

**WEST JEFFERSON COUNTY METROPOLITAN DISTRICT  
30920 STAGECOACH BLVD  
EVERGREEN, CO 80439**

Public Questions  
Inclusion of Foothills Fire District Property  
August 15, 2022

Abbreviations:

BCWA: Bear Creek Watershed Association  
District: West Jefferson County Metropolitan District and Evergreen Metropolitan District  
EMD: Evergreen Metropolitan District  
ERMD: El Rancho Metropolitan District  
FFD: Foothills Fire District  
Jeffco: Jefferson County  
SDEA: System Development Engineering Analysis  
WJCMD: West Jefferson County Metropolitan District

Submitted Questions and Responses:

Note that many individual similar questions have been combined.

1. The board members seemed confused about what information was available on your website. This is to confirm that the petition/application from Foothills Fire Department was not available online and only the Public Notice of the petition was available on your website.  
Furthermore, in spite of numerous requests for a copy of that document, it was not provided to the community for review prior to the meeting on July 21, 2022. We ask that request be fulfilled if that has not already been done.

**Response: The Petition for Inclusion was put up on the District Website ([evergreenmetro.colorado.gov](http://evergreenmetro.colorado.gov)) on July 27<sup>th</sup> and has remained accessible to the public.**

2. Please clarify and respond to the question about Northstar LLC paying for the Foothills Fire Department's application fee. We were told that Northstar did pay the FFD application fee. During the meeting it was then said that Northstar paid a deposit to cover the cost of your attorney to review the application. I heard \$500 but was told by another person attending that they heard \$3,500. Please provide an explanation of who paid for what and when regarding this subject.

**Response: Northstar Ventures, LLC (Northstar) paid \$3,500 for a deposit for the District's legal expenses to administer the Inclusion Process for the property at 28802 Rainbow Hill Road. The check was received prior to the Public Hearing. The Public Hearing would not have taken place had the District not received the signed Petition for Inclusion or the check.**

3. The Foothills Fire Department Fire Chief claimed that they were not actually acting as an agent for Northstar LLC by filing their application/petition. One definition of an agency relationship is that it exists when it is implied that a party is acting on behalf of someone else for consideration (money). If Northstar paid money on behalf of Foothills Fire Department for this application/petition Foothills Fire Department is in fact acting as an agent for Northstar. As the saying goes; "If it looks like a duck, walks like a duck, and quacks like a duck...it's a duck", despite the chief's denial. This should be a red flag to the EMD board of directors.

Response: First, some background on District's involvement with this property. The property known as the Observatory, located at 29339 and 29259 US Highway 40 was included into the ERMD in 2007. ERMD has since consolidated with WJCMD. The inclusion agreement for the Observatory property was submitted by the property owner, Colorado Outdoor Inc. although there has been no further development on this property. Since the inclusion, the District has received multiple (10+) requests for information on water and wastewater service to the property. All the requests for information, to date have come from real estate agents and developers, not the property owner. When staff has replied with information on water and sewer service requirements and the potential costs, there has been no further action on these development proposals.

The latest development proposal came from Northstar and was received in February of 2021. This proposal was larger in scope than previous proposals and included the Observatory property and property located at 28802 Rainbow Hill Road that is outside the District's boundaries, currently owned by FFD.

The District currently requires a System Development Engineering Analysis for multi-unit development proposals. The developer/real estate agent/property owner is responsible for the costs of the development review. The SDEA for this project was signed by Northstar Ventures LLC and included a legal and engineering review of the proposal. Northstar provided a \$25,000 deposit to cover the estimated costs. The engineering analysis was based on the preliminary design received from Northstar that included development on the combined Observatory and FFD properties. Based upon the engineering review, it is feasible for the District to furnish domestic water (not including fire supply) and wastewater service to the proposed development. Service will require substantial water and wastewater system improvements to be located within the development area. The SDEA is posted on the District's website.

Northstar determined to continue with their development proposal, but as a condition of review of the development plan by Jeffco, the inclusion of the FFD property into the District service area was necessary. The property owner, in this case FFD, must, under State law, submit the Petition for Inclusion. Since Northstar does not own the property, FFD had to submit for inclusion. Any agreement between Northstar and FFD to develop the property after inclusion is a matter between those parties and not a legal consideration of inclusion for the Board.

Any specific concerns with the FFD-Northstar relationship should be directed to FFD.

4. Foothills Fire Department's Rainbow Hills station is currently provided water by Lookout Mountain Water District. The fire chief claimed FFDRH station was "not showing up in the Lookout Mountain Water District system". Don't they get a water bill from LMWD? If not, have they been taking and using water without paying for it all these years?

