

## Cluster Dev State Attw Gen Water Opinion

Doris

**From:** Kuzmiak, Janet [Janet.Kuzmiak@state.co.us]  
**Sent:** Tuesday, July 17, 2007 3:58 PM  
**To:** naylor@qwestoffice.net  
**Cc:** Frey, Heidi  
**Subject:** Livestock Watering on Cluster Development Open Space Lands

John,

Here is the background on the livestock watering on open space designated lands in cluster developments as you requested.

Janet

**From:** Adam Bergeron [mailto:Nrbergal@dolsmtp.dol.state.co.us]  
**Sent:** Wednesday, May 02, 2007 4:25 PM  
**To:** Frey, Heidi  
**Cc:** Kowaleski, Patrick  
**Subject:** Twin Butte Estates Cluster Development

Hi Heidi,

Alex passed this project along to me when she left, and I have had a chance to take a look at the relevant statutes and some caselaw. Pat, Alex asked that I cc: you on this email as well in case you wanted to discuss.

## 1. Fire-fighting purposes

C.R.S. 37-92-602(1)(d) clearly states that, for a well to be exempt under this section, it must be "available for use only in fighting fires." So, I believe that your initial thought that the developer would need a second well is correct. The developer cannot use a well, and thereby exempt that well, for the dual purposes of fire-fighting and livestock watering. The developer would need a second well that is dedicated solely to fire-fighting to gain an exemption under this section of the statute.

## 2. Livestock watering

C.R.S. 37-92-602(1)(b) provides for exemption of wells used for, among other things, "the watering of poultry, domestic animals, and livestock on farms and ranches..." Farms and ranches are not defined in Title 37, and I was unable to locate caselaw that provides a definition for those terms relative to Title 37. However, they are defined in Title 39, specifically C.R.S. 39-1-102(3.5) and (13.5).

A "farm" under Title 39 "means a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit."

A "ranch" under Title 39 "means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this section (13.5), 'livestock' means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit."

So, it is clear that open space adjacent to a cluster residential development does not satisfy the definitions of farm or ranch under Title 39 because open space's primary purpose is not one of "obtaining a monetary profit." Also, it is doubtful that any animal that could be "watered" in that open space would qualify as "livestock" under Title 39 given the definition. Further, the "grazing and boarding of 'pleasure horses' does not qualify as a 'ranching' use" under Title 39. *Palmer v. Bd. of Equaliz.*, 957 P.2d 348, 349 (Colo. App. 1998). I am not sure if the developer intended to "water" riding horses with the well, but just in case, I provided this cite for you. Also, you stated in your correspondence with Alex that the developer seeks to water "livestock," so I focused on that term more so than on "domestic animals." Regardless, even if someone wanted to water "domestic animals," the open space still would not qualify as a "farm" or "ranch."

7/18/2007

Although this language does not directly apply to Title 37, a court may find it persuasive because these definitions are reasonable in their application to the terms "ranch," "farm" and "livestock" as used in Title 37.

If you have any further questions regarding this issue, please feel free to contact me.

Thank you,  
Adam Bergeron