

**Huerfano County**  
**Board of County Commissioners**  
**Staff Report – Permit #22-54 Map Amendment and Vacation of**  
**Right-of Way in Cuchara Mountain Park, Filing 4**  
**Meeting Type – Action on Planning Commission Recommendation**

April 22, 2024

**Update on quiet title to remove deed restrictions on Tracts L2 and L3:**

In February, 2023, the applicant, Jonathan Hotaling of JJH Property 3, applied for a plat amendment and vacation of right-of-way to reconfigure the properties known as Tracts B1, B2, B3, L2 and L3. Because of deed restrictions on L2 and L3 that set aside recreational open space in perpetuity, the Commissioners conditionally approved the application on the condition that the applicant get a decree from the District Court supporting the removal of deed restrictions.

In 2020, as part of the dissolution of the Cuchara Mountain Park Master Homeowners Association, these deed restrictions were removed, however, a homeowners' association does not have the authority to remove a deed restriction according to Section 2.02.11(2) of the Huerfano County Land Use Code, which states that deed restrictions and easements created as part of a subdivision cannot be removed without the consent of the Board of County Commissioners.

When this case was first brought before the Board of County Commissioners in February of 2023, Commissioners made a motion to neither approve nor deny the application and asked the applicant to seek a declaratory judgment from the courts supporting the claim that the deed restrictions were moot because the right to access the properties was granted to the dissolved Cuchara Mountain Park Master Homeowners Association and to “owners, tenants, and guests of grantee or Cuchara Mountain Resort.” It was not clear whether “Cuchara Mountain Resort” referred to the entire Panadero Subdivision, or if it was limited to members of the Cuchara Mountain Park Master Homeowners Association. The HOA was labeled as the “Grantor” in the deed restriction, and the deed restrictions were written to apply to both the Grantor and Cuchara Mountain Resort. In the complaint submitted to District Court, applicant stated that:

*“Cuchara Mountain Park” can commonly be construed as the successor of Cuchara Mountain Resort. However, Cuchara Mountain Resort did not legally exist as an entity at the time of transfer of part of subject property (L2 and L3, Panadero Filing #4). The Cuchara Mountain Resort that is referred to in the Warranty Deed at Reception number 340385 is not the same as the Cuchara Mountain Resort, Inc. on file with the Secretary of State. Said entity was created more than a decade after said Warranty Deed. Therefore, Plaintiff asserts that declaring the restrictions, regarding use of open space and common areas, in this deed as no longer valid and enforceable, given the facts of the situation set forth herein...*

The Applicant filed a quiet title suit which was settled in Huerfano County District Court, case number 2023CV30049, that establishes that he owns the properties listed below in fee simple, and that no defendant has any title or interest in the property. Defendants named were Huerfano County and any and all persons who claim any interest in the subject matter of the complaint. The County Attorney signed a waiver and acceptance of service on Nov. 9, 2023.

With the completion of the quiet title process, application 22-54 for plat amendment and vacation of right-of way is presented again to the Board of County Commissioners.

**Request:**

The land use application 22-54 includes the following four requests:

- 1. Plat Amendment rearranging lot configuration in Cuchara Mountain Park, Filing 4:** pursuant to LUR Section §2.14 to rearrange the lot lines of a part of Cuchara

Mountain Park Estates, Filing #4 and to establish a private, gated road as well as a non-motorized access easement heading north/south on the east side of Parcels E and G – This pathway would provide access to the ski lift located just south of the property. The site is known as Tracts B1, B2, B3, L2 and L3 (Parcel Numbers 122419, 122420, 122421, 122424 and 122425).

The Cuchara Mountain Park subdivision designated Tracts B1, B2 and B3 with higher density limits than are allowed in the Urbanizing Residential zoning district; as part of this plat amendment, those allowed densities are redistributed to the proposed new lots.

The Planning Commission passed a motion to consider the 8-parcel layout a Plat Amendment.

2. **Request for a property tax exemption for lots E, G and H** as long as they remain undeveloped in exchange for a proposed 50' perpetual easement on the east side of Parcel E and G, a 20' public access easement on the west side of Parcel H, as well as on the southern portions of Parcels E and G containing ski runs. Public access would be granted to the entirety of these parcels as long as they remain undeveloped.

**Note:** Property tax exemptions must go through the State Property Tax Administrator. If the property were to be deed restricted as open space and development disallowed, the County would use a different formula to assess the property value than is used for vacant land.

3. **Request that Huerfano County pay 25% of the total survey costs** (\$6,000 – \$12,000) in exchange for the dedication of a 50' public access easement and use of parcels E and G and H as public open space while parcels remain undeveloped.
4. **Vacation of a part of Yosemite Ln and Teton Ridge Dr:** Yosemite Ln. previously served to give access to the recreational easement on Tract L3 and to Tract B3. With the elimination of Tract L3 and the reconfiguration of the tracts into parcels, parcels E, G and H are accessible through the non-motorized access easement proposed. The 50' wide segment of Parcel H that extends along the border with the National Forest is not marked as an easement, and it includes a gate. The purpose of this segment is to create a buffer between Forest Service land and Parcels D and F to reduce insurance costs for improvements on those parcels. Public access would be allowed on Parcel H as long as it remains undeveloped.

**County Ownership:** The County came to own these roads as part of a tax sale; they were not deeded to the County as ROW with the original filing. On Map 425 – Panadero Development Filing No. 4 from 1999, Note 7 states: “Yosemite Lane, Teton Ridge Drive and Denali Ridge Road are private ownership access roads to be maintained by Cuchara Mountain Park Estates Homeowners Association. A 50-foot easement is granted for any underground utility in the private access road, for the purpose of installing and maintaining any and all underground utilities within the road right-of-way. A 50-foot easement is granted on all private access roads for emergency access.”

**Note:** The 50' utility easement is not subject to this vacation request.

## **Zoning**

The subject property is zoned Urbanizing Residential. Zoning standards for this district are set forth in LUR Section §1.03. The zone permits by right the building of a single family residence on each lot, which is in accordance with the applicant's stated intent to build off-grid single family residences and garages on lots B, C and F. Lots B1, B2 and B3 were granted higher densities as part of the Cuchara Mountain Park, and are labeled as Multi-Family tracts on Map 425, and combined were originally planned to support up to 268 units on 28.51 acres (an average of 9.4 units/acre, though intended densities varied by tract); the proposed maximum number of units would be 240, a 10.4% reduction. Developing to this level of intensity is not the applicant's intent at this time.

### **Amendment to Scope and Density:**

In the original application, the applicant proposed the creation of six lots. Subsequently, an alternative proposal for the creation of eight lots was presented to the Planning Commission along with new proposed densities for each lot.

In the Panadero Filing #4; Tract B1 allowed 150 units on 10.23 acres (14.7 units/acre); Tract B2 allowed for 80 units on 7.86 acres (10.2 units/acre); and Tract B3 allowed for 30 units on 2.46 acres (12.2 units/



acre). Tracts L2 and L3 were dedicated as open space. The combined tracts covered by this request permit an aggregate total of 260 units. The average density allowed on B1, B3 and B3 is 12.7 units/acre – after adding the acreage from Tracts L2 and L3 and reducing the total number of units allowed to 240, the new proposed average density would be 9.4 units/acre.

The current proposal proposes the following maximum units per lot:

Lot	Acearage	Units	Density (units/acre)
A	1.69	16	9.5
B	2	19	9.5
C	2.75	26	9.5
D	2.23	21	9.4
E	2.35	22	9.4
F	8.61	81	9.4
G	3.72	35	9.4
H	2.25	21	9.3

TOTAL: 25.6-acres    240 units    Average of 9.4 units/acre

**Process for Plat Amendment**

**(2.14.01):**

1. If more than three new lots are created and no public right of way or other public space is dedicated, PC recommendation on whether to treat application as subdivision or plat amendment.
2. Full application submitted; Staff determines completeness, routes to relevant referral agencies and schedules public meeting with PC and prepares staff report
3. PC public meeting and recommendation
4. BOCC public meeting and decision

**Noticing:** BOCC may require notification of review agencies or other interested parties.

**Eligibility: (2.14)** Minor changes that do not include modifications which significantly alter the intended land uses, density, number of lots, circulation system, drainage easements, dedicated land or encompass more than 25% of land included within a recorded subdivision. Scope can include adjustment of lot lines, replatting of lots, reconfiguration of dedicated streets and easements and reserved sites. If more than three new lots are created, Planning Commission shall determine if proposal shall be considered a plat amendment or subdivision.

**Eligibility Note:** Cuchara Mountain Park Estates Filing 4 consists of approximately 61 acres. The parcels being reconfigured amount to approximately 27.4 acres, or about 45% of the land included within the recorded subdivision.

**Planning Commission Determination:**

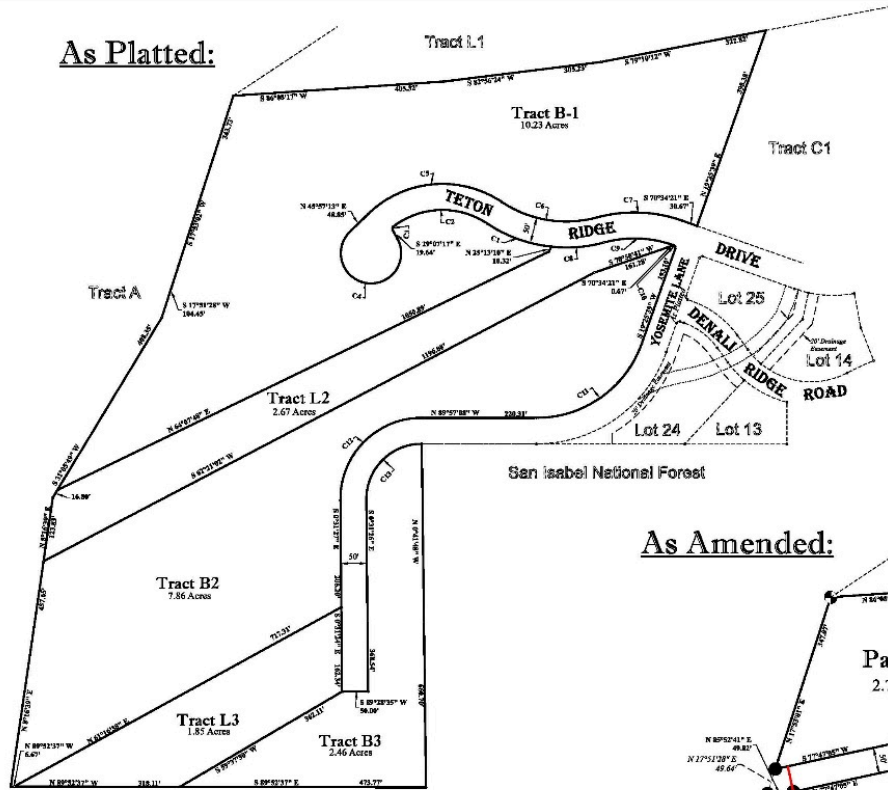
The Planning Commission had decided that this application can be treated as a plat amendment. A Plat Amendment must be under 25% of the total area of a subdivision. This application constitutes about 45% of the subdivision filing in which it is located, however, if the Cuchara Mountain Resort Panadero Subdivision, which includes Filing #4, is considered the subdivision, then this would satisfy that criterion.

**Process for Vacation**

**(2.15.01)**

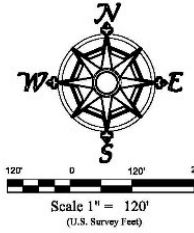
1. Staff determines completeness, routes to relevant referral agencies and schedules & posts notices for public meeting /public hearing with PC and prepares staff report
2. Public notices and notices to referral agencies
3. PC public hearing and recommendation
4. BOCC public meeting and decision.

**As Platted:**



# Map Amendment and Road Vacation FOR JJH PROPERTY 3, LLC.

Tracts B1, B2, B3, L2 and L3, Cuchara Mountain Park Estates  
Panadero Development Filing No. 4  
a Planned Unit Development  
County of Huerfano, State of Colorado

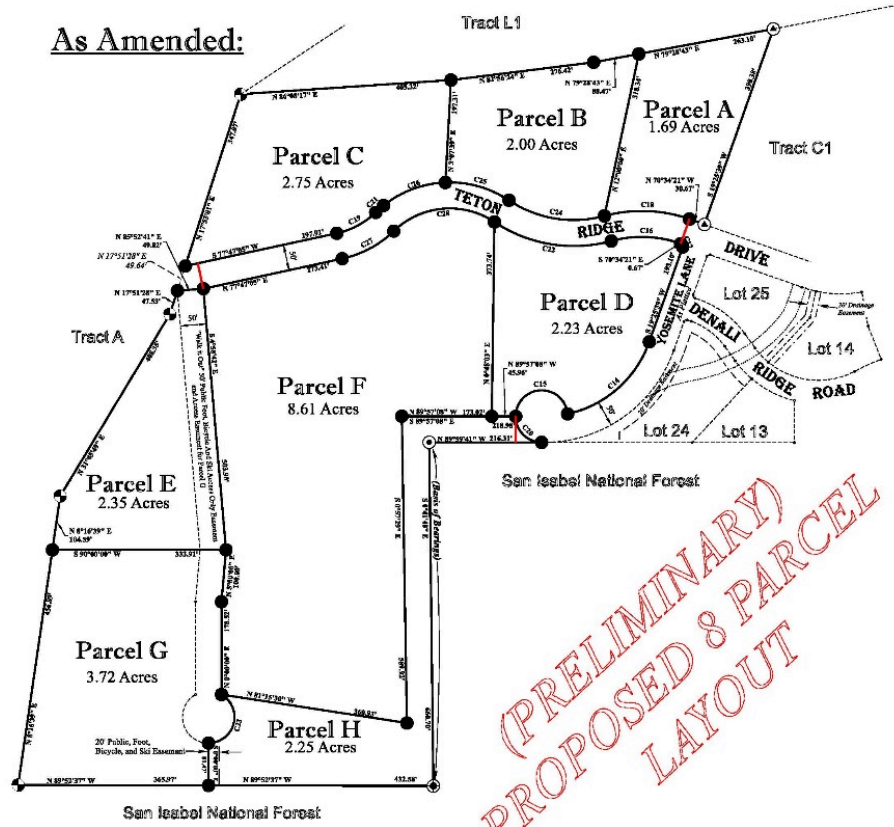


KNOW ALL MEN BY THESE PRESENTS: That JJH Property 3, LLC being the sole owner of the following described property:  
Tract B-1, B-2, B-3, L-2 and L-3, Cuchara Mountain Park Estates (Panadero Development, Filing No. 4), Recorded Map No. 425, Recorded August 2, 1999 at Reception No. 340387, According to the Records of the Clerk and Recorder for Huerfano County, Colorado

That JJH Property 3, LLC, is the sole owners of that real property situated in Huerfano County, Colorado, has caused said real property to be laid out and surveyed as Parcel A, B, C, D, E, and F of Map Amendment and Easement Vacation, Huerfano County, State of Colorado, and does hereby accept the responsibility for the completion of required improvements and does hereby dedicate and set apart all of the roads and other public improvements and places as shown on the accompanying plat to the use of the public forever, and does hereby dedicate those portions of said real property which are indicated as easements on the accompanying plat as easements for the purpose shown hereon, and does hereby grant the right to install and maintain necessary structures to the entity responsible for providing the services for which the easements are established

Jonathan Hotaling (Owner, JJH Property 3, LLC) Date: \_\_\_\_\_  
Jennifer Hotaling (Owner, JJH Property 3, LLC) Date: \_\_\_\_\_

**As Amended:**



STATE OF COLORADO )  
COUNTY OF ) ss  
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, A.D. by Jonathan Hotaling and Jennifer Hotaling  
WITNESS MY HAND AND OFFICIAL SEAL:  
My Commission Expires: \_\_\_\_\_ Notary Public

I, William S. Bechaver, a Professional Land Surveyor, registered in the State of Colorado, hereby certify to the Board of County Commissioners, of the County of Pueblo and to JJH Property 3, LLC, that a survey of the above described premises was conducted by me or under my direct responsible charge. That this plat of Map Amendment and Road Vacation complies with the minimum standards for Land Surveys and Plans as set forth in Section 38-51-106 et. Seq. C.R.S. 1993 (as amended).

William S. Bechaver PLS No. 38163  
BH2 Land Surveying, LLC Date: \_\_\_\_\_  
This is to certify that this Map Amendment Plat and Road Vacation, is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the Board of County Commissioners, County of Huerfano, State of Colorado.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairperson of the Board  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ancst: Clerk of the Board

**(PRELIMINARY)  
PROPOSED 8 PARCEL  
LAYOUT**

**LEGEND**

- ⊙ FOUND, BLM BRASS CAP
- ⊙ FOUND, 1/2" REBAR WITH PLASTIC CAP, PLS 16163
- ⊙ FOUND 1/2" REBAR WITH PLASTIC CAP, PLS 27265
- ⊙ FOUND 3/4" REBAR, WITH 2" ALUMINUM CAP, PLS 16163
- SET, 1/2" REBAR WITH YELLOW CAP, PLS 38103
- PROPOSED PRIVATE GATE

**"REFERENCES"**

- 1) Plat Cuchara Mountain Park Estates, Reception No. 340387
- 2) Special Warranty Deed, Reception No. 425899
- 3) Special Warranty Deed, Reception No. 425898
- 4) Declaration of Access Easement, Reception No. 418879

**BASIS OF BEARINGS:** S 0°41'48" E, (per Plat of Cuchara Mountain Park Estates) along the East line of Parcel D, With a BLM Brass cap on the South End and a 3/4" rebar with an Aluminum Cap, PLS 38103 on the North End, monumented as shown hereon.

**"NOTE:"** This survey does not constitute a title search by BH2 Land Surveying, LLC, to determine ownership or easements of record.

**"NOTE"** Client did not request a search for recorded Rights-of-Way and Easements.

**"NOTICE:"** According to Colorado law you must commence any legal action based upon any defect in this survey with in three years after you first discover such a defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.

