



Huerfano County
Planning Commission and 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

February 14, 2023

Requests

With this Application BH2 Land Surveying, LLC (the Applicant) requests the following:

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 threshold between a Plat Amendment and a Subdivision is not precisely defined in the code and 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 are zoned Multi-Family, 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:

In the Panadero Filing #4, Tract C1 allowed for 8 units on 7.96 acres (1 unit/acre); 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 current proposal proposes the following maximum units per lot:

Lot	Acearage	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

Process for Plat Amendment

(2.14.01): PC meeting: recommendation → BOCC public meeting → Record amended plat with County Clerk and Recorder within 5 days at applicant’s expense.

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.

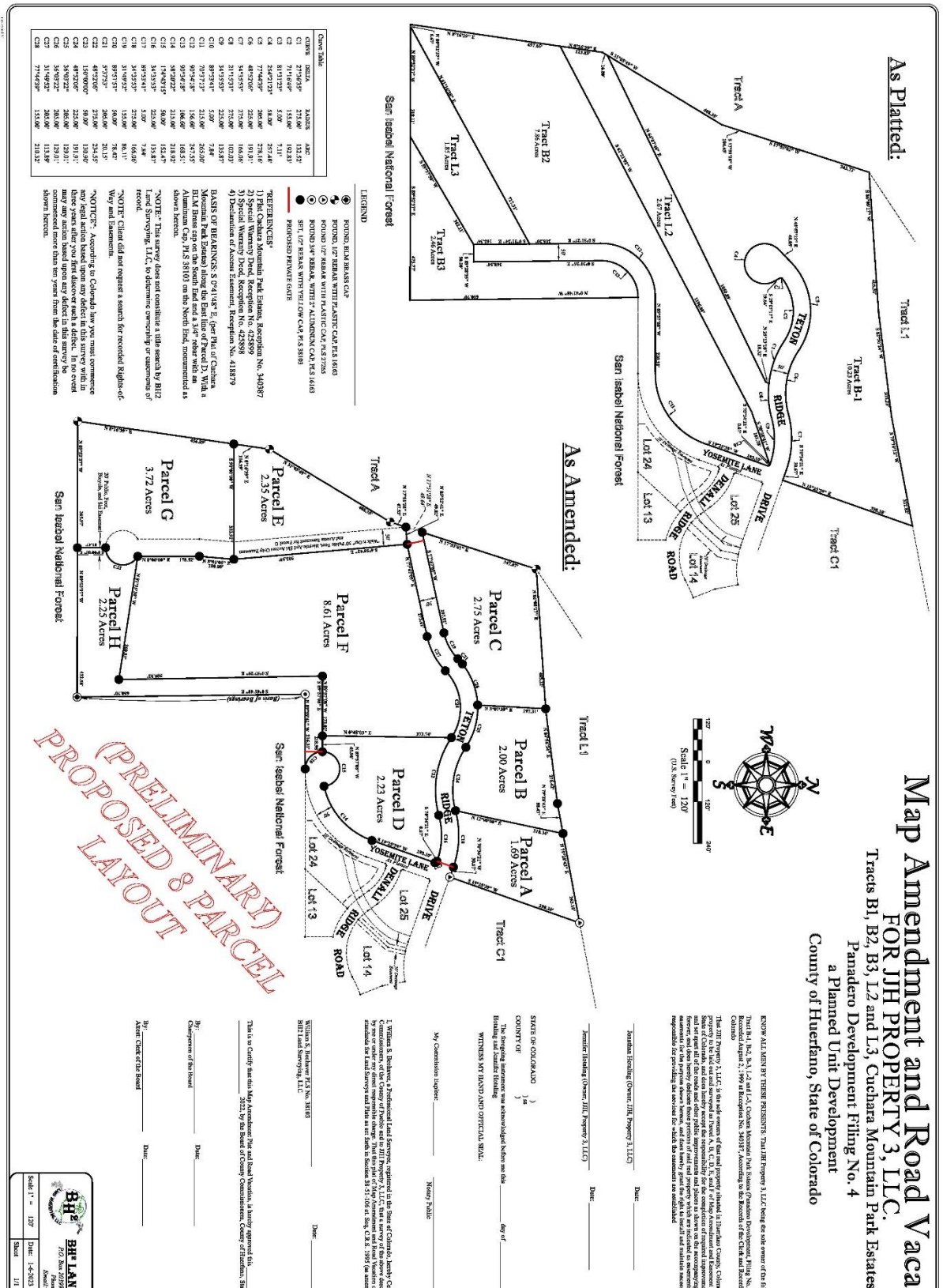
Eligibility Note: Cuchara Mountain Park Estates Filing 4 consists of approximately 61 acres. The parcels being reconfigured amount to approximately 27.4 acres, or about 45% of the land included within the recorded subdivision.

