



# Cochise County Board of Supervisors

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County Administrator

**ARLETHE G. RIOS**  
Clerk of the Board

## **AGENDA FOR SPECIAL BOARD MEETING AND POSSIBLE EXECUTIVE SESSION Tuesday, December 19, 2017 at 9:30 a.m.**

BOARD OF SUPERVISORS EXECUTIVE CONFERENCE ROOM  
1415 MELODY LANE, BUILDING G, BISBEE, AZ 85603

*Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Cochise County Board of Supervisors and to the general public that the Board of Supervisors will hold a meeting open to the public for the purpose of deciding whether to go into executive session. If authorized by a majority vote of the Board, the executive session will be held immediately after the vote and will not be open to the public.*

### **ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION**

#### **ROLL CALL**

*Members of the Cochise County Board of Supervisors will attend either in person or by telephone, video or internet conferencing.*

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The Board may permit public comment during the discussion of any item on this agenda. If you wish to be heard on a specific item, please sign up to be heard using the 'Specific Item' on the speaker form provided, and please list the item about which you wish to be heard. Persons will be permitted three minutes to speak.

Please note that any discussion during Executive Session is confidential and should not be shared with anyone other than those present at the meeting during the Executive Session portion.

### ***ACTION***

#### **Board of Supervisors**

*This executive session is authorized pursuant to A.R.S. § 38-431.03(A)(3) and (4), the Board may go into executive session for legal advice with the attorney of the public body and to consider its position and instruct its attorneys regarding the public body's position in pending litigation.*

1. Approve Agreement Settling Easter Mountain, LLC v. Cochise County, Case # C2016 4853.
2. Approve Docket S-12-10, a tentative plat for 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).

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Pursuant to the Americans with Disabilities Act (ADA), Cochise County does not, by reason of a disability, exclude from participation in or deny benefits or services, programs or activities or discriminate against any qualified person with a disability. Inquiries regarding compliance with ADA provisions, accessibility or accommodations can be directed to Chris Mullinax, Safety/Loss Control Analyst at (520) 432-9720, FAX (520) 432-9716, TDD (520) 432-8360, 1415 Melody Lane, Building F, Bisbee, Arizona 85603.

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**Cochise County Board of Supervisors**

1415 Melody Lane, Building G Bisbee, Arizona 85603  
520-432-9200 520-432-5016 fax board@cochise.az.gov

**AI-3742**

**1.**

**Special / Executive Session Board of Supervisors Meeting**

**Meeting Date:** 12/19/2017

Agreement Settling Easter Mountain, LLC v. Cochise County, Case # C2016 4853.

**Submitted By:** Kim Lemons, Board of Supervisors

**Department:** Board of Supervisors

**Presentation:** No A/V Presentation

**Document Signatures:**

**NAME of PRESENTER:** Britt Hanson

**Recommendation:**

**# of ORIGINALS Submitted for Signature:**

**TITLE of PRESENTER:** Chief Civil Deputy Attorney

**Mandated Function?:**

**Source of Mandate or Basis for Support?:**

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**Information**

**Agenda Item Text:**

Approve Agreement Settling Easter Mountain, LLC v. Cochise County, Case # C2016 4853.

**Background:**

Discussion with the Board regarding settlement agreement.

**Department's Next Steps (if approved):**

n/a

**Impact of NOT Approving/Alternatives:**

**To BOS Staff: Document Disposition/Follow-Up:**

n/a

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AI-3750

2.

**Special / Executive Session Board of Supervisors Meeting**

**Meeting Date:** 12/19/2017

Docket S-12-10, a tentative plat for Conservation Subdivision J-6 Ranch, Lots 1-42, Block 1 and Common Areas A, B and C Subdivision

**Submitted By:** Britt Hanson, County Attorney

**Department:** County Attorney

**Presentation:** No A/V Presentation

**Document Signatures:**

**NAME of PRESENTER:** Sara Ransom

**Recommendation:**

**# of ORIGINALS Submitted for Signature:**

**TITLE of PRESENTER:** Deputy County Attorney

**Mandated Function?:**

**Source of Mandate or Basis for Support?:**

**Information**

**Agenda Item Text:**

Approve Docket S-12-10, a tentative plat for 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).