Curve Table	CURVE	DELTA	RADIUS	ARC
C1	27°36'35"	275.00'	132.52'	
C2	71°16'49"	155.00'	102.83'	
C3	81°51'23"	5.00'	7.11'	
C4	254°21'23"	58.00'	257.48'	
C5	77°44'39"	205.00'	278.16'	
C6	48°52'06"	225.00'	191.91'	
C7	34°35'53"	275.00'	166.00'	
C8	21°15'31"	275.00'	102.03'	
C9	34°35'53"	225.00'	135.87'	
C10	89°53'41"	5.00'	7.84'	
C11	70°37'13"	215.00'	265.00'	
C12	90°34'18"	156.00'	247.55'	
C13	90°34'18"	106.60'	168.51'	
C14	58°20'22"	215.00'	218.92'	
C15	174°43'15"	50.00'	152.47'	
C16	34°35'53"	225.00'	135.87'	
C17	89°53'41"	5.00'	7.84'	
C18	34°35'53"	275.00'	166.00'	
C19	31°49'52"	155.00'	86.11'	
C20	89°51'51"	50.00'	78.42'	
C21	5°37'53"	205.00'	20.15'	
C22	48°52'06"	275.00'	234.55'	
C23	150°00'00"	50.00'	130.90'	
C24	48°52'06"	225.00'	191.91'	
C25	36°03'22"	285.00'	129.01'	
C26	36°03'22"	285.00'	129.01'	
C27	31°49'52"	205.00'	113.89'	
C28	77°44'39"	155.00'	210.32'	

**BH<sup>2</sup> LAND SURVEYING**  
P.O. Box 20359, Colorado City, CO 81019  
Phone: 719-676-2072  
Email: bh2@bh2survey.com

Scale 1" = 120' Date: 1-6-2023 Drawn By: WSB  
Sheet 1/1 Job No. 2022-037

Site Map: (see page 4)

**Code References**

The following Code Sections are applicable to this application and may be referenced by the Planning Commission in their evaluation of the request:

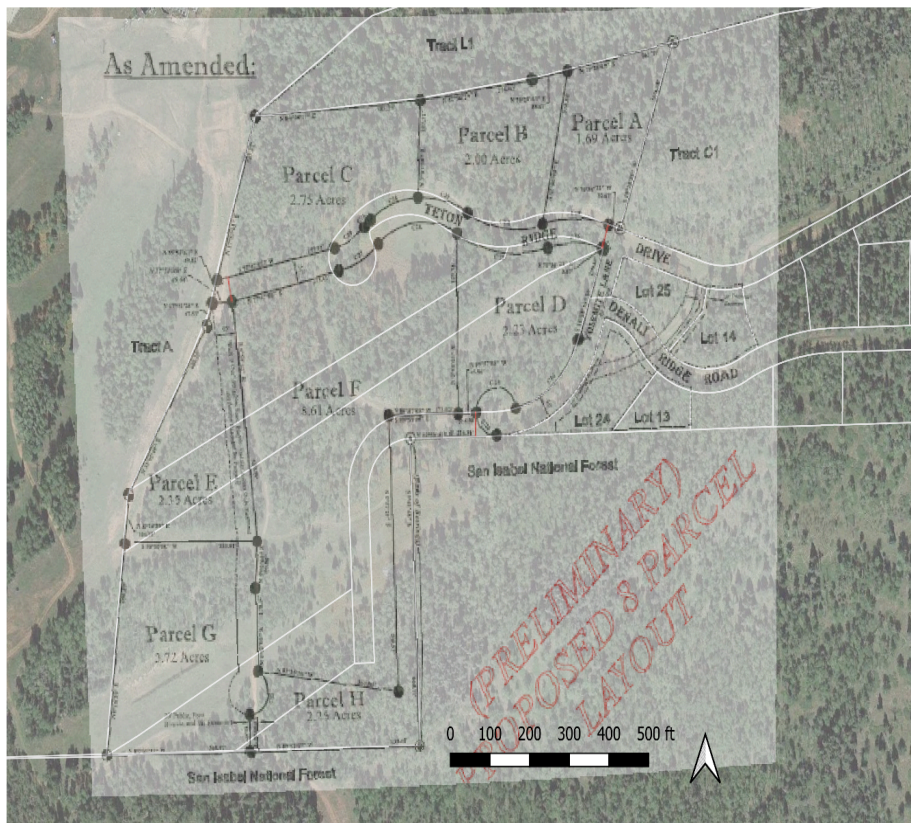
- § 2.14 – Plat Amendment
- § 2.15 Vacation
- § 2.02.11 Dedication of Land for Open Space

- The Board of County Commissioners may require the dedication, reservation or conveyance of areas or sites suitable for open space, flood control, scenic areas and related uses. The location of such sites shall be agreed upon by the applicant and the County, and in an amount of at least ten (10) percent of the total area of the subdivision. The proposed open space(s) shall be reasonably adopted for use for park land and recreational or other purposes, taking into consideration such factors as size, topography, geology, access and location of the proposed subdivision and the land earmarked for dedication.

**Staff Comment:** Filing 4 contains 59.26 acres; L1 contains 7 acres, L2 2.67 acres and L3 1.85 acres. L1, which is owned by the County, represents more than 10% of the area of Filing 4.

Map showing overlay with satellite image. Ski runs on portions of parcels E and G are to be dedicated as public open space.

**22-54 Plat Amendment**



On November 8, 2022, an Application for a Plat Amendment, Application Fees, and attachments were received by the County.

At the Planning Commission on December 8, 2022, the Commissioners asked for more information on proposed densities on each lot, given that the original tracts each permitted a specific number of units. In changing the shape and arrangement of lots, new proposed densities or maximum number of units were described for each lot. These numbers represent a slight reduction in total allowable units.

The Planning Commission asked if the original declarations to the Master Homeowners Association could be produced, as this was a missing attachment in the articles of dissolution. Those have been found and area attached.

On February 14, 2023, the Board of County Commissioners heard the case and voted to neither approve nor deny the application. The Commissioners requested that the applicant resolve the legal question about the deed restrictions on Tracts L1 and L2 with a declaratory judgment from a court. The applicant has since completed a quiet title process, in which his ownership in fee simple is established and defendants were declared to have no interest or title to the properties.

### **Proposals:**

#### **Plat Amendment**

The intent of the Applicant is to build single family homes on Parcels C, D and F with no immediate development plans for other Parcels. The Applicant has stated an intent to allow public use of parcels E, G and H until plans to develop those are made. This offer is made in conjunction with requests for the County to pay for 25% of the survey and for a property tax exemption for these lots so long as they remain undeveloped. It is not clear from the application if the intent to grant public access to parcels E and D and to dedicate a non-motorized access easement is conditional on the County's agreement to these requests.

#### **Vacation of a portion of Yosemite Ln. and Teton Ridge Dr.**

Yosemite Ln. has not been built; a track cut through lots 25 and 24 has been used and declared an access easement. The Applicant does not intend to cut Yosemite Rd in its platted location, and intends instead to use the access easement through lots 24 and 25. Establishing the road as platted, the Applicant claims, would be detrimental to the subdivision's appeal, operation, the forest, and drainage.

To this point, the owners of lots 24 and 25 have emailed objections. They would like to see the road cut as platted rather than perpetuating the use of the access easement through their parcels. The Applicant would prefer to vacate Yosemite Rd as platted and replat the road where the easement exists. The applicant states that owners of parcels in the subdivision, namely those down Denali Ridge Rd. have always used this easement, however none of those parcels have been developed to date.

The vacation of a portion of Teton Ridge Dr. includes an extension and realigning its placement as a private road. Instead of ending in a cul-de-sac, it would extend to the property boundary and connect to the non-motorized access easement proposed on the east side of Lot E, giving access to lots E and D, neither of which have near-term plans for development. The applicant does not have plans to construct the extension of Teton Ridge Dr at this time, but wishes to plat it on the map.

#### **Application Materials**

**Requirements for a Plat Amendment:** Proof of ownership; approved and recorded final plat along with proposed amendments; narrative statement explaining why proposed changes should be approved by the Planning Commission and BOCC.

#### **Requirements for a Vacation of R.O.W:**

Proof of ownership; copy of approved and recorded plat and vacated plat; narrative statement; legal description, area of land to be vacated.

**Staff Comment:** Acreage of proposed vacation of ROW is not included in letter.



## **Code References and Criteria for Action**

### **2.14 Amendments to Approved and Recorded Plats**

Minor changes to an approved and recorded plat shall not be considered a subdivision of land within the intent and definitions of these regulations, so long as the minor changes are not undertaken for the purposes of circumventing these subdivision regulations and so long as the minor changes do not include modifications which significantly alter the intended land uses, density, number of lots, circulation system, dedicated land or encompass more than twenty-five (25) percent of the land included within an overall site within an approved and recorded subdivision. Specifically included within the scope of minor changes are the following actions: the adjustment and revision of lot lines, the re-platting of lots, the reconfiguration of dedicated streets and easements and reserved sites, along with similar minor changes to an approved and recorded plat, so long as the minor changes create no nonconforming lots, nor significantly alter street and road locations, drainage easements or violate the subdivision design standards contained herein. If more than three new lots are created, Staff analysis of impact and recommendation on whether it should be an amendment or subdivision to Planning Commission for determination on how to treat the application.

#### **2.14.03 Criteria for Action on a Plat Amendment Application**

All actions by the Planning Commission in reviewing and making recommendations on an application to amend an approved and recorded plat and by the Board of County Commissioners in approving or disapproving such applications shall be based in general upon the provisions of these regulations and specifically on the following criteria:

1. That the proposed amendment meets the qualifications stated herein for a minor change to the approved and recorded plat.
2. That the proposed amendment would be consistent with all other provisions of these regulations and would not cause significant hardship or inconvenience for adjacent or neighboring land owners or tenants.
3. That the proposed amendment would be beneficial to the public health, safety or welfare of County residents.

#### **2.15.03 Criteria for Action on a Vacating Application**

All actions by the Planning Commission in reviewing and making recommendations on an application to vacate an approved and recorded plat or easement and by the Board of County Commissioners in approving or disapproving such applications, shall be based in general upon the provisions of these regulations and specifically upon the following criteria:

1. That the proposed vacating would not interfere with development of nor deny access via a public thoroughfare to existing structures within the recorded plat, adjoining properties, utility services or other improvements, nor deny access to structures, facilities or sites located beyond the plat or easement to be vacated.
2. That the proposed vacating would not cause undue hardship or inconvenience for any utility company, special district, neighboring landowner or tenant.
3. That the proposed vacating would not be likely to prove detrimental to the public health, safety or welfare of County residents.
4. That the proposed vacating would be consistent with all other provisions in these regulations.
5. That the proposed vacating would not cause undue financial hardship to Huerfano County nor deprive it of needed tax base.

#### **2.15.04 Vacating of Roads, Streets and Highways**

Any conflicting provisions contained within these regulations, notwithstanding the procedures for vacating roads, streets and highways shall conform to the provisions contained in Section 43-2-301, et seq. Colorado Revised Statutes.

## **Analysis**

The proposed vacation of a portion of Yosemite Ln as well as the vacation of Teton Ridge Dr. in combination with the elimination of the recreational easements on L2 and L3 reduces connectivity between lots in Filing 4 and the ski area. Leaving the extension of Teton Ln open to public access would provide a more direct connection between Filing4 properties and the ski area. If closed to public access, property owners along Denali Ridge and Teton Ridge would have to walk about 1/3 mi farther to reach public lands at the ski resort. At this time, because there is no other development along Denali Ridge or Teton Ridge, closing Teton Ridge causes no immediate impact to access.

The applicant proposes to use this property for the construction of 3 to 4 single-family homes, which is of lower intensity than what was permitted in Map 425 for the area in 1999, which planned 150 units for Tract B1, 80 units for Tract B2, and 30 units for Tract B3. However, the applicant proposes maintaining the right to increase the intensity of development of the parcels to a level slightly lower level than permitted by the original subdivision map.

These parcels were originally envisioned for higher density development, likely as the location of a resort. Accordingly, the Planning Commission has recommended that this be considered a plat amendment rather than a subdivision. The proposed rearrangement of lots comes with a proposal to slightly lower the total potential density and no new development rights are being created with this amendment.

The shape of proposed Parcel D is unusual and has been designed as such to create a buffer between USFS land and property on which applicant intends to build to reduce insurance costs, which are higher when abutting Forest Service land. The 50'-wide strip heading north and east along the Forest Service border represents about 35% of the total area of the parcel and is unbuildable due to setbacks. National forest access is still technically possible from the proposed cul-de-sac at the end of Yosemite Ln.

## **Referral Comments**

Prior to submittal, two adjacent property owners wrote to object to a plan to re-route Yosemite Ln from its platted position to the path that exists on the ground and which passes through Lots 24 and 25. When the application was submitted, this was not part of the proposal, however, using the existing access easement instead of building Yosemite Ln as platted is proposed.

## **Recommendations Made by the Planning Commission on 2/09/23**

### **Plat Amendment:**

1. Motion to consider the 8-parcel layout a plat amendment.  
(Motion by White, Seconded by Falk, unanimous - passed)
2. Motion to recommend approval of the Plat amendment as proposed.  
(Motion by White, second by Brown, unanimous; motion passed)

### **Vacation of Right of Way**

3. Motion to recommend approval of the request to vacate a portion of Teton Ridge Dr. and Yosemite Ln.

(Motion by White, second by Falk; unanimous – Motion passed)

**Note:** This includes a reconfiguration of the platting of Teton Ridge Dr as a private, gated road and the termination of Yosemite Ln just past the property line.

**Tax Exemption for Lots E, G and H**

4. Motion to recommend approval of Applicant's request for property tax exemption on Parcels E, G and H, so long as they remain undeveloped and in exchange for the proposed 50' perpetual easement on the east side of Parcel E and G and the 20' public access easement on the west side of Parcel H as well as on the southern portions of Parcels E and G containing ski runs. Public access would be granted to the entirety of these parcels as long as they remain undeveloped.

(Motion by White, seconded by Edmundson. White, Edmundson, Brown in favor; Falk and Lyons opposed; motion passed.)

**Note:** Tax exempt status is granted by the State Property Tax Administrator. If the property were to be deed restricted as open space and development disallowed, the County would use a different formula to assess the property value than is used for vacant land.

**County Contribution to Surveying Costs**

5. Motion to recommend approval of Applicant's request for the County to pay 25% of the total survey cost (\$6,000 – 12,000) in exchange for dedication of 50' public access easement and use of lots E and G and H as public open space.

(Motion by White, second by Brown; White, Brown, and Falk in favor; Lyons, Edmundson opposed – motion passed)

**Note:** Requests for County contributions to survey costs are not typically part of plat amendment applications.

6. Motion to recommend approval of amended densities on each lot.

(Motion by White, second by Brown; unanimous – motion passed)

Note: Amended proposed densities between 9.3 and 9.5 units/acre are lower (a combined total of 260 units were originally allowed on Tracts B-1, B-2 and B-3 in the 1997 Master Plan; the new proposed total is 240).

**The BOCC may take the following actions on each of the Planning Commission's recommendations:**

1. **Approval** without any special conditions.
2. **Conditional Approval** with a description of the special conditions.
3. **Denial**, indicating for the record the reason(s) for such action.
4. **Continuation** until a future date to gather more information or obtain clarification or for any other relevant cause.

**Attachments**

1. Application: Plat Amendment
2. Application: Vacation
3. Letter of Request
4. Supporting Documentation Letter
5. Plat Amendment/Vacation Map

6. Termination of Cuchara Mountain Park Master Homeowner Association
7. Declaration of access easement (through lots 24 and 25)
8. Proposed Density for 8-lot map
9. Map of Cuchara Mountain Estates Filing 4
10. Emails from neighbors
11. Deeds to Property
12. 1999 Warranty Deed for L2 and L3 showing deed restrictions
13. Quiet Title: Complaint
14. Quiet Title: Summons
15. Quiet Title: Proof of publication
16. Quiet Title: Judgment



Land Use Application #22-054  
Plat Amendment and Road Vacation

# Attachment 1 - Application

**Huerfano County Land Use Department**

401 Main Street, Suite 340, Attn: Land Use

Walsenburg, Colorado 81089

719-738-1220 ext. 103



**GENERAL LAND USE APPLICATION**

Application File No.: \_\_\_\_\_

Date Received: \_\_\_\_\_

Received by: \_\_\_\_\_

Fees due: \_\_\_\_\_ Date Paid \_\_\_\_\_

**1. ACTION(S) REQUESTED:**

- Conditional Use Permit
  - Conditional Use Permit / Marijuana
  - Conditional Use Permit/ Oil, Gas or Uranium Exploration and/or Development
  - Rezoning
  - Variance
  - Subdivision Exemption
  - Plat Amendment
  - Lot Consolidation
  - Plat Correction
  - Right-of-Way or Easement Vacation
  - Other Actions (specify): \_\_\_\_\_
- Sign Permit
  - Temporary Use Permit
  - H.B. 1041 Text Amendment
  - H.B. 1041 Development Permit
  - H.B. 1041 Flood Plain Exemption
- PUD and Subdivisions:
- Sketch Plan
  - Preliminary Plan
  - Final Plat / Subdivision Improvement Agreement
  - Appeal of Denied Application

**2. APPLICANT AND OWNER INFORMATION:**

Applicant Name: BH<sup>2</sup> Land Surveying, LLC (William S. Bechaver)

Applicant's Mailing Address: PO Box 20399, Colorado City, CO 81019

Applicant's Telephone: 719-676-2072 Email: bh2@ghvalley.net

Name of Land Owner: JH Property 3, LLC (Jonathon & Jennifer Hotaling)

Land Owner's Mailing Address: \_\_\_\_\_

Land Owner's Telephone: 303-725-7550 Email: jon@libertyservice.group

**3. PERMIT DETAILS:**

Detailed project description/Scope of Work: To rearrange lot lines to create more usable lots, possible dedication of easement and establish private gated road (walk-it-out).

Parcel Area: 25± Acres; Zoning District(s): UR

Parcel/Schedule Number(s): 122419, 122424, 122420, 122425, 122421

Parcel Address (optional): \_\_\_\_\_

Current/Proposed Land use (see §1.05 of the Land Use Code): Future Residence



# GENERAL LAND USE APPLICATION

If project is in an HOA, HOA name: N/A

If a Variance Request, please state the reason for the Variance(s): \_\_\_\_\_  
\_\_\_\_\_

Is all or a portion of the subject land located in a 100-year flood plain area (see FEMA floodplain map), or are there areas with slopes in excess of twenty percent (20%)?  YES  NO  NOT SURE

If YES, describe existing conditions: \_\_\_\_\_  
\_\_\_\_\_

Value of proposed project: \_\_\_\_\_

Will the proposed project require any State or Federal permits?  YES  NO

If YES, please list all permits or approvals required: \_\_\_\_\_  
\_\_\_\_\_

Additional pertinent information: \_\_\_\_\_  
\_\_\_\_\_

If a H.B. 1041 permit is required, for what matters of local concern and state interest? \_\_\_\_\_  
\_\_\_\_\_

## 4. CERTIFICATION BY THE APPLICANT:

I hereby certify that this Application is made with full knowledge of the design standards, all fees, procedures, public hearing and meeting requirements contained in the Huerfano County Land Use Regulations. Furthermore, I understand that all conditional use permits are non-transferrable, unless specifically approved by the Huerfano County Board of County Commissioners. The Board of County Commissioners may impose permit transfer fees as it deems appropriate. All documents submitted may be subject to internet publishing.

