

THE LENIHAN LAW FIRM, P.C.

1050 East River Road, Suite 300
Tucson, Arizona 85718
(520)293-1702/Fax (520)293-0539
email: slenihan@usa.net

January 5, 2016

Personally served to
Kim Lemon

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COCHISE COUNTY
BOARD OF SUPERVISORS

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Civil Division

JAN 11 2016

COCHISE COUNTY
ATTORNEY'S OFFICE

VIA SERVICE OF PROCESS

Clerk of the Board of Supervisors for Cochise County
1415 Melody Lane, Building G
Bisbee, Arizona 85603

Re: **NOTICE OF CLAIM AGAINST COCHISE COUNTY**
PER A.R.S. §12-821.01

Dear Sir or Madam:

This office represents Easter Mountain Ranch, L.L.C. ("Easter Mountain" or "EMR") with regard to its claim against Cochise County (the "County") arising from the matter described herein.

Before a party may file a lawsuit against any public entity or against a public employee claiming damages, the party must file a notice of the claim in compliance with the provisions of A.R.S. § 12-821.01. The purposes of the statutory notice of claim requirement are: (1) to provide prior notice to allow public entities to investigate and assess potential liability, (2) to facilitate settlement, and (3) to assist in financial planning and budgeting. *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 295, ¶ 6,152 P.3d 490, 492 (2007); *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, 527 ¶ 9, 144 P.3d 1254, 1256 (2006). The notice of claim must contain: "facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed", "a specific amount for which the claim can be settled" and "the facts supporting that amount." A.R.S. § 12-821.01(A).

This Notice of Claim is made pursuant to the statutory requirements.

By filing this Notice of Claim, Easter Mountain does not concede that A.R.S. §12-821.01 requires a notice of claim with respect to some or all of the claims set forth herein. Without limiting the generality of the foregoing, A.R.S. §12-821.01(H) provides that A.R.S. §12-821.01 does not apply to a claim for just compensation pursuant to Chapter 8, Article 2.1 of Title 12 (commonly known as Proposition 207). Nevertheless, Easter

Mountain hereby gives notice to Cochise County that a claim pursuant to Proposition 207 is contemplated by Easter Mountain.

1. Sufficient facts to understand the basis of liability.

On October 25, 2011, the Cochise County Board of Supervisors approved the rezoning of the 556-acre EMR lands (the "EMR Property") from RU-4 to SR-2 subject to six conditions (the "Rezoning"). The County then prepared and submitted to EMR a document entitled Acceptance of Conditions: Rezoning Approval, Docket No. Z-11-06 (Easter Mountain [*sic*], LLC) (the "Acceptance") and gave EMR two weeks in which to accept the zoning conditions by signing the Acceptance and returning it to the County. EMR signed the Acceptance and returned it to the County on November 9, 2011. The Acceptance was then recorded by the County in the official records of Cochise County, Arizona, on November 16, 2011, as Document No. 2011-24675.

EMR's agreement to the Acceptance and its recordation constitute a binding contract between EMR and the County. In reliance upon the Acceptance and the binding agreement which it constituted, EMR incurred costs and expenses in excess of \$100,000 for surveying, engineering, and legal fees and associated costs for the preparation of a Tentative Plat for the EMR Property and other associated efforts. Evidence of these costs and expenses incurred by EMR are available upon request.

On July 14, 2015, in a public hearing, the Cochise County Board of Supervisors voted 2-0 to deny Easter Mountain's request for approval of the J6 Ranch, Lots 1-42 subdivision Tentative Plat. Prior to the hearing, the County staff had confirmed that the Tentative Plat satisfied all of the County subdivision regulations. See Cochise County Community Development Department to Cochise County Planning and Zoning Commission dated May 28, 2015 (III Subdivision Review Section) attached hereto as Exhibit A. The County further confirmed that the sole reason for the denial was the failure to satisfy zoning condition #4 relating to public access to federal lands (the "Zoning Condition"). See letter from Cochise County Attorney's Office to Stephen J. Lenihan dated July 16, 2015 attached hereto as Exhibit B. The Zoning Condition reads, as relevant here, as follows:

"4. Prior to plat approval, the Applicant [Easter Mountain] must provide either on-site or off-site multi-purpose (vehicular, pedestrian, equestrian, etc) legal access to federal lands."

The easement for legal access to federal lands was recorded June 22, 2015, and a copy thereof was provided by Easter Mountain to the County on or about July 14, 2015

(the “Original Easement”). The Original Easement is an easement for vehicular, pedestrian, equestrian and bicycle access along the southern boundary of lands owned by Bradbury Investments, L.L.C. (the “Bradbury Property”) extending from State Route 90 to federal lands, i.e., the Coronado National Forest – Whetstone Mountains (the “Federal Lands”). The County objected to the location of the Original Easement on the basis that it accessed the Federal Lands where new roads on the Federal Lands may have been prohibited. The Original Easement satisfied the clear language of the Zoning Condition. Attached hereto as Exhibit C is a copy of the Original Easement.

On July 29, 2015, Easter Mountain proposed to extend the Original Easement from its terminus northerly along the western boundary of the Bradbury Property to an area of the Federal Lands where new roads were not prohibited (the “Proposed Extended Easement”). The County repeatedly sought the approval of the Arizona Game & Fish Department and the U.S. Forest Service to this Proposed Extended Easement; however, to date, the County has not notified Easter Mountain that the Proposed Extended Easement was acceptable.

