

Written Comment from Stakeholders

From: [Sandra Bratlie](#)
To: [Jenny Axmacher](#); [Eric Potyondy](#)
Cc: [Clay Frickey](#); [Scott E. Holwick](#); [Chris Pletcher - Contact](#)
Subject: [EXTERNAL] RE: City of Fort Collins Water Adequacy Determination Review Code Updates
Date: Wednesday, May 10, 2023 11:12:35 AM
Attachments: [image001.png](#)
[image002.png](#)

Jenny,

The redlines are not showing again on this version. We did have one additional minor request in Section 3.13.4 (A) (1) (b) 7 on page 4

Change from:

7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with **all applicable** regulations.

to:

7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with **state and federal primary drinking water** regulations.

Thanks!

Sandra Bratlie, P.E.

District Engineer | **FCLWD**

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sbratlie@fclwd.com

From: Jenny Axmacher <jaxmacher@fcgov.com>
Sent: Wednesday, May 10, 2023 11:02 AM
To: Sandra Bratlie <SBratlie@fclwd.com>; Eric Potyondy <epotyondy@fcgov.com>
Cc: Clay Frickey <cfrickey@fcgov.com>; Scott E. Holwick <SHolwick@lyonsgaddis.com>; Chris Pletcher <cpletcher@fclwd.com>
Subject: RE: City of Fort Collins Water Adequacy Determination Review Code Updates

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Additional changes were made to the proposed code based on feedback and they are highlighted in the attached document. This is the version of the code that will be in the Council Packet for next week's hearing.

Bushong & Holleman PC

A t t o r n e y s • a t • L a w

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May 9, 2023

Sent via Email: jaxmacher@fcgov.com; epotyondi@fcgov.com

Jenny Axmacher, Principal Planner
Eric Potyondi, Assistant City Attorney
City of Fort Collins, CO

Re: Water Adequacy Code Revisions

Dear Jenny and Eric,

This letter is on behalf of the Montava entities. While we greatly appreciate the changes made so far to the water adequacy code, we are requesting that the red-lined changes in the attached document also be made. In addition to the brief explanations in the attached, please accept the following further explanation for the suggested changes.

1. For Northeast Fort Collins to develop consistent with the City's vision, with affordable housing and neighborhood communities, more economical and reliable water supply solutions are needed. Buying and dedicating CBT and WSSC shares to ELCO works better for small rural developments than for urban growth. The water adequacy code should not deprive the City or Montava of future water supplies that may be essential for the intended growth. To address this issue, we suggest the following:

3.13.5(C)(5)(c). This suggested edit (adding: "if otherwise required by Colorado law") simply protects legal rights that exist to provide an alternative water solution. The code should not inadvertently deprive future developments of such rights by granting districts veto power over alternative water supplies if such authority does not exist. For example, where a statute or court order authorizes a private water solution within an established district, the suggested edit ensures the code does not usurp that authority by still requiring the district's consent or exclusion.

3.13.6(A)(5). These suggested edits accomplish two things. First, similar to the above concern, it protects legal rights that exist under Colorado law to provide an alternative nonpotable water solution. Second, it retains the City's discretion to waive the requirement if the established district "is incapable of providing a reasonable level of service." The City currently has that authority at Code 26-4 and should not waive it in

these amendments. The City added similar language to the potable service provision (3.13.5(C)(5)(c)) and the same should apply to non-potable service.

2. “Other potable water supply entities” will be critical in developing new water supplies for the City within established districts. Thus, it is important that the code allows for and encourages a fair assessment of such new water supplies.

3.13.5(A)(4). This provision assesses the costs of the other potable water supply entities and includes in those costs any fees for metro districts or HOAs associated with the development. However, HOAs or metro districts exist for many developments and are not unique to other potable water supply entities. To ensure a fair assessment of costs of the other potable water supply entities, the costs of HOAs or metro districts should only be added to the extent they are uniquely applicable to the water service being provided by the other potable water supply entity.

Multiple code provisions. In numerous places within the code “other potable water supply entities” and “non-potable water supply entities” must model a one-in-fifty year drought. Although it is unclear why “established potable water supply entities” are not held to the same standard, our suggestion is to add “or equivalent standard” for each reference. For example, Montava used an even more robust modeling assumption to assess drought resiliency and, generally speaking, the method used will depend on the available data. The code should not preclude such modeling.

3.13.6(A)(2)(d). This paragraph presumes groundwater supplies will have augmentation requirements which is not always the case (e.g. Coffin Wells do not require augmentation and are prevalent in Northeast Fort Collins). We have suggested a minor clarifying change.

Thank you for considering the attached redlined changes and the associated explanations. If this raises any questions, please do not hesitate to contact us.

Very truly yours,

BUSHONG & HOLLEMAN PC

A handwritten signature in black ink, appearing to read 'SB', is written over a horizontal line.

Steve Bushong

Encl.

cc: Max Moss

Dick Wolfe, P.E.

Calvin Miller, Ph.D.

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Amend Section 3.7.3, Adequate Public Facilities

Add Subsection (G):

(G) **Water Supply Adequacy.** The determination required by Section 29-20-301, et seq., C.R.S., whether the proposed water supply for development is adequate is not addressed in this Section but is set forth in Division 3.13.

Division 3.13 - Water Adequacy Determinations

Section 3.13.1 - Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.”;
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water; and
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.13.2 - Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

- (A) Temporary non-potable water supply systems to establish native vegetation are exempt from these requirements if the term of use is three consecutive years or less and identified as such on an approved landscape plan.
- (B) Except as stated in Subsection 3.13.5(D), the modification of standards review set forth in Division 2.8 shall not apply to this Division 3.13.

Section 3.13.3 Application.

- (A) **Application Timing.** An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for final plan or basic development review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to the following:
 - (1) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable or non-potable water until submittal with a development construction permit (Division 2.6) if the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
 - (2) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a building permit (Division 2.7), if the provider is an established potable water supply entity and the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
- (B) **Separate Applications.** The applicant shall file separate applications for water adequacy determinations for each portion of the development served by different water supply entities or water supply systems unless the Director determines that a single combined application can fully describe and provide needed information and be effectively analyzed. Subsequent sections in this Division provide distinctions in the evaluation process for established potable water supply entities, other potable water supply entities, and non-potable water supply entities.
- (C) **Material Changes.** The City shall make a determination that a proposed water supply is adequate only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a new water adequacy determination. The Director's determination that a material change has occurred is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (D) **Application After Director Denial.** If the Director denies an application for a water adequacy determination, the applicant may submit another application at any time, subject to applicable fees, that addresses the stated reason or reasons for denial.

Section 3.13.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

- (A) **Application Requirements.**
 - (1) Requests under this Section shall include a letter as described in Subsection (a), unless exempted pursuant to Subsection (b).
 - (a) A letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity that contains the following information:

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1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the established potable water supply entity's water supply system and the physical source(s) of water supply that will be used to serve the proposed development. If the proposed source(s) includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;
3. An estimate of the amount of water yield projected from the proposed water supply system and water rights portfolio under various hydrologic conditions;
4. Water conservation and, or water demand management measures, if any, that may be implemented within the proposed development;
5. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various hydrologic conditions;
6. An affidavit signed by the entity manager attesting that to the best of their knowledge the entity is in compliance with all applicable regulations; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

All letters shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. At the established potable water supply entity's discretion, the letter may describe their entire service area and be submitted for a determination once and updated as required based on any material changes to any of the requirements in this Section or in their reported supply as described in Subsection 3(C). If the letter describes the entire service area, then the entity does not need to resubmit the approved letter with each letter as outlined in Subsection (2) but should be referenced within the letter content in addition to what is outlined in Subsection (2).

- (b) The letter described in Subsection (a) shall not be required if the established potable water supply entity has a water supply plan, or other plans that cumulatively provide the information, that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the established potable water supply entity;
 2. Has a minimum twenty-year planning horizon;
 3. Lists the water conservation measures, if any, that may be implemented within the service area;
 4. Lists the water demand management measures, if any, that may be implemented within the development or service area;
 5. Includes a general description of the established potable water supply entity's water obligations, such as a general description of customer demands and operational water delivery obligations, such as augmentation requirements and return flow obligations;
 6. Includes a general description of the established potable water supply entity's water supply system and water rights portfolio; and

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7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with all applicable regulations.

All water supply plans, or other plans that cumulatively provide the information required above shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. The Director may defer providing the Council with any water supply plan or other plans until such time as the established potable water supply entity updates their existing water supply plan. Once the plan, or plans, are on file, they do not need to be resubmitted with each letter as outlined in Subsection (2) but should be referenced within the letter content in addition to what is outlined in Subsection (2).

- (2) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director. Such requests shall include a letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity:
 - (a) Identifying the portions of a development to be served with potable water by the established potable water supply entity;
 - (b) Stating its ability to provide an adequate water supply for the proposed development;
 - (c) Stating it is willing to commit to provide an adequate water supply for the proposed development including any conditions of the commitment; and
 - (d) Providing the length of time the letter is valid for should the proposed development not occur immediately.
- (B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.
- (C) **Standards.** To issue a determination that a proposed water supply is adequate under this Section, the Director must find that the statements in the application and associated materials are complete, correct, and reliable.
- (D) **Decision.**
 - (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations pursuant to this Section in writing including specific findings and shall either:
 - (a) Approve the application finding that the proposed water supply is adequate;
 - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
 - (c) Deny the application finding that the proposed water supply is inadequate.
 - (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all information submitted or developed upon which any water adequacy decision was based, and that record shall become part of the associated development application.
 - (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards

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set forth in this Section. No building permit may be issued until all conditions have been met.

- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.13.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a water adequacy determination for all or portions of a development to be served with potable water by other potable water supply entities shall be in a form as required by the Director. Such applications shall include all of the following:
- (1) A summary document linking the information to the standard of review.
 - (2) Report including information required under Section 29-20-304(1), C.R.S.:
 - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
 - (b) A description of the established potable water supply entity's water supply system and the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
 - (c) A description of all elements of the water rights portfolio either owned or planned for acquisition required for proposed water supply;
 - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
 - (e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
 - (f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
 - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
 - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees to the extent that are also uniquely applicable to providing the proposed water service development to be served by the other potable water supply entity.
 - (5) Approval documentation from other regulatory agencies such as CDPHE. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. If additional approvals will be required, provide an explanation of how those approvals will be obtained, and at the Director's discretion, the additional approvals may be required as conditions of approval.
 - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed of.
 - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

Commented [A1]: An HOA or metro district may exist regardless of who supplies water. Since the purpose of this provision is to assess true costs of the other potable water supply entities, this should apply only to HOAs or metro districts to the extent uniquely applicable to the water service provided by the other potable water supply entity.

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- (8) An other potable water supply entity with an approved ODP or PUD Overlay as outlined in Division 2.3 and Division 2.15 that includes the entire proposed service area, may at either the other potable water supply entity's, or Director's discretion, submit an application that describes their entire proposed service area once with the initial phase of development and then update the initial determination with a letter from a professional engineer for each subsequent phase with the information required in Section 3.13.4.(A) (2); or as required based on any material changes to:
- (a) Any of the requirements set forth in this Section;
 - (b) The reported water supply as set forth in Section 3(C); or
 - (c) The proposed development, as determined by the Director.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
- (2) **Review.**
- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
 - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
 - (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.
- (C) **Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:
- (1) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
 - (a) Providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
 - (b) Providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects; and
 - (c) Establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
 - (2) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:

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- (a) Relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
- (b) Having ability to acquire a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
- (3) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.
- (4) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
 - (a) Establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
 - (b) If the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
 - (c) Establishing that the water supply system and water rights portfolio can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
 - (d) Establishing and maintaining a water supply entity that can oversee and maintain the water supply system and water rights portfolio for the lifetime of the development.
- (5) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
 - (a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed water supply system;
 - (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
 - (c) For lands within the water service area of an established potable water supply entity, and if otherwise required by Colorado law, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.
- (D) **Modification of Standards.** If a potable water supply entity cannot meet the standards set forth above in Subsection 3.13.5(C), with the exception of 3.13.5(C)(5)(c) which shall not be subject to

Commented [A2]: What is examined or modeled will depend upon the best available data. The City should be open to equivalent or more rigorous ways to assess drought resiliency.

Commented [A3]: This is similar to both ELCO's and Montava's prior suggestions. This paragraph should not usurp Colorado law. Montava desires to retain available legal rights to provide a private water solution.

The City should not pick winners and losers by inadvertently precluding legal options.

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modification, then they may seek a modification of standards pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the four standards set forth in Section 2.8.2(H) for granting a modification, the Director may also grant a modification if such modification would not be detrimental to the public good and the standard as modified is comparable to an existing standard already being employed by another established potable water supply entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:
 - (a) Approve the application finding that the proposed water supply is adequate;
 - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
 - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information submitted or developed upon which the water adequacy determination was based for the proposed water supply and proposed water supply system, and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system; and/or the applicant completing construction of all infrastructure for the water supply system. No building permit may be issued until all conditions have been met.
- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (5) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for the development is being provided by the approved entity.

