

Dilley Ranch

January 2024 POA meeting
Bobcat Trail timeline and detail

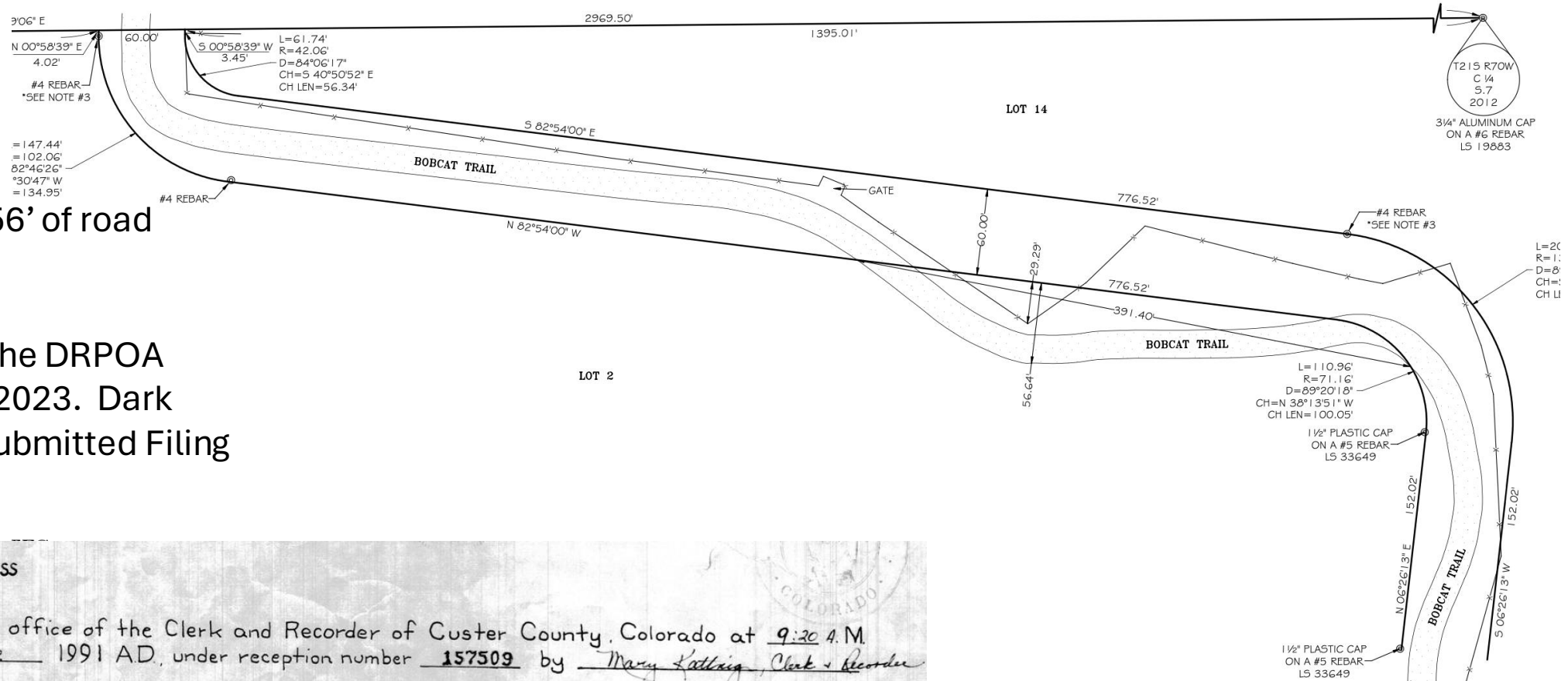
Timeline overview

- On March 22, 2023 John Peck notified the DRPOA Board of a discrepancy between a part of Bobcat Trail and his property due to a survey he had done in 2020. John initially brought this to the Board in 2020. At that time the president of the DRPOA (Al Baldwin) brought it to the attention of an attorney and no further action was taken.
- It has been brought to the Board's attention again now that John is no longer a member of the Board.
- June 12, 2023 DRPOA received a letter from Laurel Quinto, an attorney representing John. The letter indicated Mr. Peck would sue the DRPOA unless several conditions were met.