The County rejected the Original Easement and never approved the Proposed Extended Easement. Although not legally obligated to do so and in the hope of resolving the issue of access to Federal Lands, Easter Mountain proposed a relocated public access easement to Federal Lands along the northern boundary of the Bradbury Property (the “Replacement Easement”). The Replacement Easement accessed the Federal Lands in an area that did not prohibit new roads and provided a more direct route than the Proposed Extended Easement. The County has repeatedly sought the approval of the Arizona Game & Fish Department and the U.S. Forest Service to this Replacement Easement; however, to date, the County has failed to notify Easter Mountain that the Replacement Easement is acceptable. While the Replacement Easement was offered to the County months earlier, it was recorded on November 25, 2015 and delivered to the County on December 8, 2015. Attached hereto as Exhibit D is a copy of the Replacement Easement.

The Original Easement satisfied the clear language of the Zoning Condition. It provided vehicular, pedestrian, and equestrian legal access from State Route 90 to Federal Lands (Coronado National Forest, Whetstone Mountains). The Zoning Condition required access for the “public”, not for the U.S. Forest Service or Arizona Game & Fish Department. It should be noted that there is no requirement in the Zoning Condition that specifies where access to Federal Lands was to be located, no requirement that EMR or the County obtain the approval of federal or state agencies for the location of the public access easement and certainly no requirement that the access connect to existing roads within the Federal Lands. Like the Original Easement, the Proposed Extended Easement and the Replacement Easement satisfied the clear language of the Zoning Condition.

Inasmuch as all of the aforementioned easements satisfied the Zoning Condition, the County had no factual or legal grounds to deny approval of Easter Mountain's Tentative Plat.

These facts support claims for liability against the County, including but not limited to the following:

(a) Breach of contract inasmuch as the Acceptance of the zoning conditions constituted a contract between the County and EMR.

(b) Diminution of EMR's land value by the County in violation A.R.S. §12-1134 of the Private Property Rights Protection Act, A.R.S. §§12-1131 *et.seq.*, entitling EMR to just compensation.

(c) Violation by the County of A.R.S §11-822(B) and *McIntyre v. Mohave County*, 127 Ariz. 317, Ariz., 620 P.2d 696 (1980) which requires strict compliance with the county subdivision statutes inasmuch as the Board of Supervisor's denial did not include a citation or reference to the rule or regulation violated by the plat.

(d) The County had no authority to deny approval of EMR's tentative plat inasmuch as the subdivision regulations and zoning conditions were satisfied.

(e) Improper delegation, by the County to the Arizona Game and Fish Department, the U.S. Forest Service and others, of its rezoning authority. *See Emmett McGloughlin Realty v. Pima County*, 203 Ariz. 557, 58 P.3d 39 (App. 2001).

(f) The Zoning Condition is not enforceable (or constitutes a "taking") in that it is in violation of the Fifth Amendment of the United States Constitution, art. II, § 17 of the Arizona Constitution and the United States Supreme Court decisions in *Koontz v. St. Johns River Water Management Dist.*, 133 S.Ct. 2586 (2013); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

(g) Inverse eminent domain.

(h) Other claims supported by the facts recited herein.

2. Amount for which claim can be settled.

Under A.R.S. § 12-821.01(A), this Notice of Claim must provide “a specific amount for which the claim can be settled and the facts supporting that amount.” *See also Backus v. State*, 220 Ariz. 101, 106–07, ¶ 23, 203 P.3d 499, 504–05 (2009) (holding the claimant is required to supply those facts the claimant deems adequate to permit the public entity to evaluate the claim); *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 296, ¶ 5, 152 P.3d 490, 493 (2007) (requiring that a claimant “include a particular and certain amount of money that, if agreed to by the government entity, will settle the claim”).

My client’s claim against Cochise County is in the amount of \$9,869,000.00.

The following facts are those deemed by my client to permit Cochise County to evaluate my client’s claim. The failure to approve EMR’s tentative plat has the effect of nullifying the Rezoning from RU-4 to SR-2 and thus denying EMR the right to develop the EMR Property for 278 lots. Instead, EMR may only develop the EMR Property for 139 lots pursuant to the prior RU-4 zoning.

My client projects that under the SR-2 rezoning it would sell the 278 lots for an average net selling price of \$85,000.00 each and incur development costs of \$35,000.00 per lot. The result would be total gross sales proceeds of \$23,630,000.00, total development costs of \$9,730,000.00, and a net profit of \$13,900,000.00. My client projects that under the prior RU-4 zoning it would sell the 139 lots for an average net selling price of \$95,000.00 each and incur development costs of \$66,000.00 per lot as there is very little savings in the length of the roads or costs of utilities or other infrastructure. The result would be total gross sales proceeds of \$13,205,000.00, total development costs of \$9,174,000.00, and a net profit of \$4,031,000.00. Thus, the damages that would be incurred by my client would be \$9,869,000.00.

Demand is hereby made that Cochise County pay this amount. If the same is not received within the statutorily mandated time period our client will proceed with legal proceedings against Cochise County to collect the full amount of the damages.

Very truly yours,

THE LENIHAN LAW FIRM, P.C.



Stephen J. Lenihan

SJL:nsa

Enclosures

cc: Easter Mountain Ranch, L.L.C.

Mr. Richard Searle, Cochise County Board of Supervisors

Mr. Patrick Call, Cochise County Board of Supervisors

Mrs. Ann English, Cochise County Board of Supervisors

Mr. James E. Vlahovich, Cochise County Manager

Mr. Paul Esparza, Cochise County Community Development Director

Ms. Jesse Drake, Cochise County Planning Manager

Britt Hanson, Esq., Deputy Cochise County Attorney

EXHIBIT A



**Cochise County
Attorney's Office
Civil Division**

Public Programs...Personal Service
www.cochise.az.gov

7-21-15

BRIAN M. McINTYRE
Cochise County Attorney

July 16, 2015

Stephen J. Lenihan, Esq.
The Lenihan Law Firm, P.C.
1050 E. River Road, Suite 300
Tucson, AZ 85718

**Re: Docket S-12-01 (J6 Ranch Lots 1-42) Subdivision Tentative Plat,
Parcel 124-01-013H near Benson, Arizona.**

Dear Mr. Lenihan:

This is a follow-up to the letter to you from Jesse Drake dated July 14, 2015, in which she documented that at their regular meeting on July 14, 2015, the Cochise County Board of Supervisors voted (2-0) to deny your request for approval of the J6 Ranch, Lots 1-42 subdivision Tentative Plat.

