

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. Klafiky
Mary Ritchie
Bryan E. Schmid
Nathan J. Whitney
Michael J. Desmond
Christopher M. Strider
Terry A. Sample

February 22, 2021

SP-19-3 Windermere Subdivision
Preliminary Plan Amendment

Reviewed by: Lori L. Seago, Senior Assistant County Attorney
Edi Anderson, Paralegal, ACP

FINDINGS AND CONCLUSIONS:

1. This is a preliminary plan amendment proposal by Windsor Ridge Homes ("Applicant") for subdivision of 203 lots, plus right-of-way and tracts for open space, parks, drainage, and utilities on 55.58 +/-¹ acres of land (the "Property"). The Property is zoned RS-5000 CAD-O (Residential Suburban/Commercial Airport District).

2. The Applicant has provided for the source of water to derive from the Cherokee Metropolitan District ("District" or "Cherokee"). Pursuant to the Water Supply Information Summary ("WSIS"), the annual water demand for the development is 66.5 acre-feet per year, which equates to 62.9 acre-feet for household use and 3.6 acre-feet for community irrigation. Based on Applicant's figures, the Applicant must be able to provide a supply from the District of 19,950 acre-feet of water (66.5 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement.

3. The General Manager of the District provided a "formal Letter of Commitment" dated February 9, 2020,² (referred to as Commitment Letter No. 2021-2) committing to provide water service for the 203 single-family lots of the Windermere Subdivision which is located within the District's boundaries. The District's commitment is delineated as follows:

¹ The Water Supply Information Summary cites acreage at 55.83.

² The letter was dated February 9, 2020; however, this appears to be a typo and the letter should be corrected to indicate February 9, 2021.

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



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

Type of Use	Demand (AF/yr)
Single Family Homes	62.93
Irrigated Common Areas	3.55
Total	66.5

The District's commitment is only a conditional commitment. The District's General Manager states: "[t]o confirm this commitment you must provide the District with a copy of the final plat approval from El Paso County Development Services within 12 months of the date of this letter. Otherwise, the District may use this allocation for other developments requesting a water commitment."

4. The Applicant's proposal included a *Water Resources Report for Windermere* dated February 2021 which was prepared by Drexel, Barrell & Co. The Report detailed the District's water resources which are available to supply the 66.5 acre-feet/year for the 203 lots in the Windermere Subdivision. The Report notes that the District has "4,443.0 AFY of exportable supply and 4,126.2 AFT of commitments" and therefore has "a water balance of 316.8 AFY before the subject development. After commitment of 66.5 AFY to this development, the District will have 250.3 AFY remaining for additional commitments."

5. In a letter dated February 11, 2021, the State Engineer reviewed the application to subdivide 55.58 +/- acres into 203 single-family lots. The State Engineer confirmed that the Cherokee Metropolitan District has committed a water supply of 66.5 acre-feet/year and that the WSIS details the water demand for the development at 66.5 acre-feet/year. Further, the State Engineer states that "[a]ccording to this office's records, it appears that Cherokee has adequate water resources to serve up to 66.5 acre-feet/year for the proposed development."

Finally, the State Engineer declared that "[p]ursuant 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, and the supply is expected to be adequate."

6. Section 8.4.7(B)(10)(g) of the El Paso County Land Development Code allows for a presumption of water quality when water is supplied from an existing Community Water Supply which operates in conformance with the Colorado Primary Drinking Water Regulations and the CDPHE requirements, as clarified by El Paso County Public Health, and is determined to meet the required water quality standards.

7. Analysis: As indicated above, this review is based on a water demand of 66.5 acre-feet/year, which the District has committed to serve. The State Engineer determined that Cherokee Metropolitan District appears to have adequate water resources to serve the estimated demand of 66.5 acre-feet/year for the proposed development.

8. Therefore, based upon the finding of sufficiency and no injury to existing water rights by the State Engineer, a water demand of 66.5 acre-feet/year and a commitment from the District in the amount of 66.5 acre-feet/year for a period of 300 years, but given the conditional nature of the commitment to serve by the District, and subject to the conditions set forth below, the County Attorney's Office recommends a finding of **conditional sufficiency** as to water quantity and dependability for the Windermere Subdivision.

CONDITIONS OF COMPLIANCE:

A. Applicant and all future owners of lots within this filing shall be advised of, and comply with, the conditions, rules, regulations, and specifications set by the District.

B. Cherokee Metropolitan District must upload an updated letter to EDARP correcting the date of their letter to February 9, 2021.

C. Prior to hearing on the preliminary plan by the Board of County Commissioners, Applicant must upload to EDARP an updated WSIS that has Sections 10-12 completed.

D. Applicant must obtain final plat approval and provide evidence thereof to the District within 12 months of the District's commitment letter dated February 9, 2021 (See paragraph B above and footnote 2). Approval must be provided by February 9, 2022 to retain the District's water commitment. **If Applicant fails to do so, this recommended finding of conditional sufficiency will be deemed moot and no longer valid. Once Applicant provides proof to the District that satisfies the District's condition of final plat approval, this conditional finding of sufficiency will automatically convert to a full sufficiency finding.**

cc: Kari Parsons, Planner III