Area of concern



Portion of road in dispute



Issue is with 391' by 56' of road
(Less than 1/2 acre)

This drawing is from the DRPOA survey completed in 2023. Dark solid lines are from submitted Filing 2 documents, 1991

STATE OF COLORADO ss
COUNTY OF CUSTER

This instrument filed in the office of the Clerk and Recorder of Custer County, Colorado at 9:30 A.M. this 7th Day of NOVEMBER 1991 AD, under reception number 157509 by Mary Ketting, Clerk & Recorder

Purchase history Lot 2 Bobcat Trail

Bobcat Trail was registered with the county in November 1991. First sale February 1992. John purchased property 26 years after road install. 29 years before survey and 32 years before demand

| Sale Date | Sale Price | Recording Number | Instrument | Qualified |
|---|------------|------------------|------------------------|-----------|
| 3/30/2017 | \$0 | 229578 | QUIT CLAIM DEED(QC) | False |
| Grantor: PECK RITA J Grantee: PECK JOHN C JR TRUSTEE JOHN C PECK JR LIV TR | | | | |
| 11/12/2007 | \$150,500 | 595225 | WARRANTY DEED(WD) | True |
| Grantor: RICE PATRICK J & PATRICIA A Grantee: PECK RITA J | | | | |
| 11/7/1998 | \$87,500 | 347218 | WARRANTY JOINT TEN(WJ) | True |
| Grantor: JUNG KRISTIN Grantee: RICE PATRICK J & PATRICIA A | | | | |
| 12/26/1995 | \$1,997 | 294199 | WARRANTY DEED(WD) | True |
| Grantor: HALL JOHN A & FOSTER Grantee: TERRANCE L | | | | |
| 2/10/1992 | \$43,700 | 23090 | WARRANTY JOINT TEN(WJ) | True |
| Grantor: D & K PARTNERSHIP Grantee: HALL & FOSTER | | | | |

Demand letter from John's Attorney

The letter from Ms. Quinto on John's behalf required the DRPOA to:

1). Remove the fence installed on Mr. Romero's property (Lot 14A)

2). Give Mr. Peck an additional 2.75 acres of DRPOA Property

3). Install two cattle guards at DRPOA expense

4). Install two automatic gates along Bobcat Trail at DRPOA expense.

From "June 12 Peck letter to DRPOA.pdf" sent from Ms. Quinto to the DRPOA Board

There are two solutions to resolve this issue with finality. The first, and most expensive option, is for Mr. Peck to initiate litigation against the Association and the neighboring property owner to have all continuous trespasses removed from his property. Or, to save everyone the time and expense of protracted litigation, the Association can resolve the issue by doing the following:

1. Require the neighboring property owner to relocate any trespassing fence to his parcel's legal boundary line as shown on the plat map in **Attachment A**;
2. Convey to Mr. Peck that portion of the right-of-way not utilized for the road as shown on **Attachment A** and allow Mr. Peck to place a fence along the outer boundary, fencing in his full parcel;
3. Fund the construction of a cattle guard where Bobcat Trail enters and exits Mr. Peck's Property; and
4. Fund the construction and maintenance of an automatic gate across Bobcat Trail where it enters and exits Mr. Peck's property, pursuant to the DRPOA Gate Policy (adopted March 6, 2021). Gates are necessary in addition to a cattle guard because just a cattle guard isn't sufficient to keep in Mr. Peck's intended sheep and goats.
5. In exchange for the above actions by the Association, Mr. Peck will grant an express 15-foot-wide easement to the Association for Bobcat Trail as it's currently constructed.