At that meeting, you handed to the Board and me a document titled "Public Ingress and Egress Easement" that was recorded on June 22, 2015 with the ID # of 2015-11281 in which you purport to unilaterally grant a public easement for legal access to the Coronado National Forest in order to comply with Condition #4 of Rezoning Ordinance No. Z-11-06. According to the Easement: "In the event that Cochise Count determines that this Easement does not satisfy the afore-mentioned rezoning condition, then this easement shall be void, *ab initio*."

As you are aware from the discussion at the Board meeting, the reason for the Board's denial of your Tentative Plat was the failure to satisfy Condition #4.

Main Office
150 Quality Hill Road
PO Drawer CA
Bisbee, Arizona 85603
520-432-8700
Attorney@cochise.az.gov

Juvenile Division
100 Colonia de Salud, Suite 104
Sierra Vista, Arizona 85635
520-803-3160

Division Fax Numbers
Civil 520-432-8778
Drug Unit 520-432-2487
General Crimes 520-432-4208
Juvenile 520-417-0895
Misdemeanor 520-432-8729
Victim Witness 520-432-8777

Pursuant to Cochise County Subdivision Regulation § 205.C, this access issue must be addressed before any re-submittal of a Tentative Plat to the Commission.

Sincerely,

A handwritten signature in black ink, appearing to be "Britt W. Hanson", with a long horizontal line extending to the right.

Britt W. Hanson
Chief Civil Deputy County Attorney
Cochise County Attorney's Office

BWH:aw

cc: Jesse Drake, Planner II
James Vlahovich, County Administrator
Arlethe Rios, Clerk of the Board

EXHIBIT B



Cochise County
Community Development
Planning, Zoning and Building Safety Division
Public Programs...Personal Service
www.cochise.az.gov

MEMORANDUM

TO: Cochise County Planning and Zoning Commission
FROM: Jesse Drake, Planner II
FOR: Beverly Wilson, Planning Director
SUBJECT: Docket S-12-01 (J-6 Ranch, Lots 1-42) subdivision tentative plat
DATE: May 28, 2015 for the June 10, 2015 Meeting

I. REQUEST AND DESCRIPTION OF SUBDIVISION

This request is for approval of a Conservation Subdivision J-6 Ranch, Lots 1-42, Block 1 and Common Areas A, B and C Subdivision (herein known as J-6 Ranch Lots 1-42) Tentative Plat. The developer is Easter Mountain Ranch LLC, represented by Mr. Stephen Lenihan. Mr. William H. Baker represents Baker & Associates Engineering, Inc., the project engineer. The subdivision consists of 42 lots on 84.80 acres zoned SR-2 (currently SR-87), with minimum lot size of two acres (Single-Household Residential, 87,000 square feet). This parcel (APN 124-01-013H) was re-zoned on October 25, 2011, from RU-4 to SR-2 (now SR-87 per the revised Zoning Regulations of June 20, 2008). The site is located approximately three miles south of Interstate 10 at the J-6/Mescal Interchange. Access is from J-6 Ranch Road.

II. SUBDIVISION OPTION USED: CONSERVATION

This is a conservation subdivision with flexible lot sizes and a minimum of 50 percent of the site preserved as a conservation area. For lots 1-42 and Block "1" the total acreage is 84.8 acres, the proposed area of disturbance is 42.4 acres with proposed conservation/open space area of 42.4 acres (50%). Building envelopes on lots less than two-acres are limited to 15,000 square feet. Building envelopes on a two-acre or larger lot may be enlarged to 25,000 square feet if approved by the architectural and design review committee. Driveways may be outside the building envelope but are not included in the conservation/open space calculation. Building heights for lots 1-42 are limited to single-story or multi-story if the various levels follow the terrain and the building height does not exceed thirty feet. For lots 1-42 setbacks are twenty feet except that the J-6 Ranch Road right-of-way is fifty feet.

All development is subject to the approved and recorded CC&Rs and Sustainability Plan for J-6 Ranch. Zoning is SR-2 with no density bonus allowed for this J-6 Ranch project. Block "1" is eligible to be included in subsequent plats (and re-subdivisions) and may be re-subdivided into lots as long as the number of lots shown on the plat (and subsequent plats) does not exceed, in the aggregate, 1 lot per 2 gross acres (including roads, common areas, etc.). For purposes of this calculation of gross acres, acreage contained in more than one plat shall only be counted once. This plat contains 42 lots. Subsequent plats

Planning, Zoning and Building Safety
1415 Melody Lane, Building E
Bisbee, Arizona 85603
520-432-9300
520-432-9278 fax
1-877-777-7958
planningandzoning@cochise.az.gov

Highway and Floodplain
1415 Melody Lane, Building F
Bisbee, Arizona 85603
520-432-9300
520-432-9337 fax
1-800-752-3745
highway@cochise.az.gov
floodplain@cochise.az.gov

may contain up to an additional 236 lots in the aggregate for a total of 278 lots on 556 acres in the entire J-6 Ranch project.