Response: This question should be directed to FFD or Lookout Mountain Water as the District does not have the information available.

5. They apparently have a septic wastewater treatment system on their property. The fire chief also stated that they are 40% understaffed. That would leave them operating at 60% of capacity. As long as the septic system is operational it should be more than adequate to handle their needs. Therefore, we don't believe that FFD has established a compelling need to be included in the District since they currently have all their needs met for both water and sewage treatment.

Response: The District has been asked to review the feasibility to serve between 1 and 60 potential water/wastewater taps for the Observatory and FFD properties as described in item 3. The inclusion is for the FFD property only and not the proposed development itself, of which the FFD property is a small part. The Observatory property, which constitutes most of the development, is already included in the District, and the District must provide service to the property. The District does not have jurisdiction over the proposed development property, which is located within an activity center under the Jeffco land use plan (the Evergreen Community Plan). Land use is a county function and should be addressed on the county level. Should the Northstar development not occur, water and wastewater service to the FFD facility could be provided if water and wastewater lines are extended north of Highway 40, with the property owner responsible for all costs associated with the extensions. Public water and wastewater service is preferential to Individually-Owned On Site Treatment Systems for environmental reasons.

6. By requesting duplicate services from EMD FFD is potentially denying services to the Rainbow Hills community as was stated by Mr. Heier during the meeting. This could also be applied by extension to the Evergreen community, et. al.

Response: There has never been any request for service for water or wastewater service for any property located in what you are calling the "Rainbow Hill Community". Nor is either EMD or WJCMD under any obligation to hold in reserve a capacity to serve properties located outside of the District boundaries. And based upon engineering and legal analysis of both water and wastewater systems, there is adequate capacity to serve all identified vacant properties located within the District boundaries and service areas, provided any potential developments are designed within the scope of the water and wastewater system and Evergreen Community Plan. Further, water service to the Rainbow Hill area would be unlikely, since it is located in a different water basin and would require expensive infrastructure improvements to be feasible.

7. According to Mr. Buchanan during the meeting he controls the Observatory property and that is already included in the District. Is this accurate in all its aspects?

Response: As stated in item 3, according to Jefferson County Assessor's Office records, the Observatory properties located at 29339 and 29259 US Highway 40 are owned by Colorado Outdoor Inc. The properties were included into ERMD in 2007. ERMD has since consolidated with WJCMD. As such, the included properties are eligible for water and wastewater service provided that all associated fees are paid, and District approved water and wastewater system facilities are installed by the developer/property owner at their cost. As of this date, the District has only received preliminary information regarding any development of this property.

8. Has EMD done any recent assessment of how climate change will affect potential EMD future taps?

Response: EMD and WJCMD are members of the Bear Creek Watershed Association. BCWA monitors the watershed for water quality parameters. BCWA provides thousands of datapoints on stream water quality, including temperature logging data on an annual basis. Additionally, EMD monitors stream flow in Bear Creek on a daily basis. EMD maintains a statistical analysis of stream flow since 1984. District staff check long range (minimum 3-month) weather forecasts and monitors the US Drought website. The District and BCWA have also participated with the EPA in 2 rounds of analysis of the effects of climate change using the EPA's CREATE (Climate Resilience Evaluation and Awareness software tool. The system analyzes the potential effects of temperature changes to the water system and provides for potential adaptive measures. The District is very aware of the current conditions of the watershed as well as how climate change forecasts may affect the water supply.

The ceiling of water taps that can be served within the system was set by EMD several years ago. The ceiling of water taps is well under what could potentially be served by EMD's water rights and the existing water delivery system. The District's water rights attorneys and engineers review the rights on a continual basis. The maximum number of taps for the EMD and WJCMD wastewater facilities fall within the water tap capacity. The Districts' utility plans have identified each district's service area, reviewed size, type, and condition of all facilities. Management and engineering have reviewed those areas of each district where development is possible, and management has determined estimated taps for those areas based on current zoning and proposals that have come thru the District office.

Based on this information, both EMD and WJCMD have stated they have the capacity to serve proposed development and will review each proposal on a case-by-case basis under the SDEA process. These analyses will be done on every multi-unit development proposal to determine if the proposal is capable of being served by the water and wastewater systems and what if any improvements may need to be made. The review will also look at potential legal issues with respect to water and wastewater service to a development.