Letter response

- As a result of the demand letter from Mr. Peck the DRPOA Board met with a local attorney, Wade Gateley for a 1-hour free consultation.
- Prior to this meeting the original documents filed with the county were obtained and brought to the meeting for reference.
- Mr. Gateley indicated during that hour that the cases cited by Ms. Quinto did not apply and there was no trespass. Additionally, after an 18-year period, there was an easement on the road as it exists.
- Mr. Gateley also indicated the cost of litigation was expensive and there was no ability to recover attorney cost on either side.

Option to settle

- As a result of the meeting with Mr. Gateley the Board wanted to try and negotiate rather than litigate.
- DRPOA sent an email to Ms. Quinto on July 11 indicating we are taking the letter sent by Mr. Peck seriously and after a survey would respond with a proposal.
- The Board hired Landmark Surveyors to confirm the information Mr. Peck provided and on August 14 the board received information that generally supported the survey we were provided.
- As a result of the survey the Board submitted a proposal to John that we thought would resolve the issue.

Settlement offer sent

The Board submitted an offer for John to move the road at his expense and the DRPOA would not object. This would provide an opportunity for John to reclaim his property even though the Board felt legally there was no obligation to do this, it would be better than fighting with attorneys. Max out of pocket would have been \$15,000

“Letter to JP Attorney 9-11-2023.doc”

Bobcat Trail was created before John Peck purchased his property, and has been established by adverse possession. In addition, there was no survey performed before John purchased Lot 14A, Filing 2 of Dilley Ranch. Since the DRPOA was created after the roads were constructed, the DRPOA is not responsible for moving the road to align with the survey. According to our governing documents, the Association is required only to maintain the existing roads on the Dilley Ranch.

However, since the surveyor’s reports (Geomark and Landmark) based upon the previous markers (only one of which is an original), the DRPOA will not oppose John Peck from moving the road at his own expense. The new portion of the road will need to meet the DRPOA standards and be approved before road construction begins. During construction of the new road, the DRPOA will need to know the time frame of the construction to be able to alert delivery services (UPS, Federal Express, Owners) that the road is unavailable. The DRPOA board will monitor and supervise the construction during this time frame.

After the new portion of the road is constructed and approved, the DRPOA will agree to maintain that portion of the road that has been moved, including road base, snow plowing and grading just like all of the other roads in the Dilley Ranch.

At this point we have a verbal quote of approximately \$12,000 to \$15,000 for the road to be moved. This quote, we feel is representative of the realistic costs and max out of pocket expense to get the road moved. The Association has already spent money for the survey and our attorney, and will agree to pay for the pins to be placed correctly in the disputed area.

Settlement offer rejected

I understand that the DRPOA commissioned a pin location service on August 3, 2023. I've reviewed the ROW and road depiction put together by Landmark Surveyor, which shows an identical encroachment as the other surveys that have been provided to DRPOA by Mr. Peck. Now that DRPOA has conducted its desired due diligence, it is time to resolve this issue. To that end, Mr. Peck makes the following offer of compromise to resolve all issues concerning the encroachment:

This is the only offer submitted to John and his lawyer. No other offers were discussed or offered in an official capacity prior to the written offer submitted on 9/11/23

1. Mr. Peck will conduct all initial work required to move the road to be within the original right of way, which will include:
 - a. Removing the existing fencing (roughly 2 weeks of man hours);
 - b. Clearing trees and brush from the right of way where the road will be moved to (roughly 2 weeks of man hours);
 - c. Initial cut-in of the road using Mr. Peck's own backhoe (roughly 24 hours at \$45/per engine for operating the backhoe)
2. Mr. Peck will provide notice to the DRPOA once each portion of phase 1 is completed. Once Mr. Peck is finished with the above work, DRPOA must organize and fund finishing the road, which will include:
 - a. Hiring a bulldozer operator to finish the road construction to code (roughly 8 hours of work); and
 - b. Installing road base and any culverts that are needed.
 - c. DRPOA must begin this work in paragraph 2 within 20 days after Mr. Peck provides notice that the work in paragraph 1 is complete and the road is ready for phase 2 work.