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Printed name: \_\_\_\_\_

## 5. ACTION (by the authorized permitting authority):

Final Approval       Conditional Approval       Denial

Name \_\_\_\_\_ Signature \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

Comments \_\_\_\_\_



**Huerfano County Land Use Department**

401 Main Street, Suite 340, Attn: Land Use

Walsenburg, Colorado 81089

719-738-1220 ext. 103



**GENERAL LAND USE APPLICATION**

Application File No.: \_\_\_\_\_

Date Received: \_\_\_\_\_

Received by: \_\_\_\_\_

Fees due: \_\_\_\_\_ Date Paid \_\_\_\_\_

**1. ACTION(S) REQUESTED:**

- Conditional Use Permit
  - Conditional Use Permit / Marijuana
  - Conditional Use Permit/ Oil, Gas or Uranium Exploration and/or Development
  - Rezoning
  - Variance
  - Subdivision Exemption
  - Plat Amendment
  - Lot Consolidation
  - Plat Correction
  - Right-of-Way or Easement Vacation
  - Other Actions (specify): \_\_\_\_\_
- Sign Permit
  - Temporary Use Permit
  - H.B. 1041 Text Amendment
  - H.B. 1041 Development Permit
  - H.B. 1041 Flood Plain Exemption
- PUD and Subdivisions:
- Sketch Plan
  - Preliminary Plan
  - Final Plat / Subdivision Improvement Agreement
  - Appeal of Denied Application

**2. APPLICANT AND OWNER INFORMATION:**

Applicant Name: BH2 Land Surveying LLC (William S. Bechaver)

Applicant's Mailing Address: PO Box 20399, Colorado City, CO 81019

Applicant's Telephone: 719-676-2072 Email: bh2@ghvalley.net

Name of Land Owner: JH Property 3, LLC (Jonathan & Jennifer Hotaling)

Land Owner's Mailing Address: \_\_\_\_\_

Land Owner's Telephone: 303-725-7550 Email: jon@libertyservice.group

**3. PERMIT DETAILS:**

Detailed project description/Scope of Work: To vacate a portion of Yosemite Lane and Teton Ridge.

Parcel Area: 25<sup>±</sup> Acres; Zoning District(s): UR

Parcel/Schedule Number(s): 122419, 122424, 122420, 122425, 122421

Parcel Address (optional): \_\_\_\_\_

Current/Proposed Land use (see §1.05 of the Land Use Code): private Road



# GENERAL LAND USE APPLICATION

If project is in an HOA, HOA name: NI/A

If a Variance Request, please state the reason for the Variance(s): \_\_\_\_\_  
\_\_\_\_\_

Is all or a portion of the subject land located in a 100-year flood plain area (see FEMA floodplain map), or are there areas with slopes in excess of twenty percent (20%)?  YES  NO  NOT SURE

If YES, describe existing conditions: \_\_\_\_\_  
\_\_\_\_\_

Value of proposed project: \_\_\_\_\_

Will the proposed project require any State or Federal permits?  YES  NO

If YES, please list all permits or approvals required: \_\_\_\_\_  
\_\_\_\_\_

Additional pertinent information: \_\_\_\_\_  
\_\_\_\_\_

If a H.B. 1041 permit is required, for what matters of local concern and state interest? \_\_\_\_\_  
\_\_\_\_\_

## 4. CERTIFICATION BY THE APPLICANT:

I hereby certify that this Application is made with full knowledge of the design standards, all fees, procedures, public hearing and meeting requirements contained in the Huerfano County Land Use Regulations. Furthermore, I understand that all conditional use permits are non-transferrable, unless specifically approved by the Huerfano County Board of County Commissioners. The Board of County Commissioners may impose permit transfer fees as it deems appropriate. All documents submitted may be subject to internet publishing.

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Printed name: \_\_\_\_\_

## 5. ACTION (by the authorized permitting authority):

Final Approval

Conditional Approval

Denial

Name \_\_\_\_\_ Signature \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

Comments \_\_\_\_\_



# *BH<sup>2</sup> LAND SURVEYING, LLC*

P.O. Box 20399  
Colorado City, CO 81019  
Phone: 719-250-5028  
Email: [bh2@ghvalley.net](mailto:bh2@ghvalley.net)

## Letter of Request for Map Amendment and Road Vacation and Dedication Tracts B1, L2, B2, L3, B3, Cuchara Mountain Park Estates Filing #4\*

**Date:** November 3, 2022

**Owners:** JJH Property 3, LLC, 3327 Springridge Cir, Colorado Springs, CO 80906, Jon & Jen Hotaling owners. 303-725-7550

**Owners Representative:** BH2 Land Surveyors, 4301 Valverde Way, #2, Colorado City, CO. 719-676-2072

### **Request and reason for the Map Amendment, Road Vacation and Dedication:**

- Rearrangement of the common lines between Tracts B1, L2, B2, L3, and B3 to create more usable and buildable lots.
- Vacation and dedication of a portion of Teton Ridge Drive and Yosemite Lane for better use of the land.
- Dedication of a 50-foot, Public Access Easement (Walk it Out) for foot, bicycle, and ski access only (except for the use of landowners and maintenance vehicles) along east side of Lot E. Said Easement is for the benefit of Cuchara Mountain Park users to have access to San Isabel National Forest.
- A 20-foot Public Access easement along the west end of Lot D, from the South end (Walk it Out) to the North line of San Isabel National Forest for foot, bicycle, and ski access to the San Isabel National Forest, lying south of the above-described Tracts of land.
- Establishment of gates at the location shown on the attached plat to maintain landowner privacy.
- Dedication of Lot E and the easement portion of Lot D for public space/use for the benefit of Cuchara Mountain Park users.

**Current Zoning:** Urban residential

**Legal Description:** Tracts B1, L2, B2, L3, B3 Cuchara Mountain Park Estates Filing #4

**Parcel Numbers:** 122419, 122424, 122420, 122425, 122421

**Existing Utilities that serve the parcels:** None.

**Existing Structures:** None.

### **Additional Requests and Supporting Documentation, per JJH Property 3, LLC**

- A Request for property tax exemption of Lots E and D, as long as they remain undeveloped. At which point said Lots are developed said tax exemption will become void. Also, in exchange for the perpetual easements, as long as E and D remain undeveloped and E and D's easement are accessible for Cuchara Mountain Park public space/use.



## *BH<sup>2</sup> LAND SURVEYING, LLC*

P.O. Box 20399  
Colorado City, CO 81019  
Phone: 719-250-5028  
Email: [bh2@ghvalley.net](mailto:bh2@ghvalley.net)

- A request that Huerfano County pay up to 25% of total survey cost (\$6000 to \$12000) in exchange for the dedication of 50-foot Public Access Easement (Walk it Out) and the use of Lots E and D, as public space/use.
- Future construction of off-grid Single-Family residence and garage on Lots B, C and F, in the next (1 to 10 years).
- Proposed Rearrangement could reduce current multi-family residential density by up to 50%.
- \*Supporting documentation and explanation provided by JJH Property 3, LLC. (See Attached Exhibit 1)

Please feel free to contact us if you have any questions of concerns.

Sincerely,

William S. Bechaver  
BH2 Land Surveying, LLC

JJH Property 3, LLC,  
3327 Springridge Cir, Colorado Springs, CO 80906,  
Jon & Jen Hotaling  
303-725-7550

**" Exhibit 1"**

**Supporting Documentation to**  
**Letter of Request for**  
**Plat Map Amendment Application**  
**Tracts L2, L3, and west ends of Yosemite Lane and Teton Ridge Drive in Cuchara**  
**Mountain Park Estates Filing #4**

**Additional Supporting Documentation and reason for the Map Amendment:**

1. Regarding Tracts L2 and L3 labeled on Map 425 (see attached) as "HOA Controlled Open Space", please refer to the attached 3 documents:
  - A) Recorded Bargain and Sale Deed from the now terminated HOA to Grantees.
  - B) Recorded Termination of Declarations by the HOA. Note Recital B, and bullets 3 and 4 that remove any and all HOA restrictions and encumbrances on L2 and L3 including HOA/public access. Moreover, Tract L2 and L3 have never been used by nor utilized for HOA or public access or use.
  - C) Recorded Articles of Dissolution for the HOA.
  
2. Regarding vacation of western part of Yosemite Lane, please refer to the attached:
  - A) Recorded Declaration of Access Easement which details the terms and conditions of this "perpetual" public access easement across Lots 25 and 24 to "connect Yosemite Lane and Teton Ridge Drive". This easement is the existing road (Not the deeded and uncut Yosemite Lane) that is already cut in and is the only means of egress and ingress for all other landowners in Cuchara Mountain Park Estates Filing #4. JJH Property 3, LLC Does not want Huerfano County nor the owners of Lots 25 and 24 (so labeled on Map 425 as "Excessive Slope Lots") to cut in this remaining part Yosemite Lane or it's new circle at the new western end because the existence of the perpetual easement makes it unnecessary and doing so would be detrimental to the subdivision's appeal, operation, the forest, and drainage. Subdivision landowners and the public will still have National Forest Access off the southern end of the new Yosemite Lane traffic circle which is at the western end of the perpetual easement across Lots 24 and 25.

The Map Amendment is submitted this way because the new owners of Lots 24 and 25 have both indicated to Mr. Hotaling that they do not want to have their adjacent portions of Yosemite Lane vacated and instead intend to carve it in themselves in an attempt to do away with the existing road, now with a perpetual easement, that is being and always has been utilized by every landowner in the subdivision since the formation of the subdivision.



JJH Property 3, LLC would prefer to have all of Yosemite Lane vacated and the current road / easement made into the permanent road as outlined in section 5.9 of the recorded Declaration of Access Easement. However, the cooperation of the owners of Lots 24 and 25 will apparently be required to do so.

**Current Zoning:** Urban residential

**Legal Description:** Tracts L2 and L3 of Cuchara Mountain Park Estates Filing #4, and western ends of current Yosemite Lane and Teton Ridge Drive.

**Parcel Numbers:** 122424, 122425

**Existing Utilities that serve the parcels:** None.

**Existing Structures:** None.

Please feel free to contact us if you have any questions or concerns.

Sincerely,

JJH Property 3. LLC

3327 Springridge Cir, Colorado Springs, CO 80906

Jon & Jen Hotaling

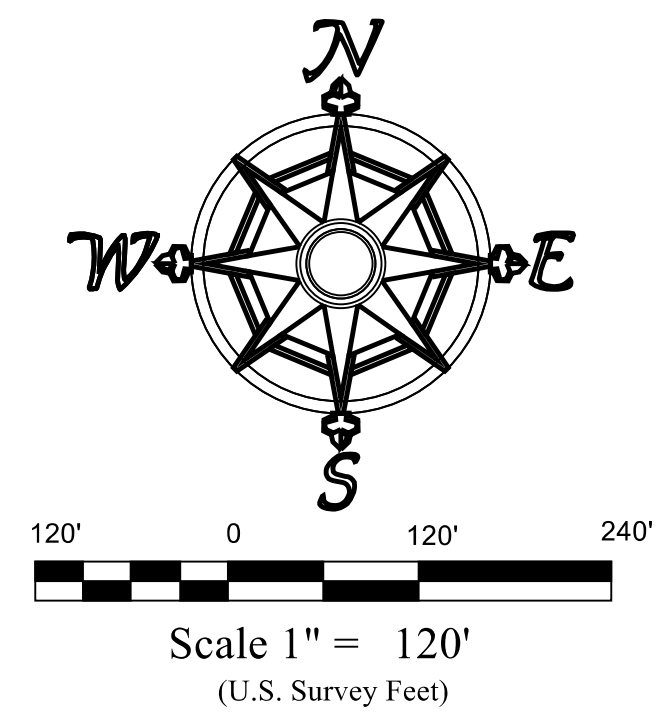
303-725-7550

Land Use Application #22-054  
Plat Amendment and Road Vacation

## Attachment 2 – Plat Map

# Map Amendment and Road Vacation FOR JJH PROPERTY 3, LLC.

Tracts B1, B2, B3, L2 and L3, Cuchara Mountain Park Estates  
Panadero Development Filing No. 4  
a Planned Unit Development  
County of Huerfano, State of Colorado



KNOW ALL MEN BY THESE PRESENTS: That JJH Property 3, LLC being the sole owner of the following described property:

Tract B-1, B-2, B-3, L-2 and L-3, Cuchara Mountain Park Estates (Panadero Development, Filing No. 4), Recorded Map No. 425, Recorded August 2, 1999 at Reception No. 340387, According to the Records of the Clerk and Recorder for Huerfano County, Colorado

That JJH Property 3, LLC, is the sole owners of that real property situated in Huerfano County, Colorado, has caused said real property to be laid out and surveyed as Parcel A, B, C, D, E, and F of Map Amendment and Easement Vacation, Huerfano County, State of Colorado, and does hereby accept the responsibility for the completion of required improvements and does hereby dedicate and set apart all of the roads and other public improvements and places as shown on the accompanying plat to the use of the public forever, and does hereby dedicate those portions of said real property which are indicated as easements on the accompanying plat as easements for the purpose shown hereon, and does hereby grant the right to install and maintain necessary structures to the entity responsible for providing the services for which the easements are established

Jonathan Hotaling (Owner, JJH, Property 3, LLC) Date: \_\_\_\_\_  
Jennifer Hotaling (Owner, JJH, Property 3, LLC) Date: \_\_\_\_\_

STATE OF COLORADO )  
COUNTY OF ) ss

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2022, A.D. by Jonathan Hotaling and Jennifer Hotaling

WITNESS MY HAND AND OFFICIAL SEAL:

My Commission Expires: \_\_\_\_\_ Notary Public

I, William S. Bechaver, a Professional Land Surveyor, registered in the State of Colorado, hereby Certify to the Board of County Commissioners, of the County of Pueblo and to JJH Property 3, LLC, that a survey of the above described premises was conducted by me or under my direct responsible charge. That this plat of Map Amendment and Road Vacation complies with the minimum standards for Land Surveys and Plats as set forth in Section 38-51-106 et. Seq, C.R.S. 1995 (as amended).

William S. Bechaver PLS No. 38103  
BH2 Land Surveying, LLC Date: \_\_\_\_\_

This is to Certify that this Map Amendment Plat and Road Vacation, is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ 2022, by the Board of County Commissioners, County of Huerfano, State of Colorado.

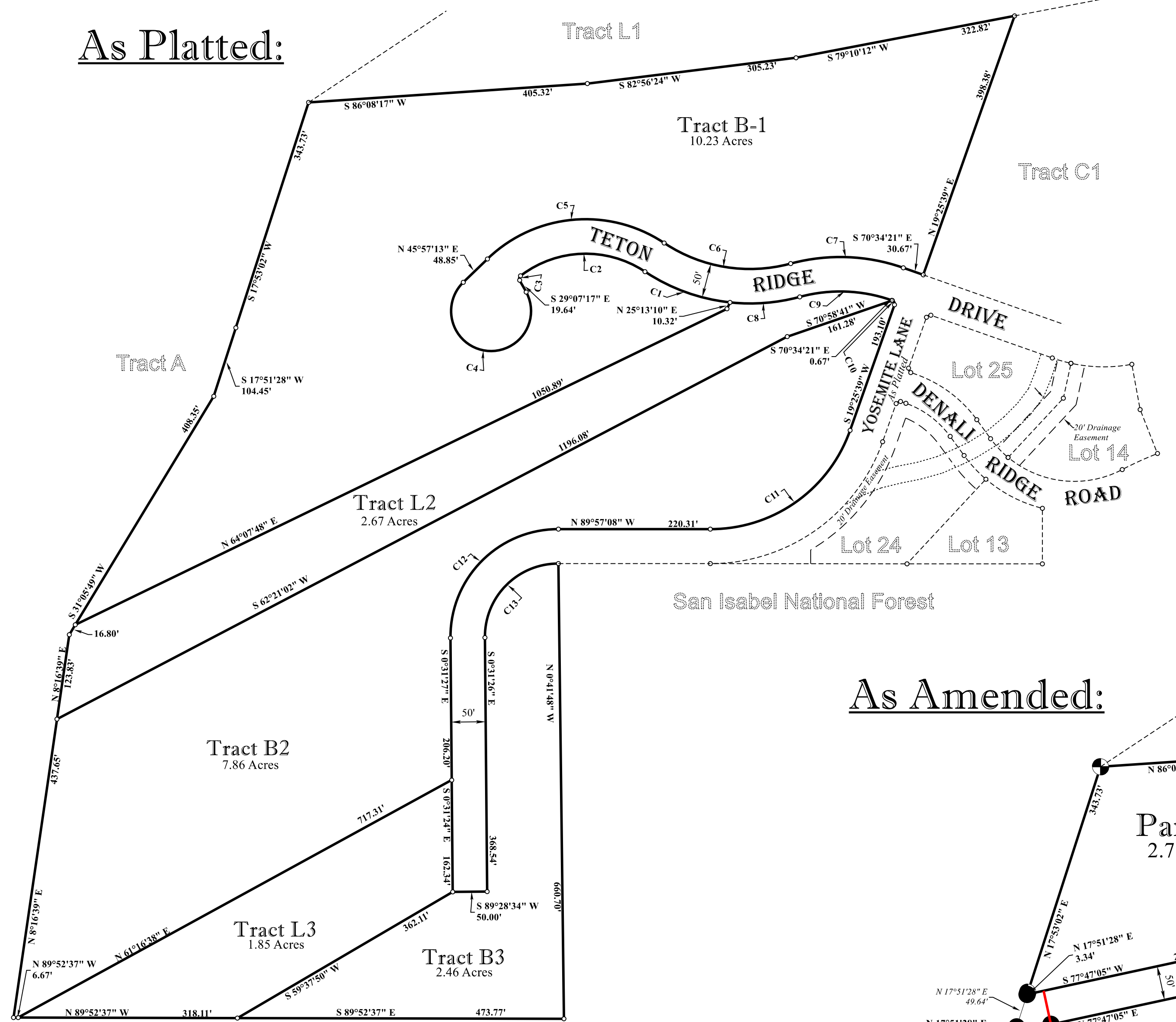
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairperson of the Board