The District had concerns about the ability to serve this higher density development with both water and wastewater. As a result, the EMD Board placed a moratorium on multiple tap sales within the El Rancho area until a water SDEA could be performed. The analysis was on the entire water system, from water rights, through the water treatment

facility, and into the distribution system. The engineering analysis provides a tool to use in conjunction with similar wastewater system analysis done in 2017, to review all development proposals on the ability to provide service.

EMD water usage represents a small percentage of the total flow in Bear Creek. The average water consumption since 1995 is 1.3 cfs with a high usage month of July average of 2.0 cfs. This compares to an average stream flow of 36 cfs. On an annual basis, the District usage accounts for about 3% of the total flow, and during July about 3.8%. And the District Water Conservation Plan provides for voluntary and mandatory water use restrictions during significant reductions of stream flow during drought conditions.

9. Therefore, in addition to your extending the objection/comment period to July 29th, which is appreciated, I also believe it is incumbent on you to conduct another public open meeting at which those denied their opportunity to speak can avail themselves of such.

Response: The Board extended the public comment period to July 29, 2022, and provided until August 5, 2022, for the public to submit questions on the inclusion for any additional comments or questions for the Board.

It is the Boards opinion that adequate time has been provided for comments and questions and that the statutory requirement for public notice has been met. Another public meeting will not be provided.

10. Chief Anderson stated that he needed EMD sewage service specifically for his station, and not for Buchanan's project, as he lacked that outside service now. The question is whether or not he will be responsible for the necessary lift station to get that sewage up Nob Hill. What would happen if you approve Inclusion, and Buchanan's plans fall through or are rejected? Is Anderson prepared to follow through with the necessary infrastructure? Shouldn't a bond or some statement of financial commitment and adequacy, submitted directly by and pertaining to FF and not Buchanan, be required as a prerequisite for Inclusion consideration? Might EMD be on the hook to provide such service even without FF-funded lift station otherwise?

Response: The sewage from the north side of Highway 40 does not have to be pumped to the top of Nob Hill. It does need to be pumped to the east, across Evergreen Parkway and into the El Rancho sewer system. The existing lift station down by Swede Gulch will then pump the sewage over Nob Hill. The existing lift station has the capacity for the additional flow.

Inclusion is not a guarantee of service. Whether it is the Northstar development, FFD, or any future individual or development on the included property that requests service, they will be responsible for all costs associated with the connection. Development pays for the installation of all water and wastewater facilities before the District's accept responsibility for the operation and maintenance.

11. EMD has stated that it has adequate water capacity for non-emergency flows to Buchanan's project, but that he would need additional water for emergency/fire use, such as that held in a cistern. My question is: Where does that additional water come from? Is he required to secure water rights, water storage rights, or rights of any kind for his basic and/or emergency water? Could he not simply build his cistern, and then fill it with EMD water? Or is that what is expected he'll do?

Response: Northstar, or any property located within the District service area that will require additional water storage for fire flow, will have options on how to get water into the storage cistern/tank. Example of options that may be available:

- They can haul bulk water and fill the tank.
- Install a separate water connection from Lookout Mountain Water or the EMD system that will be metered and billed for water consumption. If this is on the Clear Creek side of the hill as opposed to the EMD/Bear Creek side, property owner supplied water rights may be required for the exchange.
- Get a private well permit and install a private groundwater well if allowable under district rules and state regulation.

Note: Fire cisterns must be separated by air gap from the District potable water system

12. We would like to have access to the meeting recording ASAP.

Response: Please complete an Open Records Request Form. A copy of the form is available from EMD and has been sent to those requesting the recording.

13. Have they (FFD) done a water use analysis to justify their request and why do they need additional taps?

Response: Foothills Fire has not submitted any plans for water and wastewater for their facility.

14. Who is paying the fees associated with this petition?

Response: At present Northstar is the entity who has paid evaluation money and is tentatively identified as the developer. They will be responsible for all inclusion fees

15. Does the petition indicate what the plans are for the property if inclusion is approved (i.e., will it remain community services, or is it going to be taken over for commercial development)?

Response: Since an inclusion is for the property and not specific to any particular land use by State law, plans are not required for inclusion.

The preliminary development plans submitted for the SDEA are for commercial development to include a new fire facility. Any changes to the plans after inclusion may require a new SDEA.

16. Was this petition accepted and a hearing held?

Response: The petition was presented to the Board and the Public Hearing was held on July 21<sup>st</sup>. The Board agreed to extend the time for Public Comment until July 29<sup>th</sup>. The Petition for Inclusion has not yet been acted upon by the District Board, which is expected to occur in September.

