

MONSON, CUMMINS & SHOJET, LLC

13511 NORTHGATE ESTATES DRIVE, SUITE 250
COLORADO SPRINGS, CO 80921

CHRISTOPHER D. CUMMINS*
DAVID M. SHOJET
RYAN W. FARR
EMILIE B. POLLEY *

TELEPHONE: (719) 471-1212
FAX: (719) 471-1234
www.cowaterlaw.com
ebp@cowaterlaw.com

Of Counsel: STEVEN T. MONSON

August 9, 2021

John Green
Planner II
El Paso County Planning & Community Development
2880 International Circle, Suite 110
Colorado Springs, CO 80910

Re: Comments received for the Miles Subdivision AKA JeniShay Farms

Dear Mr. Green:

Our firm represents Shay Miles, applicant of the Miles Subdivision, which is also referred to as JeniShay Farms. Mr. Miles received comments on the Water Resources Report from both El Paso County and the Division of Water Resources. Please find responses to the comments below.

Water Resources Report

Comment: "Calculation must be based on 0.26 ac-ft/year"

The presumptive 0.26 value does not apply where there is another value "established as acceptable by the State Engineer." Land Development Code §8.4.7(d) The 0.25 acre-foot per home minimum was established for the property in the decree of Water Court, Division 2, in Case No. 18CW3226, which process includes input from the

* Also licensed in Wyoming



Colorado State and Division Engineer's Offices, both as to the sufficiency of water for in-home purposes and otherwise. The Land Development Code also states that all quantities of water shall originate from "court decrees for water rights." Land Development Code §8.4.7(B)(9)(a)(ii). Furthermore, Case No. 96CW68 provides for a 0.30 acre-foot per year annual pumping amount for Lots 5 and 6 of the Terra Ridge Estates subdivision. Accordingly, all quantities of water synopsisized in the Water Resources Report are consistent with, and imitate, the quantities of water as delineated in the 18CW3226 and 96CW68 decrees.

Source of Water Supply

Comment: "The Applicant must submit a water supply plan for replatted lots 5 and 6 of Terra Ridge Estates that satisfies the county's 300-year water supply requirement."

The Applicant has requested to replat Lots 5 and 6 of the Terra Ridge Estates Subdivision for inclusion into the JeniShay Farms subdivision. However, the Applicant does not seek to make any other changes to these existing parcels as established in the Terra Ridge Estates plat. Applicant's inclusion of Lots 5 and 6 of the Terra Ridge Estates plat as part of the JeniShay Farms subdivision is solely for the purpose of providing consistent covenants and restrictions to these long-platted lots, along with the other newly platted lots of the JeniShay Farms subdivision. Lots 5 and 6 of the Terra Ridge Estates were platted in 1997 with an approved plan for augmentation under the then-applicable land development code. It is inequitable to force applicant to seek a new water plan for previously platted lots in this instance, where a 300-year water plan for the newly platted lots has already been obtained. The El Paso County Land Development Code §7.2.2(D) provides that "certain subdivision standards and requirements regarding water supply. . . shall not be applicable to an exemption." Specific subdivision exemptions are outlined in the LDC, though the list is not exclusive; the Board of County Commissioners can still deem certain land use actions as exempt from subdivision standards and requirements if the land use action is not within the County Planning purposes contained in C.R.S. § 30-28-101. Land Development Code §7.2.2(E)(6). The simple inclusion of two existing lots from Terra Ridge Estates into JeniShay Farms for purposes of covenant consistency should not be considered a subdivision action which would necessitate adherence to the full gambit of requirements of a subdivision application. See C.R.S. § 30-28-101(10)(a). As such, the Applicant should be able to rely on the already County approved Court decreed augmentation plan in place for Lots 5 and 6 of Terra Ridge Estates.

Thank you for your consideration, please don't hesitate to contact us with any additional questions or concerns pertaining to water supply for the JeniShay Farms project.

Sincerely,

MONSON, CUMMINS & SHOHET, LLC

Emilie B. Polley

Emilie B. Polley