Section 3.13.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

- (A) **Application Requirements for Non-Potable Water Supplies.** Applications for a water adequacy determination for all or portions of a development to be served with non-potable water shall include all of the following:
- (1) Summary document linking the information to the standard of review.
 - (2) Report including information required under Section 29-20-304(1), C.R.S.:
 - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
 - (b) A description of the water supply system and physical source of water supply that will be used to serve the proposed development. This description must include

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water quality test results and results of an analysis investigating any limitations of use due to poor quality;

- (c) A description of all elements of the water rights portfolio either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;
 - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year including any based on augmentation requirements;
 - (e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
 - (f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the Land Use Code.
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
- (5) Approval documentation from other necessary regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system if otherwise required by law. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.
- (6) Such other information as may be required by the Director.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
- (2) **Review.**
- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
 - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

Commented [A4]: Not all groundwater supplies require augmentation. Coffin wells exist in Northeast Fort Collins and require no augmentation.

Commented [A5]: The changes to this paragraph are based upon similar concerns expressed above at paragraph 3.13.5(C)(5)(c). This last proposed sentence retains the City's current authority under the code to assess reasonableness of the established district's service and is identical to the last sentence already in 3.13.5(C)(5)(c).

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- (c) Applications for water adequacy determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.
- (C) **Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:
 - (1) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
 - (2) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
 - (a) Relying upon a renewable and/or sustainable physical supply of water;
 - (b) Having a water rights portfolio that provides a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
 - (c) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand under various hydrological conditions, including a modeled one-in-fifty year drought or equivalent standard, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.
 - (3) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
 - (a) If the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products; and
 - (b) Establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
 - (4) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
 - (a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed non-potable water supply system; and
 - (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.
- (D) **Decision.**
 - (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:
 - (a) Approve the application finding that the proposed water supply is adequate;

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- (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
 - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) The written determination shall be included in the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system. No building permit may be issued until all conditions have been met.
- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Water Adequacy Determination Definitions to Place in LUC Art. 5

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Established potable water supply entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

Non-potable water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-potable water supply entities shall mean the water supply entities, either established potable water supply entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of non-potable water.

Other potable water supply entities shall mean the water supply entities other than the established potable water supply entities that provide potable water service, including new proposed water supplies.

Potable water shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

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Water adequacy determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that supplies, distributes, or otherwise provides water at retail.

Water rights portfolio shall mean all rights to water, including water rights, contracts, and agreements associated with water supplies that are used to meet demands. A water rights portfolio that includes non-renewable or non-perpetual water supplies does not mean that the entire portfolio is not renewable and/or sustainable.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.

DRAFT

From: [Mike Scheid](#)
To: [Jenny Axmacher](#); [Eric Potyondy](#)
Cc: ["Tim Goddard"](#); ["Brad Grasmick"](#); ["Richard Raines"](#)
Subject: [EXTERNAL] RE: RE: Word Doc- water adequacy
Date: Tuesday, May 9, 2023 3:40:51 PM

Jenny & Eric,

ELCO asks that you consider the following change to section 3.13.5(C)(5)(c) in the proposed redline language provided on 5/3/23:

Change the last sentence of 3.13.5(C)(5)(c), which currently reads:

“The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.”

To Read:

“The Director may, however, waive this requirement if the applicant shows the established potable water supply entity is incapable of providing a level of service for the proposed development that is reasonably similar to the level of service it has historically provided to other developments.”

Please let us know if you would like to discuss this proposed change.

Thanks,

Mike Scheid
ELCO Water District
232 South Link Lane
Fort Collins, CO 80524
(970) 493-2044

From: Jenny Axmacher <jaxmacher@fcgov.com>
Sent: Wednesday, May 3, 2023 3:09 PM
To: Mike Scheid <mikes@elcowater.org>; Eric Potyondy <epotyondy@fcgov.com>
Cc: Tim Goddard <timg@hfglawfirm.com>; 'Brad Grasmick' <brad@lcwaterlaw.com>; Richard Raines <rraines@scwtp.org>
Subject: RE: RE: Word Doc- water adequacy

There is an issue with the redline file so I'm resending it.

.....
Jenny Axmacher, AICP
Pronouns: [she/her](#)
Principal Planner

[City of Fort Collins](#)

From: Jenny Axmacher

Sent: Wednesday, May 3, 2023 2:04 PM

To: Mike Scheid <mikes@elcowater.org>; Eric Potyondy <epotyondy@fcgov.com>

Cc: Tim Goddard <TimG@hfglawfirm.com>; 'Brad Grasmick' <Brad@lcwaterlaw.com>; Richard Raines <rraines@scwtp.org>

Subject: RE: [EXTERNAL] RE: Word Doc- water adequacy

Hi Mike,

Here is the draft code that will be in the City Council packet as well as a redline copy. I can include any additional public comment on the draft if it gets to me before 5/10.

Please let me know if you have any questions.

Sincerely,

.....
Jenny Axmacher, AICP
Pronouns: [she/her](#)
Principal Planner
[City of Fort Collins](#)

From: Jenny Axmacher

Sent: Tuesday, April 25, 2023 1:36 PM

To: Mike Scheid <mikes@elcowater.org>; Eric Potyondy <epotyondy@fcgov.com>

Cc: Tim Goddard <TimG@hfglawfirm.com>; 'Brad Grasmick' <Brad@lcwaterlaw.com>; Richard Raines <rraines@scwtp.org>

Subject: RE: [EXTERNAL] RE: Word Doc- water adequacy

Hi Mike,

Thank you for your feedback. Here's the updated draft and a redline copy. We'll continue to incorporate feedback as we prepare for the Council Packet deadline next week.

Sincerely,

.....
Jenny Axmacher, AICP
Pronouns: [she/her](#)
Principal Planner
[City of Fort Collins](#)

From: Mike Scheid <mikes@elcowater.org>

Sent: Friday, April 21, 2023 3:15 PM

To: Jenny Axmacher <jaxmacher@fcgov.com>; Eric Potyondy <epotyondy@fcgov.com>

Cc: Tim Goddard <TimG@hfglawfirm.com>; 'Brad Grasmick' <Brad@lcwaterlaw.com>; Richard Raines <rraines@scwtp.org>

Subject: [EXTERNAL] RE: Word Doc- water adequacy

Jenny & Eric,

Included with this email is a word version of the City's proposed Water Adequacy Determination language with some ELCO suggested redline changes as well as comments. Some of the comments provide suggestions while others are in the form of questions. The comments that are in the form of questions are not necessarily intended to be requested revisions to the language but rather are issues that ELCO staff believes will need to be resolved as the process is developed.

Let me know if we need to discuss or answer any questions you may have.

Mike Scheid
ELCO Water District
232 South Link Lane
Fort Collins, CO 80524
(970) 493-2044

From: Jenny Axmacher <jaxmacher@fcgov.com>
Sent: Tuesday, April 18, 2023 2:57 PM
To: Mike Scheid <mikes@elcowater.org>
Subject: Word Doc- water adequacy

Here you go!

.....
Jenny Axmacher, AICP
Pronouns: [she/her](#)
Principal Planner
Community Development & Neighborhood Services
[City of Fort Collins](#)
281 N. College Ave.
970-416-8089 office
jaxmacher@fcgov.com



Fort Collins City Council
300 LaPorte Avenue
Fort Collins, CO 80521

Re: Water Adequacy Determination

The East Larimer County Water District (“ELCO”) submits this letter as a supplement to its prior letter that was submitted to the Planning and Zoning Commission on April 26, 2023. This supplement addresses the question that was presented by the Planning Commission as to what appeal rights does an owner have if the board of directors of a special district, such as ELCO, denies an owner’s request to be excluded from the service area of the special district.

When the process is understood, it becomes evident that the decision-making process is both fair and comports fully with general due process principles. It is not an autocratic process that leaves an owner without an adequate remedy. The procedure is similar to an appeal of a decision of the City Planning Commission to the Fort Collins City Council and then the Larimer County District Court.

The multiple levels of appeal assure that the final decision made will not be arbitrary or subject to bias. Further, the county board of commissioners can override a denial by the board of the special district, and the district court can override a denial by the county board of commissioners. To the extent any member of the Planning Commission was left with a misunderstanding of the appeal process, ELCO apologizes for not being able to fully explain the process at the hearing before the Planning Commission.

To provide context to this supplement, the proposed amendment (the “Amendment”) to the Land Use Code to add Division 3.13—Water Adequacy Determination includes the following provision, §3.13.5(C)(5)(c), which ELCO strongly supports:

For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

In its prior letter, ELCO explained how this requirement serves the same public purpose as § 32-1-107, C.R.S. does with regards to preventing overlapping water service entities. To be clear, §3.13.5(C)(5)(c) simply mimics the statutory restriction that § 32-1-107 would impose on a potable water supply entity that is a metropolitan district or a special district. No metropolitan district or special district can provide water service within the service area of an existing water district without the consent of the existing water district. Section §3.13.5(C)(5)(c) then extends this

requirement to any potable water supply entity, regardless of the particular form of the entity. As explained in ELCO's prior letter, permitting a new potable water supply entity to operate within the service area of an existing water district may create substantial harm to the water district and the customers that rely on the water district for potable water service.

ELCO explained in its prior letter the important role that §3.13.5(C)(5)(c) will provide to assure that ELCO and other potable water service providers have performed the detailed and important analysis and findings required by § 32-1-501, C.R.S, before any decision is made to exclude land from the service area of the water district. Because a request for exclusion by an owner would not be required if the water district consented to overlapping water service, the supplement will focus on the procedure for a request for exclusion filed by the owner of the land sought to be excluded. Section 32-1-502 provides a separate procedure that allows the governing body of any municipality wherein territory within a special district is located, the board of any special district with territory within the boundaries of any municipality, or fifty percent of the fee owners of real property in an area of any municipality in which territory within a special district is located to petition the district court for exclusion of the territory described in the petition. This supplement will not address that process other than to note a different procedure is provided for that exclusion process. ELCO will not prematurely comment on any request that may come before the ELCO Board of Directors in the future, other than to explain the process that it will follow.

Petition Requesting Exclusion

The process begins with the fee owner or owners of one hundred percent of the property sought to be excluded filing a petition with the board of directors requesting that the property be excluded from the special district. The petition must provide the legal description of the property, must contain a notarized statement that the fee owner or owners consent to the exclusion of the property from the special district and provide a deposit of money sufficient to pay all costs of the exclusion proceedings.

After receiving the petition, the board of directors must provide notice of a public meeting to hear the petition. The notice must be published and state the place, time and date of the meeting, the names and addresses of the petitioners, if applicable, a general description of the area proposed for exclusion, and notice that all persons interested shall appear at the designated time and place and show cause in writing why the petition should not be granted or a resolution to approve the petition should not be finally adopted. The failure of any person in the district to file a written objection is treated as their assent to the exclusion.

The Hearing Procedure

At the hearing, the board of directors hears evidence on the following factors that, by statute, the board must take into consideration and make findings upon to determine whether to grant or deny the petition or to finally adopt a resolution to exclude the property:

(a) The best interests of all of the following:

(I) The property to be excluded;

- (II) The special district from which the exclusion is proposed;
- (III) The county or counties in which the special district is located;
- (b) The relative cost and benefit to the property to be excluded from the provision of the special district's services;
- (c) The ability of the special district to provide economical and sufficient service to both the property to be excluded and all of the properties within the special district's boundaries;
- (d) Whether the special district is able to provide services at a reasonable cost compared with the cost that would be imposed by other entities in the surrounding area to provide similar services in the surrounding area;
- (e) The effect of denying the petition on employment and other economic conditions in the special district and surrounding area;
- (f) The economic impact on the region and on the special district, surrounding area, and state as a whole if the petition is denied or the resolution is finally adopted;
- (g) Whether an economically feasible alternative service may be available; and
- (h) The additional cost to be levied on other property within the special district if the exclusion is granted.

If the board of directors, after considering all of the factors set forth above, determines that the property should not be excluded from the special district, it must order that the petition be denied or that the resolution be rescinded.

Appeal to the County Commissioners

If the petition is denied, an appeal of the denial may be filed with the board of county commissioners of the county in which the special district's petition for organization was filed for review of the board's decision. Any appeal must be taken no later than 30 days after the decision by the board of directors is entered. On appeal, the board of county commissioners must consider the same factors that the board of directors was required to consider but must make its own determination based on the record developed at the hearing before the special district board of directors as to whether the property should be excluded.

Appeal to the District Court

If the board of county commissioners votes to deny the exclusion, the owner may appeal that decision to the district court of the county which has jurisdiction of the special district. The appeal must be filed within 30 days of the county commissioner board's decision. On appeal, the district court must review the record developed at the hearing before the special district board of directors and, after considering all of the factors that the special district board and county board of commissioners must consider, must then make its own determination whether the property should be excluded.

The statutory procedure provided above provides an owner who seeks to withdraw their property from the boundaries of a special district, a full and fair opportunity to present their case in a meaningful manner that satisfies all due process requirements. Section §3.13.5(C)(5)(c), if adopted, will work with the above discussed procedure to assure that no potable water supply entity will be permitted to provide water service within the service area of an existing special district without either (i) obtaining the consent of the Special District or (ii) petitioning for and obtaining approval of exclusion according to the procedure discussed above. Only if the board of directors of the special district, the Larimer County Board of County Commissioners, and a judge of the Larimer County District Court all independently agree that the property should not be excluded would §3.13.5(C)(5)(c) work to prevent development because of the overlapping water service.