17. The information available talks about 60 taps at the above inclusion address. However, clearly Foothills doesn't need 60 taps. If the application is approved does that mean that the developer can add 60 taps without an additional hearing?

Response: The SDEA requested by the developer was an analysis based on approximately 60 water and wastewater taps and provides the required development work for such 60 taps. The inclusion itself does not reference any number of taps and will likely include anywhere from 1 to 60 taps.

The Public Hearing occurs for the inclusion process. Once a property is included there are no formal public hearings for the establishment of water and/or wastewater service.

18. If Foothills Fire is awarded the 60 taps are they allowed to just give/sell the developer those taps?

Response: As mentioned previously in various questions, taps are not ordinarily reserved at the time of the inclusion. FFD would not be awarded taps, but the inclusion order would specify the number of inclusion fees to be paid for which service would be later furnished; any adjustment to that number of units would require approval of the Board. FFD, or the subsequent property owner, would need to perform an SDEA to establish the number of water and/or wastewater taps required. These taps would then need to be purchased from the District, if available at the time.

Once purchased, the taps stay with the property unless the owner of the property (1) forfeits the taps through a formal request to the District, or (2) applies to transfer taps from their property to another property within the District that is owned by the same person(s)/entity.

19. If we applied for and were awarded taps could we then just give/sell them to anyone as well?

Response: Once water and wastewater taps are assigned to a property, they remain with the property. If the property sells, the taps go with the property. If your property is not in the District, you must petition for inclusion and be approved before you can go through the process of buying taps. The District does not sell taps as a commodity.

20. What is the accountability of the taps awarded for future use/transfer?

Response: We are not sure what the term “accountability” means here. There are an accounting of water and wastewater taps that are assigned to every property served by the District. This count of taps remains constant unless more taps are purchased, or taps are forfeited from a particular property. As stated previously, all assigned taps remain with the property unless transferred to another property owned by the same person(s)/entity.

21. What does the addition of Foothills mean in terms of other areas/properties being able to ask to be included?

Response: The inclusion or denial of inclusion of the FFD property does not enhance or impede another property owner from petitioning for inclusion. Both WJCMD and EMD must, by State law, review petitions for inclusion on a case-by-case basis.

22. Is my understanding that all of Rainbow Hill Rd. is eligible for inclusion in the district, if 28802 Rainbow Hill Rd. takes 60-100 taps, how does that affect the rest of Rainbow Hill Rd?

Response: Please reference question #6.

23. What is the source of the water for the additional taps and is it sustainable?

Response: Please reference question #8. The water source for the additional taps is the same as for all District water customers; surface water supply from Bear Creek as stored in Evergreen Lake and administered through the water rights owned by EMD. And it is sustainable.

24. How will the inclusion of the land in question affect the water quality and availability to the residents of Rainbow Hill currently on wells?

Response: As the water supplied by EMD is a surface water source that is from Bear Creek, the use of EMD water will have no impact on wells within the Clear Creek basin.

25. Why are they petitioning the existing Foothills Fire station property for inclusion?

Response: Please reference #3.

26. Have they submitted any plans for Foothills Fire Station expansion on the existing property to justify the request for inclusion?

Please reference questions #3 and #5.

27. Have they done a water use analysis in regards to projected water usage by Foothills Fire Station on the existing property to justify their request? If yes, can we be provided with a link to see it

Please reference question #3. The SDEA for the proposed development is posted on the District website.

28. Why is the developer, Buchanan, paying the fees for Foothills Fire station when they claim they are petitioning on their own behalf, and not as an agent of the developer? The owner of the property must be the one submitting the petition.

Response: No fees have yet to be paid for the inclusion or the development. Northstar placed a \$25,000 deposit for the legal and engineering analysis of the entire proposed development. Northstar placed a \$3,500 deposit for the District's legal administration of the inclusion process for the FFD property. Any questions regarding the arrangement between FFD and Northstar should be directed to those organizations. Inclusion fees, tap fees, and all costs associated with any water and wastewater main extensions have yet to be determined.

29. If Foothills Fire Station has not demonstrated a legitimate need for inclusion of their property at this time, shouldn't the developer be required to resubmit a request for inclusion at such time as he is the owner of the Foothills Fire Station property? And shouldn't he at that time be required to justify his request for inclusion?

Response: The District Board of Directors must, by State law, determine if it is feasible to furnish service to the property in the Petition. The Board will consider the Petition for Inclusion, the SDEA documentation, and all public comments received before and during the Public Hearing as well as the those received by the July 29<sup>th</sup> extended comment period date to render their decision.