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Attest: Clerk of the Board

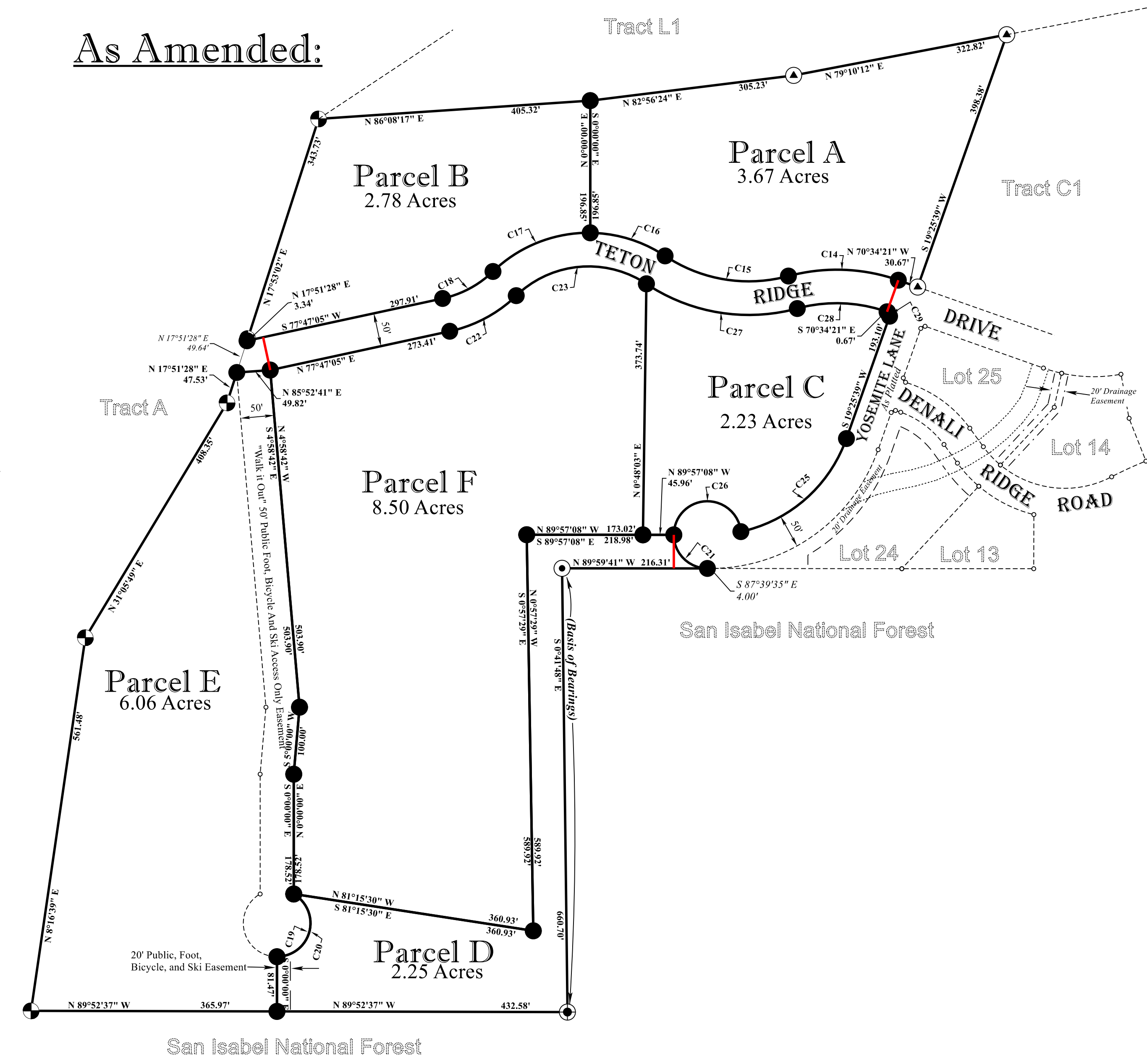
**BH<sup>2</sup> LAND SURVEYING**  
P.O. Box 20399, Colorado City, CO 81019  
Phone: 719-676-2072  
Email: bh2@gshvalley.net

Scale 1" = 120'	Date: 11-4-2022	Drawn By: WSB
Sheet 1/1	Job No. 2022-057	

## As Platted:



## As Amended:



- LEGEND**
- FOUND, BLM BRASS CAP
  - FOUND, 1/2" REBAR WITH PLASTIC CAP, PLS 16163
  - FOUND 1/2" REBAR WITH PLASTIC CAP, PLS 27265
  - FOUND 3/4" REBAR, WITH 2" ALUMINUM CAP, PLS 16163
  - SET, 1/2" REBAR WITH YELLOW CAP, PLS 38103
  - PROPOSED PRIVATE GATE

- "REFERENCES"**
- 1) Plat Cuchara Mountain Park Estates, Reception No. 340387
  - 2) Special Warranty Deed, Reception No. 425899
  - 3) Special Warranty Deed, Reception No. 425898
  - 4) Declaration of Access Easement, Reception No. 418879

**BASIS OF BEARINGS:** S 0°41'48" E, (per Plat of Cuchara Mountain Park Estates) along the East line of Parcel D, With a BLM Brass cap on the South End and a 3/4" rebar with an Aluminum Cap, PLS 38103 on the North End, monumented as shown hereon.

**"NOTE:"** This survey does not constitute a title search by BH2 Land Surveying, LLC, to determine ownership or easements of record.

**"NOTE"** Client did not request a search for recorded Rights-of-Way and Easements.

**"NOTICE":** According to Colorado law you must commence any legal action based upon any defect in this survey with in three years after you first discover such a defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.

Curve	DELTA	RADIUS	ARC
C1	27°36'35"	275.00'	132.52'
C2	71°16'49"	155.00'	192.83'
C3	81°31'23"	5.00'	7.11'
C4	254°21'23"	58.00'	257.48'
C5	77°44'39"	205.00'	278.16'
C6	48°52'06"	225.00'	191.91'
C7	34°35'53"	275.00'	166.06'
C8	21°15'31"	275.00'	102.03'
C9	34°35'53"	225.00'	135.87'
C10	89°53'41"	5.00'	7.84'
C11	70°37'13"	215.00'	265.00'
C12	90°34'18"	156.60'	247.55'
C13	90°34'18"	106.60'	168.51'
C14	34°35'53"	275.00'	166.06'
C15	48°52'06"	225.00'	191.91'
C16	33°02'49"	205.00'	118.24'
C17	44°41'50"	205.00'	159.92'
C18	31°49'52"	155.00'	86.11'
C19	150°00'00"	50.00'	130.90'
C20	150°00'00"	50.00'	130.90'
C21	89°51'51"	50.00'	78.42'
C22	31°49'52"	205.00'	113.89'
C23	77°44'39"	155.00'	210.32'
C24	68°16'32"	50.00'	373.74'
C25	58°20'22"	215.00'	218.92'
C26	174°43'15"	50.00'	152.47'
C27	48°52'06"	275.00'	234.55'
C28	34°35'53"	225.00'	135.87'
C29	89°53'41"	5.00'	7.84'

Land Use Application #22-054  
Plat Amendment and Road Vacation

## **Attachment 3 – Proof of Ownership**



425899

Page 1 of 3

Nancy C. Cruz, Clerk & Recorder

Huerfano County, CO

03-10-2022 01:55 PM Recordings Fee \$23.00

After recording, please return to:

MASON LAW AND PLANNING GROUP, LLC  
16055 Old Forest Point, Suite #301  
Monument, Colorado 80132

Reserved for recording information

## Special Warranty Deed

THIS DEED is made this 24th day of February 2022 between **JONATHAN HOTALING AND JENNIFER HOTALING,**

Grantor,

whose address is 3327 Springridge Circle, Colorado Springs, Colorado 80906, and

**JJH PROPERTY 3, LLC,**

Grantee,

whose address is 3327 Springridge Circle, Colorado Springs, Colorado 80906,

for and in consideration of Ten and no/100 Dollars (\$10.00), in hand paid, the receipt and sufficiency of which is hereby acknowledged, granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell, convey, and confirm, unto the grantee(s) heirs and assigns forever, all the real property, together with improvements, if any, situate, lying and being in the County of Huerfano, State of Colorado, described as follows:

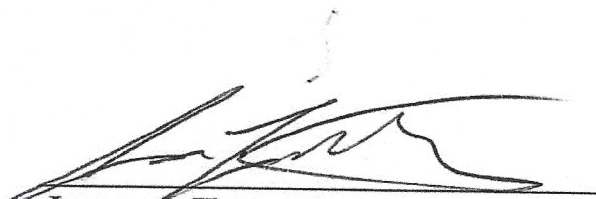
**TRACT B-1 AND B-2, CUCHARA MOUNTAIN PARK ESTATES (PANADERO DEVELOPMENT, FILING NO. 4), RECORDED MAP NO. 425, RECORDED AUGUST 2, 1999 AT RECEPTION NO. 340387, ACCORDING TO THE RECORDS OF THE CLERK AND RECORDER FOR HUERFANO COUNTY, COLORADO.**

**SEE EXHIBIT A ATTACHED**

**TOGETHER** with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversions and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor(s), either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

**TO HAVE AND TO HOLD** the said premises above bargained and described with the appurtenances, unto the grantee(s) heirs and assigns forever. And the grantor(s), for sell heirs and personal representatives, do covenant, grant, bargain, and agree to and with the grantee(s), heirs and assigns, that at the time of the ensealing and delivery of these presents, well seized of the premises above conveyed, good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and good right, full power and authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances, and restrictions of whatever kind or nature.



  
**JONATHAN HOTALING**

  
**JENNIFER HOTALING**

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF EL PASO     )

The foregoing instrument was acknowledged before me this 24th day of February 2022, by Jonathan Hotaling and Jennifer Hotaling.

WITNESS my hand and official seal.

My commission expires: 04/16/2022

AMANDA FREITAG  
Notary Public  
State of Colorado  
Notary ID # 20184016578  
My Commission Expires 04-16-2022

  
**Amanda Freitag, Notary Public**

**EXHIBIT A / EXCEPTIONS**

**FILING NUMBER: CT 178843**

- 1. EASEMENTS, NOTES, TERMS, CONDITIONS, PROVISION, RESTRICTIONS, COVENANTS, AGREEMENTS AND OBLIGATIONS, IF ANY, AS CONTAINED ON THE PLAT OF SAID SUBDIVISION RECORDED AUGUST 22, 1999 AT RECEPTION No. 340387.**
- 2. COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, RESERVATIONS AND LIEN RIGHTS, IF ANY, WHICH DO NOT INCLUDE A FORFEITURE OR REVERTER CLAUSE, DELETING RESTRICTIONS, IF ANY, BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILY STATUS OR NATIONAL ORIGIN SET FORTH IN THE DECLARATION RECORDED AUGUST 2, 1999 AT RECEPTION No. 340388, AND ANY AND ALL AMENDMENTS, SUPPLEMENTS, AND ANNEXATIONS THERETO.**
- 3. TERMS, AGREEMENTS, PROVISIONS, CONDITIONS AND OBLIGATIONS OF TREASURER'S DEED RECORDED AUGUST 16, 2017 AT RECEPTION No. 409771.**



425898

Page 1 of 4

Nancy C. Cruz, Clerk & Recorder  
Huerfano County, CO

03-10-2022 01:55 PM Recordings Fee \$28.00

After recording, please return to:

MASON LAW AND PLANNING GROUP, LLC  
16055 Old Forest Point, Suite #301  
Monument, Colorado 80132

Reserved for recording information

## Special Warranty Deed

THIS DEED is made this 24th day of February 2022 between **JONATHAN HOTALING AND JENNIFER HOTALING,**

Grantors,

whose address is 3327 Springridge Circle, Colorado Springs, Colorado 80906, and

**JJH PROPERTY 3, LLC,**

Grantee,

whose address is 3327 Springridge Circle, Colorado Springs, Colorado 80906,

for and in consideration of Ten and no/100 Dollars (\$10.00), in hand paid, the receipt and sufficiency of which is hereby acknowledged, granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell, convey, and confirm, unto the grantee(s) heirs and assigns forever, all the real property, together with improvements, if any, situate, lying and being in the County of Huerfano, State of Colorado, described as follows:

**TRACT B-3, L-2 AND L-3, CUCHARA MOUNTAIN PARK ESTATES (PANADERO DEVELOPMENT, FILING NO. 4), RECORDED MAP NO. 425, RECORDED AUGUST 2, 1999 AT RECEPTION NO. 340387, ACCORDING TO THE RECORDS OF THE CLERK AND RECORDER FOR HUERFANO COUNTY, COLORADO.**

**SEE EXHIBIT A ATTACHED BELOW**

**TOGETHER** with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversions and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor(s), either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

**TO HAVE AND TO HOLD** the said premises above bargained and described with the appurtenances, unto the grantee(s) heirs and assigns forever. And the grantor(s), for sell heirs and personal representatives, do covenant, grant, bargain, and agree to and with the grantee(s), heirs and assigns, that at the time of the ensealing and delivery of these presents, well seized of the premises above conveyed, good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and good right, full power and authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances, and restrictions of whatever kind or nature.

Special Warranty Deed

Page 1 of 4







**EXHIBIT A**  
**EXCEPTIONS TO TITLE**

**DECLARATION OF COVENANTS FOR CUCHARA MOUNTAIN PARK ESTATES, RECORDED AUGUST 2, 1999 AT RECEPTION No. 340388**

**9. TREASURES DEED FOR THE ROADS AT CUCHARA MOUNTAIN PARK ESTATES PANADERO DEVELOPMENT FILING No. 4, RECORDED AUGUST 16, 2017 AT RECEPTION No. 409771.**

**10. RESOLUTION No. 99-18 FOR CUCHARA MOUNTAIN PARK ESTATES – PANADERO DEVELOPMENT FILING No. 4, RECORDED AUGUST 4, 1999 AT RECEPTION No. 340418 AND RESOLUTION No. 99-19A, RECORDED AUGUST 4, 1999 AT RECEPTION No. 340420.**

**11. TITLE TO ALL MINERALS WITHIN AND UNDERLYING THE PREMISES, TOGETHER WITH ALL MINING AND DRILLING RIGHTS AND OTHER RIGHTS, PRIVILEGES AND OTHER IMMUNITIES RELATING THERETO.**

**12. ANY AND ALL EXISTING ROADS, HIGHWAYS, DITCHES, CANALS, RESERVOIRS, WELLS, RAILROAD TRACKS, PIPELINES, WATER LINES, POWER LINES, TELEPHONE LINES, AND ANY AND ALL RIGHT OF WAY EASEMENTS THEREFORE.**

**13. EASEMENTS GRANTED TO THE CUCHARAS SANITATION AND WATER DISTRICT BY DEEDS RECORDED FEBRUARY 15, 1985 IN BOOK 373 PAGE 319.**

**14. EASEMENT GRANTED TO CUCHARAS SANITATION AND EATER DISTRICT BY INSTRUMENT RECORDED FEBRUARY 14, 1985 IN BOOK 373 PAGE 318.**

**15. TERMS, CONDITIONS AND AGREEMENTS IN THE AGREEMENT REGARDING CUCHARA VALLEY RESORT WATER AND SEWER SYSTEMS RECORDED MARCH 22, 1990 IN BOOK 8M PAGE 568.**

**16. SPECIAL WARRANTY DEED REGARDING CUCHARA VALLEY RESORT WATER AND SEWER SYSTEMS RECORDED MARCH 22, 1990 IN BOOK 8M PAGES 565, 566 AND 567.**

**17. UNRECORDED LEASE TO THE LA VETA FIRE PROTECTION DISTRICT DATED JUNE 1, 1987 AFFECTING A PARCEL OF LAND 120 FEET BY 240 FEET IN THE NW1/4 OF SECTION 16, TOWNSHIP 31 SOUTH, RANGE 69 WEST OF THE 6TH P.M.**

**18. EXCEPTING AND RESERVING TO THE UNITED STATES A RIGHT OF WAY FOR DITCHES AND CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES ACT OF AUGUST 30, 1890 (26 STAT, 39; 43 U.S.C. 945) AS RESERVED IN PATENT RECORDED IN BOOK 379 PAGE 485.**

**19. EASEMENT TO U.S. WEST COMMUNICATIONS, INC. RECORDED JULY 26, 1994 IN BOOK 26M PAGE 16.**

**20. MASTER LAND USE ON MAP FILED DECEMBER 17, 1997 AS MAP NO. 405.**

**21. RESOLUTION 99-19-A, A RESOLUTION APPROVING THE PLAT OF CUCHARA MOUNTAIN PARK**



- ESTATES, PANADERO SUBDIVISION FILING NO. 4, FILED AUGUST 4, 1999 AT RECEPTION NO. 340420.**
- 22. NOTES, RESTRICTIONS AND EASEMENTS AS SHOWN ON PLAT OF CUCHARA MOUNTAIN PARK ESTATES (PANADERO DEVELOPMENT FILING NO. 4) AND PANADERO DEVELOPMENT FILING 4A AS FILED AUGUST 2, 1999 AT RECEPTION NO. 340387, MAP NO. 425.**
- 23. PERPETUAL EASEMENT FOR UTILITIES CUCHARA PARTNERS, LTD ETAL FILED JANUARY 9, 2002 AT RECEPTION NO. 352165 FOR PANADERO FILING NO. 3.**
- 24. EASEMENT TO THE CUCHARAS SANITATION AND WATER DISTRICT RECORDED SEPTEMBER 13, 2004 AT RECEPTION NO. 364883.**
- 25. TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT WITH THE CUCHARAS SANITATION AND WATER DISTRICT RECORDED SEPTEMBER 14, 2004 AT RECEPTION NO. 364899.**
- 26. RECEPTION OF USE OF PROPERTY FOR RECREATIONAL PURPOSES ONLY AS SHOWN IN DEED RECORDED AUGUST 2, 1999 AT RECEPTION NO. 340385 AS TO LOTS L-2 AND L-3.**
- 27. PERPETUAL EASEMENT RECORDED ON SPECIAL WARRANTY DEED FROM SKI CUCHARA, L.P., A TEXAS LIMITED PARTNERSHIP AND CUCHARA PARTNERS, LTD, RECORDED JULY 16, 1997 AT RECEPTION NO. 329792.**





WARRANTY DEED

CUCHARA PARTNERS, LTD., ("Grantor"), whose mailing address is 946 Panadero Avenue, Cuchara, Colorado 81055, for consideration of ten (\$10.00) Dollars and other good and valuable consideration, in hand paid, hereby sells and conveys to CUCHARA MOUNTAIN PARK ESTATES MASTER HOMEOWNERS ASSOCIATION, ("Grantee") whose address is 946 Panadero Ave., Cuchara, Colorado 81055. the following real property, to remain common area open space in perpetuity and this dedication shall run with the land, in the County of Huerfano, State of Colorado, to-wit:

Tracts L1, L2 and L3, Filing No. 4, Panadero Subdivision, Huerfano County, Colorado

with all its appurtenances, and warrants the title to the same, subject to any easements, restrictions, reservations, rights of way or covenants of record, if any, recorded in the records of the Huerfano County Clerk and Recorder.

The Grantor hereby stipulates the land described herein shall remain recreational open space in perpetuity, and left in its natural state "as is" without alteration or modification by structures or buildings. That the Grantee and its successors or assigns shall maintain this property in such state forever. That the Grantee and its successors or assigns agrees not to transfer, sell or otherwise dispose of the property except to a successor or related homeowners association or to a master homeowners association which may incorporate Grantee or its successors and assigns within it. That the property may be subject to easements for recreational use such as the building of trails for cross country skiing, hiking, biking or other park like uses of this property. The construction and operation of ski lift facilities shall be permitted. That no camping, motorized vehicles except for snow grooming and maintenance machinery be permitted on the property. That only owners, tenants, and guests of Grantee or Cuchara Mountain Resort may have access to the property for the use described herein and in accordance with the Declaration of Covenants on file for Cuchara Mountain Park Estates, Huerfano County, Colorado. These listed restrictions and conditions shall run with the land and be perpetual in nature. Further Huerfano County shall have the unilateral right to take by any lawful means actions to enforce these perpetual conditions which run with the land.