ELCO explained in its prior letter why the City has the power and authority to include §3.13.5(C)(5)(c) in the Amendment. ELCO also explained how that provision will promote the health, safety, prosperity, security and general welfare of the inhabitants of the special districts that would be impacted by a provider being able to provide potable water service within the service area of an existing special district. That purpose includes preventing unnecessary proliferation of water service providers that could result in a diffusion of local tax sources and double taxation of the persons who reside within overlapping services areas.

As ELCO previously explained, it makes no difference from the public perspective of whether a new water supply provider is a special district, a metropolitan district or a private entity providing public water service, the impact is the same—overlapping services should be avoided as they result in additional unnecessary costs to the public and harm existing water service providers. ELCO, therefore, strongly supports the inclusion of the provision §3.13.5(C)(5)(c) in the Amendment.

Sincerely,



Mike Scheid
General Manager
East Larimer County Water District



West Fort Collins Water District • PO Box 426 • LaPorte, Colorado 80535
2711 North Overland Trail
Phone: 970.484.4881 • Fax: 970.484.8874

City of Fort Collins Planning and Zoning Commission
300 Laporte Avenue
Fort Collins, Colorado 80521

Re: Water Adequacy Determination

The West Fort Collins Water District ("WFCWD") joins in the attached letter submitted by the East Larimer County Water District ("ELCO"). Like ELCO, WFCWD generally supports the proposed amendment (the "Amendment") to the Land Use Code to add Division 3.13—Water Adequacy Determination. Also, like ELCO, WFCWD shares the concern that any residential development must possess a reliable water distribution system in which the residents of the development can have confidence that potable water service will be available to them on a long-term, if not perpetual basis. WFCWD meets this need for developments within its service area. To approve a development located within WFCWD's service area that would propose to rely on a potable water supply and service other than WFCWD could create the serious harm stated in ELCO's letter.

For that reason, WFCWD also strongly supports the inclusion of the requirement stated in §3.13.5(C)(5)(c) of the Amendment that:

For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

This requirement will serve the public interest by promoting the policy of avoiding the unnecessary proliferation of water service providers that could result in an excessive diffusion of local tax sources and would facilitate the elimination of the overlapping of services. WFCWD agrees with ELCO that "[t]he dependability and availability of a proposed water supply necessarily requires a determination that the entity proposing to provide distribution of the water supply is equally dependable and will not create overlapping services within the service area of an existing water district, which could result in double taxation, increased service fees, disparate water rates, varying reliability and quality of service between providers within the same service area or other harm to the public."

WFCWD, therefore, joins in ELCO's support for the inclusion of the provision in the Amendment and would also strenuously object to any diminishment of the requirement in any final draft.

Respectfully,

A handwritten signature in black ink that reads "Doug Bigge". The signature is written in a cursive, flowing style.

Doug Bigge, Manager, West Fort Collins Water district



April 26, 2023

City of Fort Collins Planning and Zoning Commission
300 Laporte Avenue
Fort Collins, Colorado 80521

Re: Water Adequacy Determination

The East Larimer County Water District ("ELCO") generally supports the proposed amendment (the "Amendment") to the Land Use Code to add Division 3.13—Water Adequacy Determination.ⁱ

ELCO strongly believes that the adoption of the Amendment will further the Colorado legislature's declaration in § 29-20-301(1)(b), C.R.S., which states the determination that an adequate water supply is available for proposed new developments, is "necessary for the preservation of public health, safety, and welfare and the environment of Colorado."

ELCO shares with the City the public concern that any residential development must possess a reliable water distribution system in which the residents of the development can have confidence that potable water service will be available to them on a long-term, if not perpetual basis. ELCO has operated its water delivery system for over 60 years with that public purpose in mind.

In particular, ELCO supports the requirement stated in §3.13.5(C)(5)(c) that:

For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

This requirement is consistent with and serves the same public purpose as § 32-1-107, C.R.S. does with regards to overlapping water service entities. That section prohibits a new or existing special or metropolitan district from seeking to provide water service within the service area of an existing water district unless certain requirements are met. Those requirements include that the board of directors of the water district consents to the new or existing special or metropolitan district providing the same service within its service area.

Likewise, §3.13.5(C)(5)(c) recognizes that the public purpose with regards to potable water service is best served if a new service does not result in overlapping water service areas without

the consent of the existing provider. The consent of the existing service provider or the exclusion of the area to be served by the new service from the service area of the existing service provider will allow the existing service provider to perform the important analysis provided in § 32-1-501, C.R.S, to assure that the operation of an overlapping service provider will not harm the public, including the customers of the existing service provider.

As it did with the adoption of Colorado Adequate Water Supply statutes (§§ 29-20-301 through 29-20-306, C.R.S.), the legislature has also declared that the provisions of the Special District Act “serve a public use and ... promote the health, safety, prosperity, security, and general welfare of the inhabitants of such districts and of the people of the state of Colorado.” § 32-1-102(1). The consent requirement in § 32-1-107 (and the similar requirement in §3.13.5(C)(5)(c)) serves this public purpose by preventing “unnecessary proliferation” ... “to avoid excessive diffusion of local tax sources” and to “facilitate the elimination of the overlapping of services ... [which can result in] double taxation” (32-1-102(2), (3)) of the persons residing within the service area.

ELCO believes that protecting this important public interest is essential in any development decision made by the City and believes that §3.13.5(C)(5)(c) adequately serves this vital interest. It makes no difference from the public perspective of whether a new water supply provider is a special district, a metropolitan district or a private entity providing public water service, the impact is the same. Clearly, overlapping services resulting in additional unnecessary costs to the public are to be avoided.

This conclusion is also consistent with the implied scope of the determination of whether a water supply will be “adequate.” The term “adequate” as used in the Amendment is substantially similar to definition of “adequate” in § 29-20-302, C.R.S. It means “a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability....” The dependability and availability of a proposed water supply necessarily requires a determination that the entity proposing to provide distribution of the water supply is equally dependable and will not create overlapping services within the service area of an existing water district, which could result in double taxation, increased service fees, disparate water rates, varying reliability and quality of service between providers within the same service area or other harm to the public.

There also should be no issue that the City has the power to impose the requirement stated in §3.13.5(C)(5)(c). Section 29-20-305, C.R.S., provides the City the authority to include in its water adequacy determination procedure the right and power to include any “information deemed relevant by the [City] to determine, in its sole discretion, whether the water supply for the proposed development is adequate.” As §3.13.5(C)(5)(c) promotes a proper adequacy determination of the water supply and concomitant distribution of the water supply, there should be no question that the City can impose this necessary requirement, and ELCO, therefore, strongly supports the inclusion of the provision in the Amendment and would strenuously object to any diminishment of the requirement in any final draft.

Sincerely,



Mike Scheid
General Manager
East Larimer County Water District

ⁱ ELCO received an amended version of the Water Adequacy Determination yesterday. ELCO will provide any additional comments to the recent changes in a separate letter.

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Division 3.12 - Water Adequacy Determinations

Section 3.12.1 - Purpose.

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water;
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

Section 3.12.2 - Applicability.

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

Section 3.12.3 Application.

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
 - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
 - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
 - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

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- (B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.
- (C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

- (A) **Application Requirements.**
- (1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:
 - (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
 - (2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.
 - (3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.
 - (2) Requests under this section shall also include a letter as described in subsection (1), unless exempted pursuant to subsection ((2) or (3), or both).
 - (a) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:
 1. An estimate of the water supply requirements for the proposed development through build-out conditions;
 2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

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3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
 4. Water conservation measures, if any, that may be implemented within the proposed development;
 5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
 6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development in all hydrologic conditions; and
 7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
 2. Has a minimum twenty-year planning horizon;
 3. Lists the water conservation measures, if any, that may be implemented within the service area;
 4. Lists the water demand management measures, if any, that may be implemented within the development;
 5. Includes a general description of the water supply entity's water obligations;
 6. Includes a general description of the water supply entity's water supplies;
 7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
 8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.
- (B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.
- (C) **Standards.**
- To issue a Water Adequacy Determination under this section, the Director must find that:
- (1) The statements in the application and associated materials are complete, correct, and reliable; and
 - (2) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.
- (D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's

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decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:
- (1) A summary document linking the information to the standard of review; and
 - (2) Report including information required under Section 29-20-304(1), C.R.S.:
 - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
 - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
 - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
 - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
 - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
 - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
 - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
 - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
 - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
 - (5) Approval documentation from other regulatory agencies such as CDPHE.
 - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
 - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

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to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) **Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

- (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
 - 1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
 - 2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
 - 3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
- (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
 - 1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
 - 2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
 - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

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- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
 2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
 3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
 4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.
- (d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
 2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
 3. for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.
- (D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (E) **Decision.**
- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
 - (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant:

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acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

- (1) Summary document linking the information to the standard of review; and
- (2) Report including information required under Section 29-20-304(1), C.R.S.:
 - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
 - (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
 - (c) A description of the water rights either owned or planned for acquisition required for the proposed water supply;
 - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
 - (e) Water conservation measures, if any, that may be implemented within the development;
 - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
 - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

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- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
 - (6) Such other information as may be required by the Director.
- (B) Review of Application.**
- (1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
 - (2) Review.
 - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
 - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
 - (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.
- (C) Standards**
- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
 - (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
 - 1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
 - (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
 - 1. relying upon a renewable and/or sustainable physical supply of water;
 - 2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
 - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

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- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
 - 1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
 - 2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
 - 1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
 - 2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

(D) Decision.

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Water Adequacy Determination Definitions to Place in LUC Art. 5

Adequate shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

Established Potable Water Supply Entities shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

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Non-Potable Water shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

Non-Potable Water Supply Entities shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

Other Potable Water Supply Entities shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

Potable water, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

Water Adequacy Determination shall mean a determination whether the proposed water supply for a development is adequate.

Water supply entity shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

Water supply system shall mean all infrastructure planned or used to divert and deliver water to a development.

From: Steven Bushong <sbushong@BH-Lawyers.com>
Sent: Friday, April 21, 2023 10:25 AM
To: Jenny Axmacher
Cc: Dick Wolfe; Calvin Miller; Eric Potyondy
Subject: [EXTERNAL] Montava Water Adequacy

Hello Jenny

We haven't met in person yet, but I wanted to thank you for the opportunity to discuss the adequacy of Montava's planned water supply on Wednesday. I hope it was informative. A couple of points came up during the discussion that I wanted to follow up on. First, you mentioned an existing code provision that prevents the City from extending any water service within ELCO. Could you please point us to that code provision for my understanding? I was not able to find it. Second, you mentioned that you had been hearing different things from the other side on the ELCO approval issue. Since I presume all comments are public, can you please send us the comments you were referencing so we can understand that perspective and respond as needed?

Also, as we discussed, one of our principal concerns with the draft code provisions is that we believe they give an Established Water Provider such as ELCO more authority than it would otherwise legally have over future development within the City. Our specific concerns in 3.12.5(C) (1)(d)(3) and 3.12.6(A)(5) could be simply addressed by starting each paragraph with "Except for private water companies . . ." That would preserve the right to use a private water company where it makes sense to do so.

It also occurred to me that another approach would be to simply ensure that the new code provisions do not take away any legal rights, without the City taking a position on the legal issues. This would ensure the City does not inadvertently take away rights that would impact future development. The following is suggested language on that approach:

3.12.5(C) (1)(d)(3): "for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities ~~will be~~ **have been** removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity; **or the Other Potable Water Supply Entity is otherwise entitled to provide the proposed service as a matter of law.**"

3.12.6(A)(5): "Approval ~~Documentation~~ **that approval will be obtained** from other regulatory agencies **where necessary**, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system **unless the subject Non-Potable Water Supply Entities is otherwise entitled to provide the proposed service as a matter of law.**

I believe the above changes accomplish a few important things. (1) clarify that steps can be accomplished later (this allows the City if it chooses to condition approval); (2) it ensures the code does not inadvertently take away rights that exist under the law; and (3) for non-potable irrigation, it also clarifies that only necessary approvals will need to be obtained.

Thanks in advance for any information you can provide on my questions and please let me know if the City would like to discuss the above wording in the Code.

Best regards,

Steve

Steve Bushong
Bushong & Holleman PC
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Boulder, Colorado 80302
Telephone: 303-431-9141
Facsimile: 1-800-803-6648

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**DRAFT SUBJECT TO FURTHER REVISION AND REVIEW****Division 3.12 - Water Adequacy Determinations****Section 3.12.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water; and
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Section 3.12.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

**Section 3.12.3 Application.**

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
  - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
  - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
  - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

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- (B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.
- (C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities****(A) Application Requirements.**

- (1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director, to be established collaboratively with each Established Potable Water Supply Entity. Such requests shall include the following:
- (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
  - (2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.
  - (3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.
- (2) Requests under this section shall also include a letter as described in subsection (1), unless exempted pursuant to subsection ((2) or (3), or both).
- (a) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:
1. An estimate of the water supply requirements for the proposed development through build-out conditions;
  2. A description of the physical source(s) of water supply that will be used to serve the proposed development. **If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;**

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3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
  4. Water conservation measures, if any, that may be implemented within the proposed development;
  5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
  6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development in all hydrologic conditions; and
  7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development;
  5. Includes a general description of the water supply entity's water obligations;
  6. Includes a general description of the water supply entity's water supplies;
  7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
  8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

(B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

- (1) The statements in the application and associated materials are complete, correct, and reliable; and
- (2) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.

