

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

Diana K. May, County Attorney

Assistant County Attorneys

Lori L. Seago
Lisa A. Kirkman
Steven A. Klaffky
Mary Ritchie
Bryan E. Schmid
Nathan J. Whitney
Michael J. Desmond
Christopher M. Strider
Terry A. Sample

March 31, 2021

SF-21-12 Upland Flats by Watermark Filing No. 1
Final Plat

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

FINDINGS AND CONCLUSIONS:

1. This is a final plat proposal by Feathergrass Investments, LLC ("Applicant") for subdivision of 1 lot to establish 300 apartment units in 9 buildings (including a pool and clubhouse) on 15.39 +/- acres, which is located at Akers Drive identified as the N.E. corner of Akers/Constitution (the "Property"). This proposal is a replat of Akers Market which was previously Tract DD of Heather Ridge at Feathergrass Filing No. 1. The Property is currently zoned CS (Commercial Service); however, there is a concurrent proposal to rezone the Property to RM-30 (Multi-family residential). The Property is within the *Commercial Aviation District Overlay (CAD-O)*, so all subdivision actions will be subject to any restrictions and limitations of the Airport Overlay.

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 70.8 acre-feet per year, which equates to 60.7 acre-feet for residential use and community irrigation in the amount of 10.1 acre-feet as more fully detailed in Paragraph 3 below. Based on Applicant's figures, the Applicant must be able to provide a supply from the District of 21,240 acre-feet of water (70.8 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 letter dated January 28, 2021, committing to provide water service for Upland Flats at Watermark Filing 1, which they identify as Watermark at Constitution, which is located within the District's boundaries. The District's commitment is delineated as follows:

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



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

Type of Use	Demand (AF/yr)
Domestic	60.7
Irrigation	10.1
Total	70.8

The District notes that this commitment is “hereby made exclusively for this specific development project at this site within the District.” The District’s commitment is only a conditional commitment: “[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 provided a Water Resource Report identified as *Watermark at Akers Drive* by Kimley-Horn (“*Report*”) dated March 1, 2021. The *Report* detailed the water demand for the subdivision and the water supply available from the District. The *Report* confirmed the water demand of 70.8 acre-feet/year. The *Report* states that Cherokee has “4,443.0 AFY of exportable supply and 4,033.0 AFY of commitments, CMD [Cherokee] has a water balance of 318.8 AFY before the subject development. After commitment of 70.8 AFY to this development, the District will have 248 AFY remaining for additional commitments.”

5. In a letter dated March 11, 2021, the State Engineer reviewed the application to subdivide the 15.39-acre tract into 1 lot with 9 buildings, including 300 multi-family residences. The State Engineer reviewed the WSIS and confirmed the water demand of “60.0 acre-feet/year for 300 units, 0.69 acre-feet/year for clubhouse and pool water, and 10.1 acre-feet/year for irrigation of 10.1 acres. The total annual water demand is 70.8 acre-feet.” The State Engineer confirmed that the Cherokee Metropolitan District has committed a water supply of 70.8 acre-feet/year to the subdivision. Further, the State Engineer states that “[a]ccording to the records of this office, it appears Cherokee has sufficient water resources to supply this development as described above.” Further, the State Engineer declared that “pursuant to Section 30-28-136(1)(h)(II), C.R.S., it is the opinion of this office that the proposed can be provided without causing injury to decreed water rights and is expected to be adequate.”

NOTE: The State Engineer stated their records indicate that “wells with Permit Nos. 29766 and 29768 may be located on the subject parcel. Note that CRS 37-92-602(3)(b)(III), requires that the cumulative effect of all wells in a subdivision be considered when evaluating material injury to decreed water rights Therefore, any existing exempt wells on the parcel must be included in an augmentation plan, or must be plugged and

abandoned since the provisions of CRS 37-92-602 which allowed for issuance of the well permits will no longer apply.”

6. 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.

7. Analysis: As indicated above, this review is based on a water demand of 70.8 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 70.8 acre-feet/year for the proposed development.

8. There is a finding of sufficiency and no injury to existing water rights by the State Engineer, a water demand of 70.8 acre-feet/year and a commitment from the District in the amount of 70.8 acre-feet/year for a period of 300 years. Based on 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 Upland Flats at Watermark Filing No. 1 subdivision. The El Paso County Public Health Department may wish to 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. Applicant must obtain final plat approval and provide evidence thereof to the District within 12 months of the District’s commitment letter dated January 28, 2021 (approval must be provided by January 28, 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.**

C. Prior to final plat recording, Applicant must provide evidence to the State Engineer’s Office that they have either plugged and abandoned the wells associated with Well Permit Nos. 29766 and 29768; or that the wells have been included in an augmentation plan.

D. Prior to final plat recording, the following documents must be updated and submitted to EDARP indicating the correct subdivision name of Upland Flats by Watermark Filing No. 1:

- Water Supply Information Summary
- Cherokee District's commitment letter
- Water Resource Report.

cc: Kari Parsons, Planner III