
MEMORANDUM

TO: Planning Department, City of Colorado Springs, Colorado

FROM: Seter, Vander Wall & Mielke, P.C. on behalf of M&A, LLC

DATE: October 29, 2025

RE: Eminent Domain Request for Proposed Miller Downs Metropolitan District

This memorandum describes the request for limited eminent domain/condemnation authority for the proposed Miller Downs Metropolitan District (“District”), and a summary of Colorado’s eminent domain laws and current cases supporting such request.

Overview of Proposal

Petitioners for Miller Downs Metropolitan District (“Petitioners”) seek approval of a Service Plan from Colorado Springs City Council. The City Council public hearing on the Service Plan is scheduled for November 10, 2025.

The District’s Service Plan is modeled after the City’s Model Service Plan. However, Section V.A.20 of the proposed Service Plan has been revised to allow the District to condemn two parcels that are designated as future roadways to access the Miller Downs property. The parcels are:

- Tract I, Quail Brush Creek Filing No. 2, identified in the plat as a 0.21-acre parcel reserved for public access, public utilities, and reservation for a future right-of way. This tract is owned by Woodmen Heights Metropolitan District No. 2 (“Woodmen Heights”) but is in the process of being conveyed to the City.
- Tract A, Quail Brush Creek Filing No. 4, identified in the plat as a 0.11-acre parcel reserved for public access, public utilities, and reservation for a future right-of-way. This tract is owned by Quail Brush Creek LLLP, an entity affiliated with Challenger Homes (“Challenger”).

Acquisition of those tracts by a public entity is necessary to develop the Miller Downs property consistent with City requirements regarding access. In addition, the planned development of those tracts for roadways and public utilities is consistent with the City-approved plats for Quail Brush Creek Filing Nos. 2 and 4. Copies of those plats with applicable sections highlighted are enclosed with this memo.

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In addition to the plats, the Quail Brush Creek PUD (approved by the City on January 30, 2014), identifies both of these tracts as reserved for 50-foot wide street connection rights-of-way and states that the developer of the Miller Downs property shall construct the roadways when the Miller Downs property is annexed into the City. A copy of the Quail Brush Creek PUD with the applicable section highlighted is enclosed with this memo as well.

As described below, the Petitioners have engaged in negotiations with Woodmen Heights and Challenger to convey the tracts. Negotiations for Tract A have stalled and inclusion of limited eminent domain authorization into the Service Plan is necessary so the District or other public entity can acquire these tracts for the necessary public roadways and related infrastructure within the Miller Downs' development.

History of Negotiations with Tract Owners

A summary of negotiations with Woodmen Heights and Challenger is as follows.

Negotiations with Woodmen Heights. Discussions with Woodmen Heights began over 8 months ago. Initial discussions were positive, but a conveyance has not yet been finalized. Woodmen Heights has executed a deed to convey Tract I to the City, and acceptance by the City is pending. Therefore, Petitioners anticipate the completion of a mutually agreed upon conveyance; however, Service Plan authorization for condemnation of this tract is necessary in the event the conveyance to the City is not finalized because it is a City-required access point for the Miller Downs community.

Negotiations with Challenger. Negotiations with Challenger began in January 2025. Negotiations have been unsuccessful. Despite the small size of Tract A and its reservation for a future right-of-way, Challenger originally demanded \$500,000 in compensation. Challenger reduced its demand in subsequent discussions to \$200,000. However, that price is greatly disproportionate to the value of the tract, and Challenger has been unresponsive to requests for further negotiations.

Petitioners have worked in good faith for almost a year to acquire the predetermined right-of-way but Challenger has been unwilling to honor the Quail Brush Creek plat terms and has demanded unreasonable compensation related to the right-of-way. Of note, Challenger developed the Quail Brush Creek subdivision adjacent to the Miller Downs property. During conversations with representatives of Challenger, Petitioners were informed that Challenger wants to develop the Miller Downs property. Challenger made previous offers to purchase the Miller Downs property, which were rejected. Petitioners are confident further negotiations with Challenger will be unsuccessful based on Challenger's purported desire to prevent development of the Miller Downs property by other developers.