(D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's

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decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:
- (1) A summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
  - (5) Approval documentation from other regulatory agencies such as CDPHE.
  - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

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to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

**(2) Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

**(C) Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
  - (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
    - 1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
    - 2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
    - 3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
  - (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
    - 1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
    - 2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
    - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.



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- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
  3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

- (d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
  2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
  3. for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

- (D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**(E) Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant:

**DRAFT SUBJECT TO FURTHER REVISION AND REVIEW**

acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

**Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

- (1) Summary document linking the information to the standard of review; and
- (2) Report including information required under Section 29-20-304(1), C.R.S.:
  - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
  - (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
  - (c) A description of the water rights either owned or planned for acquisition required for the proposed water supply;
  - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
  - (e) Water conservation measures, if any, that may be implemented within the development;
  - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

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- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
- (6) Such other information as may be required by the Director.

**(B) Review of Application.**

- (1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
- (2) Review.
  - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
  - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
  - (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

**(C) Standards**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
  - (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
  - (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. relying upon a renewable and/or sustainable physical supply of water;
    - 2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
    - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

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- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
  - 1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
  - 2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
  - 1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
  - 2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

**(D) Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the **lifetime of the** type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

**DRAFT SUBJECT TO FURTHER REVISION AND REVIEW**

*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water*, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

### 29-20-301. Legislative declaration.

- 1) The general assembly:
  - a. Finds that, due to the broad regional impact that securing an adequate supply of water to serve proposed land development can have both within and between river basins, it is imperative that local governments be provided with reliable information concerning the adequacy of proposed developments' water supply to inform local governments in the exercise of their discretion in the issuance of development permits;
  - b. To that end, declares that while land use and development approval decisions are matters of local concern, the enactment of this part 3, to help ensure the adequacy of water for new developments, is a matter of statewide concern and necessary for the preservation of public health, safety, and welfare and the environment of Colorado;
  - c. Finds that it is necessary to clarify that, where a local government makes a determination whether an applicant for a development permit has demonstrated the proposed water supply is adequate to meet the needs of the development in accordance with the requirements of this part 3, the local government, in its sole discretion, not only makes the determination but also possesses the flexibility to determine at which stage in the development permit approval process the determination will be made; and
  - d. Further finds that it is also necessary to clarify that the stages of the development permit approval process are any of the applications, or any combination of the applications, specified in section 29-20-103 (1) as determined by the local government, and that none of the stages are intended to constitute separate development permit approval processes for purposes of section 29-20-303.

### 29-20-302. Definitions.

As used in this part 3, unless the context otherwise requires:

- 1) "Adequate" means a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.
- 2) "Water supply entity" means a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply company that supplies, distributes, or otherwise provides water at retail.

### 29-20-303. Adequate water supply for development.

- 1) A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.
- 2) Nothing in this part 3 shall be construed to require that the applicant own or have acquired the proposed water supply or constructed the related infrastructure at the time of the application.

## 29-20-304. Water supply requirements.

- 1) Except as specified in subsections (2) and (3) of this section, an applicant for a development permit shall submit estimated water supply requirements for the proposed development in a report prepared by a registered professional engineer or water supply expert acceptable to the local government. The report shall include:
  - a. An estimate of the water supply requirements for the proposed development through build-out conditions;
  - b. A description of the physical source of water supply that will be used to serve the proposed development;
  - c. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
  - d. Water conservation measures, if any, that may be implemented within the development;
  - e. Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - f. Such other information as may be required by the local government.
- 2) If the development is to be served by a water supply entity, the local government may allow the applicant to submit, in lieu of the report required by subsection (1) of this section, a letter prepared by a registered professional engineer or by a water supply expert from the water supply entity stating whether the water supply entity is willing to commit and its ability to provide an adequate water supply for the proposed development. The water supply entity's engineer or expert shall prepare the letter if so requested by the applicant. At a minimum, the letter shall include:
  - a. An estimate of the water supply requirements for the proposed development through build-out conditions;
  - b. A description of the physical source of water supply that will be used to serve the proposed development;
  - c. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
  - d. Water conservation measures, if any, that may be implemented within the proposed development;
  - e. Water demand management measures, if any, that may be implemented to address hydrologic variations; and
  - f. Such other information as may be required by the local government.
- 3) In the alternative, an applicant shall not be required to provide a letter or report identified pursuant to subsections (1) and (2) of this section if the water for the proposed development is to be provided by a water supply entity that has a water supply plan that:
  - a. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the water supply entity;
  - b. Has a minimum twenty-year planning horizon;
  - c. Lists the water conservation measures, if any, that may be implemented within the service area;
  - d. Lists the water demand management measures, if any, that may be implemented within the development;
  - e. Includes a general description of the water supply entity's water obligations;
  - f. Includes a general description of the water supply entity's water supplies; and
  - g. Is on file with the local government.

### 29-20-305. Determination of adequate water supply.

- 1) The local government's sole determination as to whether an applicant has a water supply that is adequate to meet the water supply requirements of a proposed development shall be based on consideration of the following information:
  - a. The documentation required by section 29-20-304;
  - b. If requested by the local government, a letter from the state engineer commenting on the documentation required pursuant to section 29-20-304;
  - c. Whether the applicant has paid to a water supply entity a fee or charge for the purpose of acquiring water for or expanding or constructing the infrastructure to serve the proposed development; and
  - d. Any other information deemed relevant by the local government to determine, in its sole discretion, whether the water supply for the proposed development is adequate, including, without limitation, any information required to be submitted by the applicant pursuant to applicable local government land use regulations or state statutes.

### 29-20-306. Cluster developments- inapplicability.

Nothing in this part 3 shall be deemed to apply to a rural land use process regarding the approval of a cluster development pursuant to part 4 of article 28 of title 30, C.R.S.





## Fort Collins-Loveland Water District

April 13, 2023

City of Fort Collins Planning and Zoning Commission

Dear Planning Commissioners:

On Tuesday April 11, 2023, the Fort Collins-Loveland Water District received the first notice from the City of Fort Collins Community Development Department regarding the proposed code review for new regulations regarding a Water Adequacy Determination that would have significant detrimental impact to the Fort Collins-Loveland Water District. The Planning and Zoning Work Session where this would be discussed will be held on Friday April 14 at 12:00pm. This provides less than 72 hours to evaluate and respond to proposed new regulatory code that has a very significant impact to the provision of potable water for a significant number of City residents today and into the future. Considering normal business hours and cutoff times for packet submittals 24 hours prior to the meeting, this provides effectively 12 business hours to respond to the City's proposed code. This is simply not adequate and indicates a lack of follow-through by staff on the stakeholder engagement direction provided by this commission and City Council.

The Fort Collins-Loveland Water District is a quasi-municipal corporation and a political subdivision of the state of Colorado with all the powers of a water district organized under Part 1, Article 1, Title 32, Colorado Revised Statutes to supply water for domestic and other public and private purposes by any available means. We serve a population in excess of 63,000 through more than 19,000 taps in an area that includes portions of the City of Fort Collins, City of Loveland, Town of Timnath, Town of Windsor and unincorporated Larimer County. Within the City of Fort Collins, we serve approximately 24,000 City Residents in City Council Districts 2, 3 and 4.

As an independent unit of government, FCLWD is not subject to the City's review and determination of adequacy of our water supplies compared to our existing or proposed service areas within the established and mutually agreed upon water service boundaries with our adjacent potable water providers. Submittal of Existing Potable Water Provider water supply plans to the City was indicated in the City's recorded video presentation introducing the proposed code posted on the City's website at <https://www.fcgov.com/planning/water-adequacy>. As a Title 32 Special District we take great exception to being regulated by an adjacent unit of government within our state authorized mission to deliver potable water.

In response to Section 3.12.4 (A) (1) The District does not manage our water supply commitments on a per-tap or per-subdivision basis. We manage our water resource supplies and our system demands on an aggregate basis, and continually acquire water resources to allow us to sell individual taps on demand for cash-in-lieu of water dedication. It is the District's goal to continue to maintain a water supply portfolio that equals or exceeds the aggregate demand from our customers. Due to this approach, when we issue a "Will Serve" letter, we are committing that adequate water pressure zones exist within our water distribution system to supply adequate water pressure at the customer tap, and that the overall transmission and distribution system has adequate capacity to support the general demand of this type of use. However, system distribution capacity is more often driven by fire flow

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Fort Collins, Colorado 80525  
Phone: 970-226-3104  
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[www.fclwd.com](http://www.fclwd.com)



## Fort Collins-Loveland Water District

requirements than domestic customer demands. Therefore, a "Will Serve" letter is not specific to, nor is it a reservation for a commitment of water resources to a particular tap or development.

In response to Section 3.12.4 (A) (2) (a) 1. Our water supply requirements are posted on our website in our Tap Fee Schedules. We do not provide development specific pro-forma analysis of water supply requirements on a per-application or per-subdivision basis, as our requirements are very straightforward based on customer type and tap size or units of multi-family residential proposed. Regarding Section 3.12.4 (A) (2) (a) 2. Our water sources are conmingled through the treatment process and are not obtained through dedication by individual developments, nor are they delivered to or accounted to only specific developments. The District acquires water for treatment that is compatible with the treatment processes used at our Soldier Canyon treatment plant, and we have full control over the water that we acquire to determine its suitability for treatment. We do not need to submit this to the City for evaluation or review of our analysis of the "potential impact on water treatment processes or the quality of delivered potable water." It is the District's sole determination of the adequacy of our water supply that informs our ability to sell water taps on demand, or restrict tap sales if needed. Further, responding to paragraph 3.12.4 (A) (2) (b) 8. The District does not need City Council review nor Community Development approval of our water supply plans to determine if our water supply is adequate for proposed tap applications.

We would appreciate support from the City of Fort Collins to recognize the authority vested by the State of Colorado in Title 32 Special Districts such as East Larimer County Water District (ELCO) and the Fort Collins-Loveland Water District (FCLWD) and to support the local water district's exclusive and sovereign authority to regulate the provision of potable water within their service areas. When the City entertains a competing proposal from a proposed potable water provider, it undermines the statutory authority of the existing Special District that has invested financial, water rights and infrastructure resources to provide service within their service area boundary.

The proposed code goes to great length to define a process to determine if a water supply is adequate, but it does very little to address protecting the exclusive right of an existing potable water provider to provide potable water within their service area. We suggest that already-defined water service areas within and surrounding the City of Fort Collins be protected through the City planning and Community Development processes, and only when the current provider formally relinquishes their ability or willingness to serve potable water, that other provider options be considered.

Sincerely,

A handwritten signature in blue ink that reads "Chris Pletcher". The signature is fluid and cursive, with the first name "Chris" and last name "Pletcher" clearly distinguishable.

Chris Pletcher, PE  
General Manager

Enclosures:

April 11, 2023 Email from City Staff Regarding Water Adequacy Code Review

**Chris Pletcher**

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**From:** Jenny Axmacher <jaxmacher@fcgov.com>  
**Sent:** Tuesday, April 11, 2023 1:39 PM  
**To:** Chris Pletcher  
**Cc:** Eric Potyondy  
**Subject:** City of Fort Collins Water Adequacy Determination Review Code Updates  
**Attachments:** Att 1 - Proposed WADR Code with Header.pdf

Hi Chris,

I am a planner with the City of Fort Collins and got your contact information from Eric, our Water Attorney. The City has been working on a code update to our Land Use Code to add specific regulations outlining how the City will make a water adequacy determination for new development. The regulations are divided into three different categories, one for Established Water Providers, one for new providers and one for non-potable providers. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

Since your District is a water provider within our city limits, I wanted to make sure you were aware of the update and had a chance to review the draft and provide feedback. Fort Collins - Loveland Water District is currently considered an Established Water Provider under the proposed code updates. I have some time reserved next week if you'd like to meet to discuss it. Otherwise, feel free to send us feedback on it, or attend any of the public hearings. The adoption schedule is as follows:

April 14 – P&Z Work Session

April 26 – P&Z Public Hearing to make recommendation to Council

May 16 – Council Public Hearing/First Reading

Sincerely,

.....  
**Jenny Axmacher, AICP**  
Pronouns: [she/her](#)  
Principal Planner  
Community Development & Neighborhood Services  
[City of Fort Collins](#)  
281 N. College Ave.  
970-416-8089 office  
[jaxmacher@fcgov.com](mailto:jaxmacher@fcgov.com)



April 26, 2023

City of Fort Collins Planning and Zoning Commission  
300 Laporte Avenue  
Fort Collins, Colorado 80521

Re: Water Adequacy Determination

The East Larimer County Water District ("ELCO") generally supports the proposed amendment (the "Amendment") to the Land Use Code to add Division 3.13—Water Adequacy Determination.<sup>i</sup>

ELCO strongly believes that the adoption of the Amendment will further the Colorado legislature's declaration in § 29-20-301(1)(b), C.R.S., which states the determination that an adequate water supply is available for proposed new developments, is "necessary for the preservation of public health, safety, and welfare and the environment of Colorado."