To address your letter. Mr. Peck cannot agree to your offer for several reasons.

First, the more than fair offer Mr. Peck outlined on September 9 was in substance the offer DRPOA Board member David Lanthem offered to Mr. Peck as a representative of the Board in July. The Board cannot now reject entirely what Mr. Lanthem represented the Board agreed to.

Second, Mr. Peck will not accept responsibility and the associated liability for building phase 2 of the road for DRPOA, and it is unreasonable for this to be requested. To avoid such issues, DRPOA must be responsible for phase 2 of the road construction.

Board response

At this point the Board had no option but to retain an attorney.

The Board unanimously agreed that a good faith offer had been made, and Bobcat Trail was in place long before John purchased the property and it was his responsibility to do a survey before buying.

Agreeing to any type of road move at the DRPOA's expense set a bad precedent and could not be accepted.

**Board of Directors Meeting Minutes
September 16, 2023 @ 10:00am
Meeting Location – Claire McCutcheon Residence
Conference Phone 800-719-7514
Conference Code 733718
Ref. DRPOA By-Laws, Article II, Sections 2,3 & 4**

**Call to Order: Claire McCutcheon, President at 10:06am
Roll Call: Claire McCutcheon, Lavonne Bullard, Alex Wilcox, David Latham
Via Phone: Jaron Tyner**

This meeting is to discuss a response to the letter received September 12, 2023 from Laurel Quinto, the attorney for John Peck.

A motion was made by C. McCutcheon, to engage Wade Gateley as our attorney of record regarding the Bobcat Trail location brought to our attention by Mr. Peck and his attorney Ms. Quinto. Seconded by L. Bullard. Vote was unanimous.

Comments by members of the board indicating no documentation was provided to Mr. Peck apart from the e-mail dated September 11, 2023 sent by C. McCutcheon to Ms. Quinto.

Claire McCutcheon and David Latham have been in contact with Ronnie Romero, the property owner of lot 14A. He has indicated he will provide a written response regarding his stance on repositioning the road. C. McCutcheon will follow up with Mr. Romero in regard to the response.

Claire McCutcheon made a motion to clarify the position of the board regarding the location of Bobcat Trail. The DRPOA board stance is to rescind any previous offer and assert that the road location must remain as it is through Adverse Possession / Eminent Domain. The road was in place for more than 18 years, and in place before Mr. Peck purchased the property. Seconded by D. Latham. Vote was unanimous.

Meeting was adjourned at 10:32am

DRPOA representation

September 27 Email to Ms. Quinto from Mr. Gateley

Dear Ms. Quinto:

Please be advised that I represent Dilley Ranch Property Owners Association on your client John Peck's claims regarding Bobcat Trail. Please direct all further correspondence and communications in this matter to me.

The Dilley Ranch Property Owners Association withdraws all previous offers to settle this matter. The Association Board voted unanimously at a meeting on September 16, 2023 to keep Bobcat Trail in its current location.

DRPOA has no legal obligation to remove fences or move the current location of Bobcat Trail, which is a prescriptive easement established by adverse possession of more than 18 years. See ***Clinger v. Hartshorn*, 89 P.3d 462 (Colo. App. 2003); C.R.S. 38-41-101**. Please note that moving Bobcat Trail would also require the permission of adjacent landowner Ronnie Romero, and he has not agreed to Mr. Peck's proposals.

No response

- After that letter there was no response.
- Ms. Quinto then reached out to discuss the urgent need for Mr. Peck to place a fence.
- DRPOA Board members met with John which resulted in an agreement attempt to resolve the fence location.

Fence placement

Dear Ms. Quinto,

Thank you for your e-mail of October 25 regarding your client John Peck's proposed fence. I have forwarded your e-mail to the DRPOA Board, and discussed it with the Board members.

It appears that the proposed fence will be placed in part on the property of Ronnie Romero. I do not represent Mr. Romero, and you will need to contact him directly to negotiate and possibly obtain his permission prior to any construction of the proposed fence.

