

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

Amy R. Folsom, County Attorney

Assistant County Attorneys

M. Cole Emmons
Lori L. Seago
Diana K. May
Kenneth R. Hodges
Lisa A. Kirkman
Steven A. Klaffky

June 23, 2017

SF-17-012 Hannah Ridge at Feathergrass Filing No. 3
Final Plat

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

1. This is a proposal by Feathergrass Investments, LLC ("Applicant") for approval of a Final Plat to subdivide approximately 8.31 +/- acres into 39 single-family residential lots, plus right-of-way for streets. This is a re-plat of Tract FF, Hannah Ridge at Feathergrass Filing No. 1, which Tract FF was then so platted for future development. The property is currently zoned PUD.

2. The Applicant has provided that the source of water for the subdivision will come from the Kane Water Right and Tipton Water, both as served by the Cherokee Metropolitan District ("District") pursuant to Water and Sewer Service Agreements that Sand Creek Investments North, LLC entered into with the District. Sand Creek Investments North, LLC, entered into Assignment of Water and Sewer Service Agreements with Feathergrass Investments, LLC, whereby Sand Creek assigned all of its rights and obligations under its Agreements with the District to Feathergrass and Feathergrass accepted the same. The Applicant estimates its annual water requirement to serve 39 single family residential lots at 0.42 acre-feet per lot for a total water requirement of 16.38 acre-feet per year, plus 2.73 acre-feet for irrigation of 1.3 acres for a total water demand of 19.11 acre-feet per year for the subdivision. Based on this estimate, the Applicant would need to provide a supply from the District of 5,733 acre-feet (19.11 acre-feet x 300 yrs.) to meet the County's 300 year water supply requirement. Because the State Engineer has determined that both water sources are annually renewable, the water supply is presumed to meet the County's 300 year aquifer life requirement.

3. The General Manager of the District provided an updated formal commitment letter dated June 19, 2017, and the Water Resources Report dated March 30, 2017, which reviewed the water available for the development. The Water Resources Report stated that the developer "purchased water rights from the Kane and

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



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

Tipton water rights, which are reserved exclusively for this subdivision developers use” and which water is “sufficient to supply Phases 1 through 6 of the Hannah Ridge at Feathergrass development.” The Water Resources Report indicates there is 136.50 acre-feet of water available from the District and further delineates the water supply provided to Hannah Ridge at Feathergrass Filing 1 at 19.95 acre-feet, Filing 2 at 16.38 acre-feet, and Shops at Feathergrass at 1.68 acre-feet, providing an available water supply of 98.49 acre-feet for Filing 3 and future filings in Hannah Ridge at Feathergrass. The District commits to serve the 19.11 acre-feet of water annually required by this development. Therefore the General Manager of the District stated the “District is able and willing to provide water and sewer services for Hannah Ridge at Feathergrass, Filing No. 3.”

4. In a letter dated May 31, 2017, the State Engineer reviewed information for the Filing 3 Final Plat based on subdividing approximately 8.31 +/- acres into 39 single family residential lots, plus street right-of-ways. The Engineer reviewed the two sources of water to be provided by the District. Regarding the Kane Water Right, the Engineer states the following:

“The Kane Water Right is not a separate water right, but rather a contractual water right for a portion of water removed under contract from the Sweetwater Well Field operated by Cherokee. The Kane Water Right is not viewed by this office as a commitment from Cherokee, but a pre-existing ‘first-in-line’ delivery that Cherokee accepted upon assuming control of the Sweetwater Well Field. Since Sweetwater Nos. 1-3, 5, 8-9, 11, 13 and 15-16 are currently the only wells that may legally be used to supply water outside of the Designated Basin, the State Engineer’s Office based its opinion on the understanding that the 200 acre-feet would come from Sweetwater Nos.1-3, 5, 8-9, 11, 13 and 15-16.”

Regarding the Tipton Water, the Engineer states the following:

“The second source of water is 76 acre-feet per year of Tipton Water, as documented by the December 4, 2006 ‘Water and Sewer Service Agreement’ between Cherokee and Sand Creek Investments North, LLC. The 76 acre-feet is part of 225 acre-feet of fully consumable and exportable water adjudicated to the Tipton Well in Colorado Ground Water Commission Case No. 91GW01, for use and export outside of the Upper Black Squirrel Creek Designated Ground Water Basin.”

The State Engineer’s opinion is that “[a]t this time, it appears that Cherokee has 136.5 acre-feet of obligation to deliver for the proposed development. This amount of water satisfies the total estimated demand of 19.95 acre-feet/year for Filing No. 1 ... 16.38 acre-feet/year for Filing No. 2 ... 1.68 acre-feet/year for Shops at Feathergrass Filing No. 1 19.11 acre-feet/year for Filing No. 3 (the subject of this submittal), and leaves 79.38 acre-feet per year of obligation for future filings in Hannah Ridge at

Feathergrass. Pursuant to Section 30-28-136(1)(h)(II), C.R.S., it is the opinion of this office that the proposed water supply for Filing No. 3 of Hannah Ridge at Feathergrass can be provided without causing injury to decreed water rights and is expected to be adequate." Finally, the Engineer notes that the Sweetwater Wells and the Tipton Well are constructed into the Quaternary alluvium, which is considered annually renewable.

NOTE: The State Engineer's Office also provided an advisory to the Applicant related to the project's onsite drainage/water quality pond. The Engineer advised the Applicant that ". . . unless the proposed improvements to the existing storm water structure 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 water quality requirements of Section 8.4.7.B.10 of the Land Development Code must be satisfied.

6. Analysis and Recommendation. With 136.5 acre-feet of water supply contracted to be served by Cherokee Metropolitan District, a proposed annual demand of 19.11 acre-feet for this Filing No. 3, and previous commitments for Filing No. 1 of 19.95 acre-feet, Filing No. 2 of 16.38 acre-feet, and Shops at Feathergrass Filing No. 1 of 1.68 acre-feet, there is a remaining surplus of 79.38 acre-feet; thus, there appears to be a sufficient supply available to meet the demands of this Filing No. 3. Therefore, based on the finding of sufficiency and no injury to existing water rights by the State Engineer, on the commitment to serve by the District, and subject to the conditions set forth below, the County Attorney's Office recommends a finding of **sufficiency** as to water quantity and dependability for this proposal of 39 single-family lots of Hannah Ridge at Feathergrass Filing No. 3. The El Paso County Health Department will need to make a recommendation as to water quality.

CONDITION 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, including the District's requirement that the project "must achieve appropriate zoning and a final plat land use entitlement from the El Paso County Development Services within 12 months of the date of this letter" [letter dated June 19, 2017].

- B. It is Applicant's responsibility to comply with the advisory by the State Engineer's Office regarding its onsite drainage/water quality pond to ensure that the structure meets the requirements of a 'storm water detention and infiltration facility' and that notice, construction and operation of the proposed structure meets statutory and administrative requirements.

cc: Kari Parsons, Project Manager, Planner II