ELCO shares with the City the public concern that any residential development must possess a reliable water distribution system in which the residents of the development can have confidence that potable water service will be available to them on a long-term, if not perpetual basis. ELCO has operated its water delivery system for over 60 years with that public purpose in mind.

In particular, ELCO supports the requirement stated in §3.13.5(C)(5)(c) that:

For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity.

This requirement is consistent with and serves the same public purpose as § 32-1-107, C.R.S. does with regards to overlapping water service entities. That section prohibits a new or existing special or metropolitan district from seeking to provide water service within the service area of an existing water district unless certain requirements are met. Those requirements include that the board of directors of the water district consents to the new or existing special or metropolitan district providing the same service within its service area.

Likewise, §3.13.5(C)(5)(c) recognizes that the public purpose with regards to potable water service is best served if a new service does not result in overlapping water service areas without



the consent of the existing provider. The consent of the existing service provider or the exclusion of the area to be served by the new service from the service area of the existing service provider will allow the existing service provider to perform the important analysis provided in § 32-1-501, C.R.S., to assure that the operation of an overlapping service provider will not harm the public, including the customers of the existing service provider.

As it did with the adoption of Colorado Adequate Water Supply statutes (§§ 29-20-301 through 29-20-306, C.R.S.), the legislature has also declared that the provisions of the Special District Act “serve a public use and ... promote the health, safety, prosperity, security, and general welfare of the inhabitants of such districts and of the people of the state of Colorado.” § 32-1-102(1). The consent requirement in § 32-1-107 (and the similar requirement in § 3.13.5(C)(5)(c)) serves this public purpose by preventing “unnecessary proliferation” ... “to avoid excessive diffusion of local tax sources” and to “facilitate the elimination of the overlapping of services ... [which can result in] double taxation” (32-1-102(2), (3)) of the persons residing within the service area.

ELCO believes that protecting this important public interest is essential in any development decision made by the City and believes that § 3.13.5(C)(5)(c) adequately serves this vital interest. It makes no difference from the public perspective of whether a new water supply provider is a special district, a metropolitan district or a private entity providing public water service, the impact is the same. Clearly, overlapping services resulting in additional unnecessary costs to the public are to be avoided.

This conclusion is also consistent with the implied scope of the determination of whether a water supply will be “adequate.” The term “adequate” as used in the Amendment is substantially similar to definition of “adequate” in § 29-20-302, C.R.S. It means “a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability....” The dependability and availability of a proposed water supply necessarily requires a determination that the entity proposing to provide distribution of the water supply is equally dependable and will not create overlapping services within the service area of an existing water district, which could result in double taxation, increased service fees, disparate water rates, varying reliability and quality of service between providers within the same service area or other harm to the public.

There also should be no issue that the City has the power to impose the requirement stated in § 3.13.5(C)(5)(c). Section 29-20-305, C.R.S., provides the City the authority to include in its water adequacy determination procedure the right and power to include any “information deemed relevant by the [City] to determine, in its sole discretion, whether the water supply for the proposed development is adequate.” As § 3.13.5(C)(5)(c) promotes a proper adequacy determination of the water supply and concomitant distribution of the water supply, there should be no question that the City can impose this necessary requirement, and ELCO, therefore, strongly supports the inclusion of the provision in the Amendment and would strenuously object to any diminishment of the requirement in any final draft.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Scheid". The signature is fluid and cursive, with the first name "Mike" and last name "Scheid" clearly distinguishable.

Mike Scheid  
General Manager  
East Larimer County Water District

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<sup>i</sup> ELCO received an amended version of the Water Adequacy Determination yesterday. ELCO will provide any additional comments to the recent changes in a separate letter.

**Division 3.12 - Water Adequacy Determinations****Section 3.12.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City "shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate."
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments' proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water;
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Commented [ELEMENT1]:** Missing an end quote.

**Section 3.12.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

**Section 3.12.3 Application.**

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
  - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
  - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
  - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

**Commented [MS2]:** Should this be done at the BDR stage? Doing it later, such as the Final (FDP) stage is too late. This determination should be made up front.



- (B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.
- (C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by ~~a~~ different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

#### Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) **Application Requirements.**

- (1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:
  - (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
  - (2) A letter prepared by the Established Potable Water Supply Entity's ~~by a~~ registered professional engineer or ~~by a~~ water supply expert ~~from the Established Potable Water Supply Entity~~ stating:
    - (i) ~~the Established Potable Water Supply Entity's~~ its ability to provide an adequate water supply for the proposed development ~~and;~~
    - (ii) ~~A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development, including any and the conditions of the commitment, under which it will commit to serving the development.~~
- (2) ~~The Requests under this section shall also include a letter as described in subsection (2), shall also include the following: unless exempted pursuant to subsection ((2) or (3), or both).~~
  - (a) ~~A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:~~
    1. An estimate of the water supply requirements for the proposed development through build-out conditions;
    2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this

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description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
  4. Water conservation measures, if any, that may be implemented within the proposed development;
  5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
  6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various in-all hydrologic conditions; and
  7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development;
  5. Includes a general description of the water supply entity's water obligations;
  6. Includes a general description of the water supply entity's water supplies;
  7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
  8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

(B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Approval Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

- (1) The statements in the application and associated materials are complete, correct, and reliable; and
- (2) The applicant ~~provider~~ submitted appropriate documentation establishing that the applicant is ~~y-are~~ in compliance with all applicable regulations.

**Commented [ELEMENT3]:** Does "the proposed water supply" refer to all rights including a portfolio of water supplies (water rights, contracts, IGAs) and operational systems (storage, water system integration) that are used to meet demands under variable hydrology or the certain dedication requirement to get a service commitment? ELCO interprets this to be the total water supply, including the water dedicated for the subject development, that the EPWSE has available in average and dry years to meet the total water demand for the uses of the subject development and prior customers. Is that correct?

**Commented [ELEMENT4]:** Although this language is copied from the statute, is "demand management" different from conservation in (A)(2)(a)5. above? Does demand management refer to demand-side drought mitigation? Will FC use this information or is the requirement just because the requirement is listed in the statute? How is this information used by FC?

**Commented [ELEMENT5]:** Will FC provide an example or form to follow?

**Commented [ELEMENT6]:** What is the distinction between:  
 • Conservation versus demand management and Service area versus "the development"?  
 Is this referring to demand standards?

**Commented [ELEMENT7]:** Clarify what this means.

**Commented [MS8]:** Will need to make it clear that if a development is planning to add demand to ELCO's system, that developer will be required to add the corresponding supply.

**Commented [MS9]:** I can see how a water supply plan that is updated every 10 years can generally forecast water supply needs based on land use planning for large areas but how can that same plan forecast future developments and their specific water supply needs / demands?

**Commented [ELEMENT10]:**

**Commented [TG11R10]:** The change assumes the applicant is intended. If this provision is intended to address the Established Potable Water Supply Entity, the referenced regulations need to be identified and included in the letter or plan provided by the Established Water Supply Entity.

**Commented [TG12]:** 29-20-305 adds the requirement: "Whether the applicant has paid to a water supply entity a fee or charge for the purpose of acquiring water for or expanding or constructing the infrastructure to serve the proposed development." I suggest adding a (3) that states the applicant has satisfied all conditions required for the Established Potable Water Service Entity to provide potable water service to the Project as provided in any letter of an Established Potable Water Service Entity submitted by the applicant or any conditions provided in any water supply plan of an Established Potable Water Service Entity on file ...

- (D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

#### **Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:
- (1) A summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
  - (5) Approval documentation from other regulatory agencies such as CDPHE.
  - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (B) **Review of Application.**

**Commented [ELEMENT13]:** How can a "planned" acquisition be relied upon for an adequate supply determination?

**Commented [TG14R13]:** If any water rights are conditional or not currently acquired, the Director should confirm all conditional or planned rights have been obtained prior to approval.

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) **Approval Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

- (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - 1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
  - 2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
  - 3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
- (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - 1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  - 2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
  - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a

**Commented [RR15]:** It seems that the developer will say its fine now, but how will you insure it will stay that way over time.

**Commented [RR16]:** Can there be a clarification if non-tributary is not considered renewable?

**Commented [RR17]:** Should this be own?

**Formatted:** Highlight

modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

**Commented [RR18]:** Redundancy is not defined. Does this mean multiple sources? Interconnects? How is the City's redundancy defined as a standard?

- (d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Potable Water Supply Entity-Provider, establishing that: if required by a Colorado statute or any applicable rule or regulation, the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of the an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

- (D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant: acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

**Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

- (A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:
- (1) Summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
    - (c) A description of the water rights either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;
    - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
    - (e) Water conservation measures, if any, that may be implemented within the development;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

**Commented [MS19]:** ELCO's requires that the proposed non-potable landscape irrigation supply be held to the same reliability standard as if it were a like irrigation supply from ELCO. (Supply factor = 1.5).

Will an applicant be subject to different requirements for the ELCO and City review processes or is the City planning to coordinate with ELCO in some way?

**Commented [ELEMENT20]:** What water quality testing is needed? Does this apply to non-potable water?

- (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;
  - (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
  - (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
  - (6) Such other information as may be required by the Director.
- (B) **Review of Application.**
- (1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
  - (2) Review.
    - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
    - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
    - (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.
- (C) **Approval Standards.**
- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
    - (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
      - 1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
    - (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
      - 1. relying upon a renewable and/or sustainable physical supply of water;
      - 2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) ~~in all under various~~ hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable

**Commented [MS21]:** ELCO has its own assessment and approval process for developments seeking to use a non-potable supply for SF residential lot irrigation. How will the timing of this new City review align with the ELCO process?

**Commented [MS22]:** What if the findings of ELCO and the Director don't align? ELCO will not grant a developer a reduced raw water and plant investment fee requirement if the City approves a non-potable supply and ELCO does not. What if the reverse is true?

**Commented [RR23]:** Does this exclude non-tributary groundwater? Can this be clarified?



obligations, including augmentation requirements and return flow obligations; and

3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand ~~in all~~ under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

**Commented [RR24]:** Non-potable water supply is defined as a supply without treatment below.pi

- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

**(D) Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Commented [TG25]:** Add, Nothing contained in this Section 3.12.6 shall satisfy or otherwise affect any requirements imposed by an Established Potable Water Supply Entity for the providing of water service by such Established Potable Water Supply Entity.

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply

of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water*, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

**Commented [ELEMENT26]:** How is this defined?

**Commented [TG27R26]:** Would perpetual supply of water for the type of development proposed express the intent better?

## **Division 3.12 - Water Adequacy Determinations**

### **Section 3.12.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.”
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water;
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

### **Section 3.12.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

### **Section 3.12.3 Application.**

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
  - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
  - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
  - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

**Commented [MS1]:** Should this be done at the BDR stage? Doing it later, such as the Final (FDP) stage is too late. This determination should be made up front.

- (B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.
- (C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

#### Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities

(A) **Application Requirements.**

- (1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:
  - (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
  - (2) A letter prepared by the Established Potable Water Supply Entity's ~~by a~~ registered professional engineer or ~~by a~~ water supply expert ~~from the Established Potable Water Supply Entity~~ stating:
    - (i) ~~the Established Potable Water Supply Entity's~~ its ability to provide an adequate water supply for the proposed development and;
    - (ii) ~~A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development, including any and the conditions of the commitment, under which it will commit to serving the development.~~
- (2) ~~The Requests under this section shall also include a letter as described in subsection (2), shall also include the following: unless exempted pursuant to subsection ((2) or (3), or both).~~
  - (a) ~~A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:~~
    1. An estimate of the water supply requirements for the proposed development through build-out conditions;
    2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this

description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
  4. Water conservation measures, if any, that may be implemented within the proposed development;
  5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
  6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various in all hydrologic conditions; and
  7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development;
  5. Includes a general description of the water supply entity's water obligations;
  6. Includes a general description of the water supply entity's water supplies;
  7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
  8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

(B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.

(C) **Approval Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

- (1) The statements in the application and associated materials are complete, correct, and reliable; and
- (2) The applicant provider-submitted appropriate documentation establishing that the applicant is in compliance with all applicable regulations.

**Commented [ELEMENT2]:** Does "the proposed water supply" refer to all rights including a portfolio of water supplies (water rights, contracts, IGAs) and operational systems (storage, water system integration) that are used to meet demands under variable hydrology or the certain dedication requirement to get a service commitment? ELCO interprets this to be the total water supply, including the water dedicated for the subject development, that the EPWSE has available in average and dry years to meet the total water demand for the uses of the subject development and prior customers. Is that correct?

**Commented [ELEMENT3]:** Although this language is copied from the statute, is "demand management" different from conservation in (A)(2)(a)5. above? Does demand management refer to demand-side drought mitigation? Will FC use this information or is the requirement just because the requirement is listed in the statute? How is this information used by FC?

**Commented [ELEMENT4]:** Will FC provide an example or form to follow?

**Commented [ELEMENT5]:** What is the distinction between:  
 •Conservation versus demand management and Service area versus "the development"?  
 Is this referring to demand standards?

**Commented [ELEMENT6]:** Clarify what this means.

**Commented [MS7]:** Will need to make it clear that if a development is planning to add demand to ELCO's system, that developer will be required to add the corresponding supply.

