

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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January 6, 2020

Gardens at North Carefree
Final Plat – SF-19-5

Reviewed by: Cole Emmons, Senior Assistant County Attorney
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1. This is a proposal by Mule Deer Investments, LLC (“Applicant”) for a subdivision of 70 single-family lots on 11.563 +/- acres of land. The property is zoned PUD (Planned Unit Development). On February 12, 2019, the project was approved as a PUD preliminary plan (File No. PUDSP-18-4) by the Board of County Commissioners based on a total of 71 lots. This final plat proposal reduces the total number of lots to 70.

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 21.7 acre-feet per year for the subdivision based on 70 lots (0.31 acre-feet/lot) inclusive of household use and irrigation. Based on the proposed water demand, the Applicant will need to provide a supply from the District of 6,510 acre-feet (21.7 acre-feet x 300 years) to meet the County’s 300-year water supply requirement.

3. The District’s General Manager provided a letter committing to serve the subdivision dated January 2, 2020 (Letter 2020-01), which updated the District’s earlier letter dated August 3, 2018 (Letter 2018-07), which had expired August 3, 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 updated 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, have determined that the following will be the total water demand required by this occupancy: 22.0 acre-feet per year.”¹

¹ The District’s letter dated August 3, 2018 previously committed to providing a water supply of 22.01 acre-feet/year for a total of 71 lots. The current final plat proposal requires 21.7 acre-feet/year for 70 lots.

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4. In a letter dated September 6, 2019, the State Engineer reviewed the Water Supply Information Summary and the District's letter of commitment dated August 3, 2018. Although the State Engineer relied on the August 3, 2018 expired letter from the District – it did review the proposal based on the correct number of 70 lots. The State Engineer noted the Applicant's estimated water demand of 0.31 acre-feet per household or 21.7 acre-feet/year for the 70 single-family lots. The Engineer stated that based on "the latest water supply report on file with this office, it appears the District has sufficient water resources to supply the proposed subdivision. Therefore, 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 so long as the demand of the proposed development does not exceed 22.01 acre-feet per year, the proposed water supply can be provided without causing injury to decreed water rights."

Note: State Engineer's Office also provided an advisory to the Applicant related to any possible storm water collection and/or conveyance facilities that may be included in the project. The Engineer advised the Applicant that ". . . unless the storm water structure(s) 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. 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.

6. Analysis and Recommendation. Based on the Applicant's estimated water demand of 21.7 acre-feet per year and the Cherokee Metropolitan District's commitment to supply up to 22.0 acre-feet of water per year and based on the State Engineer's confirmation of the District's latest water supply report on file, there appears to be a sufficient water supply available to meet the demands of the subdivision. Therefore, based upon the finding of sufficiency and no injury to existing water rights by the State Engineer's Office, based on Applicant's stated demand of 21.7 acre-feet per year and the commitment to serve by the District, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. 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 (January 2, 2020) 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.**
- C. It is Applicant's responsibility, and not the County's, to comply with the advisory by the State Engineer's Office regarding any storm water collection and/or conveyance facilities that may be included in the development to ensure that any such structures meet 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: Nina Ruiz, Project Manager, Planner III