



Alpine Bank Building
917 Main Street (2nd Floor)
Post Office Box 646
Ouray, CO 81427-0646

t: 970.325.4414
f: 970.325.7333
michael@ouraylaw.com

Michael D. Hockersmith,
Of Counsel

MEMORANDUM
CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION

TO: Brian Rogers, San Juan Vista Landowners' Association, Inc. ("SJVLOA")
FROM: Michael D. Hockersmith
DATE: April 8, 2021
RE: Status of Easement to United States Forest Service

I have been asked by the SJVLOA to review an easement granted to the United States Forest Service in 1971 by Mario Zadra. Specifically, I have been asked to opine on whether SJVLOA and/or any of its owner/members have any rights to utilize this easement for access to the National Forest. In this review I have examined the easement from Zadra to the United States, recorded on June 19, 1972 at Book 341, Page 659 in the office of the San Miguel County Clerk and Recorder's Office (hereinafter referred to as the "Easement"). A copy of the Easement is attached to this memorandum. The Easement deed describes its course as following the centerline of "Leopard Creek Road No. 875," proceeding in a generally southerly direction through San Juan Vista and ending at the intersection with the National Forest boundary. Reviewing the San Juan Vista Subdivision Plat, Filing 1, filed of record with the San Juan County Clerk and Records Office on July 1, 1974 at Plat Book 1, Pages 46-48 (the "Plat"), it appears that the Easement follows Willow Road, turns left onto San Juan Drive, then onto Forest Lane, proceeding past the cul-de-sac and ending at the intersection of the Easement with the National Forest. Attached is a copy of the San Vista Plat showing the course of the Easement.

An easement confers an enforceable right authorizing one to do or maintain something on the land of another. *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229, 1234 (Colo. 1998). A grant of easement creates what are called "dominant" and "servient" estates. The easement owner is the holder of the dominant estate and the underlying property owner is the holder of the servient estate. As one may glean from these terms, the rights granted to the easement owner are superior to the rights of the underlying landowner. While the underlying property owner may still utilize the area encompassed by the easement, this use may not impair or otherwise conflict with use of the easement by the easement owner.

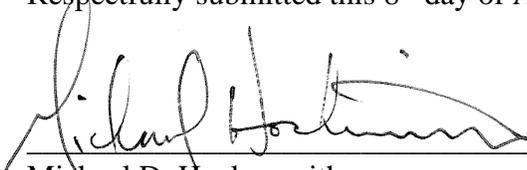
In this instance, the Zadra deed to the United States granted to the United States and its acquiring agency, the Forest Service, the right to cross Zadra's property along the course of the Easement. Zadra retained the non-exclusive right to utilize the Easement area so long as his use did not conflict with the rights of access granted to the United States. Subsequent to the granting of the Easement, San Juan Vista Subdivision was created with the filing of the Plat in 1974. The Plat created the various lots as shown thereon and as noted above, laid out the private roads for

use by all owners within SJV. Therefore, there is no doubt that all owners and their guests may utilize the roads within SJV, including those that correspond to the course of the Easement over Leopard Creek Road No. 875. Clearly, the use of the roads does not conflict with the rights of the United States for its access. However, it is my opinion that the rights of SJVLOA, and its owners in general, to use the Easement for access ends at the cul-de-sac at the end of Forest Lane.

As one may tell from a review of the Plat, the course of the Easement continues south past the Forest Lane cul-de-sac and runs along the west boundaries of Lots 18 and 17 and the east boundary of Lot 16, extending fifteen feet into each of these Lots. As the owner of the Easement, it is only the United States and its agencies that may utilize this section of the Easement for access to the National Forest, not the SJVLOA or its general membership.¹ However, Lots 16, 17 and 18 are now the servient estates subject to the rights of the United States as the dominant estate holder. The owners of these lots do have the right to use the Easement as it crosses their properties for any purposes, but they may not obstruct, impair or otherwise interfere with the rights of the Easement owner, the United States.

Therefore, in conclusion, it is my opinion that the United States of America, as the owner of the Easement, has the dominant rights to use the Easement for access to the National Forest. The owners of Lots 16, 17 and 18 each have the retained right, as servient estate holders, to use the Easement to the extent that it is present on each of their properties for any purpose consistent with rights of the United States. There are no rights available to SJVLOA or its other owners to use the section of the Easement that extends south of the Forest Lane cul-de-sac. Let me know if you have any further questions about this matter.

Respectfully submitted this 8th day of April.



Michael D. Hockersmith

¹ I would note that the Plat also shows a drainage easement along the course of the Easement, but its presence is not relevant to my analysis in this Memorandum.