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) PC review → Notify school districts, utility companies and municipalities and other referral agencies identified by Planning Commission (21 day review) → Joint PC/BOCC public hearing → PC recommendation → BOCC decision

Site Map:



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.

Legal Questions

Application proposes the elimination of two tracts that were deed restricted as open space and which acted as a non-motorized connection between Teton Dr and County land on the Ski Resort (L2) and from Yosemite Ln and the County land on the Ski Resort (L3); the open space tracts serve to give a more direct path of access to the Ski Resort to Lots 1-25 and Tract C-1 within the same subdivision. Furthermore, there is a deed restriction on these tracts to preserve them as open space(see attachment). These deed restrictions were declared removed as part of the dissolution of the Cuchara Mountain Park Estates Master Homeowners Association in 2020.

- Do the deed restrictions on lots L2 and L3 still exist? They were declared removed in the documents terminating the Cuchara Mountain Park Master Homeowners Association.
- Did the Cuchara Mountain Park Master Homeowners Association have the authority to remove the deed restrictions? See Section 2.02.11(2) of the Huerfano County Land Use Code below.
- With the dissolution of the Cuchara Mountain Park Master Homeowners Association, did the easements created in the deed restrictions become moot? Did the deed restrictions apply only 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 the Grantor *and* Cuchara Mountain Resort.
- The Deed restrictions function like an easement – can the removal of the deed restrictions be treated like the removal of an easement?

2.02.11(2):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.

Staff Comment: The deed restrictions on L2 and L3 were declared eliminated by a notarized declaration from the HOA as part of their dissolution. The Board of County Commissioners has not taken action to eliminate the deed restrictions. The HOA's existence is required to create the deed restrictions, but its dissolution does not imply the elimination of such restrictions. This section of the code implies that BOCC action is required to eliminate deed restrictions.

The deed restrictions on Tracts L2 and L3 read, in part:

"...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 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."

Further down, it reads: *"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..."*