III. SUBDIVISION REVIEW

The Tentative Plat was reviewed by County Departments and other interested agencies including the Mescal/J6 Fire District, and the J6/Mescal Community Development Organization (CDO), federal agencies and other interested parties. The Tentative Plat is the preliminary working plat used by staff and the developer that must be completed prior to approval of the Final Plat. In order to obtain subdivision approval the Final Plat, the legal recorded document for the subdivision, must be in substantial conformance with the Tentative Plat. A summary of review comments follows.

Planning Comments:

Compliance with Subdivision Regulations: The subdivision Tentative Plat complies with applicable Subdivision Regulations.

Rural Addressing: Rural Addressing staff reviewed the Tentative Plat to ensure that street names are not duplicated within this addressing grid, and that emergency service providers can find individual addresses in a timely fashion.

Water Conservation: As a condition of the rezoning J-6 Ranch has recorded Covenants, Conditions, and Restrictions (CC&R's) and a Sustainability Plan, dated September 2011, for all phases of the proposed Subdivision. (General Notes 10 and 11 on Tentative Plat Sheet 1)

Access: Access to the subdivision shall be via County-maintained J-6 Ranch Road, from Interstate 10 to the gated subdivision which will have private internal roads. The internal roads will be built to Cochise County standards.

At the intersection of J-6 Ranch Road and Easter Mountain Road it is recommended that Right-of-way be dedicated to the public for the existing road intersection. The length of J-6 Ranch Road is approximately fifteen feet south of the north subdivision boundary line based on shaded "new pavement" shown on sheet 2 of the submitted plat. It is further recommended that dedication of this intersection extend to the eastern boundary of the subdivision to prevent potential access issues for neighbors on the east that use this existing intersection.

Drainage (with Conditions on Final Plat as attached):

The County Highway & Floodplain Director and Floodplain Administrator together with the County Floodplain Engineer have reviewed and approved the Drainage Report for J-6 Ranch dated January 2015, Amended March 2015, sealed March 18, 2015 prepared by Baker & Associates Engineering, Inc. for Easter Mountain Ranch, LLC. Floodplains and erosion hazard setbacks shall be provided on Final Plat. (see April 6, 2015 Interoffice Memo from Joaquin Soli, P.E.)

Environmental Health: Prior to construction site investigations will be submitted with each joint use permit. Each lot in the subdivision will have an individual sewage disposal system, with both conventional (septic tank and leach field) and alternative systems if required. A minimum 100-foot setback is required from all wells and 50-foot from all lot lines (General Notes #3, 4 and 5 on Tentative Plat Sheet 1).

Highway: Cochise County surveyor, Dale Jones, has reviewed and approved the legal descriptions (see Dale Jones Memo dated July 21, 2014).

Floodplain: This project lies within a non-flood Zone X as defined by FEMA FIRM Panel #1225, dated 08/28/08. The site is hilly with washes crossing the parcel which create a 100-year floodplain drainage. The floodplain is clearly delineated on the plat, along with the erosion setbacks. The responsibility for maintenance of these drainage structures shall be by the Association formed to maintain private, common, or community owned improvements.

Transportation: The applicant has completed a Supplementary Traffic Impact Statement (TIS) to address the first phase of the planned development; this TIS was approved on March 19, 2014. A variance allowing a 44' pavement radius for the cul-de-sacs in this subdivision was granted by the County Engineer on June 4, 2014. Road design standards will comply with the Cochise County Road Design & Construction Standards & Specifications and will provide soil testing to determine the depth of the sub-grade, if less than the minimum standards.

Water Adequacy: Water is to be provided by Empirita Water Company and a determination of water adequacy from the Arizona Department of Water Resources (ADWR) as required per Section 408.03 of the Country Regulations was issued on March 27, 2007 (see Decision and General Note 19 on Tentative Plat Sheet 1).

Zoning Condition for Access to the Coronado National Forest:

Board of Supervisors approval of Docket Z-11-06 on October 25, 2011 granted the conditional rezoning of APN 124-01-013H from RU-4 Rural to SR-2. The conditions of approval included in the As You Are Aware letter sent to the applicant on October 27, 2011 (see attached) are:

1. The Applicant shall provide the County with a signed *Acceptance of Conditions* and a *Waiver of Claims* form arising from ARS Section 12-1134 signed by the property owner of the subject property within thirty (30) days of Board of Supervisors approval of the rezoning or the approval of the rezoning may be deemed void; and
2. It is the Applicants' responsibility to obtain any additional permits, or meet any additional conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations; and
3. The Applicant will submit a subdivision plat within one year from the date of approval, with a phasing plan for all future development. All subdivision plats will reflect at least 50% open space and the use of building envelopes. All construction will be completed within 10 years. If these conditions are not met, the Board of Supervisors may revert the zoning of any portions of the parcel that are not subdivided back to the RU-4 District; and
4. Prior to plat approval, the Applicant must provide either on-site or off-site multi-purpose (vehicular, pedestrian, equestrian, etc) legal access to federal lands. If access to the federal land is provided on-site, it will be reflected on all future subdivision plats; provided, however, if the Developer does provide legal access, but the U.S. Forest Service, Arizona Game and Fish, or some other agency or person, does not improve the access for vehicular use within two years after legal access has been provided, then the condition requiring legal access for vehicular use shall cease; and
5. The Applicant shall adhere to the Declaration of Covenants, Conditions, Restrictions, and Easements for J-6 Ranch, dated June, 2011 and the Sustainability

Plan, dated September, 2011, both prepared by the Planning Center and attached as Exhibit B to this Zoning Ordinance; and

6. Any subdivision of the Parcel will not be eligible for a density bonus for a Residential Conservation Subdivision, but in all events any subdivision plat for the Parcel must provide at least 50% open space.