Signed this 22 day of July, 1999.

GRANTOR: CUCHARA PARTNERS, LTD.

By: Lawrence Smith

Handwritten signature of Lawrence Smith and another signature.

STATE OF New Mexico } ss. COUNTY OF Bernalillo }

The foregoing instrument was acknowledged before me this 22 day of July, 1999, by Lawrence Smith.

Witness my hand and official seal.

Notary Public

Handwritten signature of the Notary Public.



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340385 08/02/1999 02:17P WD Judy Benine 1 of 1 R 5.00 D 0.00 Huerfano Co.

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Land Use Application #22-054  
Plat Amendment and Road Vacation

## Attachment 4 – Attorney Communications



### Cuchara Mountain Park Estates - L2 and L3 deed restrictions termination

Jon Hotaling <[redacted]>  
To: Sky Tallman <stallman@huerfano.us>, Lisa Powell-DeJong <lisa@huerfano.us>, BH2 Land Surveying <[redacted]> Mon, Nov 28, 2022 at 11:40 AM

Hi Sky and Lisa,

Below and attached, please see the title attorney's clarification. Please let me know if you need anything else.

Best,

Jon Hotaling  
[redacted]

----- Forwarded message -----  
From: **Perlstein, Janet E.** <[redacted].com>  
Date: Mon, Nov 28, 2022 at 10:38 AM  
Subject: FW: [EXT] HOA papers for Cuchara Mountain Park Estates?  
To: Jon Hotaling <[redacted]up>  
Cc: Bohara, Stephen F. <[redacted]m>

Jon,

The deed restrictions were granted to the Cuchara Mountain Park Estates Master Homeowners Association ("HOA"). The Declaration of Covenants Conditions and Restrictions for the HOA was terminated pursuant to the attached termination document, after such termination was voted on by the requisite percentage of owners at a duly called meeting of the owners association. At that same meeting, you were appointed as the president of the HOA and were delegated the authority to file all documents necessary to effect the resolutions adopted at the HOA meeting. As part of the termination, the owners agreed to relinquish any interest in the deed restrictions. In following the resolutions adopted by the owners at the meeting of the HOA, the HOA conveyed the deed restricted property to you and Jennifer pursuant to the attached Bargain and Sale Deed, relinquishing all rights title and interest of the HOA in and to the deed restrictions. Since the deed restrictions were relinquished by the HOA, which was the party holding the interest therein, the deed restrictions no longer exist and are of no further force or effect. Please let me know if you need any additional information.

**Janet Perlstein**  
Partner  
**Fox Rothschild LLP**  
1225 17th St.  
Suite 2200  
Denver, CO 80202  
[redacted] direct  
[redacted] - cell  
[redacted] - fax  
[redacted].com  
[www.foxrothschild.com](http://www.foxrothschild.com)

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Fox Rothschild LLP by replying to this email and delete the original and reply emails. Thank you.

--  
*Liberty Service Group*  
[redacted]

**2 attachments**

- 112251363\_1\_TERMINATION OF CCRS FOR CUCHARA MOUNTAIN PARK ESTATES MASTER HOA RECORDED JULY 13, 2020, HUERFANO COUNTY, CO-C1-C.PDF**  
238K
- 112251440\_1\_BARGAIN AND SALE DEED - CUCHARA MOUNTAIN PARK ESTATES MASTER HOA TO JONATHAN AND JENNIFER HOTALING - RECORDED JULY 13, 2020, HUERFANO COUNTY, CO-C2-C-C.PDF**  
73K



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## Cuchara Mountain Park Estates - L2 and L3 deed restrictions termination

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Jon Hotaling <[REDACTED]>

Mon, Nov 28, 2022 at 12:01 PM

To: Sky Tallman <stallman@huerfano.us>, Lisa Powell-DeJong <lisa@huerfano.us>, BH2 Land Surveying <[REDACTED]>

Also, fyi, to your question about asking if the HOA had the right to relinquish the restrictions, Janet wrote:

No, the county does not have a point. All easements are granted in perpetuity, unless they specifically state that they are limited to a particular period of time. That does not prohibit the beneficiary of the easement from relinquishing its interest, and by doing so, extinguishing the easement, as occurred in this situation. The HOA is the beneficiary of the deed restriction. The HOA, as the beneficiary of the deed restriction, by vote of the requisite percentage of owners, resolved to relinquish any interest in the deed restriction (which relinquishment occurred both in the termination of Declaration of Covenants, Conditions and Restrictions and also in the Bargain and Sale deed, which conveyed any interest owned by the HOA in the deed restricted property to you and Jennifer) and to dissolve the HOA (which dissolution occurred on July 20, 2020). Let me know if you have any other questions.

**Janet Perlstein**

Partner

**Fox Rothschild LLP**

1225 17th St.

Suite 2200

Denver, CO 80202

[REDACTED] direct

[REDACTED] cell

[REDACTED] fax

[REDACTED]schild.com

[www.foxrothschild.com](http://www.foxrothschild.com)

[Quoted text hidden]





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## Cuchara Mountain Park Estates - L2 and L3 deed restrictions termination

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Sky Tallman <stallman@huerfano.us>

Thu, Dec 1, 2022 at 1:30 PM

To: Jon Hotaling <j[REDACTED]up>

Cc: Lisa Powell-DeJong <lisa@huerfano.us>, BH2 Land Surveying <[REDACTED]>

Jon,

I have discussed this with the County Attorney and have two outstanding concerns which do not appear to be addressed in the response above:

1. The deed restrictions grant use to owners, tenants, and guests of grantee or Cuchara Mountain Resort. Cuchara Mountain Resort refers to the Panadero subdivision, not just to the members of the Cuchara Mountain Park Master Homeowners Association, therefore the restrictions apply to more than just the grantee.
2. Section 2.02.11 of our Land Use Code requires BOCC action to remove deed restrictions. It reads: *The type of dedication, reservation or conveyance required in a given case shall be determined by the Board of County Commissioners in consultation with the Planning Commission, depending on the proposed size, use(s) and other characteristics of the subdivision. A reservation or dedication of areas for the use of owners or users of lots within the subdivision may be acceptable. Such areas shall be restricted to their intended use by plats, deed restrictions and/or recorded covenants which run with the land in favor of the future owners of property within the subdivision and which cannot be defeated or eliminated without the consent of the Board of County Commissioners. In the event of a reservation or dedication for the use of owners of lots within a subdivision, the applicant shall provide for the creation of a homeowners' association or similar organization with powers of assessment for maintenance, improvements and upkeep of such areas and the provisions contained within the homeowners' association bylaws or similar governing document shall receive approval from the Board of County Commissioners prior to acceptance of a final plat.*

Sincerely,

[Quoted text hidden]

[Quoted text hidden]



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## Cuchara Mountain Park Estates - L2 and L3 deed restrictions termination

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Jon Hotaling <[REDACTED]>

Mon, Dec 5, 2022 at 12:15 PM

To: Sky Tallman <stallman@huerfano.us>

Cc: Lisa Powell-DeJong <lisa@huerfano.us>, BH2 Land Surveying <[REDACTED]>

Hi Sky and Lisa,

Below is our attorney's response to your previous inquiry. The language of the documents appear to be straightforward and clear. If you or the BOCC are still unsure, please let me know if you have any additional questions or concerns that I/we can address....

Via Scott Ross:

The deed restriction set forth in the July 22, 1999 Warranty Deed grants access to the property for use to only the owners, tenants and guests of Grantee or Cuchara Mountain Resort. However, the deed restriction further provides that these owners, tenants, and guests may have access in accordance with the Declaration of Covenants on file for Cuchara Mountain Park Estates. The Declaration of Covenants for Cuchara Mountain Park Estates was terminated on July 13, 2020 by a Termination recorded at Reception No. 419220. Therefore, access for use of the property cannot occur in accordance with the Declaration of Covenants. Since the basis for having access has terminated, access is no longer available to such owners, tenants and guests, and their rights have effectively terminated.

Additionally, there are no owners, tenants or guests of Grantee or Cuchara Mountain Resort because neither Grantee or Cuchara Mountain Resort are entities that remain in existence. The Grantee under the Deed, the Cuchara Mountain Park Estates Master Homeowners Association, was dissolved in 2020. Further, in connection with the termination of the Declaration of Covenants and dissolution of the Master Homeowners Association, the members/owners of the Cuchara Mountain Park Estates Master Homeowners Association relinquished their rights under the Deed and that relinquishment is binding on the owners, tenants and guests of the Master Homeowners Association. Accordingly, the owners, tenants or guests of Cuchara Mountain Park Estates Master Homeowners Association have no rights under the Deed.

As for the owners, tenants, and guests of Cuchara Mountain Resort, the County asserts that Cuchara Mountain Resort refers to the Panadero subdivision but offers no explanation for this assertion. Cuchara Mountain Resort more likely appears to be a reference to a business entity, which business entity is now defunct. In that case, there would not be any owners, tenants or guests of the defunct entity. However, regardless of the status of the owners, tenants or guests of Grantee or Cuchara Mountain Resort, their rights for access for use of the property have terminated because the Declaration of Covenants which provided the basis for having access has been terminated.

As a practical matter, the rights have either been relinquished or terminated and to the extent that Section 2.02.11 of the County's Land Use Code requires BOCC action to remove deed restrictions, the removal of the 1999 deed restrictions by consent of the BOCC should be included as part of the land use application, review and approval.

Best regards,

**Scott Ross**

Partner

**Fox Rothschild LLP**

1225 17th St.

Suite 2200

Denver, CO 80202

[REDACTED] direct

[REDACTED] fax

[Quoted text hidden]



Sky Tallman <stallman@huerfano.us>

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## Cuchara Mountain Park Estates - L2 and L3 deed restrictions termination

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Jon Hotaling <[REDACTED]>

Mon, Dec 5, 2022 at 12:25 PM

To: Sky Tallman <stallman@huerfano.us>

Cc: Lisa Powell-DeJong <lisa@huerfano.us>, BH2 Land Surveying <[REDACTED]>

From Janet, FYI....

"The county may be trying to argue that, based on its regulations, there is a public right of access that cannot be terminated without the board's consent. However, that is not what the documents say. Scott's explanation should be persuasive to cause the county board to agree to vacate the easements, but there is no guaranty that the board will agree. Please let us know if they raise any other arguments."

[Quoted text hidden]



Sky Tallman <stallman@huerfano.us>

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## Plat Amendment Deed Restrictions

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Sky Tallman <stallman@huerfano.us>

Tue, Nov 22, 2022 at 2:03 PM

To: BH2 Land Surveying <[REDACTED]> Jon Hotaling <[REDACTED]>  
Cc: Lisa Powell-DeJong <lisa@huerfano.us>

Bill and Jonathan,

I would like to let you know that your application for vacation and plat amendment are on the Planning Commission agenda for Dec. 8 at 1:30. In reviewing the application for the plat amendment, I have found that there are deed restrictions on lots L2 and L3 that have not been addressed. You may want to seek legal counsel on how to address these restrictions. Please see the deed attached.

Sincerely,

--

Sky Tallman, AICP  
Huerfano County Land Use Director  
o: 719-738-1220 ext. 108  
c: 719-890-0047

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**1999 Warranty Deed L1 L2 L3 open space.pdf**  
308K

Land Use Application #22-054  
Plat Amendment and Road Vacation

## **Attachment 5 – Termination of Covenants**

After Recording, Return to:  
Jonathan Hotaling  
3327 Springridge Cir  
Colorado Springs, CO 80906

**TERMINATION  
OF  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
CUCHARA MOUNTAIN PARK ESTATES MASTER HOMEOWNERS ASSOCIATION,  
HUERFANO COUNTY, COLORADO**

THIS TERMINATION OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CUCHARA MOUNTAIN PARK ESTATES MASTER HOMEOWNERS ASSOCIATION, HUERFANO COUNTY, COLORADO (“Termination”) is made by the undersigned Owners of Lots within the Cuchara Mountain Park Estates Master Homeowners Association, a Colorado nonprofit corporation (“Association”).

**RECITALS**

A. The Declaration of Covenants, Conditions and Restrictions for Cuchara Mountain Park Estates Master Homeowners Association, Huerfano County, Colorado was recorded on August 2, 1999 at Reception No. 340388 in the real property records of Huerfano County, State of Colorado (“Declaration”). Capitalized terms used but not defined herein shall have the same meanings set forth in the Declaration.

B. The Declaration refers to Exhibits A through D which were to identify the real property subject to the Declaration, additional real property that could be annexed to the Declaration, the Association Properties and the Common Area. The Declaration was recorded without any of the Exhibits attached thereto and, except for general reference to Cuchara Mountain Park Estates, the Declaration did not otherwise identify or provide the legal description of the real property initially subject to the Declaration, the additional property that could be annexed to the Declaration or any Association Properties or Common Area. Therefore, there is uncertainty whether the Declaration encumbers any portion of Cuchara Mountain Park Estates or properly establishes a common interest community.

C. Pursuant to Article IX, Section 4 of the Declaration, the Class A Members may terminate and extinguish the Declaration by written instrument executed by at least three-fourths (3/4) of the Class A Members, and pursuant to C.R.S. 38-33.3-218 a common interest community may be terminated only by agreement of unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated or any larger percentage the declaration specifies.

D. The terms, conditions and restrictions of that certain Warranty Deed from Cuchara Partners, LTD. to Cuchara Mountain Park Estates Master Homeowners Association dated July 22, 1999 and recorded at Reception No. 340385, County of Huerfano, State of Colorado (the "Deed") was intended to supplement the Declaration and as such the parties hereto desire to relinquish any and all right under the Deed in conjunction with this Termination.

E. The undersigned owners desire to terminate and extinguish the Declaration and constitute the Owners of Lots to which at least three-fourths of votes in the Association are allocated. This Termination constitutes the agreement of such Owners to terminate the Declaration in its entirety.

**NOW, THEREFORE**, the undersigned Owners hereby declare as follows:

1. The foregoing Recitals are incorporated herein by this reference.
2. Pursuant to C.R.S. 38-33.3-218 and Article IX, Section 4 of the Declaration, the Declaration and the common interest community created thereunder is hereby terminated and extinguished in its entirety. This Termination shall be effective upon the recording of this Termination in the real property records of Huerfano County, Colorado, and thereafter neither the Declaration nor the common interest community created thereunder shall have any further force or effect. This Termination shall be void unless it is executed and recorded on or before June 1, 2021.
3. The undersigned parties each hereby relinquish any and all rights of such parties to enforce the terms of the Deed, including, without limitation, any and all rights to enforce any restrictions on ownership or use of the property described in such deed and acknowledge such use restrictions shall be of no further force and effect.
4. Notwithstanding the termination of the Declaration as provided herein, all easements granted pursuant to the Declaration for roads, utilities and drainage, shall remain in full force and effect; provided, however that all easements and restrictions over L2 and L3 are hereby terminated by this Termination.

[signature pages follow]













WHEN RECORDED MAIL TO:

Jonathan Hotaling  
3327 Springridge Cir  
Colorado Springs, CO 80906

**DECLARATION OF ACCESS EASEMENT**

**THIS DECLARATION OF ACCESS EASEMENT** (this "Declaration") is made and entered into as of the 2<sup>nd</sup> day of May, 2020 (the "Effective Date"), by PURGATOIRE PROPERTIES, L.L.C., a Colorado limited liability company, whose address is 1918 Foxfield Drive, Castle Rock, Colorado 80104 ("Grantor").

**RECITALS**

A. Grantor is the fee owner of certain real property known as Lots 24 and 25, Cuchara Mountain Park Estates, Huerfano County, Colorado, as legally described on **Exhibit A** attached hereto ("Lot 24 and Lot 25").

B. The Grantor intends to establish certain access easements over, upon and across a portion of Lot 24 and Lot 25 referred to as the Access Area (as defined below) for the benefit of Grantor, Lot 24 and Lot 25, Cuchara Mountain Park Estates and the general public on the terms and conditions set forth herein. The "Access Area" is an area 25 foot in width being (i) the easterly 25 feet of Lot 25 along the easterly boundary of Lot 25, and (ii) the northerly and westerly 25 feet of Lot 24 along the northerly and westerly boundaries of Lot 24, from Teton Ridge Drive to Yosemite Lane.

D. Grantor intends that development of the land within Cuchara Mountain Park Estates be served by the Access Area and desires to subject and place upon Lot 24 and Lot 25 certain covenants, easements, and obligations for access easement purposes to protect the value and desirability of the such land, ensuring access thereto, and for the purpose of furthering a plan for the improvement, sale and ownership of such land, to the end that harmonious and complementary development of such land may be accomplished and the health, comfort, safety, convenience and general welfare of owners of the Land, or any portion thereof, may be promoted and safe-guarded.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor hereby covenant, declares and states as follows as of the Effective Date:

1. Easement. The Grantor does hereby declare, establish, create, reserve and grant a non-exclusive, easement solely for vehicular and pedestrian roadway access, ingress and egress, but not for parking purposes (the "Easement"), over, upon and across the Access Area in order to permit vehicular and pedestrian access between Yosemite Lane and Teton Ridge Drive. The Easement is granted for the use and benefit of the owners of Lot 24, Lot 25, other land within

C7178843



Cuchara Mountain Park Estates and the general public to provide for the passage of motor vehicles and pedestrians.

2. Character of Easement.

2.1 Right to Relocate Access Area. There is hereby established for the benefit of Grantor the right to relocate within Lot 24 and Lot 25 all or a portion of the Access Area from time to time, if necessary for the beneficial use of Grantor's Property. In the event the Access Area or portion thereof is relocated, the easement rights granted by this Declaration will be applicable to the relocated Access Area or portion thereof.

2.3 Obstructions within Access Area. No person shall be permitted to erect within the Access Area any barriers, fences, curbs, walls, ditches, barricades or other structures or obstacles so as to unreasonably burden or interfere with, impede, divert or prevent vehicular and pedestrian traffic over the Access Area.

2.4 No Parking Easement. Nothing contained in this Declaration shall be deemed to establish, grant, convey or reserve any easement, license or right for parking purposes.

2.5 Lateral or Subjacent Support. Grantor shall not take any action which would impair the lateral or subjacent support necessary or convenient for the full use and enjoyment of the easement rights hereunder and any access improvements located within the Access Area.