**Commented [MS8]:** I can see how a water supply plan that is updated every 10 years can generally forecast water supply needs based on land use planning for large areas but how can that same plan forecast future developments and their specific water supply needs / demands?

**Commented [ELEMENT9]:**

**Commented [TG10R9]:** The change assumes the applicant is intended. If this provision is intended to address the Established Potable Water Supply Entity, the referenced regulations need to be identified and included in the letter or plan provided by the Established Water Supply Entity.

**Commented [TG11]:** 29-20-305 adds the requirement: "Whether the applicant has paid to a water supply entity a fee or charge for the purpose of acquiring water for or expanding or constructing the infrastructure to serve the proposed development." I suggest adding a (3) that states the applicant has satisfied all conditions required for the Established Potable Water Service Entity to provide potable water service to the Project as provided in any letter of an Established Potable Water Service Entity submitted by the applicant or any conditions provided in any water supply plan of an Established Potable Water Service Entity on file ...

- (D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

#### **Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:
- (1) A summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
  - (5) Approval documentation from other regulatory agencies such as CDPHE.
  - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (B) **Review of Application.**

**Commented [ELEMENT12]:** How can a "planned" acquisition be relied upon for an adequate supply determination?

**Commented [TG13R12]:** If any water rights are conditional or not currently acquired, the Director should confirm all conditional or planned rights have been obtained prior to approval.

(1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

(2) **Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

(C) **Approval Standards.**

(1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

- (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - 1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
  - 2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
  - 3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
- (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - 1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  - 2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
  - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a

**Commented [RR14]:** It seems that the developer will say its fine now, but how will you insure it will stay that way over time.

**Commented [RR15]:** Can there be a clarification if non-tributary is not considered renewable?

**Commented [RR16]:** Should this be own?

**Formatted:** Highlight



modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

(c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

**Commented [RR17]:** Redundancy is not defined. Does this mean multiple sources? Interconnects? How is the City's redundancy defined as a standard?

(d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Potable Water Supply Entity-Provider, establishing that: if required by a Colorado statute or any applicable rule or regulation, the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of the an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

(D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.

- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant: acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

#### Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities

- (A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:
  - (1) Summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
    - (c) A description of the water rights either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;
    - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
    - (e) Water conservation measures, if any, that may be implemented within the development;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and

**Commented [MS18]:** ELCO's requires that the proposed non-potable landscape irrigation supply be held to the same reliability standard as if it were a like irrigation supply from ELCO. (Supply factor = 1.5).

Will an applicant be subject to different requirements for the ELCO and City review processes or is the City planning to coordinate with ELCO in some way?

**Commented [ELEMENT19]:** What water quality testing is needed? Does this apply to non-potable water?

- (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
- (6) Such other information as may be required by the Director.

**(B) Review of Application.**

- (1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
- (2) Review.
  - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
  - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
  - (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

**(C) Approval Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
  - (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
  - (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. relying upon a renewable and/or sustainable physical supply of water;
    - 2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) ~~in all under various~~ hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable

**Commented [MS20]:** ELCO has its own assessment and approval process for developments seeking to use a non-potable supply for SF residential lot irrigation. How will the timing of this new City review align with the ELCO process?

**Commented [MS21]:** What if the findings of ELCO and the Director don't align? ELCO will not grant a developer a reduced raw water and plant investment fee requirement if the City approves a non-potable supply and ELCO does not. What if the reverse is true?

**Commented [RR22]:** Does this exclude non-tributary groundwater? Can this be clarified?

obligations, including augmentation requirements and return flow obligations; and

3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand ~~in all~~ under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:

1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.

**Commented [RR23]:** Non-potable water supply is defined as a supply without treatment below.pi

- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

**(D) Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Commented [TG24]:** Add, Nothing contained in this Section 3.12.6 shall satisfy or otherwise affect any requirements imposed by an Established Potable Water Supply Entity for the providing of water service by such Established Potable Water Supply Entity.

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply

of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water*, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

**Commented [ELEMENT25]:** How is this defined?

**Commented [TG26R25]:** Would perpetual supply of water for the type of development proposed express the intent better?

**Division 3.12 - Water Adequacy Determinations****Section 3.12.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.”
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water;
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Section 3.12.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

**Section 3.12.3 Application.**

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
  - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
  - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
  - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

- (B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.
- (C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

#### **Section 3.12.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities**

**(A) Application Requirements.**

- (1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:
- (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
  - (2) A letter prepared by the Established Potable Water Supply Entity's registered professional engineer or water supply expert stating:
    - (i) the Established Potable Water Supply Entity's ability to provide an adequate water supply for the proposed development and;
    - (ii) the Established Potable Water Supply Entity is willing to commit to provide an adequate water supply for the proposed development, including any conditions of the commitment.
- (2) The letter described in subsection (2), shall also include the following:
- (a)
    1. An estimate of the water supply requirements for the proposed development through build-out conditions;
    2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;



3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
  4. Water conservation measures, if any, that may be implemented within the proposed development;
  5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
  6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various hydrologic conditions; and
  7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development;
  5. Includes a general description of the water supply entity's water obligations;
  6. Includes a general description of the water supply entity's water supplies;
  7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
  8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.
- (B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.
- (C) **Approval Standards.**
- To issue a Water Adequacy Determination under this section, the Director must find that:
- (1) The statements in the application and associated materials are complete, correct, and reliable; and
  - (2) The applicant submitted appropriate documentation establishing that the applicant is in compliance with all applicable regulations.
- (D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's

decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

### **Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:
- (1) A summary document linking the information to the standard of review; and
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
    - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
  - (5) Approval documentation from other regulatory agencies such as CDPHE.
  - (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
  - (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

**(2) Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

**(C) Approval Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
  - (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
    - 1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
    - 2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
    - 3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
  - (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
    - 1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
    - 2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
    - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
  3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.
- (d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
  2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
  3. for lands within the water service area of an Established Potable Water Supply Entity, establishing that: if required by a Colorado statute or any applicable rule or regulation, the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of the Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.
- (D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins **Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (E) **Decision.**
  - (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
  - (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be

entitled to make a Water Adequacy Determinations conditioned upon the applicant: acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

### **Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

(A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

- (1) Summary document linking the information to the standard of review; and
- (2) Report including information required under Section 29-20-304(1), C.R.S.:
  - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
  - (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
  - (c) A description of the water rights either owned or planned for acquisition, contracts, and/or IGAs required for the proposed water supply;
  - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
  - (e) Water conservation measures, if any, that may be implemented within the development;
  - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
- (6) Such other information as may be required by the Director.

**(B) Review of Application.**

- (1) Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
- (2) Review.
  - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
  - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
  - (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

**(C) Approval Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:
  - (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
  - (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - 1. relying upon a renewable and/or sustainable physical supply of water;
    - 2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
    - 3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand under various hydrological conditions, including a modeled one-in-fifty year drought,

when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
  - 1. if the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
  - 2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
  - 1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
  - 2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

**(D) Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.



*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water*, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

## Hartford Homes Review of Draft Code Standards

4/17/23

Patrick McMeekin in Red  
Dave Thorpe in Blue

## Planning and Zoning Commission Hearing Agenda

Julie Blackhouse, Vice Chair  
Michelle Haefele  
Adam Sass  
Ted Shepard  
Samantha Stegner  
York

City Council Chambers - City Hall West  
300 Laporte Avenue  
Fort Collins, Colorado

Virtual (Zoom or Telephone)  
Cablecast on FCTV Channel 14 on Connexion &  
Channels 14 & 881 on Comcast

*Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide 48 hours advance notice when possible.*

*A solicitud, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione 48 horas de aviso previo cuando sea posible.*

## Special Hearing April 26, 2023 6:00 PM

**Participation** for this hybrid Planning and Zoning Commission meeting will be available online, by phone, or in person.

**Public Participation (In Person):** Individuals who wish to address the Planning & Zoning Commission in person may attend the meeting located in City Council Chambers at City Hall, 300 Laporte Ave.

**Public Participation (Online):** Individuals who wish to address the Planning & Zoning Commission via remote public participation can do so through Zoom at <https://fcgov.zoom.us/j/99273488136>. Individuals participating in the Zoom session should also watch the meeting through that site.

The meeting will be available to join beginning at 5:45 p.m. on April 26, 2022. Participants should try to sign in prior to 6:00 p.m. if possible. For public comments, the Chair will ask participants to click the "Raise Hand" button to indicate you would like to speak at that time. Staff will moderate the Zoom session to ensure all participants have an opportunity to address the Commission.

*(Continued on next page)*

**Public Participation (Phone):** If you do not have access to the internet, you can call into the hearing via phone. Please dial: 253-215-8782 or 346-248-7799, with Webinar ID: 992 7348 8136.

The meeting will be available beginning at 5:45 p.m. Please call in to the meeting prior to 6:00 p.m., if possible. For public comments, the Chair will ask participants to click the “Raise Hand” button to indicate you would like to speak at that time – phone participants will need to hit \*9 to do this. Staff will be moderating the Zoom session to ensure all participants have an opportunity to address the Committee. Once you join the meeting: **keep yourself on muted status**. If you have any technical difficulties during the hearing, please email [smanno@fcgov.com](mailto:smanno@fcgov.com).

**Documents to Share:** If residents wish to share a document or presentation, City Staff needs to receive those materials via email by 24 hours before the meeting. Please email any documents to [smanno@fcgov.com](mailto:smanno@fcgov.com).

Individuals uncomfortable or unable to access the Zoom platform or unable to participate by phone are encouraged to participate by emailing general public comments you may have to [smanno@fcgov.com](mailto:smanno@fcgov.com). Staff will ensure the Commission receives your comments. If you have specific comments on any of the discussion items scheduled, please make that clear in the subject line of the email and send 24 hours prior to the meeting.

**As adopted by City Council Ordinance 143, 2022, a determination has been made by the chair after consultation with the City staff liaison that conducting the hearing using remote technology would be prudent.**

- **ROLL CALL**
- **AGENDA REVIEW**
- **PUBLIC PARTICIPATION**

Individuals may comment on items not specifically scheduled on the hearing agenda, as follows:

- Those who wish to speak are asked to sign in at the podium if they are in person
- The presiding officer will determine and announce the length of time allowed for each speaker.
- Each speaker should state their name and address and keep their comments to the allotted time.
- Any written materials should be provided to the Secretary for record-keeping purposes.
- In person participants will hear a timer beep once and the time light will turn to yellow to indicate that 30 seconds of speaking time remains and will beep again and turn red when a speaker's time to speak has ended.

- **CONSENT AGENDA**

The Consent Agenda is intended to allow the Planning and Zoning Commission to quickly resolve items that are non-controversial. Staff recommends approval of the Consent Agenda. Anyone may request that an item on this agenda be “pulled” for consideration within the Discussion Agenda, which will provide a full presentation of the item being considered. Items remaining on the Consent Agenda will be approved by the Planning and Zoning Commission with one vote.

The Consent Agenda generally consists of Commission Minutes for approval, items with no perceived controversy, and routine administrative actions.

No Items listed.

- **DISCUSSION AGENDA**

4. **Water Adequacy Determination Code Update**

**PROJECT DESCRIPTION:** This is a request for a recommendation to City Council regarding proposed Land Use Code changes to add specific regulations outlining how the City will make a water adequacy determination for new development. The regulations are divided into three different categories, one for Established Water Providers, one for new providers and one for non-potable providers. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

**APPLICANT:** City of Fort Collins  
413 S Bryan St  
Fort Collins, CO 80521

**STAFF ASSIGNED:** Jenny Axmacher, Principal Planner

- **OTHER BUSINESS**

- **ADJOURNMENT**

# Development Review Staff Report

*Agenda Item 1*

Planning & Zoning Commission Extra Hearing – April 26, 2023

## Land Use Code Amendment – Water Adequacy Determination Review Code Update

### Summary of Request

This is a request for a recommendation to City Council regarding proposed Land Use Code changes to add specific regulations outlining how the City will make a water adequacy determination for new development. The regulations are divided into three different categories, one for Established Water Providers, one for new providers and one for non-potable providers. The goal is to comply with Colorado state statute (Section 29-20-301, et seq., C.R.S.) and to make sure development has the necessary water supply.

### Next Steps

The Planning and Zoning Commission's recommendation will be forwarded to City Council as part of their consideration to adopt the proposed Land Use Code changes.

### Staff Recommendation

Approval of the proposed Land Use Code changes.

### Applicant

City of Fort Collins  
PO Box 580  
Fort Collins, CO 80522

### Staff

Jenny Axmacher, Principal Planner  
p. (970) 416.8089  
e. [jaxmacher@fcgov.com](mailto:jaxmacher@fcgov.com)

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## 1. Project Introduction

### A. BACKGROUND

Water is a crucial and constrained resource, and the City strives to ensure that development meets the community's vision and expectations for responsible resource management. City Plan includes policies to ensure water is used wisely and our community is prepared for a changing climate. The plan also supports managing water resources in a manner that enhances and protects long-term water quality, supply, and reliability for current and future residents.

