

MEMORANDUM RE DAWSON TRAILS – WATER RIGHTS AGREEMENT

To: Mark Marlowe, Matt Benak, and Heather Justus
From: Madoline Wallace-Gross and Alison Gorsevski
Re: *Proposed Agreement – Dawson Trails’ Water Rights Quiet Title Action*
Date: January 12, 2023

I. SUMMARY. At the request of the Town of Castle Rock (“Town”), we been working with Town staff and ACM Dawson Trails VIII JV LLC (“Dawson Trails”) to evaluate Dawson Trails’ title to the Denver Basin groundwater rights (“Water Rights”) associated with its approximately 2,000-acre property located within the south-southwest quadrant of the Town (“DT Property”), in anticipation of Dawson Trails’ dedication of the Water Rights to the Town.

The Town’s Water Dedication Code requires Dawson Trails to establish that it has marketable title to the Water Rights before the Town will accept dedication. After reviewing the title documents, we advised the Town that Dawson Trials’ title to the Water Rights is inconclusive. Consequently, Dawson Trails filed a quiet title action in Douglas County court, seeking a judicial decree determining that Dawson Trails has clear title to the Water Rights (“Decree”).

Dawson Trails seeks an agreement with the Town that, once a Decree has entered, the Town will accept the marketability of Dawson Trails’ title to the Water Rights for dedication purposes. We recommend that the Town enter into this Agreement (attached) to accept the marketability of Dawson Trails’ title to the Water Rights as established by the Decree.

II. BACKGROUND. The DT Property has been annexed into the Town, and in 2022, the Town entered into a Development Agreement with Dawson Trails, the Dawson Trails Metropolitan Districts Nos. 1-5, and the Westfield Trade Center Metropolitan Districts Nos. 1 and 2 (“Development Agreement”). Dawson Trails wishes to proceed with its proposed development.

Dawson Trails must first satisfy the water dedication requirements set forth in Chapter 4.04 of the Castle Rock Municipal Code (“Water Dedication Code”) and the Development Agreement. As an initial step, the Water Dedication Code, Section 4.04.060, requires Dawson Trails to provide a title opinion from an attorney to show that Dawson Trails has good and marketable title to the Water Rights. The Town will not accept dedication of the Water Rights until it is satisfied with Dawson Trails’ title.

Dawson Trails provided a title opinion and supporting documents, and we have reviewed those materials. The DT Property and the Water Rights were conveyed to numerous different parties over the last 40+ years, including after several foreclosures and bankruptcies. As a result, title to the Water Rights is convoluted, at best. Our firm is presently unable to conclude that Dawson Trails has good and marketable title.

Colorado law allows a property owner to file a quiet title action in county court for the purpose of conclusively establishing title to specified property, including water rights. Acknowledging the difficulty of determining title to the Water Rights, Dawson Trails filed a quiet title action in Douglas County to establish its title to the Water Rights through a Decree. That case is pending.

Due to the costs and resources associated with a quiet title action, Dawson Trails has requested that the Town enter into an Agreement, under which the Town would agree that Dawson Trails

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has good and marketable title to its Water Rights for purposes of satisfying Section 4.04.060 of the Water Dedication Code.¹

III. RECOMMENDATION AND BASIS. The pending quiet title action is a legally valid way to establish Dawson Trails' title to the Water rights. Legally, Dawson Trails' quiet title action and the resultant Decree will cut off a third party's claims to ownership of the Water Rights. Therefore, because a Decree will establish Dawson Trails' title as a matter of law, the Town can rely upon that Decree to determine that Dawson Trails' title to the Water Rights is good and marketable for purposes of applying the Water Dedication Code.

For the reasons discussed above, we recommend that the Town enter into the attached Agreement with Dawson Trails.

VIII. ATTACHMENT.

- a. ***Agreement between the Town of Castle Rock and ACM Dawson Trails VII JV LLC***

¹ Dawson Trails will still be required to satisfy all other requirements of the Water Dedication Code and the Development Agreement, including but not limited to establishing the amount of water dedication required for Dawson Trails' development.