3. Maintenance Obligations.

3.1 Except as otherwise expressly set forth herein, Grantor and the owner(s) of the neighboring parcels, known as Tracts B-1, B-2, B-3, L-2 and L-3, Cuchara Mountain Park Estates, shall have the right, but not the obligation, to maintain any and all roadway improvements located on the Access Area as necessary to permit the passage of pedestrians and vehicles, including snowplowing as deemed necessary or desirable, at such party's own cost and expense.

3.2 Taxes. Grantor shall pay or cause to be paid, prior to any penalty attaching thereto, all real estate taxes, assessments and personal property taxes, if any, imposed upon the land and improvements and equipment located on Lot 24 and Lot 25, including the Access Area.

4. Miscellaneous.

4.1 No Merger of Interests.

(i) The rights and interests of the Grantor under this Declaration as the owner of any individual lot or tract are separate and distinct from its rights and interests under this Declaration as the owner of any other lot or tract. Any vesting of all interests in multiple lots or tracts in a single party will not cause a merger of those interests or any extinguishment of this Declaration or the rights and interests created by this Declaration. It is intended that no such merger occur and this Declaration remain in full force and effect from and after the Effective Date.

(ii) It is the intent of Grantor that the Easement granted and declared by this Declaration shall be perpetual in duration.



5.3 Limited to the Easement. Nothing contained herein shall be deemed or construed to grant any rights in or to any property other than the Access Area.

5.4 Appurtenant Easement. The benefits and burdens created by this Declaration are appurtenant to and shall run with Lots 24 and 25 and shall inure to the benefit of and be binding upon the Grantor, its successors and assigns, and any party using the Access Area.

5.5 No Implied Easement. Nothing contained in this Declaration shall be deemed to create any implied easements not otherwise expressly established herein.

5.6 Descriptive Headings. The descriptive headings of the sections hereof are inserted for convenience only and shall not control or affect the meanings or construction of any provisions hereof.

5.7 Modification. The terms and conditions of this Declaration may be abrogated, modified, rescinded or amended in whole or in part only by written instrument executed by the Grantor and the owners of Tracts B-1, B-2, B-3, L-2 and L-3, Cuchara Mountain Park Estates and recorded in the real property records of the County of Huerfano, Colorado (“Records”). No waiver shall be deemed a continuing waiver with respect to any breach or default, whether of similar or different nature, unless expressly stated in writing.

5.8 Partial Invalidity. In case any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Declaration shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

5.9 Dedication. The Grantor shall have the right, at any time, to dedicate, transfer or convey the Access Area or other public right of way over and across Lot 24 and Lot 25 to the Huerfano County, Colorado for public use as a connector road for vehicular and pedestrian access between Yosemite Lane and Teton Ridge Drive, in which case this Easement shall terminate.

5.10 Mortgagee Protection. Neither the breach of any of the covenants and restrictions contained in this Declaration, nor the enforcement of any remedy provisions contained in this Declaration, shall render invalid the lien of any mortgage, deed of trust, or other lien against any Lot 24 and Land 25 made in good faith and for value. All of the covenants and restrictions herein contained shall be binding upon and effective against any successor whose title is derived through foreclosure, trustee sale, or deed in lieu thereof or otherwise.

5.11 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Colorado.

5.12 Exhibits. All exhibits referred to in this Declaration and attached hereto, as listed below, are incorporated herein by this reference:

**Exhibit A:** Legal Description for Lot 24 and Lot 25

5.13 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given on the same day if delivered personally, or on the date receipt is confirmed if mailed by registered or certified mail or by commercial overnight courier (e.g., FedEx, DHL, etc.), return receipt or confirmation of delivery requested, to Grantor at the address set forth above, and to each subsequent owner of Lot 24 and Lot 25 at the address for such owner or at such other address as shall be specified by like notice.

*[Signature pages follow.]*





**EXHIBIT A**

**LEGAL DESCRIPTION OF LOT 24 AND LOT 25**

LOT 24 AND LOT 25, CUCHARA MOUNTAIN PARK ESTATES (PANADERO DEVELOPMENT, FILING NO. 4), RECORDED MAP NO. 425, RECORDED AUGUST 2, 1999 AT RECEPTION NO. 340387, ACCORDING TO THE RECORDS OF THE CLERK AND RECORDER FOR HUERFANO COUNTY, COLORADO.

Land Use Application #22-054  
Plat Amendment and Road Vacation

## **Attachment 6 – Density Calculation**



Sky Tallman <stallman@huerfano.us>

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## JJH Property 3 LLC, new density spreadsheet attached

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Jon Hotaling <jon@libertyservice.group>

Thu, Dec 15, 2022 at 4:36 PM

To: Sky Tallman <stallman@huerfano.us>, BH2 Land Surveying <BH2@ghvalley.net>

Hi Sky,

Thanks for talking to me today. FYI, I spoke to the assessor and she said she was not aware of the BOCC's new mill levy rate. Nevertheless, she answered all my questions about current and future property tax calculations. Thank you.

Per our previous Planning Commission meeting and in preparation of our next meeting on Dec 22, attached is the spreadsheet of our new requested densities which were derived based on acreage percent of the total and the new total density of 240 (down from current 260 multi family residential).

Our current proposed map has 6 proposed "Parcels" so as to satisfy the county's requirement for an amendment that does not "significantly" increase the total number of lots. If possible, we would prefer 8 total lots (derived from our 5 "Tracts" not lots, via MAP 425) and would ask that the 3 additional "Parcels" not be considered a significant increase.

To accomplish this we would split proposed parcels A and B into 3, 2.15 acre lots, and split proposed Parcel F roughly in half. Parcel E to be used as county park / ski area, would not change under any of the scenarios, fyi

Thank you for your help Sky and for letting us know if you need anything else before Dec 22.

Best,

Jon Hotaling

--

*Liberty Service Group*

C: (303) 725-7550

W: (202) 630-3629



**Proposed new multi family residential densities for JJH Property 3, LLC map amendment.xlsx**

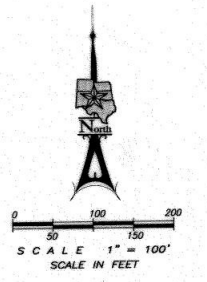
19K



# CUCHARA MOUNTAIN PARK ESTATES

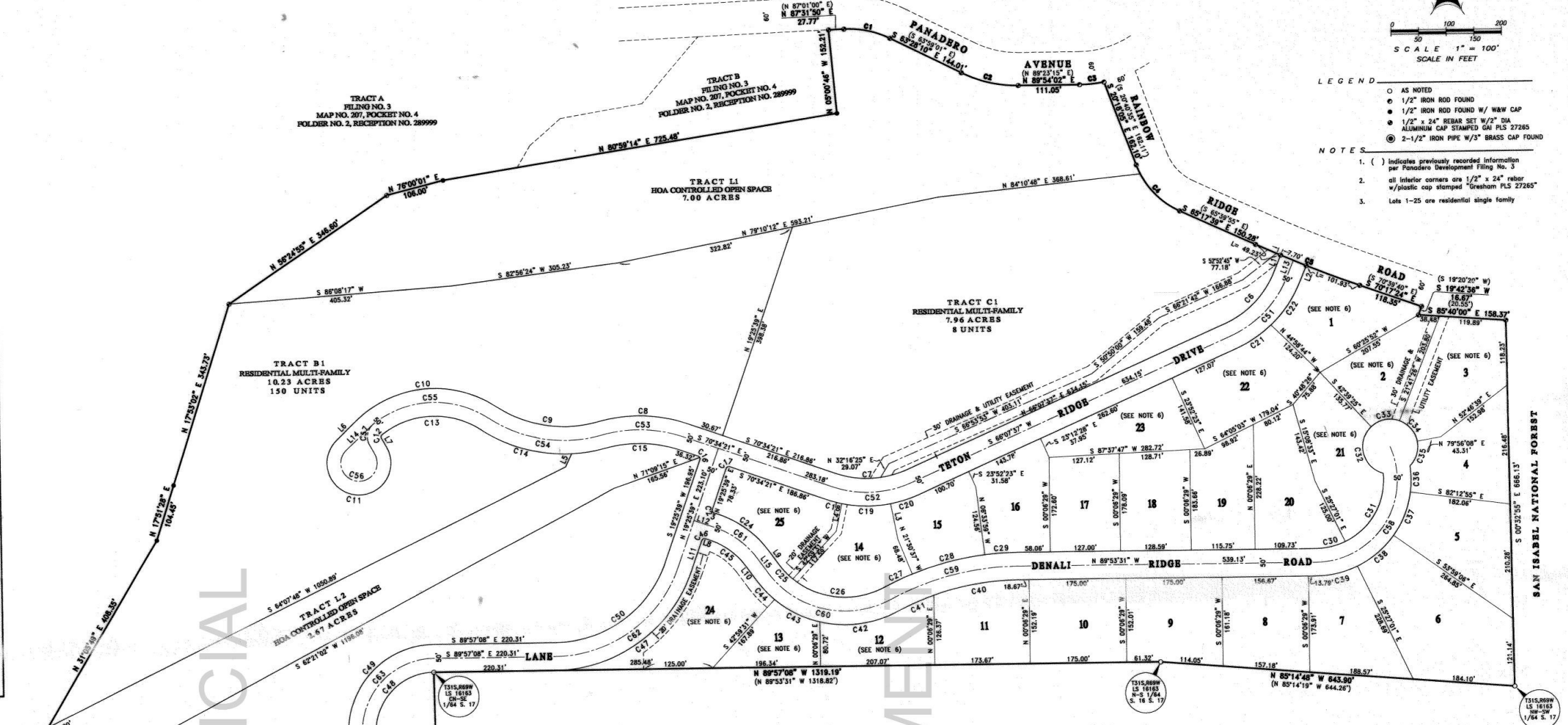
## PANADERO DEVELOPMENT FILING NO. 4 A PLANNED UNIT DEVELOPMENT

BEING A REPLAT OF A PORTION OF PANADERO DEVELOPMENT FILING NO. 3 AND AN UNPLATTED PORTION OF THE N.W. 1/4 AND THE S.W. 1/4, SECTION 16, AND THE N.E. 1/4 AND THE S.E. 1/4 OF SECTION 17, HUERFANO COUNTY, COLORADO  
SHEET 2 OF 2



- LEGEND**
- AS NOTED
  - 1/2" IRON ROD FOUND
  - 1/2" IRON ROD FOUND W/ W&W CAP
  - 1/2" x 24" REBAR SET W/ 2" DIA ALUMINUM CAP STAMPED G&P L.S. 27265
  - 2-1/2" IRON PIPE W/ 3" BRASS CAP FOUND
- NOTES**
1. ( ) Indicates previously recorded information per Panadero Development Filing No. 3
  2. All interior corners are 1/2" x 24" rebar w/ plastic cap stamped "Gresham PLS 27265"
  3. Lots 1-25 are residential single family

NUMBER	DELTA	RADIUS	LENGTH	TANGENT	CHORD BEARING	CHORD LENGTH
C1	29°00'00"	170.00	86.54	43.86	S 77°58'10" E	85.13
C2	28°37'48"	230.00	106.90	54.43	S 76°47'05" E	105.94
C3	11°07'02"	230.00	44.83	22.38	N 84°20'31" E	44.36
C4	44°59'21"	150.00	117.76	62.12	S 45°47'50" E	114.78
C5	04°58'45"	235.00	283.15	151.65	S 87°47'31" E	205.10
C6	43°38'16"	175.00	133.18	70.00	N 44°19'30" E	128.99
C7	43°18'02"	175.00	132.25	69.46	N 87°46'38" E	128.13
C8	34°33'53"	275.00	166.06	85.65	N 87°52'17" W	163.55
C9	48°52'06"	225.00	191.91	102.33	S 80°44'11" E	166.14
C10	77°44'36"	205.00	278.16	165.25	S 84°48'33" W	257.31
C11	25°42'23"	58.00	257.48	76.47	S 81°13'29" E	92.42
C12	81°32'23"	5.00	7.12	4.31	S 11°38'54" W	6.53
C13	71°16'48"	155.00	192.83	111.15	S 80°03'29" W	180.63
C14	48°52'06"	275.00	234.55	124.94	S 80°44'11" E	227.51
C15	34°33'53"	225.00	135.87	70.08	N 87°52'17" W	133.81
C16	90°00'00"	5.00	7.85	5.00	N 29°34'21" W	7.07
C17	90°00'00"	5.00	7.85	5.00	S 64°25'39" W	7.07
C18	07°09'50"	225.00	28.13	14.08	S 74°09'16" E	28.11
C19	22°38'51"	225.00	88.84	45.06	S 89°03'56" E	88.36
C20	13°29'21"	225.00	52.97	26.61	N 72°52'18" E	52.85
C21	19°39'58"	225.00	77.23	39.00	N 86°17'40" E	76.80
C22	33°56'20"	225.00	84.01	47.70	N 84°29'32" E	83.33
C23	82°28'23"	5.00	8.07	5.22	S 20°48'33" E	7.32
C24	37°03'48"	185.00	119.67	62.01	N 54°30'51" W	117.60
C25	14°15'51"	150.00	37.26	18.72	S 43°05'53" E	37.16
C26	67°23'54"	150.00	178.54	108.10	S 83°59'46" E	168.52
C27	06°08'06"	525.00	56.21	28.13	S 69°25'20" W	56.19
C28	14°58'38"	525.00	136.93	68.86	S 75°57'42" W	136.54
C29	06°40'28"	525.00	81.16	30.61	S 88°46'15" W	81.12
C30	28°53'50"	125.00	55.76	28.35	N 71°14'41" E	55.30
C31	89°39'01"	125.00	151.95	86.96	N 29°43'28" E	142.77
C32	121°40'53"	50.00	106.19	89.61	S 13°29'51" E	87.33
C33	63°22'52"	50.00	55.31	30.87	S 79°02'01" W	52.35
C34	59°12'41"	50.00	51.87	28.41	N 89°40'13" W	48.40
C35	33°03'43"	50.00	48.00	26.06	N 17°27'59" E	48.22
C36	19°58'07"	175.00	47.76	24.03	N 00°01'58" W	47.61
C37	28°13'48"	175.00	86.22	44.01	N 21°54'00" E	85.35
C38	28°32'05"	175.00	87.15	44.50	N 80°15'50" E	86.26
C39	29°53'20"	175.00	78.86	39.89	N 77°19'44" E	77.42
C40	19°02'43"	475.00	157.89	79.68	S 80°35'07" W	157.17
C41	08°42'29"	475.00	72.19	36.17	S 88°42'32" W	72.12
C42	41°53'55"	200.00	145.09	75.90	N 83°08'15" E	141.83
C43	28°40'06"	200.00	53.09	47.40	S 62°41'43" E	92.25
C44	13°25'44"	200.00	46.88	23.55	S 42°41'50" E	46.77
C45	34°33'53"	155.00	81.50	42.03	N 53°18'39" W	80.27
C46	90°00'00"	5.00	7.85	5.00	S 64°25'39" W	7.07
C47	70°37'13"	285.00	336.63	187.70	N 54°41'18" E	309.34
C48	90°34'18"	156.60	247.55	158.17	N 44°45'44" E	222.97
C49	70°37'13"	215.00	285.00	152.29	N 54°41'18" E	248.54
C50	43°38'16"	200.00	152.21	80.00	N 44°19'30" E	148.56
C51	43°18'02"	200.00	151.15	79.39	N 87°46'38" E	147.58
C52	34°33'53"	250.00	150.96	77.86	N 87°52'17" W	148.88
C53	48°52'06"	250.00	213.23	113.58	S 80°44'11" E	206.82
C54	71°16'48"	180.00	223.63	128.83	S 80°03'29" W	209.52
C55	29°25'11"	33.00	149.42	39.73	S 78°41'55" E	50.77
C56	80°59'00"	30.00	42.37	25.58	S 12°03'20" W	38.93
C57	11°32'23"	150.00	298.81	228.24	N 33°29'14" E	250.71
C58	27°45'12"	500.00	242.19	123.53	S 78°19'51" W	239.83
C59	31°08'46"	175.00	249.42	161.22	S 78°48'50" E	228.84
C60	34°33'53"	160.00	96.59	49.62	N 53°18'39" W	95.13
C61	70°37'13"	240.00	295.81	169.89	N 54°41'18" E	277.44
C62	70°37'13"	131.60	208.03	132.92	S 44°45'44" W	187.04
C63	90°34'18"	131.60	208.03	132.92	S 44°45'44" W	187.04



NUMBER	DIRECTION	DISTANCE
L1	S 22°51'22" W	33.31'
L2	S 22°51'22" W	32.99'
L3	N 10°23'01" W	66.80'
L4	S 12°15'48" W	51.90'
L5	N 29°13'10" E	25.92'
L6	N 49°57'13" E	48.85'
L7	S 29°07'17" E	19.54'
L8	S 70°54'21" E	6.20'
L9	S 35°58'58" E	34.23'
L10	S 35°58'58" E	34.23'
L11	N 17°25'39" E	58.80'
L12	S 70°54'21" E	38.20'
L13	S 22°51'22" W	33.02'
L14	N 48°51'29" E	66.51'
L15	S 35°58'58" E	34.23'

**TRACT A**  
FILING NO. 3  
MAP NO. 207, POCKET NO. 4  
FOLDER NO. 2, RECEPTION NO. 289999

**TRACT B1**  
RESIDENTIAL MULTI-FAMILY  
150 UNITS

**TRACT B2**  
RESIDENTIAL MULTI-FAMILY  
7.86 ACRES  
80 UNITS

**TRACT B3**  
RESIDENTIAL MULTI-FAMILY  
2.46 ACRES  
30 UNITS

**TRACT L1**  
HOA CONTROLLED OPEN SPACE  
7.00 ACRES

**TRACT L2**  
HOA CONTROLLED OPEN SPACE  
2.67 ACRES

**TRACT L3**  
HOA CONTROLLED OPEN SPACE  
1.5 ACRES

**POINT OF BEGINNING**  
S.E. 1/4 CORNER  
OF SECTION 17

**BASE OF BEARING ESTABLISHED BY GLOBAL POSITIONING SYSTEM**  
N 89°52'37" W 519.60'  
(N 89°45'16" W 522.06')

**SAN ISABEL NATIONAL FOREST**

**GRESHAM & ASSOCIATES, INC.**  
SURVEYING & MAPPING  
Registered Professional Land Surveyors  
Colorado, Kansas, New Mexico, Oklahoma, Texas, UT

7342 S. Allen Way, Suite B www.greshaminc.com Denver, Colorado 801  
Phone: (303) 741-2283, 1-800-338-7744 Fax: (303) 741-2279

Project Description: Panadero Development Filing No. 4  
Project No. Client Huerfano County  
90-08-084P Cuchara Partnership LTD. Colorado

DRAWING NUMBER 425

DRAWING NUMBER 425

DRAWING NUMBER 425

DRAWING NUMBER 425

Lot	Acearage	Density in units
A	1.69	16
B	2	19
C	2.75	26
D	2.23	21
E	2.35	22
F	8.61	81
G	3.72	35
H	2.25	21
TOTAL	25.6	240

Land Use Application #22-054  
Plat Amendment and Road Vacation

## **Attachment 7 – Neighbor Communications**

**Subject:** Cuchara Mountain Park Estates  
**From:** Gary Place <gary@wstexas.com>  
**Date:** 9/26/2022, 3:39 PM  
**To:** stallman@huerfano.us

Sky -

I spoke with you last week in regards to my concerns about the plans of Jon Hoteling.