Regarding Condition 3: The applicant has submitted the Tentative Plat, is meeting the 50% open space requirement and has provided a phasing plan as required in Section 303.02.C.22 of the subdivision ordinance, so the applicable conditions of Condition 3 are being met. (See attachment Lenihan 11/19/12 email with "Phasing Plan" map)

Regarding Condition 4:

County Administration, Highway Department, Transportation Department and the County Attorney have determined that the intent of Condition 4 is for the applicant to provide public vehicular access/connection to a part of the Coronado National Forest at a point where a road could be constructed in the Forest that would be used by both the general public and fire suppression vehicles. USFS property to the east of the subdivision is a designated roadless area; USFS to the west of the subdivision, located in Pima County, is not in a roadless area. The applicant has submitted a conceptual proposal for off-site access through private property that connects to an existing designated "roadless" area in the Coronado National Forest. Since the conceptual proposal does not connect to a portion of the Forest that could contain a future road, the proposal is not considered valid for meeting the requirements of Condition 4. To date the applicant has not met the requirements of Condition 4. (See attachment Conceptual off-site access plan)

Regarding Condition 6:

The current Tentative Plat for Lots 1-42 satisfies the requirement of 50% open space.

Review by Other Agencies

US Forest Service and Arizona Game and Fish Department

From the August 10, 2011 Planning and Zoning Commission meeting minutes:

Thomas Lorenz, USFS:

Opposed because plat does not provide adequate access to the Forest, in particular motorized vehicle access which would connect to a road system within the Forest.

George McKay USFS:

There is not adequate access to the Forest in this area or ROW

There is only one permanent legal access route in Dry Canyon on the SE side of Whetstone Mountains

Brad Fulk, AZ Game & Fish Department:

Opposed due to lack of guaranteed legal access to the Forest Service lands. Need unrestricted dedicated access to the Forest for hunting and fishing and general use of public lands. He stated that AZG&F are asking developer to create access through the development; new access not to reopen an old access.

Duane Bennett, USFS:

ATVs are restricted to off-county travel with limits to use only on authorized routes.

USFS would like an extension of J-Six road

Asking for legal easement, then Forest Service will build and maintain the road
There was never had legal recorded access but private property owners let people use
their property in the past
USFS has power of condemnation but does not like to use it

From the October 25, 2011, Board of Supervisors meeting minutes

George McKay:
USFS has tried unsuccessfully, since the 1980s, to negotiate legal public access for the
area.

Duane Bennett, USFS:
Supports vehicular access

J-6/Mescal Community Development Organization (CDO)

In a November 7, 2012 letter the J-6/Mescal CDO identified their concerns regarding public vehicular access and having Forest Service road open on the north face of the Whetstone Mountains for wild-lands operations and emergency vehicle access. The CDO also raised the issues of access to the development for fire suppression equipment and the requirements of the Mescal-J6 Fire District for travel lane widths, cul-de-sac diameters and driveway lengths and materials. (see attached 11/7/2012 J-6/Mescal Community Development Organization letter)

City of Benson: No objections or comments.

Mescal-J6 Fire District: The Mescal-J6 Fire District will be supplying Fire Suppression and EMS Service to residents of the gated community when it is developed. The Fire District noted in a letter to staff that "the State of Arizona implemented the 2003 International fire code, via Section R4-36-01 of the Arizona Administrative Code: Incorporation by Reference of the International Fire Code. This code specifically states: 'Unless otherwise provided by law, any person residing, doing business, or who is physically present within the State of Arizona shall comply with the provisions of the International Fire Code (2003 Edition) including D102.1 and D107.1 of Appendix D and all provision of Appendices B,C,E,F and G," (see attached Mescal-J6 Fire District letters dated 7/15/11, 8/7/12, 11/14/12 and 6/16/13)

The Developer has agreed to require that all homes to be fire sprinklered (see General Note 20 and 21 on Tentative Plat Sheet 1). The Mescal-J6 Fire District has agreed to provide fire protection with the conditions listed if shown on the final plat. (See attached Mescal-J6 Fire District note dated October 8, 2013).

Sulphur Springs Valley Electric Cooperative, Inc. (SSVEC)

SSVEC reviewed the Tentative Plat plans and noted that there was no dedication statement on the plat, lots on the east line of J-Six Ranch Road do not show 10-foot easements, no easement was identified for the SSVEC single phase primary OH line meandering on the east boundary of the subdivision, and the CC&Rs were not available for review to determine whether the electric lines will be overhead or underground. (see attached SSVEC 7/1/14 letter)

IV. STAFF RECOMMENDATIONS

Financial Security for Improvements: An Assurance Agreement or some other form of financial assurance will be required to ensure that public improvements, primarily fire safety devices, roads, road signs, and drainage, are completed before lots are sold. This Assurance

Agreement or other form of financial assurance must be approved by the Board of Supervisors and on or before the time of Final Plat approval; the Final Plat indicating all on-site improvements and showing substantial conformance with the Tentative Plat.

National Forest access: Staff has not received a grant of easement, deed of dedication, nor any other document creating public legal access to Forest lands.

