

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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December 2, 2019

PUDSP-19-1 Trails at Aspen Ridge
PUD/Preliminary Plan

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

FINDINGS AND CONCLUSIONS:

1. This is a PUD/Preliminary Plan proposal by COLA, LLC ("Applicant"), to subdivide an approximately 117.98 +/- acre parcel into 605 single-family residential units. The property is zoned RS-5000 (Residential Suburban). For historical context, this subdivision is located within Phase 2 of the Waterview Sketch Plan, and was within the boundaries of the springs at Waterview East Preliminary Plan area.

2. The Applicant has provided for the source of water to derive from the Widefield Water and Sanitation District ("District"). Pursuant to the Water Supply Information Summary, the Applicant estimates its annual water needs to serve household use for this subdivision at 211.8 acre-feet, based on the District's 0.35 annual acre-feet per single-family equivalent. Based on these figures, the Applicant must provide a supply of 63,540 acre-feet of water (211.8 acre-feet/year x 300 years) to meet the County's 300 year water supply requirement for the subdivision. Since the District's water is considered annually renewable, it is considered to already have a minimum life of 300 years, and therefore, does not have to reserve this total quantity of water.

3. Under Section 8.4.7.C.1. of the El Paso County Land Development Code (LDC), "[w]ater provided from renewable groundwater sources is considered to be annually renewable and, therefore, is considered to have a minimum life of 300 years." While not highlighted in this submittal, information in County Attorney's Office files indicates that the general well locations in the District place most of the wells approximately within one to two miles of either Fountain Creek or Jimmy Camp Creek, and given the augmentation supply of transmountain Frying Pan/Arkansas Project water which is a tributary renewable source, it appears the proposed water supply is an annually renewable source and falls within the provisions of LDC Section 8.4.7.C.1. Thus, the proposed supply is considered to have a minimum life of 300 years.

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4. In a letter dated November 19, 2019, the State Engineer reviewed the application to subdivide the 117.98 +/- acres into 605 single-family residential lots. The Engineer reviewed this matter based on information provided in the Water Supply Information Summary and the *Engineering Study for The Trails at Aspen Ridge Preliminary Plan Water System Improvements* dated June 2019. The Engineer stated that according to their records, "it appears the District has sufficient water resources to serve the proposed development. Based upon the above 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 can be provided without causing injury to decreed water rights."

The State Engineer's Office also provided the following advisory to the Applicant related to any construction and/or modification of storm water structures:

"... 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 Director of Engineering and Operations provided a letter of commitment for Trails at Aspen Ridge dated November 19, 2019, which revised earlier commitment letters dated October 19, 2017 and June 13, 2019. The November 19th letter stated that the "water commitment is for Trails at Aspen Ridge is for 605 Residential Lots with an annual water requirement of 211.75 acre-feet. The District has existing legal and physical water supply to meet the expected demand."

6. PFCs. On May 19, 2016, the Environmental Protection Agency ("EPA") announced that it lowered the health advisory levels ("HAL") for perfluorinated compounds ("PFC"), to 70 parts per trillion. One of the three local water providers whose PFC levels now exceed the EPA's HAL is Widefield Water and Sanitation District. There has been much coverage in the local press and much public concern expressed over PFCs recently. The District Manager provided a letter dated July 29, 2016 (see **Exhibit 1** attached hereto), in which he explains that the PFCs are unregulated and unenforceable, and the new HAL ". . . in no way impacts or reduces Widefield Water and Sanitation District's water supply quantity or our ability to serve water to our current or future customers."

7. Analysis: The Applicant provided an *Engineering Study for The Trails at Aspen Ridge Preliminary Plan Water System Improvements* dated June 2019 detailing the District's current water system. With a proposed annual demand of 211.8 acre-feet and based on the current commitments of the District and the available water supply, it appears the proposed water supply will be sufficient.

8. 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.

9. Therefore, based upon the finding of sufficiency and no injury by the State Engineer, the District's commitment, 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.

cc: Nina Ruiz, Planner III



RECEIVED

AUG 01 2016

El Paso County
Attorney's Office

37 Widefield Boulevard, Colorado Springs, Colorado 80911

July 29, 2016

Cole Emmons
County Attorney's Office
27 East Vermijo Avenue
Colorado Springs, Colorado 80903

Re: Perfluorinated Compounds

Dear Mr. Emmons:

Due to all of the negative media pertaining to PFC's in the water, I wanted to write to you to explain what has occurred and to reiterate in writing that the new health advisory level for PFC's in no way impacts or reduces Widefield Water and Sanitation District's water supply quantity or our ability to serve water to our current or future customers.

On May 19, 2016, the Environmental Protection Agency (EPA) announced it lowered the health advisory levels (HAL's) for both PFOS and PFOA to 70 parts per trillion. In addition, the Colorado Department of Public Health and Environment (CDPHE) decided to include PFHpA into the 70 parts per trillion combined level. By adding three of the PFC's together and lowering the level, the wells in the Widefield aquifer do not meet the new Health Advisory Level. Prior to May 19, 2016, Widefield Water and Sanitation District's well water was below the former Health Advisory Level for PFC's. PFC's are unregulated and unenforceable.

As an unregulated contaminant the EPA nor CDPHE requires public water suppliers to do anything about exceeding the health advisory level for PFC's other than notifying customers that the water may at times exceed the new HAL. WWSD can legally operate all of our wells without providing any form of treatment. Although we are not required by regulations to treat for or remove PFC's from the water, WWSD plans on designing and building a treatment plant(s) to remove PFC's in order to restore and maintain consumer confidence. We are also currently working with the Air Force, who has authorized funds to help us mitigate the PFC concerns, as it is suspected that the Air Force's use of firefighting foams may have contributed to, or caused the PFC contamination.

Widefield Water and Sanitation District water quantity or ability to deliver water is not at all impacted by the PFC issue in any way. In addition, we plan on having it mitigated before next year's high summer demand period.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steve Wilson", is written over a blue horizontal line.

Steve Wilson, District Manager