I own Lots 24 and 13.

I have attached a document with drawing to help explain the situation.

Please let me know if you have any questions or concerns.

Thanks,  
Gary Place  
214-876-7572

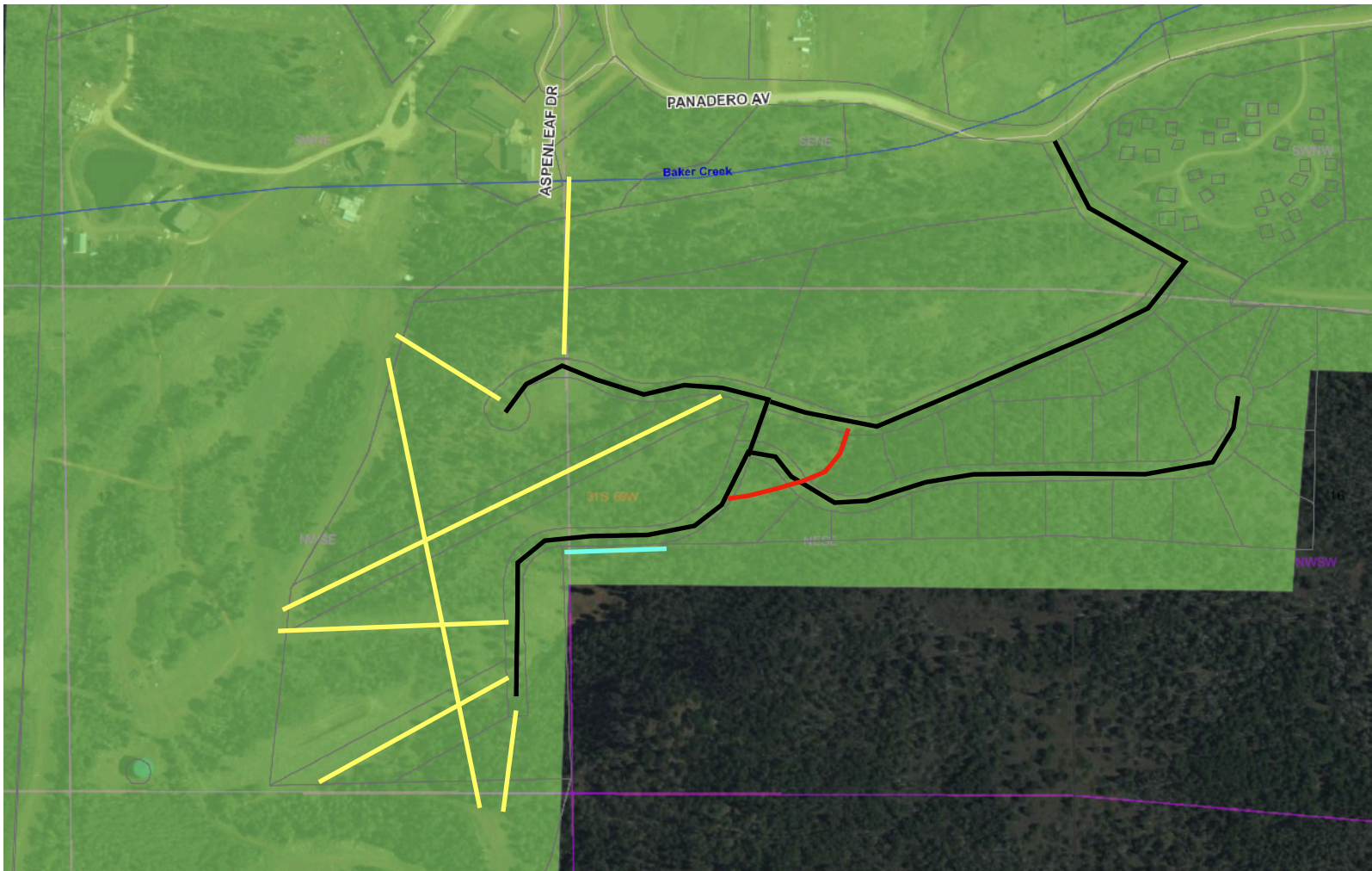
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— Attachments: —

Cuchara MTN park.pdf

5.4 MB

## Cuchara Mountain Park Estates



Black Line - Roads as originally plated.

Red Line - Existing easement through lots 24 and 25 (the existing trail) We would like removed once the road are completed as plated.

Blue Line - The original plated public access to the national forest. We would like kept in place.

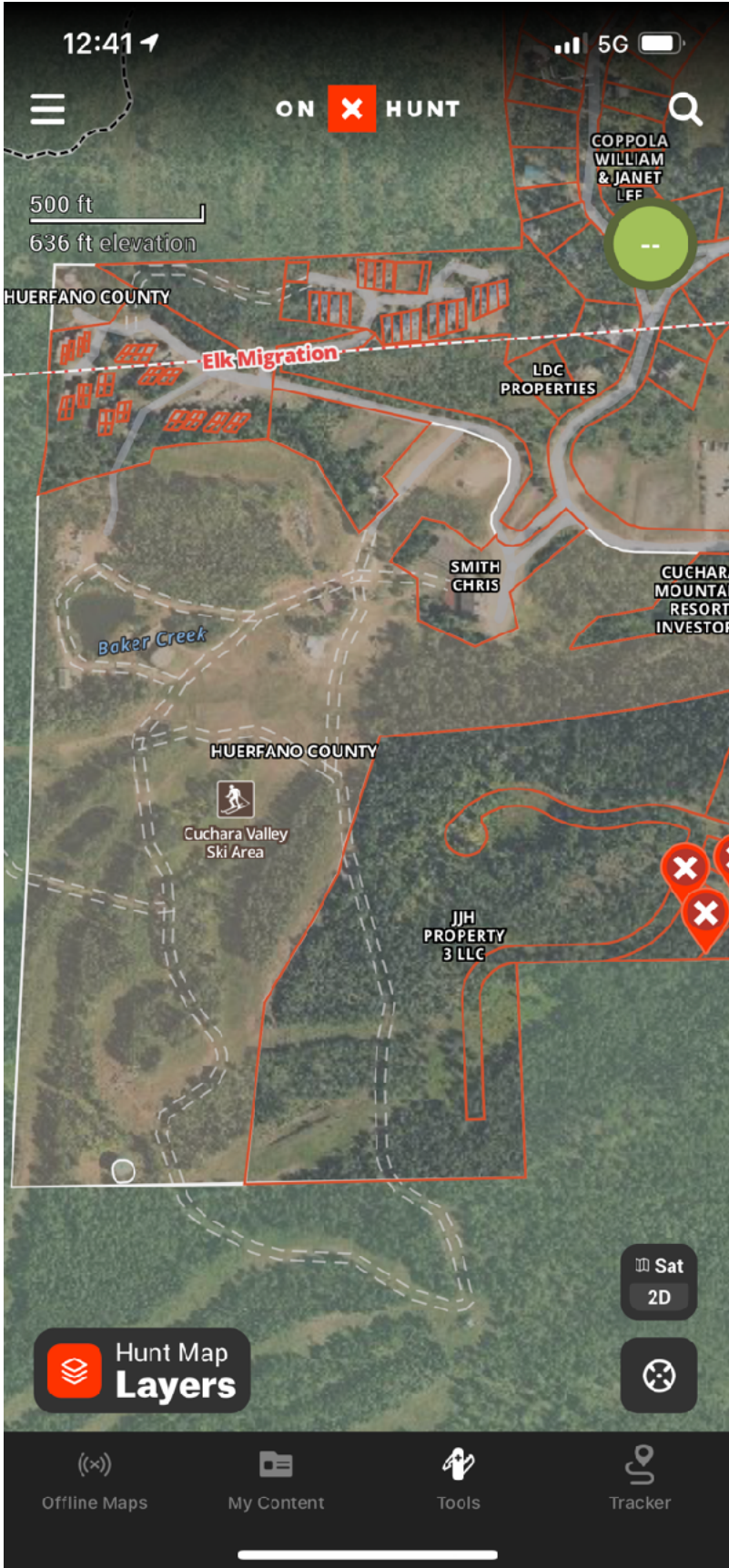
Yellow Lines - Proposed easement options for access to Cuchara Mountain Park. The original plat shows 'HOA controlled open space'. We were told there is not longer an HOA. Not sure if this plated 'open space' or any existing utility easements could be used (negotiated for) for access.

If possible, we would like to see at least one avenue of access to Cuchara Mountain Park remain.

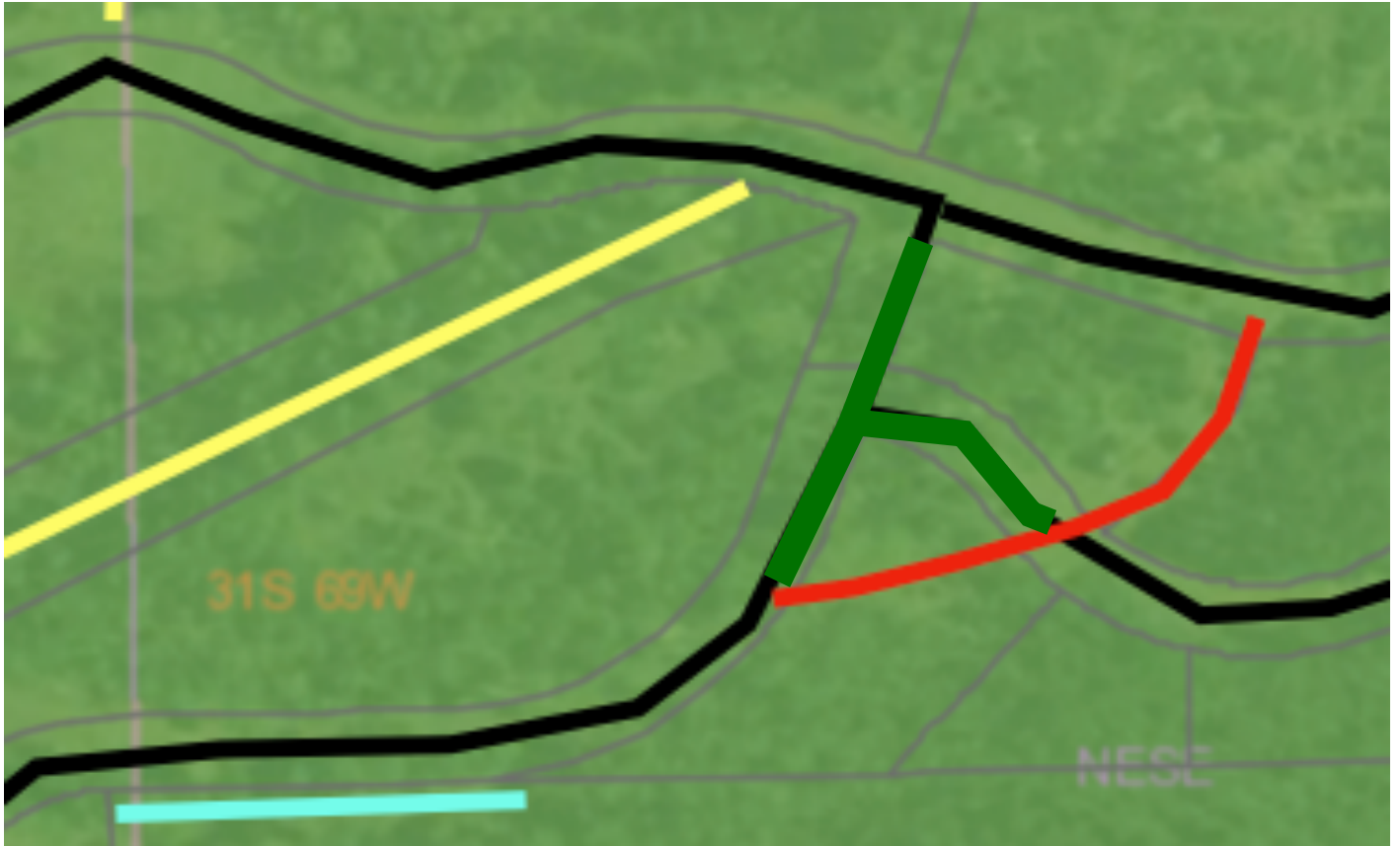
We believe The County should negotiate access to Cuchara Mountain Park for Cuchara Mountain Park Estates, in exchange for Jon taking the existing plated county roads and/or allowing him to alter the subdivision as plated.



# Cuchara Mountain Park Estates



## Cuchara Mountain Park Estates



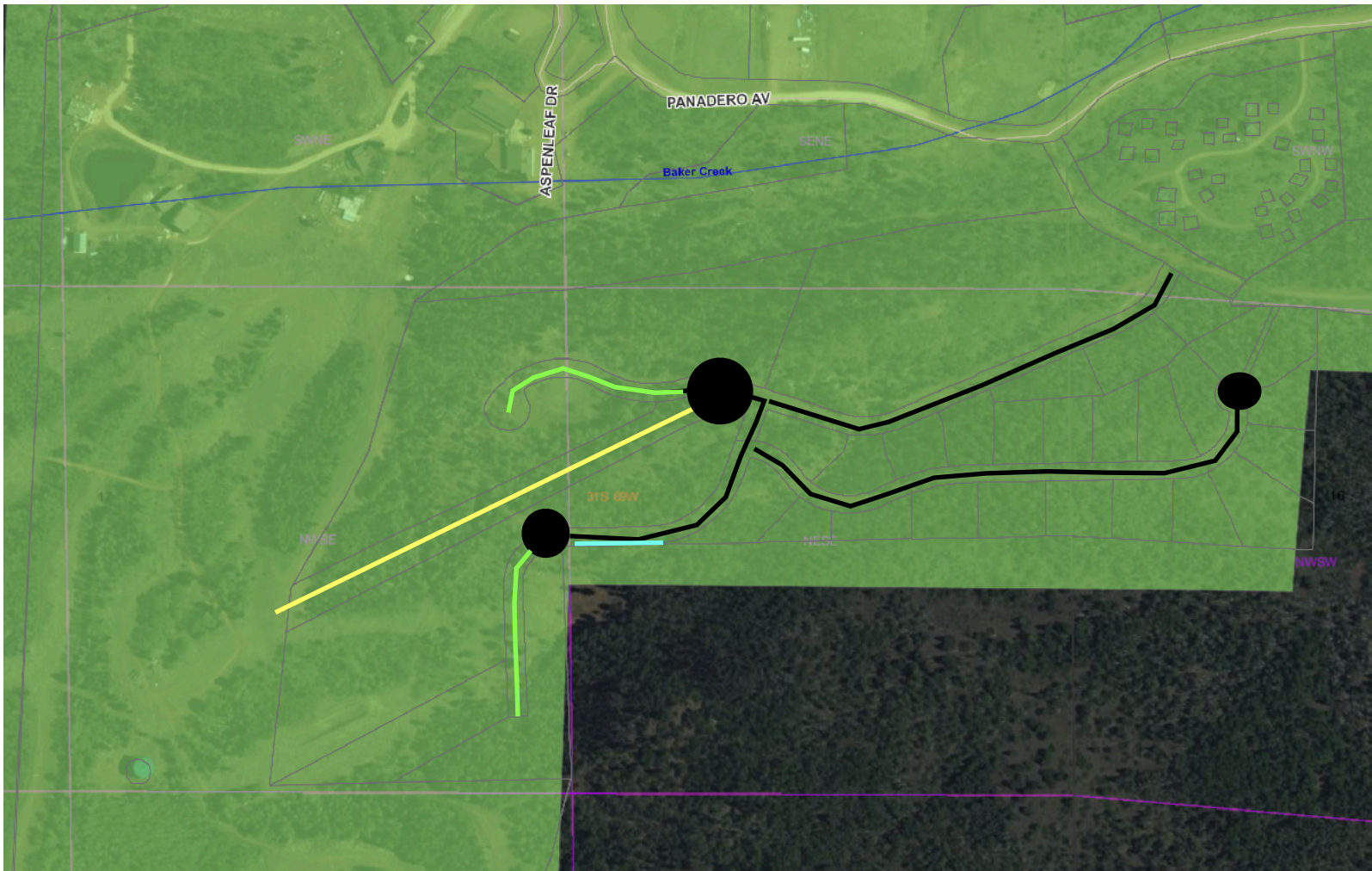
The portion of the plated road indicated in dark green is not completed. Thus the need for the access easement indicated in red.

Once the roads (dark green) are completed, we would like to have the easement through our properties removed, for it will not be necessary.

We suggest that if Jon wants to alter the original plat. At the very least, the county should negotiate for him to be responsible to complete the plated roads for his access as indicated by the dark green line.



## Cuchara Mountain Park Estates



We believe the county should negotiate access to Cuchara Mountain Park for Cuchara Mountain Park Estates, in exchange for the existing plated county roads (property) that Jon plans to take over ownership.

As indicated above: The county would give up the light green lines in exchange for the yellow line (or another agreed upon access for Cuchara Mountain Estates).

There are at least 25 other properties in this subdivision that would benefit from an easement through Jon's property to access Cuchara Mountain Park.