Recommendation:

Since the applicant has not been able to satisfy Condition 4 of the rezoning approval, staff recommends forwarding a recommendation of **denial** to the Board of Supervisors for the J-6 Ranch, Lots 1-42, Block "1" subdivision Tentative Plat, subject to the following conditions for Final Plat approval:

1. Equestrian Easement, Docket 0008-2878, shall be abandoned on Final Plat.
2. All private roads shall be built to Cochise County road standards.
3. The applicant will comply with the roadway construction requirements for the first phase of this development as identified in the approved Traffic Impact Statement during project development. This includes the construction of the J-6 Ranch Road extension through the phase 1 portion of the property; the construction of all internal roadways to serve the first 42 lots; construct entrance feature and gateway; and ensure adequate stop control is in place for Easter Mountain Road at J-6 Ranch Rd and Circle Bar Road at Easter Mountain Road.
4. Right-of-Way at the intersection of J-Six Ranch Road and Easter Mountain Road will be dedicated to the public for the existing road intersection. Dedication of this intersection will extend to the east boundary of the subdivision to prevent potential access issues for neighbors on the east that use the existing intersection.
5. Public legal access to the Coronado National Forest by conveyance of rights and acceptance by a public agency is required prior to Tentative Plat approval.
6. Prior to construction and/or Final Plat, all Drainage requirements shall be met to the satisfaction of the County Highway & Floodplain Director and the County Floodplain Engineer. The responsibility for maintenance of these drainage structures shall be by the Association formed to maintain private, common, or community owned improvements.
7. Floodplains and erosion hazard setbacks shall be provided on Final Plat.
8. Provide a dedication statement on the plat for utility easements to include a 10-foot wide utility easement along all lot lines that are adjacent to private streets including the east line of J-Six Ranch Road, and including the potential delivery point located at the northeast corner of the subdivision to cross J-Six Ranch Road so that service can be delivered to lots located on the west side of the road. Indicate whether the lines will be overhead or underground on the plat.
9. Provide a 20-foot wide utility easement on the plat on the east boundary of the subdivision for the existing SSVEC overhead line.
10. Provide an Assurance Agreement to ensure all on-site improvements.

11. Final Plat and improvement plans will reflect automatic sprinkler system requirements for each dwelling, and the International Fire Code, 2003 edition requirements for fire-flow from the identified by the J-6 Mescal Fire District.
12. The entry code for any gated entry shall be provided to all emergency service providers.
11. Meet all Regulations required in the County Subdivision regulations for the Final Plat.

Attachments:

- A. Aerial Location Map
- B. Subdivision Tentative Plat
- C. October 27, 2011 As You Are Aware letter
- D. April 6, 2015 Interoffice Memo from Joaquin Solis, P.E.
- E. Dale Jones Memo dated July 21, 2014
- F. Lenihan 11/19/12 email with "Phasing Plan" map
- G. Conceptual off-site access plan
- H. 11/7/2012 J-6/Mescal Community Development Organization letter
- I. Mescal-J6 Fire District letters dated 7/15/11, 8/7/12, 11/14/12 and 6/16/13
- J. Mescal-J6 Fire District letter dated October 8, 2013
- K. SSVEC 7/1/14 letter

EXHIBIT C

At the request of
Pioneer Title Agency, Inc.

--- Digitally Recorded ---
ID 2015-11281
County COCHISE
Date/Time 06/22/2015 @ 4:20 PM
www.recordingexpress.com

WHEN RECORDED RETURN TO:

Stephen J. Lenihan, Esq.
The Lenihan Law Firm, P.C.
1050 E. River Road, Suite 300
Tucson, Arizona 85718

Exempt Per A.R.S. § 11-1134(A)(2)

961440-KSL

PUBLIC INGRESS AND EGRESS EASEMENT

Bradbury Investments, L.L.C., an Arizona limited liability company (“Declarant”), hereby dedicates to the public a perpetual easement for vehicular, pedestrian, equestrian and bicycle, ingress and egress, in, over, across and along that certain property legally described in Exhibit “A”, attached hereto and incorporated herein by reference (the “Roadway”).

This Easement is being dedicated to the public to satisfy the requirement imposed upon Easter Mountain Ranch, L.L.C., an Arizona limited liability company, to provide public access to the Coronado National Forest (Whetstone Mountains) pursuant to Rezoning Condition No. 4 of Cochise County Zoning Ordinance No. Z-11-06, adopted October 25, 2011, and recorded November 16, 2011, as Document No. 2011-24675, official records of the County Recorder for Cochise County, Arizona (the “Rezoning Condition”). In the event that Cochise County determines that this Easement does not satisfy the afore-mentioned rezoning condition, then this Easement shall be void, *ab initio*. Further, pursuant to the Rezoning Condition, in the event that the public has not accepted this Easement by improving the Roadway for vehicular use from State Route 90 to the Coronado National Forest (Whetstone Mountains) along the full length of the Roadway, on or before the date two (2) years after recordation of this Easement, then this Easement shall automatically terminate and be void, *ab initio*.

In the event this Easement is automatically terminated and/or void, *ab initio*, pursuant to the provisions of the preceding paragraph, then either Bradbury Investments, L.L.C. or Easter Mountain Ranch, L.L.C. may unilaterally record an instrument of record confirming that this Easement has been automatically terminated and/or is void, *ab initio*. Declarant shall have the right to relocate the Roadway at any time by recording a Notice of Relocation with a new legal description referring to this Easement document.

At the request of
Pioneer Title Agency, Inc.

2015-11281
Page 1 of 5
Requested By: Pioneer Title Agency
Christine Rhodes - Recorder
Cochise County, AZ
08/22/2015 04:20 PM Recording Fee \$9.00

WHEN RECORDED RETURN TO:

Stephen J. Lenihan, Esq.
The Lenihan Law Firm, P.C.
1050 E. River Road, Suite 300
Tucson, Arizona 85718

Exempt Per A.R.S. § 11-1134(A)(2)

961440-KSL

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The dedication to the general public is intended, subject to the express provisions of this instrument, to be a common law dedication consistent with the decision of the Arizona Supreme Court in *Pleak v. Entrada Property Owners' Ass'n*, 87 P.3d 831, 207 Ariz. 418 (2004).

Exhibit "A", at the time of execution of this instrument by Declarant, contains a drawing of the Roadway location (the "Drawing"). Declarant hereby authorizes Easter Mountain Ranch, L.L.C. to supplement Exhibit "A" by attaching a legal description of the Roadway, consistent with the Drawing, prior to recording this instrument in the official records of the County Recorder for Cochise County, Arizona.