The necessity for an updated water adequacy review program stems from the limited supply and high cost of water resources, which have resulted in developers pursuing more creative ways to provide water to their proposed developments, particularly projects striving to provide affordable housing or the denser development patterns called for in City Plan. One development contemplating a more unique and potentially innovative approach to supplying water resources is the Montava Planned Unit Development (PUD), which proposes a groundwater-based water supply for both potable and non-potable water service. The developer believes this system will improve the overall resiliency of the water supply for the area while also reducing the cost.

Because the City does not currently have a review process or criteria for “non-standard” water service models, including groundwater systems, new policy and code are needed to confirm that future residents are adequately served. While the Montava project has generated the immediate need for this type of review, staff believes a comprehensive program could have benefits for reviewing all new developments moving forward, regardless of the water source.

### B. REQUIREMENT FOR WATER ADEQUACY REVIEW

This review process is being proposed to further effectuate a Colorado state statute (Section 29-20-301, et seq., C.R.S.), which states:

*A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.*

For this regulation, the Colorado state statute defines some key terms, including the following. “‘Adequate’ means a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.” “‘Water supply entity’ means a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply company that supplies, distributes, or otherwise provides water at retail.”

Currently, development within the City only occurs within the boundaries of existing City (Fort Collins Utilities) and Special District water providers, such as Fort Collins-Loveland Water District and East Larimer County Water District, and the adequacy determination is made through the issuance of a “will serve” letter from the established water provider. The City receives a will serve letter from the provider during the building permit process for the new development. A will serve letter states that the provider has the infrastructure and capacity to provide water service to the proposed development project and commits to providing that service.

Pursuant to state statute, ‘will serve’ letters meeting certain requirements may satisfy the water adequacy determination, but staff will soon be faced with a proposal that is outside the bounds of the current system and needs a more robust and transparent process to evaluate the more complex proposal. It is partly the responsibility of the City to ensure that future residents are well served by an adequate system.



## 2. Comprehensive Plan & City Policy Alignment

### A. CITY PLAN

City Plan (2018) offers the following guidance related to water supply in the city. The proposed LUC changes align to this guidance:

*Principle LIV 9: Encourage development that reduces impacts on natural ecosystems and promotes sustainability and resilience.*

*Policy LIV 9.2 - OUTDOOR WATER USE Promote reductions in outdoor water use by selecting low-water-use plant materials, using efficient irrigation, improving the soil before planting and exploring opportunities to use non potable water for irrigation.*

*Principle ENV 6: Manage water resources in a manner that enhances and protects water quality, supply and reliability.*

*Policy ENV 6.1 - WATER RESOURCE PLANNING Partner and collaborate with water service providers to ensure adequate, safe and reliable water supplies in accordance with the Water Supply and Demand Management Policy. To the extent feasible, coordinate on supply and storage development and demand modeling.*

*Policy ENV 6.2 - WATER CONSERVATION AND EFFICIENCY Continue and enhance water conservation, efficiency and education programs in accordance with the City's Water Efficiency Plan. Consider new and revised land-use and site-planning standards to reduce water use in both new and redevelopment projects. Where possible, coordinate on programs and services to create consistent experiences for users regardless of their location and water service provider.*

*Policy ENV 6.3 - DROUGHTS AND VULNERABILITY Develop drought and vulnerability planning that takes into consideration the future impacts of climate change; potential demand changes from increased urban and multifamily developments; and other hazards and vulnerabilities, such as disruption of supplies due to wildfires. Partner and collaborate with water service providers in the GMA.*

*Principle SC 3: Minimize risks to life, infrastructure and property from natural hazards or exposure to hazardous materials.*

*Principle HI 1: Be a model for equitable, effective and transparent local governance.*

*Policy HI 1.8 - SERVICE PROVIDERS Coordinate closely with and promote coordination among service providers in needs assessment, facility siting and other matters to ensure continuing delivery of effective, equitable and efficient services.*

### B. HOUSING STRATEGIC PLAN

The Housing Strategic Plan (2021) provides the following guidance related to water supply. The proposed LUC changes align to this guidance:

*18. Increase awareness and opportunities for creative collaboration across water districts and other regional partners around the challenges with water costs and housing.*

*Why Prioritized? Water costs have a significant impact on housing development costs; addressing water cost challenges creates opportunity to improve affordability and housing product diversity. Acknowledges regional nature of water and seeks opportunities for education and collaborative solutions; potential for direct impact on sustainability and affordability.*

### C. CLIMATE ACTION PLAN

Our Climate Future (2021) provides the following guidance related to water supply within the City. The proposed LUC changes align to this guidance:

*Big Move 3 – Climate Resilient Community: People, buildings, watersheds and ecosystems are prepared for the threats of climate change.*

*CRC1 - Adopt a holistic approach to integrated water resource planning and management (One Water Approach)*





*CRC3 - Expand and enhance water efficiency programs and incentives.*

*CRC4 - Update codes to address existing and new developments' indoor and outdoor water efficiency.*

*Big Move 5 – Live, Work and Play Nearby: No matter where we live, we all can meet our basic daily needs without driving across town.*

*LWPN4 - Increase density and mixed uses through the land use code as guided by City Plan.*

*Big Move 7 – Healthy, Affordable Housing: Everyone has stable, healthy housing they can afford.*

*HAH3 - Increase the number and diversity of housing types and allow more homes per lot (density) via an update to the City's Land Use Code.*

## D. CITY STRATEGIC PLAN

The water adequacy determination review can be viewed as a tool kit to look at water affordability and support sustainable development patterns and objective 1.6 of the City's 2022 Strategic Plan.

*1.6 Transform regulations and revise procedures to increase clarity and predictability to ensure new development advances adopted City plans and policies.*

## 3. Summary of Proposed LUC Changes

The proposed Land Use Code changes may be found in Attachment 1, and include an amendment to Article Three, adding Division 3.12, and adding nine new definitions to Article Five, Section 5.1.2 Definitions. A summary of the proposed changes include:

### 1. Article Three, Division 3.12 – Water Adequacy Determinations

The proposed new division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S.

The subsequent sections outline the applicability, application, and procedures and standards for the three different review types:

- Established potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District.
- Other potable water supply entities such as new private water supplies or metro districts.
- Non-potable water supply entities, such as irrigation water supplied by metro districts

#### Established Entities

For established water suppliers, the code provides options for compliance through review of water supply plans or letters from engineers detailing how the water supply system functions. Once an initial approval is completed, the process would move forward similarly to what the City does now with will serve letters.

#### Other Entities

A more detailed process is proposed for other water providers and the City has identified the following characteristics for evaluation criteria:

- Water Quality
- Quantity of Water
- Dependability of Supply and Supplier
  - Supply Resiliency
  - System Redundancy

Is this different than what is done now?  
The initial approval scares me.



- Maintenance and Outages
- Availability of Supply
- Financial Sustainability of Supplier Capitalization

In general, the standards compare the new proposed system to the existing municipal utility.

### **Non-potable Entities**

The criteria for non-potable systems looks to make sure the supply has enough quantity and quality to support the associated uses such as irrigation for landscape.

## **2. Article Five, Division 5.1.2 – Definitions**

The proposed change to Division 5.1.2 is to add the following definitions that relate to the water adequacy determination review process and provide additional clarity on specific terms used in that section.

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water* shall mean water, also known as drinking water, that is treated to state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination that the proposed water supply for development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservation district, water authority, or other public or private water supply entity that, upon application, or within three years of application, supplies, distributes, or otherwise provides water.

*Water supply system* shall mean all infrastructure planned or used to divert and convey water for development.

I agree. The implications of this code are really very significant and we feel there are major problems with this draft code. Those that develop non-pot systems should have been brought into this conversation much earlier than right before P&Z.

## **4. Public Outreach**

### **A. BACKGROUND**

This proposed Land Use Code change did not include specific public outreach meetings, however information on the code update was provided on the website, including an educational video. Staff will conduct stakeholder outreach meetings with the Special Districts and development stakeholders in the time between the P& Z work session and the P& Z hearing. Additional information on these meetings will be provided closer to the hearing date.

Sure seems like this feedback should be gathered before going to P&Z

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**Planning & Zoning Commission – Agenda Item 1**

LUC Amendment - Enclosed Mini-Storage Use Restriction

Wednesday, April 26, 2023 | Page 6 of 6

The information for the hearing packet is posted in the Development Review webpage.

Notice (Posted, Written and Published)

Published Notice: April 9, 2023. Coloradoan

## 5. Recommendation

Staff recommends the Planning and Zoning Commission forward a recommendation to City Council to approve the proposed Land Use Code changes.

## 6. Attachments

1. Proposed Land Use Code Changes
2. Staff Presentation

**DRAFT SUBJECT TO FURTHER REVISION AND REVIEW****Division 3.12 - Water Adequacy Determinations****Section 3.12.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water;
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Section 3.12.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal jurisdiction of the City. No such development or redevelopment shall be approved and allowed to proceed until the Director has determined that the proposed water supply for the development or redevelopment is adequate.

Design and adequacy are not the same. If the City wants to review adequacy, that should be done before the design process begins or in its very early stages.

**Section 3.12.3 Application.**

- (A) An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for Final Plan or Basic Development Review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to any of the following:
  - (1) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Development Construction Permit (Division 2.6);
  - (2) The Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a Building permit (Division 2.7), if the provider is an Established Potable Water Supply Entity; or
  - (3) Applications for Water Adequacy Determinations for non-potable systems shall be submitted at the same time as Development Construction Permit for review, as outlined in Division 2.6.

This is too late. You could be getting ready to go under construction and find out your non-pot system is not viable



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(B) The applicant shall file separate applications for Water Adequacy Determinations for each portion of the development served by different water supply entities or water supply systems. The Director shall have the discretion to determine whether separate applications are required. Subsequent sections in this Division provide distinctions in the evaluation process for Established Potable Water Supply Entities, Other Potable Water Supply Entities, and Non-Potable Water Supply Entities.

(C) **Material Changes.** The City shall make a Water Adequacy Determination only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a water adequacy determination. The Director's determination is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

Water Supplies Entities should be able to approve their own non-pot systems

Should not ELCO or FCLWD be able to make their own determination about their own ability to serve?

Also, if a ditch company operates their own non-pot system, or provides to a development in bulk, that entity should make the determination of their ability to serve.

### **Section 3.12.4 - Procedures and Standards for Water Adequacy Determination Water Supply Entities**

#### **(A) Application Requirements.**

(1) Requests for a Water Adequacy Determination for all or portions of a development to be served with potable water by an Established Potable Water Supply Entity shall be in a form as required by the Director. Such requests shall include the following:

- (1) Identification of the portions of a development to be served with potable water by the Established Potable Water Supply Entity; and
- (2) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating its ability to provide an adequate water supply for the proposed development.
- (3) A letter prepared by a water supply expert from the Established Potable Water Supply Entity stating it is willing to commit to provide an adequate water supply for the proposed development.

(2) Requests under this section shall also include a letter as described in subsection (1), unless exempted pursuant to subsection ((2) or (3), or both).

(a) A letter prepared by a registered professional engineer or by a water supply expert from the Established Potable Water Supply Entity stating:

1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the physical source of water supply that will be used to serve the proposed development. If the proposed source includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;

To be clear, is this section ONLY for potable? Please clarify.

How are these different?

This seems like the City trying to get into ELCO and FCLWD's business

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3. An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions including long term variability and future climate risk;
4. Water conservation measures, if any, that may be implemented within the proposed development;
5. Water demand management measures, if any, that may be implemented to address hydrologic variations;
6. Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development in all hydrologic conditions; and
7. Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

- (b) The letter described in subsection (1) shall not be required if the Established Potable Water Supply Entity has a water supply plan that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the Established Potable Water Supply Entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development;
  5. Includes a general description of the water supply entity's water obligations;
  6. Includes a general description of the water supply entity's water supplies;
  7. Includes an estimate of the water supply requirements of the proposed development through build-out conditions and demonstrates the entity's water supplies can meet these demands; and
  8. Has been reviewed by City Council and is on file with the City's Community Development and Neighborhood Services Department. The Director may defer the Council review requirement until such time as the Established Potable Water Supply Entity updates their existing water supply plan.

What happens if ELCO or FCLWD miss one of these?

How do these requirements affect them and their daily operations? It cannot be the developer's responsibility to make sure that third party quasi-governmental agencies are in compliance with this section in order for their developments to proceed.

Same as above. This is way too late in the process.

- (B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.
- (C) **Standards.**

To issue a Water Adequacy Determination under this section, the Director must find that:

- (1) The statements in the application and associated materials are complete, correct, and reliable; and
  - (2) The provider submitted appropriate documentation establishing that they are in compliance with all applicable regulations.
- (D) **Decision.** The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and those decisions shall become part of the plan set for the associated development application, if approved. The Director's

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subject to appeal pursuant to the Land Use Code or Code of the City of Fort

Can this whole code just boil down to this one section? Unless there are problems with existing providers, why include the other sections? Those entities already review non-pot plans to ensure there is adequate non-pot supply before they authorize inside use-only taps. They also confirm they have potable supply.

