

# 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. Klafky  
Peter A. Lichtman  
Mary Ritchie  
Bryan E. Schmid  
Nathan J. Whitney

June 23, 2020

Urban Collection at Palmer Village  
PUDSP-19-11 PUD/Preliminary Plan

Reviewed by: Lori Seago, Senior Assistant County Attorney *LS*  
Edi Anderson, Paralegal

1. This is a PUD and Preliminary Plan proposal by MDC Holdings, Inc. ("Applicant") for a subdivision of 100 townhomes, plus tracts for future development, and right-of-way. The PUD rezone request covers 10.8 +/- acres of land and proposes a change in zoning from PUD (commercial) and CS to PUD (residential). The Preliminary Plan includes the PUD rezone area as well as additional tracts, for a total of +/- 23.1 acres of land. The property is zoned PUD (Planned Unit Development) and CS (Commercial Service). At this time, the Applicant seeks a finding of water sufficiency only for the 10.8 acres upon which the townhomes will be developed. The remaining property within the Preliminary Plan will remain in undevelopable tracts that may be platted in the future.

2. The Applicant has provided for the source of water to derive from the Cherokee Metropolitan District ("District"). The Water Supply Information Summary sets forth a proposed water demand of 33.6 acre-feet per year for the subdivision. The water demand for the 100 townhome units is based on 0.20 acre-feet/lot for household use, plus irrigation of 13.6 acre-feet/total for community irrigation for a total of 33.6 acre-feet/year. Based on the proposed water demand, the Applicant will need to provide a supply from the District of 10,080 acre-feet (33.6 acre-feet x 300 years) to meet the County's 300-year water supply requirement.

3. The District's General Manager provided a formal letter committing to serve the subdivision dated November 22, 2019. The General Manager noted that the "proposed location for this development is located within the District's established boundaries and therefore is eligible for service connections from the District." While the District's letter did not specify the number of lots it is committing to serve, the General Manager stated that the "Cherokee Metropolitan District staff, along with the developer,

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



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

have determined that the following will be the total water demand required by this occupancy: 33.6 acre-feet.”

Type of Use	Demand (AF/yr)
Domestic	20.0
Irrigation	13.6
<b>Total</b>	<b>33.6</b>

4. The Applicant provided a *Water Resources Report for Urban Collection at Palmer Village* dated June 2020, prepared by JR Engineering, LLC. The Report noted that the District has both renewable and nonrenewable water resources; however, the “majority of the District’s water supply comes from the Upper Black Squirrel Creek aquifer, which is considered a renewable resource.” The Report further states that, as of “November of 2018, the District had a surplus of 319.803 acre-feet per year for future developments.” The Report further notes that “accounting for this development, the District will be left with a surplus of 286.203 acre-feet per year for future developments.”

5. In a letter dated December 16, 2019, the State Engineer reviewed the Water Supply Information Summary and the District’s letter of commitment dated November 22, 2019. The State Engineer noted the Applicant’s estimated water demand of 0.20 acre-feet per household or 20.0 acre-feet/year for the 100 units, plus 13.6 acre-feet/year for irrigation. The Engineer stated that “[a]ccording to this office’s records, it appears Cherokee has sufficient water resources to serve the proposed development. Based on the above and pursuant to Section 30-28-136(1)(h)(II), C.R.S., it is the opinion of this office that the proposed water supply is adequate and can be provided without causing injury to decreed water rights.”

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 that may be provided by the El Paso County Health Department.

7. Analysis and Recommendation. Based on the Applicant’s estimated water demand of 33.6 acre-feet per year, the Cherokee Metropolitan District’s commitment to supply 33.6 acre-feet year to the subdivision, and based upon the finding of sufficiency and no injury to existing water rights by the State Engineer’s Office, the County Attorney’s Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. The County Attorney’s Office recommendation is subject to the Conditions of Compliance noted below. The El Paso County Health Department may wish to confirm that the District is in compliance with the water quality regulations.

**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.
  
- B. Applicant must comply with the District's requirement that Applicant must achieve appropriate zoning and a final plat land use entitlement from El Paso County within 12 months from the date of their commitment letter (November 22, 2019) in order to use the allotment. **If Applicant does not achieve final plat land use approval from 12 months from the date of the District's commitment letter, then the foregoing water review and recommendation of sufficiency will also expire.**

cc: Kari Parsons, Project Manager, Planner III