

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

**Diana K. May, County Attorney**

### Assistant County Attorneys

M. Cole Emmons  
Lori L. Seago  
Lisa A. Kirkman  
Steven A. Klaffky  
Mary Ritchie  
Bryan E. Schmid

October 9, 2019

PUDSP-19-6 Forest Lakes Subdivision Phase II, PUDSP 5, 6, and 7  
Minor amendment with water sufficiency

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

### FINDINGS AND CONCLUSIONS:

1. In 2002, a Preliminary Plan was approved regarding the Forest Lakes Residential Development for a total of 467 residential lots, plus parks, school site, and open space. Forest Lakes Residential Development, LLC ("Applicant") is proposing to amend the PUD/Preliminary Plan for the purpose of eliminating width at the setback, move 2 lots to the east, adjust the tract for drainage, eliminate the impact to wetlands, and request water sufficiency at the Preliminary Plan stage. If water sufficiency is approved, Applicant will submit future plats for administrative approval pursuant to Resolution No. 19-329, recorded in the records of the El Paso County Clerk and Recorder at Reception No. 219101784 on August 28, 2019, which permits administrative approval of final plats. Applicant's proposal is for 180 lots on 287 +/- acres of land. The property is zoned PUD (Planned Unit Development).

2. The County approved a Preliminary Plan in 2002 for a total of 467 residential lots, plus parks, school site, and open space. But with a finding of insufficiency for the water supply. The project originally was phased into two parts, with Phase One to include 3 filings with a total of 275 lots. The Final Plat for Filing 1 for 34 single family lots was approved in 2004, with water supply findings of sufficiency as to quantity but only conditional sufficiency as to dependability because the water provider, Forest Lakes Metropolitan District ("the District"), had not completed the water supply system at that time. In 2006, the Final Plat for Filing 3 for 79 single family lots was approved with water supply findings of sufficiency as to quantity, but again, only conditional sufficiency as to dependability because the water supply system still had not been completed. Plans for Filing 2 had contemplated 163 patio home lots. In 2016, a PUD Development Plan/Preliminary Plan was approved, which amended the PUD/Preliminary Plan approved in 2002 by revising the plans for Filing 2 into Filing 2A consisting of 73 single family lots and 5 tracts and Filing 2B consisting of 87 single

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



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

family lots and 6 tracts for a total of 160 lots. The County Attorney's office recommended a finding of water sufficiency for quantity and dependability for Filings 2A and 2B based on information provided by the District, the District's completion of the CDPHE's technical, managerial, and financial ("TMF") requirements as evidenced by issuance of PWSID No. CO-0121360 for a community water system, and the certification by the District's engineer that the water system was operational.

3. The Applicant has provided for the source of water to derive from the District. Pursuant to the Water Supply Information Summary, the applicant estimates its annual water needs to serve household use for the subdivision at 63.54 acre-feet per year based on 0.353 annual acre-feet per single-family equivalent (0.353 acre-feet per lot for 180 lots). Based on these figures, Applicant must be able to provide a supply of 19,062 acre-feet of water (63.54 acre-feet/year x 300 years) to meet the County's 300 year water supply requirement for Forest Lakes Phase II. Based on information in the *Water Supply Plan and Wastewater Report for Forest Lakes Metropolitan District, Forest Lakes Phase Two, dated December 20, 2017, as revised on November 30, 2018* ("Water Resources Report"), water for this Phase II will be provided from ground water sources and is subject to the County's 300-year Rule.

4. In a letter dated December 31, 2018, the State Engineer reviewed the application to amend the PUD Development Plan/Preliminary Plan for the Forest Lakes Subdivision, which proposes to subdivide the 287+/- acres into 180 single-family residential lots. The Engineer reviewed this matter based on information provided in the Water Supply Information Summary, the District's letter dated December 3, 2018, and the Water Resources Report. The State Engineer noted an "estimated water demand of 63.46 acre-feet/year to supply 180 single-family lots. This results in an estimated water demand of 0.353 acre-feet per year per unit. In some sections for the submittal, the estimated water demand is 63.54 acre-feet/year. This discrepancy is due to rounding."<sup>1</sup>

The Engineer further noted that "standard water use rates, as found in the Guide to Colorado Well Permits, Water Rights, and Water Administration, are 0.3 acre-foot per year for each ordinary household, 0.05 acre-foot per year for four large domestic animals, and 0.05 acre-foot per year for each 1,000 square feet of lawn and garden irrigation." The Engineer stated that according to the documents provided with the proposal, including the Water Resources Report, "it appears that the District has adequate water resources to serve 63.54 acre-feet/year for the proposed development." The State Engineer further stated that "[a]ccording to the information provided and records of this office it appears the District has sufficient water resources to serve the proposed development ... and "pursuant to Section 30-28-136(1)(h)(II), C.R.S., it is the opinion of this office that the proposed water supply is adequate and can be provided without causing injury to decreed water rights."