**Background:**

On July 14, 2015, this tentative subdivision plat for Phase I was brought before the Board by Easter Mountain LLC. The Planning Director's report and recommendation is attached hereto.

Although the plat complied with all other aspects of the County's subdivision regulations, the Board determined that it did not comply with condition 4 of the conditions of rezoning the parcel regarding public access to the National Forest. Thus, the Board denied the tentative plat.

Easter Mountain then filed a lawsuit alleging wrongful denial of the tentative plat. The parties are attempting to settle the lawsuit. Among other things, the settlement, if approved by the Board, resolves the dispute pertaining to condition 4 of the rezoning by removing the condition and calls for approval of the subdivision plat. The settlement also calls for modification of condition 3 of the rezoning to allow Easter Mountain to complete construction of Phase I in fifteen (15) years instead of ten (10) years. Easter Mountain must continue to comply with all other terms of the rezoning.

With these modifications, the Board must approve the tentative plat by no later than December 20, 2017.

**Department's Next Steps (if approved):**

If approved staff will provide the applicant with an As You Are Aware letter notifying the applicant of the conditions of approval.

**Impact of NOT Approving/Alternatives:**

The settlement agreement will not come into effect and litigation will re-commence against Easter Mountain.

**To BOS Staff: Document Disposition/Follow-Up:**

N/A

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**Attachments**

Easter Mtn Phase I Staff Report 2015

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**Agenda Item Text:**

Approve Docket S-12-10, a tentative plat for 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).

**Background:**

On June 10, 2015 the Planning and Zoning Commission voted 6-1 to recommend denial of the J6 Ranch Lots 1-42 subdivision tentative plat. The discussion centered on whether or not the applicant had satisfied Condition 4 of the Board's Conditional Re-zoning approval that requires vehicular, equestrian, pedestrian, etc. access to the National Forest. The Commissioners took comment from representatives of J-6 Mescal CDO, AZ Game and Fish Department, the USFS and the applicant's engineer prior to the vote.

**I. PLANNING AND ZONING COMMISSION RECOMMENDATION**

On June 10, 2015 the Planning and Zoning Commission voted 6-1 to recommend denial of the J6 Ranch Lots 1-42 subdivision tentative plat. The discussion centered on whether or not the applicant had satisfied Condition 4 of the Board's Conditional Re-zoning approval that requires vehicular, equestrian, pedestrian, etc. access to the National Forest. The Commissioners took comment from representatives of J-6 Mescal CDO, AZ Game and Fish Department, the USFS and the applicant's engineer prior to the vote.

**II. 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.

**III. 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 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.

**IV. 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)

## **V. 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 **denial** of the J-6 Ranch, Lots 1-42, Block "1" subdivision Tentative Plat.

The following conditions shall be required 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.
1. 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.

13. Meet all Regulations required in the County Subdivision regulations for the Final Plat.

**Department's Next Steps (if approved):**

If approved staff will provide the applicant with an As You Are Aware letter notifying the applicant of the conditions of approval.

**Impact of NOT Approving/Alternatives:**

The Cochise County Subdivision Regulations, in Section 205 states that the Board of Supervisors may:

- A. Find that the tentative plat conforms with the Subdivision Regulations and approve the tentative plat as presented.
- B. Approve the tentative plat with conditions, as specifically noted.
- C. Deny the tentative plat and provide the applicant with a list of modifications, findings and considerations that must be addressed before re-submittal to the Commission.

If denied the tentative plat will be void and the applicant will not be able to submit a final plat based on this tentative plat.

**To BOS Staff: Document Disposition/Follow-Up:**

None required.