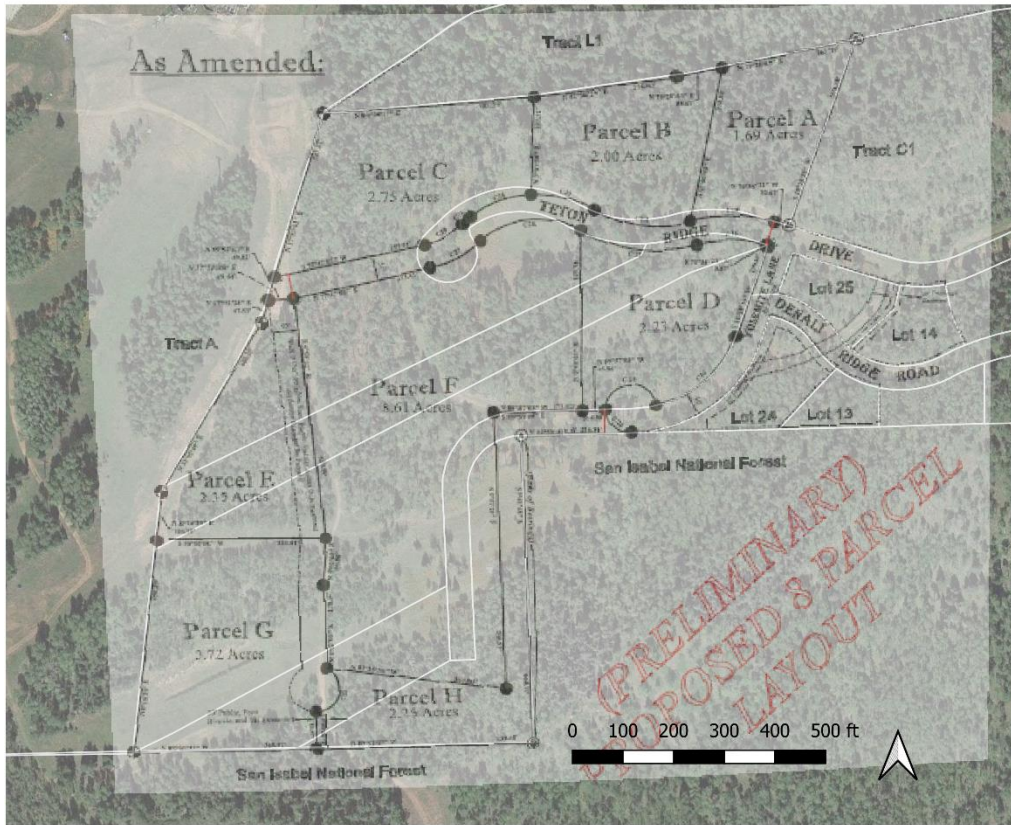
(See Attachment 13. 1999 Warranty Deed for L2 and L3 showing deed restrictions for copy of deed restrictions)

It is not clear how to treat the perpetuity described above. The term, Cuchara Mountain Resort likely refers to the whole Panadero subdivision, including the Cuchara Mountain Park filing 4 – this is the name on the 1997 master plan for the whole area (see Map 405). The former deed conveyed these tracts to Cuchara Mountain Park Estates Master Homeowner Association, which was dissolved in 2020. The covenants of Cuchara Mountain Park Estates Master Homeowner Association (“grantee” in the deed) are no longer valid or binding, however owners, tenants and guests of Cuchara Mountain Resort may still have a claim to access these easements. It is not clear that membership in the Master Homeowner Association was the sole criteria for access described in the deed restrictions on L2 and L3.

It may be necessary for the BOCC to consent to the elimination of the deed restrictions or to require a court action recognizing their removal.

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



Background

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.

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.

Criteria/Findings

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.

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.

Planning Commission Position

- The Planning Commission took the position that the proposal to create eight lots would be considered a plat Amendment.

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. as a public road closed to public access in combination with the proposed elimination of the recreational easements on L2 and L3 reduces connectivity and changes how people can access the ski area. This could potentially be partially addressed by leaving the extension of Teton Ln open to public access. If it is determined that the HOA did not have the authority to eliminate the deed restrictions on L2 and L3 this may require action by a court and/or action by the BOCC.

The proposed use of this property, which includes 3 to 4 single-family homes is of lower intensity than what was described 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.

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.

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.

Potential Conditions or Recommendations Considered 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)

Note: The Planning Commission did not have a legal opinion from our Attorney regarding whether the deed restrictions on L2 and L3 had been properly removed or were made moot by the dissolution of the Cuchara Mountain Park Master Homeowner Association and therefore relied on the opinion provided by the Applicant's legal counsel.

See legal questions section above as to whether court or further BOCC action is needed to remove deed restrictions.

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 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

Application Materials

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. Articles of Dissolution of HOA
8. Declaration of access easement (through lots 24 and 25)
9. Deeds to Property
10. Amendment to Scope
11. Proposed Density for 8-lot map
12. Map of Cuchara Mountain Estates Filing 4
13. 1999 Warranty Deed for L2 and L3 showing deed restrictions
14. Email communications with lawyer representing applicant
15. Emails from neighbors