---

<sup>1</sup> For the purpose of this review, we will use the water demand figure of 63.54 acre-feet/year (0.353/acre-feet/lot).

The State Engineer also provided the following advisory note to the Applicant: “Should the development include construction and/or modification of any storm water structure(s), ... unless the storm water structures(s) can meet the requirements of a ‘storm water detention and infiltration facility’ . . . the structure may be subject to administration by this office. The applicant should review the *DWR’s Administrative Statement Regarding the Management of Storm Water Detention Facilities and Post-Wildland Fire Facilities in Colorado* ... to ensure that the notice, construction and operation of the proposed structure meets statutory and administrative requirements.”

5. The District’s Manager provided a letter of commitment for Forest Lakes Phase II dated December 3, 2018. The Manager stated that the District provides assurances that “the Forest Lakes Metropolitan District has the necessary water resources and sewer treatment capacity and is prepared to construct the necessary related infrastructure to provide water and wastewater services to the 180 residential properties contained within Forest Lakes Phase 2. The expected annual water demand for the 180 lots is 63.54 AF.” The Office of the County Attorney also had email and telephone communications with the District Manager, Ann Nichols, on October 9, 2019, to clarify what components of the central water system must still be built, and she stated that “[w]hile much of the water and wastewater infrastructure is in place – surface water treatment plant, water transmission main, wastewater collection mains, lift stations – the actual water distribution and sewer collection lines that will serve Phase 2, including a .25 mg. water tank – have yet to be constructed.” She advised that these are the service mains from the completed central system and the lines into the individual lots and the small storage tank and booster station that typically are built when streets are being constructed.

6. The Applicant provided the Water Resources Report, detailing the District’s current water system. As stated in the Report, the District has a water supply consisting of a “mix of renewable surface water and storage as well as fully consumable non-renewable resources from the Denver basin;” however, as indicated above, water for this Phase II will be provided from ground water sources. The District’s “legal water supply on a 300 year basis is a net 724.13 annual acre-feet after relinquishments for augmentation; non-300 year demands; and evaporative losses in the reservoirs.” The Water Resources Report sets forth the current existing commitments of the District at 98.25 acre-feet/year. With the addition of the water demand for Phase II of 63.46/acre-feet (or the rounded figure of 63.54/acre-feet) the total revised demands are approximately 161.71 acre-feet/year, which is well below the District’s water supply of 724.13 annual acre-feet.

7. Section 8.4.7(B)(10)(g), of the El Paso County Land Development Code allows for the presumption of acceptable water quality for projects such as this where

water is supplied by an existing Community Water Supply operating in conformance with Colorado Primary Drinking Water Regulations unless there is evidence to the contrary.

8. Analysis: With a proposed annual demand of 63.54 acre-feet and a legal water supply of 724.13 annual acre-feet as set forth in the Water Resources Report, it appears the proposed water supply will be sufficient.

9. Therefore, based upon the finding of sufficiency and no injury by the State Engineer, the District's commitment to serve and the District's clarification that the central water system infrastructure is complete and assurances that the water distribution and sewer collection lines will be fully completed and operational, and based on the requirements below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. The El Paso County Health Department may wish to confirm that the District is in compliance with the water quality regulations.

#### **REQUIREMENTS:**

- A. Applicant and all future owners of lots within this filing shall be advised of, and comply with, the conditions, rules, regulations, limitations, and specifications set by the District.
- B. The Town of Monument has asserted that it has a blanket easement to locate certain water wells on the District's property located in this Phase II development. The District disputes that assertion. That issue is currently one of the subjects of litigation in Water Court between the Town and the District. Based on the outcome of that litigation, Applicant may need to provide notice to future lot owners in Phase II by means of a Plat Note of the existence of said easement.

cc: Kari Parsons, Planner III