Lastly, the City declined a request by Petitioners for the City to condemn the tracts. As such, Petitioners believe the best solution is to grant Miller Downs Metropolitan District the authority to acquire the tracts for their intended public purposes via condemnation.

Eminent Domain Laws & Use Cases for Special Districts

Colorado law contains numerous provisions authorizing the use of eminent domain and ensuring property owners are protected throughout the condemnation process.

Generally, governments are authorized to condemn property for public use pursuant to Article II, § 15 of the Colorado Constitution. Metropolitan districts are expressly granted condemnation authority under the Special District Act (§ 32-1-1004(4), C.R.S.), subject to limitations in a metropolitan district's Service Plan. The City's Model Service Plan authorizes metropolitan districts to exercise the power of eminent domain only upon the prior written consent of the City.

In the case of Miller Downs, Petitioners request the language be revised to state as follows:

“The District shall have the authority to exercise the power of eminent domain and dominant eminent domain for the purpose of acquiring property interests for access and infrastructure, in, to, through, over, under, across, and around the property in Colorado Springs, Colorado identified as Tract I, Quail Brush Creek Filing No. 2 (El Paso County Colorado Assessor's Office Schedule No. 5308201024) and Tract A, Quail Brush Creek Filing No. 4 (El Paso County, Colorado Assessor's Office Schedule No. 5308311019). For all other purposes, the District shall not exercise the power of eminent domain, except upon the prior written consent of the City.” Service Plan, § V.A.20.

Such language ensures the District is limited in its use of eminent domain to the particular tracts at issue, and any other exercise of eminent domain powers would be eligible only upon the prior written consent of the City.

In addition, Colorado law establishes numerous requirements to protect property owners in a condemnation action. This includes requirements such as limiting condemnation to situations that advance a public interest, requiring negotiations be done in good faith, providing notice when intending to condemn property, and paying for a property owner's appraisal if the estimated value of the property is \$5,000 or greater. Furthermore, the property owner is entitled to a valuation hearing, at which disinterested commissioners or a jury hear evidence and determine the value of the property being taken.

Lastly, it is important to note that while the District is requesting eminent domain authority, very few special district eminent domain cases actually go to court. On average, only around 5-10% of eminent domain negotiations result in a case being filed in court. Most are resolved beforehand by the applicable parties.

Current Use Cases in Colorado

Eminent domain is a commonly used power by special districts and other local governments in Colorado. Examples of currently pending eminent domain cases include:

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- Dawson Trails Metropolitan District No. 1 v. Nichols Living Trust, Douglas County District Court Case No. 2025CV030354. The case involves the condemnation of utility, slope, and construction easements and fee simple ownership for the purpose of constructing public improvements such as culverts, detention facilities, and roadways.
- Dawson Trails Metropolitan District No. 1 v. Christopher Nichols, Douglas County District Court Case No. 2025CV030353. The case involves the condemnation of utility, slope, and construction easements and fee simple ownership for the purpose of constructing public improvements such as culverts, detention facilities, and roadways.
- South Adams County Water & Sanitation District v. Kroenke CC Properties, Adams County District Court Case No. 2025CV30350. This case involves the condemnation of fee simple property for the purpose of constructing and operating public water treatment facilities.
- Parkland Metropolitan District No. 1 v. Palizzi and Sons Inc., Adams County District Court Case No. 2024CV30527. This case involves the condemnation of drainage and temporary construction easements for the purpose of constructing a regional drainage outfall and related infrastructure.
- A pending Petition in Condemnation by the City for the widening of Dublin Boulevard.

Conclusion

Based on the foregoing considerations, the Petitioners for the Miller Downs Metropolitan District request that City Council approve the Service Plan, which is modeled after the City's Model Service Plan, with the updated eminent domain authorization limited to the two identified tracts.