IN WITNESS HEREOF, the Declarant has executed these presents this 12th day of MAY, 2015.

DECLARANT:

BRADBURY INVESTMENTS, L.L.C.,
An Arizona Limited Liability Company

By: Neal T. Simonson
Neal T. Simonson, Manager

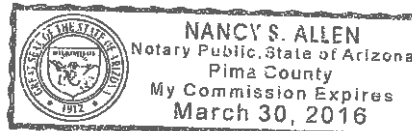
STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 12th day of May, 2015, by Neal Simonson, the Manager of Bradbury Investments, L.L.C., an Arizona limited liability company.

Nancy S. Allen
Notary Public

My commission expires:

3/30/2016





ALTA LAND SURVEY, INC.
Surveying ~ Drafting ~ Construction Staking
5930 E. Pima St., Tucson, AZ 85712 Ph. (520) 398-6651

DATE: 06/09/2015
JOB NO.: 15-117

EXHIBIT "A"
LEGAL DESCRIPTION

30' INGRESS/EGRESS EASEMENT:

A 30.00 FOOT WIDE INGRESS/EGRESS EASEMENT OVER A PORTION OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 18 SOUTH, RANGE 19 EAST OF THE GILA AND SALT RIVER MERIDIAN AND A PORTION OF LOT 3 OF SECTION 7, TOWNSHIP 18 SOUTH, RANGE 20 EAST OF THE GILA AND SALT RIVER MERIDIAN AS SHOWN IN BOOK 33 OF MAPS OF SURVEYS, PAGE 5, RECORDS OF COCHISE COUNTY, ARIZONA, LYING 30.00 FEET NORTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTH 1/4 CORNER OF SAID SECTION 12;

THENCE UPON THE SOUTH LINE OF SAID SECTION 12 NORTH 89° 52' 30" EAST A DISTANCE OF 2636.14 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 12, ALSO BEING THE SOUTHWEST CORNER OF SAID SECTION 7;

THENCE NORTH 00° 13' 21" EAST UPON THE SECTION LINE COMMON TO SAID SECTION 12 AND SECTION 7 A DISTANCE OF 1322.11 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3;

THENCE UPON THE SOUTH LINE OF SAID LOT 3 SOUTH 89° 54' 39" EAST A DISTANCE OF 2182.18 FEET;

THENCE NORTH 00° 05' 21" EAST A DISTANCE OF 551.65 FEET;

THENCE SOUTH 89° 57' 44" EAST A DISTANCE OF 220.03 FEET TO THE WEST RIGHT OF WAY LINE OF STATE ROUTE 90 AND THE POINT OF TERMINUS.

THE NORTHERLY LINE OF THE ABOVE DESCRIBED EASEMENT IS TO BE LENGTHENED OR SHORTENED TO INTERSECT THE NORTH-SOUTH MIDSECTION LINE OF SAID SECTION 12 AND THE WEST RIGHT OF WAY LINE OF STATE ROUTE 90.



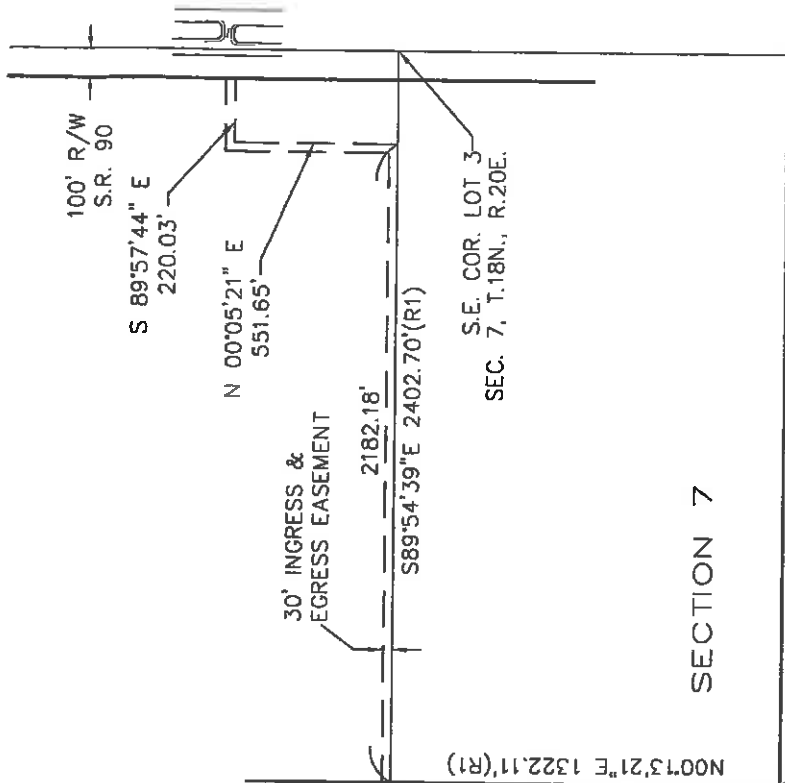
0 250 500



SCALE 1" = 500'



Donald J. Loose



SECTION 7

SECTION 12

N89°52'30"E 2336.14'(R1)

S.1/4 COR.

SEC. 12, T.18N., R.19E.

POINT OF BEGINNING

30' INGRESS/EGRESS EASEMENT

S.W. COR. SEC. 7

T.18N., R.20E.

S.E. COR. SEC 12

T.18N., R.19E.

(R1) RECORD DATA PER BOOK 33 OF MAPS OF SURVEYS, PAGE 5

EXHIBIT DRAWING

ALTA LAND SURVEY, INC.