**Subject:** Re: Cuchara Mountain Park Estates -

**From:** Seb Delson <dasein211@yahoo.com>

**Date:** 9/30/2022, 5:51 AM

**To:** Gary Place <gary@wstexas.com>, stallman@huerfano.us

I'm in agreement with bringing roads into original plat as well.  
-Severo DeLeon IV

Sent from my iPhone

On Sep 27, 2022, at 1:56 PM, Gary Place <gary@wstexas.com> wrote:

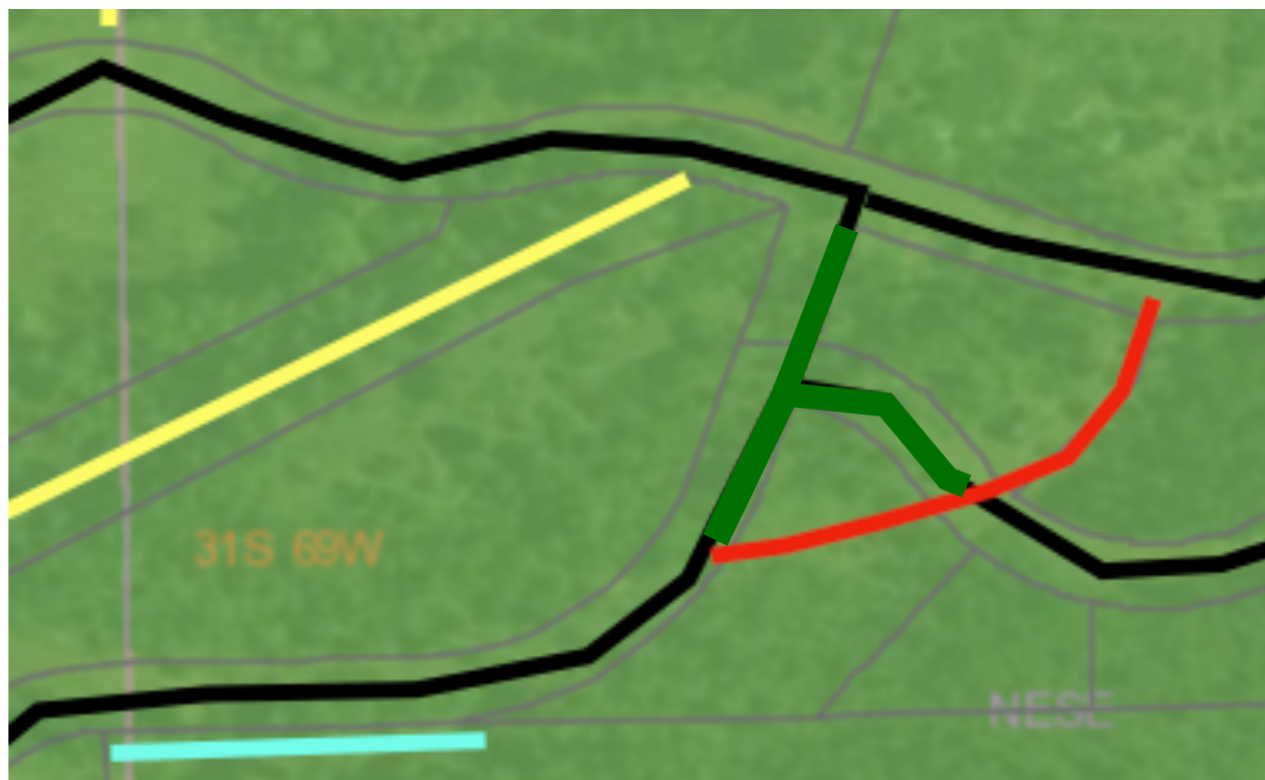
— Screen Shot 2022-09-24 at 1.44.43 PM.png —



— Screen Shot 2022-09-27 at 2.46.24 PM.png —



Cuchara Mountain Park Estates



The portion of the plated road indicated in dark green is not completed. Thus the need for the access easement indicated in red.

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Attachments:

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Screen Shot 2022-09-24 at 1.44.43 PM.png	137 KB
Screen Shot 2022-09-27 at 2.46.24 PM.png	1.2 MB

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I'm in agreement with bringing roads into original plat as well.  
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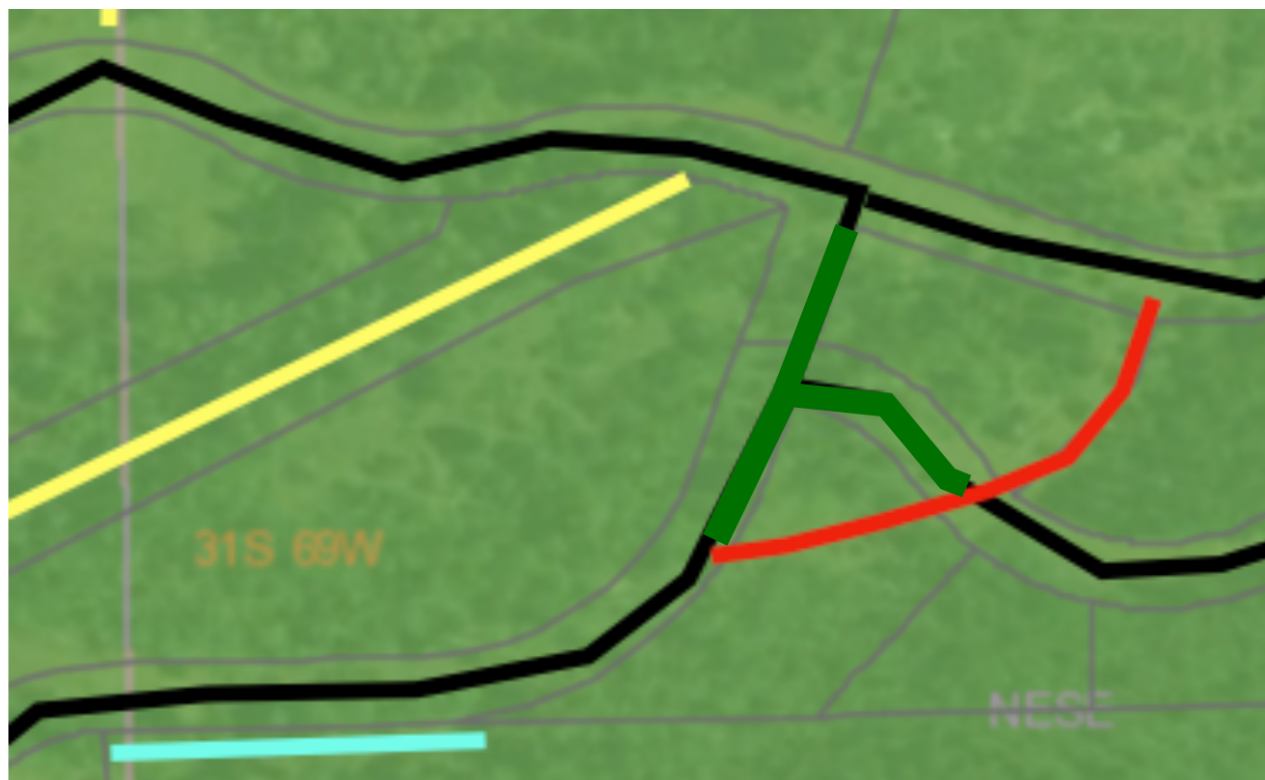
On Sep 27, 2022, at 1:56 PM, Gary Place <gary@wstexas.com> wrote:

— Screen Shot 2022-09-24 at 1.44.43 PM.png —



— Screen Shot 2022-09-27 at 2.46.24 PM.png —

Cuchara Mountain Park Estates



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We suggest that if Jon wants to alter the original plat. At the very least, the county should negotiate for him to be responsible to complete the plated roads for his access as indicated by the dark green line.

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Attachments:

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Screen Shot 2022-09-24 at 1.44.43 PM.png	137 KB
Screen Shot 2022-09-27 at 2.46.24 PM.png	1.2 MB

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Land Use Application #22-054  
Plat Amendment and Road Vacation

## Attachment 8 – Quiet Title



DISTRICT COURT, HUERFANO COUNTY, STATE OF COLORADO 200 W. 5 <sup>th</sup> St., Suite 141, Walsenburg, CO. 81089	
<b>Plaintiff(s): Jonathan Hotaling as Managing Member of JJH Property 3, LLC</b>  v.  <b>Defendant(s): Huerfano County, a Political Subdivision of the State of Colorado and any and all unknown persons who claim any interest in the subject matter of this complaint.</b>	
<b>Attorney:</b> Brenda S. Getz-Bossert Brenda S. Getz, P.C. Attorney at Law P.O. Box 294, Walsenburg, CO. 81089 (719) 738-6304 (719) 466-7148 Bsglawoffice@gmail.com	<b>▲ COURT USE ONLY ▲</b>
	Case No.: 2023CV300 ____
<b>COMPLAINT UNDER RULE 105</b>	

Plaintiff, **Jonathan Hotaling as Managing Member of JJH Property 3, LLC**, by his attorney, Brenda S. Getz, P.C. Attorney at Law for his claim against Defendants, states as follows:

### INTRODUCTION

1. In this case, Plaintiff seeks to quiet title to the following which shall be referred to hereinafter as subject property:

TRACT B-3, L-2 AND L-3 CUCHARA MOUNTAIN PARK ESTATES (PANADERO DEVELOPMENT, FILING NO. 4, RECORDED MAP NO. 425, RECORDED AUGUST 2, 1999 AT RECEPTION NO. 340387, ACCORDING TO THE RECORDS OF THE CLERK AND RECORDER FOR HUERFANO COUNTY, COLORADO.

AND

TRACT B1 AND B-2, CUCHARA MOUNTAIN PARK ESTATES (PANADERO DEVELOPMENT, FILING NO. 4) RECORDED MAP NO. 425, RECORDED AUGUST 2, 1999 AT RECEPTION NO. 340387, ACCORDING TO THE RECORDS OF THE CLERK AND RECORDER FOR HUERFANO COUNTY, COLORADO.

### JURISDICTION AND VENUE

2. Jurisdiction is proper in this Court for this matter pursuant to C.R.S. § 13-1-124(1)(c).

3. All the real property involved in this matter is located in Huerfano County, Colorado, making venue proper under C.R.C.P. 98.

## **PARTIES**

4. Plaintiff, Jonathan Hotaling as Managing Member of JJH Property 3, LLC, acquired the (“Subject Property”) on February 24, 2022, reception number 425898 and 425899 from Jonathan and Jennifer Hotaling via Special Warranty Deed.

5. Defendant, Huerfano County, a Political Subdivision of the State of Colorado, is the current owner of the area commonly known as “Cuchara Mountain Park.” Said property acquired by Defendant on January 27, 2017 reception number 408121 is adjacent property to Plaintiff.

6. There may be persons interested in the subject matter of this action whose names cannot be inserted herein because said names are unknown to Plaintiffs although diligent efforts have been made to ascertain the names of said persons; such persons have been made defendants and designated as “*all unknown persons who claim any interest in the subject matter of this action;*” so far as Plaintiffs’ knowledge extends, the interests of the unknown parties are derived through some one of more of the named defendants.

## **CLAIM FOR RELIEF**

7. Plaintiff incorporates by reference each of the above allegations as if fully set forth herein.

8. Plaintiff has been in possession of subject property since it was acquired on February 24, 2022.

9. Subject property is part of the Panadero Filing #4 which is a portion of the land that the former Cuchara Ski Resort had utilized. As part of this filing, certain lots were established as common areas and open space, and this designation ran in perpetuity in the Granting Deeds and Homeowner Association covenants. Plaintiff is seeking to Quiet Title to the subject property because of the potential rights that Defendant(s) may possess to common areas that may affect Plaintiff’s fee simple ownership of subject property.

10. Subject Property was acquired on February 24, 2022, reception number 425898 and 425899 from Jonathan and Jennifer Hotaling via Special Warranty Deed. Jonathan and Jennifer Hotaling acquired said property from Purgatorie Properties, LLC., reception number 418773 and 418774, via Bargain and Sale Deed and Special Warranty Deed on May 28, 2020, Cuchara Mountain Park Estates Master Homeowners Association, Inc., reception number 419219, via Bargain and Sale Deed on July 2, 2020, and Cuchara Mountain Resorts Investors LLC., reception number 418741 via Special Warranty Deed on May 28, 2020. Purgatorie Properties, LLC., Cuchara Mountain Investors, LLC., and Cuchara Mountain Park Estates Master Homeowners Association, Inc. have all signed away any right or interest in the subject property including rights to common areas and open space when they signed off on the Termination of Declaration of Covenants, Conditions and Restrictions for Cuchara Mountain Park Estate Master Homeowners Association, Huerfano County, Colorado. ( See attached exhibit.)

11. Defendant, Huerfano County, a Political Subdivision of the State of Colorado, is the current owner of adjacent property. Said adjacent property was acquired by Defendant on January 27, 2017 reception number 408121. Said adjacent property is what could be construed as the old Cuchara Ski Resort. (See deed at reception number 408121 for specifics). Because both subject property of Plaintiff and adjacent property of Defendant had been utilized by the old Cuchara Ski Resort, Plaintiff is seeking to Quiet title to Subject property to eliminate any potential claims of Defendant to common areas and open space within the Subject Property. Plaintiff asserts because of the aforementioned facts that any claim Defendants have to Subject Property or may be construed to have is without foundation or right.

12. Much of the potential confusion and many of the potential claims between Subject Property and Adjacent property can be traced back to the Warranty Deed at Reception number 340385, dated July 22, 1999. Said deed is between Cuchara Partners LTD (Grantor) & Cuchara Mountain Park Estates Master Homeowners Association, Inc. (Grantee) concerning use of open space and common areas by Grantee and an entity referred to as Cuchara Mountain Resort. Defendant, Huerfano County's adjacent property is commonly referred to as "Cuchara Mountain Park". "Cuchara Mountain Park" can commonly be construed as the successor of Cuchara Mountain Resort. However, Cuchara Mountain Resort did not legally exist as an entity at the time of transfer of part of subject property (L2 and L3, Panadero Filing #4). The Cuchara Mountain Resort that is referred to in the Warranty Deed at Reception number 340385 is not the

same as the Cuchara Mountain Resort, Inc. on file with the Secretary of State. Said entity was created more than a decade after said Warranty Deed. Therefore, Plaintiff asserts that declaring the restrictions, regarding use of open space and common areas, in this deed as no longer valid and enforceable, given the facts of the situation set forth herein, is a vital part of their Petition to Quiet Title on subject property.

13. There may be persons interested in the subject matter of this action whose names cannot be inserted herein because said names are unknown to Plaintiffs although diligent efforts have been made to ascertain the names of said persons; such persons have been made defendants and designated as “all unknown persons who claim any interest in the subject matter of this action”; so far as Plaintiffs’ knowledge extends , the interests of the unknown parties are derived through some one or more of the named defendants.

14. The defendants may claim some right, title, or interest in and to the above described real property adverse to Plaintiffs; the claims of said defendants are without foundation or right.

WHEREFORE, Plaintiff requests a complete adjudication of the rights of all parties to this action with respect to the Subject Property; for a decree determining that the Defendants have no interest, estate, or claim of any kind whatsoever in the Subject Property, forever barring and enjoining the Defendants from asserting any claim or title to the Subject Property, quieting title of the Plaintiff in and to the Subject Property and adjudging that the Plaintiff is the owner in fee simple and entitled to possession of the Subject Property; and for such other relief as the Court deems just.

Date: 10/10/2023

Brenda S. Getz, P.C. Attorney at Law

/s/ Brenda S. Getz-Bossert

By: \_\_\_\_\_  
Brenda S Getz-Bossert #26056

Address of Plaintiff:

Jonathan Hotaling as Managing Member  
of JJH Property 3, LLC  
3327 Springdale Ctr.  
Colorado Springs, CO 80906



DISTRICT COURT, HUERFANO COUNTY, STATE OF COLORADO 200 West 5 <sup>th</sup> Street, Suite 141, Walsenburg, CO 81089	           <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<b>Plaintiff(s): Jonathan Hotaling as Managing          Member of JJH Property 3, LLC</b> v. <b>Defendant(s): Huerfano County and any and          all unknown persons who claim any interest in          the subject matter of this complaint.</b>	
	Case No.:2023CV30049
<b>SERVICE BY PUBLICATION</b>	

All unknown persons who claim an interest you are hereby summoned and required to appear and defend against the claims of the Complaint filed with the Court in this action, by filing with the clerk of this Court an answer or other response. You are required to file your answer or other response within thirty-five (35) days after service of this Summons upon you. Service of this Summons will be complete on the day of the last publication. A copy of the Complaint may be obtained from the clerk of the Court.

If you fail to file your answer or other response to the Complaint in writing within thirty-five (35) days after the date of the last publication, judgment by default may be rendered against you by the Court for the relief demanded in the Complaint, without any further notice.

This is an action to quiet the title of the Plaintiff in and to the real property situated in Huerfano County, Colorado, more particularly described as:

*TRACT B-3, L-2 AND L-3 CUCHARA MOUNTAIN PARK ESTATES (PANADERO DEVELOPMENT, FILING NO. 4, RECORDED MAP NO. 425, RECORDED AUGUST 2, 1999 AT RECEPTION NO. 340387, ACCORDING TO THE RECORDS OF THE CLERK AND RECORDER FOR HUERFANO COUNTY, COLORADO.*

AND

*TRACT B1 AND B-2, CUCHARA MOUNTAIN PARK ESTATES (PANADERO DEVELOPMENT, FILING NO. 4) RECORDED MAP NO. 425, RECORDED AUGUST 2, 1999 AT RECEPTION NO. 340387, ACCORDING TO THE RECORDS OF THE CLERK AND RECORDER FOR HUERFANO COUNTY, COLORADO.*

Date: December 14, 2023

BRENDA S. GETZ, P.C.

By: /s/ Brenda S. Getz-Bossert  
 Brenda S. Getz, P.C. Attorney at Law

# PROOF OF PUBLICATION AFFIDAVIT

**World Journal**  
**508 Main St.**  
**P. O. Box 346**  
**Walsenburg, CO 81089**

I, Brian Orr, of lawful age, being duly sworn upon oath, deposes and says that I am the Publisher of the World Journal, which has a general circulation therein: that the same is a weekly publication that is a "legal newspaper" as that phrase is defined in CRS § 24-70-103 for the Cities of Walsenburg and La Veta, for the County of Huerfano, for the City of Trinidad, for the County of Las Animas, both in the State of Colorado; and for the City of Raton, the County of Colfax, in the state of New Mexico; and has been published continuously and uninterruptedly in said counties and states for a period of more than one year and for more than fifty-two consecutive weeks prior to the first publication of the annexed legal notice; that said newspaper has been admitted to the United States mail as a second-class matter under the provisions of the Act of March 3, 1879, or any amendment thereto and that said newspaper is duly qualified to publish legal notices and advertisements within the meaning of the laws of the State of Colorado and State of New Mexico; and more particularly Chapter 109, Colorado Revised Statutes 1963 and amendments thereto; and Chapter 14, Article 11, Section 14-11-2, 2016 New Mexico Statutes, and amendments thereto; and that the attachment hereto contains a true and correct copy of what was actually published in said legal newspaper in consecutive issues on the following dates:

<u>2023CV30049</u>	<u>19</u> <del>20</del> day of <u>Dec.</u>	<del>2024</del> <u>2023</u>
"	<u>28</u> day of <u>Dec.</u>	<del>2024</del> <u>2023</u>
"	<u>04</u> day of <u>Jan</u>	<u>2024</u>
"	<u>11</u> day of <u>Jan</u>	<u>2024</u>
"	<u>18</u> day of <u>Jan</u>	<u>2024</u>

Publication fee: \$ 175.44

Brian Orr  
Publisher, Huerfano Journal

State of Colorado  
County of Huerfano

Signed and sworn to before me this 18 day of January 2024.  
by Brian Orr, Publisher.

SIGLI GRETCHEN SPORLEDER ORR  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20084042715  
MY COMMISSION EXPIRES DECEMBER 26, 2024

Sigli Gretchen Orr  
Sigli Gretchen Sporleder Orr  
Notary Public

My Commission expires: December 26, 2024. Commission # 20084042715