

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

March 28, 2017

SP-17-001 Falcon Marketplace
Preliminary Plan

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

FINDINGS AND CONCLUSIONS:

1. This is a proposal by LG HI Falcon, LLC ("Applicant") for a Preliminary Plan to subdivide an approximately 36.4 acre parcel into 11 commercial lots/pads, plus a regional detention facility. This is the property that was previously owned by the Gaddie Family. The property is zoned CR (Commercial Regional).

2. The Applicant has provided that the source of water for the subdivision will be a central water system—Woodmen Hills Metropolitan District ("District" or "WHMD") – which is supplied by the Denver Basin. The Applicant submitted a Water Supply Information Summary estimating the annual water requirement to serve the 11-lot subdivision at 10.59 acre-feet per year to be served by various sizes of water taps. Based on these numbers, the Applicant will need to provide a supply of 3,177 acre-feet of water (10.59 acre-feet per year x 300 years) to meet El Paso County's 300 year requirement.

3. In a letter dated November 17, 2016, the Director for Water and Wastewater for the District provided a commitment to serve the Falcon Marketplace commercial subdivision. The District stated they "will provide water and wastewater service to Falcon Marketplace which consists of 11 commercial lots/pads having an estimated total SFE water demand of 29 SFE which equates to 10.59 annual acre-feet [for] 300 years."

The District noted that with inclusion of the Falcon Marketplace subdivision into the District, water right determinations which total approximately 6.67 annual acre-feet (for 300 years) were turned over to the District. Since the subdivision water demand will exceed 6.67 acre-feet per year, the Applicant will be providing a fee in lieu of water rights to make up the remainder of the difference to the District. In a telephone

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



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

conversation, District staff advised that the fee in lieu of water rights is a one-time payment. Regardless of this arrangement, the District has committed to provide the Falcon Marketplace subdivision with the annual supply of 10.59 acre-feet of water demand as required by the subdivision.

4. In a letter dated February 14, 2017, the State Engineer's Office stated they received the Falcon Marketplace proposal indicating an annual water demand for the subdivision of 10.59 acre-feet for the eleven commercial lots. The State Engineer acknowledged receipt of the November 17, 2016 letter from the District committing to the water demand of 10.59 acre-feet per year for the subdivision. The State Engineer noted that the District has 988 acre-feet/year of Denver Basin water which may be withdrawn in that annual amount for a maximum of 300 years. The State Engineer further noted that "439 acre-feet of the WHMD's supply is water produced from alluvial sources which are currently considered to be renewable. Therefore, based on a 300-year aquifer life allocation, the WHMD has a potential annual water supply of approximately 1,427 acre-feet." Based on the District's current commitments of 953.59 acre-feet, there remains an "uncommitted annual water supply of 472.96 acre-feet" which exceeds the water demand of 10.59 acre-feet/year which is the amount needed by the Falcon Marketplace subdivision. As a result of the foregoing, the State Engineer declared that "pursuant to Sections 30-28-136(1)(h)(I) and 30-28-136(1)(h)(II), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights."

5. 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.

6. Analysis: Based on the State Engineer's analysis, the available supply of water to the District is 1,427 acre-feet annually, including the water from alluvial sources, which the State Engineer states is an annually renewable and permanent source of water. Given the District's current annual commitments of 953.59 acre-feet and uncommitted annual supply of 472.96 acre-feet, from which the proposed annual demand of 10.59 acre-feet for the 11 lots for the Falcon Marketplace commercial subdivision is deducted, this would leave a balance of approximately 462.37 acre-feet. Therefore, based on the foregoing, it appears the proposed water supply will be sufficient to meet the demands of the Falcon Marketplace commercial subdivision.

7. Based upon the finding of sufficiency and no injury to existing water rights by the State Engineer's Office, and based upon the commitment letter from the Woodmen Hills Metropolitan District committing a water supply of 10.59 acre-feet per year to the subdivision, the County Attorney's Office recommends a finding that the

proposed water supply is **sufficient** in terms of quantity and dependability, subject to the conditions set forth below. The El Paso County Health Department may confirm that the District is in compliance with the water quality regulations.

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. Prior to recording the final plat, Applicant shall provide written proof to the Planning and Community Services Department and the County Attorney's Office that it has paid the required fee in lieu of water rights as required by the District.

cc: Kari Parsons, Planner II, Project Manager