SURVEYING, CONSTRUCTION STAKING & DRAFTING

5930 E. PIMA ST. SUITE 130
TUCSON, AZ 85712
(520) 398-6651

A PORTION OF THE S.E. 1/4 OF SEC. 12, T.18S., R.19E. & A PORTION OF LOT 3 SEC. 7, T.18S., R.20E. OF THE G.&S.R.M. COCHISE COUNTY, ARIZONA

PROJECT NO. 15-117

Drawn By: AMC

Checked By: DL

Date: 06/09/2015

Sheet: 2 of 2

EXHIBIT D

WHEN RECORDED RETURN TO:

Stephen J. Lenihan, Esq.
The Lenihan Law Firm, P.C.
1050 E. River Road, Suite 300
Tucson, Arizona 85718

Exempt Per A.R.S. § 11-1134(A)(2)

**TERMINATION OF EASEMENT AND ESTABLISHMENT OF
NEW PUBLIC INGRESS AND EGRESS EASEMENT**

Background

Bradbury Investments, L.L.C., an Arizona limited liability company (“Declarant”), established a Public Ingress and Egress Easement which was recorded on June 22, 2015 as I.D. Number 2015-11281, official records of Cochise County, Arizona (the “Original Easement”).

Pursuant to the Original Easement, the purpose of the Easement was to satisfy a certain Rezoning Condition (as defined in the Original Easement). Further, the Original Easement provided that if Cochise County determined that the Original Easement did not satisfy the requirements of the Rezoning Condition, then the Original Easement was void, *ab initio*.

On July 14, 2015, the Cochise County Board of Supervisors determined that the Original Easement did not satisfy the Rezoning Condition. Therefore, the Original Easement is void, *ab initio*. By this instrument, Declarant gives notice that the Original Easement is hereby terminated of record. As set forth herein, Declarant establishes a replacement public ingress and egress easement.

Replacement Easement

Declarant hereby dedicates to the public a perpetual easement for vehicular, pedestrian, equestrian and bicycle, ingress and egress, in, over, across and along that certain property legally described in Exhibit “A”, attached hereto and incorporated herein by reference (the “Roadway”).

This Easement is being dedicated to the public to satisfy the requirement imposed upon Easter Mountain Ranch, L.L.C., an Arizona limited liability company, to provide public access to the Coronado National Forest (Whetstone Mountains) pursuant to Rezoning Condition No. 4 of Cochise County Zoning Ordinance No. Z-11-06, adopted October 25, 2011, and recorded November 16, 2011, as Document No. 2011-24675, official records of the County Recorder for Cochise County, Arizona (the "Rezoning Condition"). In the event that Cochise County determines that this Easement does not satisfy the afore-mentioned rezoning condition, then this Easement shall be void, *ab initio*. Further, pursuant to the Rezoning Condition, in the event that the public has not accepted this Easement by improving the Roadway for vehicular use from State Route 90 to the Coronado National Forest (Whetstone Mountains) along the full length of the Roadway, on or before the date two (2) years after recordation of this Easement, then this Easement shall automatically terminate and be void, *ab initio*.

In the event this Easement is automatically terminated and/or void, *ab initio*, pursuant to the provisions of the preceding paragraph, then either Bradbury Investments, L.L.C. or Easter Mountain Ranch, L.L.C. may unilaterally record an instrument of record confirming that this Easement has been automatically terminated and/or is void, *ab initio*.

Declarant shall have the right to relocate the Roadway at any time by recording a Notice of Relocation with a new legal description referring to this Easement document.

The dedication to the general public is intended, subject to the express provisions of this instrument, to be a common law dedication consistent with the decision of the Arizona Supreme Court in *Pleak v. Entrada Property Owners' Ass'n*, 87 P.3d 831, 207 Ariz. 418 (2004).

Exhibit "A", at the time of execution of this instrument by Declarant, contains a drawing of the Roadway location (the "Drawing"). Declarant hereby authorizes Easter Mountain Ranch, L.L.C. to supplement Exhibit "A" by attaching a legal description of the Roadway, consistent with the Drawing, before or after recording this instrument in the official records of the County Recorder for Cochise County, Arizona.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

(Page 1 of 2)

An easement over the North 30.00 feet of the following described property:

Lot 1 and the East Half of the Northwest Quarter of Section 7, all being within Township 18 South, Ranch 20 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

AND

An easement over the West 30.00 feet of the following described property:

Lots 1 and 2 and the North 30.00 feet of Lot 3 of Section 7, Township 18 South, Ranch 20 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

AND

An easement over the North 30.00 feet of the following described property:

The Southeast quarter of Section 12, Township 18 South, Ranch 19 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

EXCEPT the following:

That portion of the Southeast 1/4 of Section 12, Township 18 South, Range 19 East of the Gila and Salt River Meridian, Cochise County, Arizona, more particularly described as follows;

Commencing at the East 1/4 corner of Section 12, said point being a marked stone;

Thence South 79° 46' 51" West a distance of 1341.51 feet to the Point of Beginning;

Thence continuing South 79° 46' 51" West a distance of 1341.52 feet to a point on the North-South Mid-section line of Section 12;

Thence North 00° 01' 07" East a distance of 466.00 feet to the Center 1/4 corner of Section 12;

Thence North 89° 46' 58" East coincident with the East-West Mid-section line of Section 12 a distance of 1320.17 feet;

Thence South 00° 01' 07" West a distance of 233.00 feet to the Point of Beginning.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

(Page 2 of 2)

AND

A thirty foot wide easement adjacent to the foregoing exception, the south and east lines of which easement are constituted by a line that is parallel with and 30' south and 30' east of the south and east line of the exception.

EXHIBIT "A"

(Legal Description of Property)

