 year water supply requirement.

3. In a letter dated June 20, 2017, the State Engineer's Office reviewed the proposed water supply for this 8-lot Final Plat. The State Engineer's Office indicates that the water supply withdrawing from the Dawson Aquifer operates pursuant to the plan for augmentation decreed in Consolidated Water Court Case Nos. 2015CW3119 (Division No. 1) and 2015CW3047 (Division No. 2). The Engineer further broke down the annual water demand as follows: 0.35 acre-feet for in-house uses, 0.3 acre-feet for irrigation of 5,000 square feet of home lawns or gardens, and 0.05 acre-feet for use in a water feature for a total of 0.70 acre-feet per lot and a total of 5.6 acre-feet for the 8-lot subdivision. The Engineer noted that the not nontributary Dawson aquifer will operate "pursuant to the augmentation plan decreed in Division 1 Water Court in consolidated case nos.

200 S. CASCADE AVENUE
OFFICE: (719) 520-6485



COLORADO SPRINGS, CO 80903
FAX: (719) 520-6487

15CW3119 (Division 1) and 15CW3047 (Division 2) (“Augmentation Decree”).” Further, according to the decree, “13.3 acre-feet per year over a 300 year period ... decreed in case nos. 08CW206, 08W315, 08CW316, 08CW317, 08CW318 and 08CW319 will be augmented.” The amount of 13.3 acre-feet is to be used to serve 19 individual wells and each well is limited to an annual amount of .70 acre-feet/year. “According to the water supply plan, 8 of the 19 augmented wells will be used to serve this subdivision. The allowed average annual amount of withdrawal associated with the 8 wells is 5.6 acre-feet.”

The Engineer further noted that well permit applications submitted by an entity other than the current decree holders, Morgan and Christine Brown, Gwilym Brown, Marlene Brown, and Marshal and Sara Brown, must include evidence that the applicant has acquired the right to the portion of water being requested on the application.

The State Engineer’s Office also provided an advisory to the Applicant related to any onsite drainage/water quality pond that may be part of the project. The Engineer advised the Applicant that “. . . any proposed detention pond for this project, must meet the requirements of a ‘storm water detention and infiltration facility’ as defined in section 37-92-602(8), Colorado Revised Statutes, to be exempt from administration by this office. The applicant should review the *DWR’s Administrative Statement Regarding the Management of Storm Water Detention Facilities and Post-Wildland Fire Facilities in Colorado* to ensure that the notification, construction and operation of the proposed structure meets statutory and administrative requirements.”

Finally, pursuant to C.R.S. § 30-28-136(1)(h)(I), the Engineer is of the opinion that the 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. 2015CW3119 (Division No. 1) and 2015CW3047 (Division No. 2) provides for a plan for augmentation. The plan for augmentation relies on water rights adjudicated in Case Nos. 08CW206, 08W315, 08CW316, 08CW317, 08CW318 and 08CW319. The plan for augmentation states that 13.3 acre-feet per year over 300 years of not nontributary Dawson Aquifer groundwater decreed in Case Nos. 08CW317 and 08CW318 (Division No. 1), is required to be augmented. Water to be used for augmentation is return flows from the not nontributary Dawson aquifer and return flows or direct discharge of nontributary Arapahoe and Laramie-Fox Hills aquifer groundwater.

The Decree requires the Applicant, its successors and assigns, to reserve and dedicate to the plan for augmentation, 25.4 acre-feet per year (2,540 acre-feet total) of nontributary Arapahoe water and 17.6 acre-feet per year (1,760 acre-feet total) of

nontributary Laramie-Fox Hills aquifer groundwater decreed in Case Nos. 08CW206 (2.1 acre-feet per year of Arapahoe and 1.5 acre-feet per year of Laramie-Fox Hills), 08W315 (2.1 acre-feet per year of Arapahoe and 1.5 acre-feet per year of Laramie-Fox Hills), 08CW316 (2.1 acre-feet per year of Arapahoe and 1.5 acre-feet per year of Laramie-Fox Hills), 08CW319 (19.1 acre-feet per year of Arapahoe and 13.1 acre-feet per year of Laramie-Fox Hills), and 5.8 acre-feet per year of the Arapahoe aquifer groundwater decreed in Case No. 08CW317 and 5.35 acre-feet per year of the Arapahoe aquifer groundwater decreed in Case No. 08CW318, for the purpose of replacing post-pumping depletions to the Cherry Creek Stream System.

The Court ruled that withdrawal of up to 13.3 acre-feet per year and no more than 3,990 acre-feet total from the Dawson Aquifer pursuant to the provisions of the decreed plan for augmentation will not result in material injury to vested water rights.

6. Analysis. The Court decreed a total of 13.3 acre-feet annually for 300 years for a total of 3,990 acre-feet from the Dawson Aquifer (13.3 acre-feet x 300 yrs. = 3,990 acre-feet) which can be withdrawn through up to 19 individual wells. The 8 wells in this Filing 4 will use 5.60 acre-feet/year from an available supply of 13.3 acre-feet. 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 in Case Nos. 08CW206, 08W315, 08CW316, 08CW317, 08CW318 and 08CW319, and pursuant to the plan for augmentation in the Decree in Consolidated Water Court Case Nos. 2015CW3119 (Division No. 1) and 2015CW3047 (Division No. 2), and 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 shall provide proof to the County Attorney's Office and the Development Services Department prior to recording the final plat that water rights have been conveyed from the current decree holders, Morgan and Christine Brown, Gwilym Brown, Marlene Brown, and Marshal and Sara Brown, to Four Gates Land Development, LLC.

B. 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. 2015CW3119 (Division No. 1) and 2015CW3047 (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 Arapahoe Aquifer and/or Laramie-Fox Hills Aquifer well(s) to replace post-pumping depletions, and responsibility for metering and collecting data regarding water withdrawals from said well(s).

C. Applicant shall assign or convey to the HOA, Applicant's interests, rights, and obligations in the plan for augmentation, and 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.

D. Applicant shall require non-evaporative septic systems to replace depletions during 300 years of pumping from the Dawson aquifer. Applicant shall reserve in any deeds of the property 25.4 acre-feet per year and 2,540 acre-feet total of non-tributary Arapahoe aquifer water and 17.6 acre-feet per year and 1,760 acre-feet total of non-tributary Laramie-Fox Hills water decreed in Case Nos. 08CW206, 08W315, 08CW316, 08CW317, 08CW318 and 08CW319 for use in the augmentation plan. Applicant shall convey by recorded warranty deed these reserved water rights to the HOA for use in the augmentation plan. Said deed shall provide that the water rights shall be appurtenant to the subdivision, to be used for the benefit of all of the lot owners to provide a source of augmentation water to replace post-pumping stream depletions caused by pumping wells in the not nontributary Dawson Aquifer underlying the subdivision, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered or encumbered. Applicant shall provide copies of 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 of the final plat.

E. 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 Dawson Aquifer underlying each lot to satisfy El Paso County's 300 year water supply requirement: 210 acre-feet (0.70 ac. ft./lot x 300 yrs.). Said Deed shall provide that the water right 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.

F. Applicant shall submit Declaration of Covenants, Conditions, and Restrictions as well as Bylaws and Articles of Incorporation of the HOA to the Development Services 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, 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.

G. Applicant, its successors and assigns, shall record all applicable documents including, but not limited to, the Decrees in Case Nos. 08CW317 and 08CW318 (Division No. 1) and the plan for augmentation decreed in the Decree in Consolidated Water Court Case Nos. 2015CW3119 (Division No. 1) and 2015CW3047 (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.

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, 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, 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: Kari Parson, Project Manager, Planner II