**Section 3.12.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

(A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a Water Adequacy Determination for all or portions of a development to be served with potable water by Other Potable Water Supply Entities shall be in a form as required by the Director. Such applications shall include the following:

- (1) A summary document linking the information to the standard of review; and
- (2) Report including information required under Section 29-20-304(1), C.R.S.:
  - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
  - (b) A description of the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
  - (c) A description of the water rights either owned or planned for acquisition required for proposed water supply;
  - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
  - (e) Water conservation measures that may be implemented within the development including how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2;
  - (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
- (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
- (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the Established Potable Water Supply Entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development.
- (5) Approval documentation from other regulatory agencies such as CDPHE.
- (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed.
- (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.

**(B) Review of Application.**

- (1) **Agreement on Costs.** Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired

Nobody in their right mind should pursue this

This is really vague. Approvals from CDPHE for what?



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to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

**(2) Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.12.3.

**(C) Standards.**

- (1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

- (a) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  1. providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
  2. providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects ; and
  3. establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.
- (b) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  1. relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  2. having ability to acquire the water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
  3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.

In in instance such as this, ALL rights should be in-hand before making an application. Proving they can be acquired seems odd and probably too late in the process.

In in instance such as this, do you require a letter from the aug plan? That should be required.

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- (c) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
1. establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  2. if the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products. ;
  3. establishing that the water supply system can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  4. establishing and maintaining a water supply entity that can oversee and maintain the water supply system for the lifetime of the development.

- (d) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:

1. establishing the applicant has the necessary property rights and resources to build and operate the proposed water supply system;
2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
3. for lands within the water service area of an Established Water Provider, establishing that: the lands to be served by the Other Potable Water Supply Entities have been removed from the water service area of an Established Potable Water Supply Entity; or the Established Water Supply Entity consents to the proposed service by the Other Potable Water Supply Entity.

- (D) Modification of Standards. If a Potable Water Supply Entity cannot meet the Fort Collins

**Utility Standards set forth above, then they may seek a modification of standards** pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the standards set forth in Section 2.8.2(H), the Director must find that the modified standard is comparable to an existing standard already being employed by another Established Potable Water Entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

(E) **Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant:

If a third party were to propose to become its own water district, I would think it would be in the public's interest for the decision maker for a modification to be above the Director. These are reasonable baseline standards. If they cannot be met, it should be elevated in the public process.

If there is a new, private potable water provider and they also want to deliver non-pot, then this section makes sense. Otherwise, it makes development far more complicated without appearing to address an established problem.

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acquiring the required water right decrees and water contracts for the water supply system; and/or completing construction of all infrastructure for the water supply system.

- (3) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (4) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for this development is being provided by the approved entity.

### **Section 3.12.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

- (A) **Application Requirements for Non-Potable Water Supplies.** Applications for a Water Adequacy Determination for all or portions of a development to be served with untreated water shall include the following:

- (1) Summary document linking the information to the standard of review; and
- (2) Report including information required under Section 29-20-304(1), C.R.S.:

- (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
- (b) A description of the physical source of water supply that will be used to serve the proposed development. This description must include water quality test results of an analysis investigating any limitations of use due to poor quality;
- (c) A description of the water rights either owned or planned for acquisition for the proposed water supply;
- (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year on augmentation requirements;
- (e) Water conservation measures, if any, that may be implemented within the development;
- (f) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
- (g) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the development code;

- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.

- (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.

To what standards is it held, though?

For surface water and reservoir water, this is not a reasonable standard, as the sources of those waters constantly varies for the ditch companies.

Is this intended to mean in homes? Or in common areas?

This whole section is very vague and talks about subjects but doesn't have any specific standards.

This should be controlled by the Water Provider and not the City. If the system is in the utilities District boundary than yes.

Agreed. This creates an opportunity for conflicting standards between COFC and other providers.

This should not be the Cities purview

And how is this related to water conservation? It shouldn't be set against anything. If non-pot is viable, it should be encouraged. The non-pot system is separate from low water plants or other landscaping issues. It's only about the source and delivery of raw water.



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- (5) Approval documentation from other regulatory agencies, including the Established Potable Water Supply Entity whose service area contains the proposed non-potable system.
- (6) Such other information as may be required by the Director.

**(D) Review of Application.**

Agreement on Costs. Prior to the City reviewing any application under this section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No Water Adequacy Determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

**Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.
- (c) Applications for Water Adequacy Determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.

**(C) Standards**

1) To issue a Water Adequacy Determination under this section, the Director must find that the application and associated materials establish that:

- (a) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
1. providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
- (b) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
1. relying upon a renewable and/or sustainable physical supply of water;
  2. having water rights or water contracts that provide a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
  3. for lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.

Agreed. This standard assumes the water provider is also reviewing. What is the public benefit of the City also doing so for ELCO and FCLWD?

Too late

Agreed. For master planned communities, this is an ODP issue. For smaller developments it should be a part of PDP because that's when the water provider already requires this information from the developer.

ELCO has a different standard

And that's part of our big fear here - multiple standards by different governments reviewing the same thing.

We had to do master plan estimates for the whole community early in the process, well before we had a final landscape plan. Master planned communities will build the backbone infrastructure up to a decade in advance. This timing doesn't work.

The potable water provider should simply require confirmation from the aug plan that the proposed non-pot system is in compliance with the aug plan.

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- (c) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
1. if the non-potable water supply system includes treatment, that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful byproducts;
  2. establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
- (d) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
1. establishing the applicant has the necessary property rights and resources to build and operate the proposed non-potable water supply system;
  2. for lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.

Again, this is undefined. If it's a metro district, the City shouldn't need to see the finance model to prove it can be built.

See above. Isn't that the aug plan's job already? Since those are often at-will the developer is already heavily incentivised to stay in compliance so they don't get kicked out.

Timing doesn't work at DCP if a decree is required.

**Decision.**

- (1) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations based on the information provided by the applicant and developed by the City and any consultants. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (2) The Director shall make Water Adequacy Determinations, conditional approvals, and denials of Water Adequacy Determinations in writing and include findings made under Section (3) Standards. The written determination shall be included in the plan set for the associated development application, if approved. The Director shall be entitled to make a Water Adequacy Determinations conditioned upon the applicant acquiring the required water right decrees for the water rights system.
- (3) ~~The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.~~

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed, and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established Potable Water Supply Entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

If the City is going to get into this business, there has to be some appeal process. The stakes are so high for developers with these systems, especially in our case where there is a PBA explicitly stating we have to have a non-pot system. This code has no standards to weigh a system against, so a denial by the Director would essentially kill the project. There needs to be recourse.

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*Non-Potable Water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-Potable Water Supply Entities* shall mean the water supply entities, either Established Potable Water Supply Entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of Non-Potable Water.

*Other Potable Water Supply Entities* shall mean the water supply entities other than the Established Potable Water Supply Entities that provide potable water service, including new proposed water supplies.

*Potable water*, shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

*Water Adequacy Determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, at the time of the application, or within three years of application, supplies, distributes, or otherwise provides water at retail.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

What is this three-year requirement? It's not mentioned anywhere else in the code.





# Water Adequacy Determination Review Land Use Code Update





- Water Adequacy Determination Review Program supports the goals of
  - City Plan
  - Housing Strategic Plan
  - Climate Action Plan
- Viewed as a tool kit to look at water affordability and support sustainable development patterns
- Neighborhood Livability & Social Health - 1.6 - Align land use regulations and review procedures to guide development consistent with City Plan.



- Water is a critical resource and its cost and availability impact new development
- Existing review process
- Need for a more robust process
  - More complicated development
  - Potential for creation of new water providers

Completely understand and agree with this one. It makes total sense and is needed.

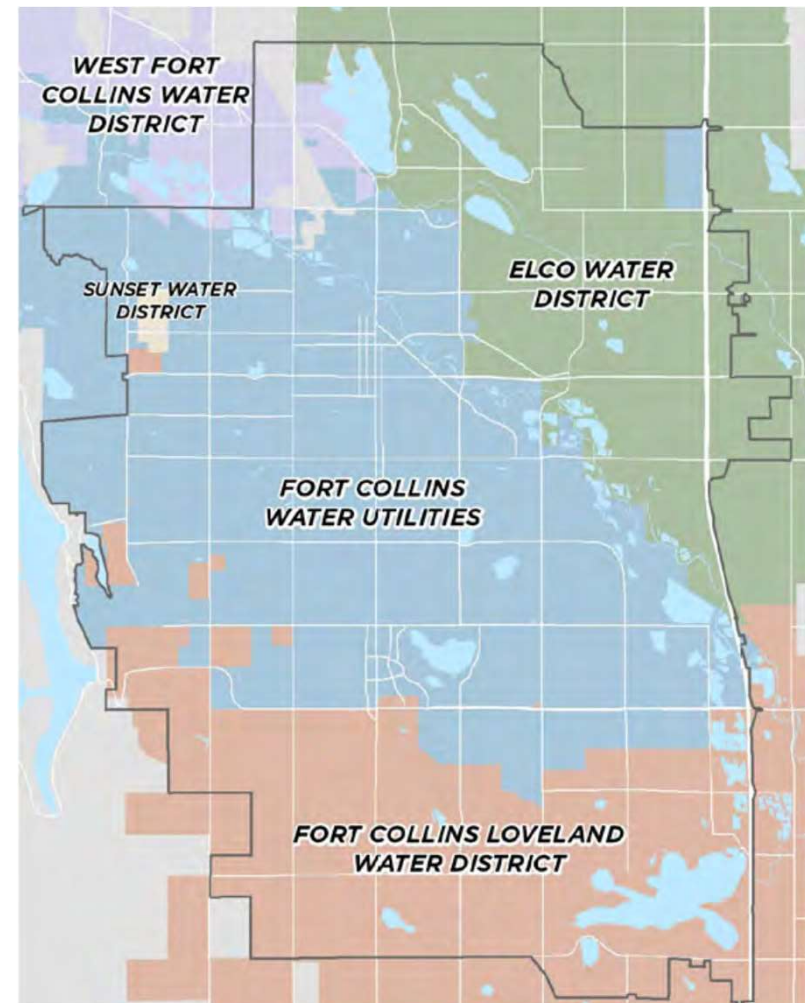
However, where is the current breakdown in the current code and development process? it worked well at Bloom. This new code would significantly increase development complexity and if it is not addressing an identified problem, where is public benefit?



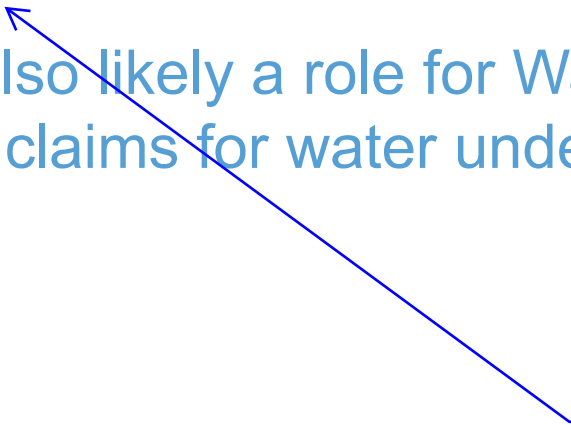
This review process is being proposed to further effectuate Section 29-20-301, et seq., C.R.S. which states:

A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.

- Development occurs within the district boundaries of existing water providers
- Will Serve Letter issued by provider
  - Part of the building permit process



- Other Agency Review
  - Other agencies have the authority to review new providers
  - CDPHE
    - Requires public water systems demonstrate adequate capacity to construct, operate and manage the new public waterworks.
  - Water Court
    - There is also likely a role for Water Court to plan in validating claims for water under Colorado Law.



Avoiding Water Court and change cases is part of what makes non-pot systems so attractive. They also mean a much smaller dedication of raw water to the potable provider when that is required. Please avoid bringing in Water Court unless necessary.



## Proposed Evaluation Process – Existing Providers

7

- Keep similar process for existing providers

- Will Serve Letter

Why not same?

- Consider opportunities to

- Review proposed updates to water supply plans
  - Improve letters
  - Streamline process
  - Increase consistency between different providers

Agreed. Where is the breakdown that this level of code is needed for all projects?

I doubt this will streamline the process. How do ELCO and FCLWD feel about COFC reviewing their water supply plans

And is the developer then hamstrung if the provider and COFC disagree on some background information?



- Evaluation criteria for new providers
  - Water Quality
  - Quantity of Water
  - Dependability of Supply and Supplier
    - Supply Resiliency
    - System Redundancy
    - Maintenance and Outages
  - Availability of Supply
  - Financial Sustainability of Supplier
    - Capitalization
- Would apply to potable and non-potable supplies





## Timing and Approval Authority

9

- Timing
- The state statute leaves the determination timing during the development process up to the purview of the local jurisdiction however they limit making the determination to **only once** unless something materially changes.
- The draft code will identify the milestone in the development review process when this determination will be made.
- It will also identify what would trigger a reassessment.
- Approval
- The determination of adequacy would be made administratively subject to a review and recommendation by a qualified water consultant.

As stated above, this proposed point is way too late in the development process.

I didn't read that section above. What does trigger it?

The draft code only discusses the Director, not a consultant. When does the consultant come in to the process?



- The major milestones for this project are:
  - Draft Code Review
  - P&Z Recommendation
  - Council Consideration
  - Implementation
- If you'd like to learn more about this code update or provide comments, please contact Jenny Axmacher at [jaxmacher@fcgov.com](mailto:jaxmacher@fcgov.com)

**THANK YOU!**