With regard to the road, it is the position of the DRPOA Board that the fence cannot interfere with or obstruct any portion of the traveled roadway and all ditches necessary for maintaining the roadway. It appears from the attached photograph that your client has already removed a ditch, regraded beside the road, and placed a fence post for the proposed new fence dangerously close to the traveled part of Bobcat Trail. The removal of the ditch, regrading and placement of the new fencepost is hindering maintenance of the road, because snow cannot be pushed into the ditch, and moisture from the road cannot be drained into the ditch. Please remove that fencepost (or move it away from the road) and re-create the ditch.

In addition, Mr. Peck's existing fence is encroaching on the ditches of Bobcat Trail in some locations (see the second attached photograph as an example). The Association's road maintenance crew will continue to maintain the road, but be advised that if there are any damages to his fence or fence posts which have already been installed due to snow plowing or other maintenance of Bobcat Trail, the DRPOA will not be responsible for any damages. Mr. Peck will be responsible for any damages to his fence resulting from his encroachment on the DRPOA easement. Additionally, Mr. Peck would be responsible for any damages done to equipment used for maintenance/snow removal on Bobcat Trail.

Work done by John encroached on the DRPOA easement and will cause damage to the road.

Additionally, the fence was close to the road in places that could cause issues that DRPOA cannot be responsible for.

Road damage



In perspective



Fencing issue clarification

I believe that these misunderstandings about Mr. Peck's proposed fence location, and the incorrect allegation that he's interfered with any ditches, can be quickly resolved by the Board visiting this portion of Mr. Peck's property and discussing any legitimate concerns. Please provide the Board's availability **between now and 11/13** to meet with Mr. Peck to visit the disputed portion of fence line on Bobcat Trail. This invitation is simply a courtesy to avoid future disputes, but if the Board will not meet for a site visit by 11/13, Mr. Peck will proceed with constructing his fence within his discretion.

The board met with John and drafted "John Peck Fence / Bobcat Trail Agreement"

The Dilley Ranch Property Owners Association Board of Directors met with John Peck on November 7, 2023 at 9:00am.

The Board and John walked along Bobcat Trail where John is proposing to erect his fence on the south – southwest side of Bobcat Trail.

The DRPOA Board agreed to the placement of this fence on the condition that John Peck will take full responsibility for any damages to his fence due to routine maintenance and/or snowplowing of Bobcat Trail.

Fence agreement rejected by Mr. Peck

The Board suggested we get everyone in a room together and work out an agreement to keep things moving and reach resolution. That suggestion was rejected.

As for the proposal that all parties and their attorneys meet in Westcliff, I appreciate the sentiment, but Mr. Peck is not interested at this time in signing any comprehensive settlement agreement. There is no agreement from Mr. Peck that the Dilly has a prescriptive easement through his property, and he won't grant an express easement without compensation for the same. For now, Mr. Peck is licensing the existence of this encroachment by Bobcat Trail. If the Dilly would like to make a proposal that would be the basis for a comprehensive written settlement agreement, I will be happy to relay that to Mr. Peck and advise him on such consistent with Colorado law. Without that as a starting point, I respectfully believe an in-person meeting would be a waste of money for both of our clients. If you'd like to give me a call or have a video conference to discuss what you disagree with concerning my email dated 11/29, that seems like it would be a more productive starting point. I've attached that email again here for your reference. I also see a great benefit in you and I speaking as opposed to exchanging emails if the Dilly is motivated to get this issue put to bed.

* direct copy of the Ms. Quinto email

Current status

At this point John and his attorney have rejected any attempt to resolve any issue related to Bobcat Trail. Mr. Gateley sent the following in response to a previous communication from Ms. Quinto.

Dear Ms. Quinto,

I have received your e-mail of December 14 and forwarded it to my client, the DRPOA Board.

The previously proposed settlement agreement between the parties has been rejected by you. The DRPOA Board does not have any new settlement proposals at this time, but will be meeting in January to discuss these issues. If the Board approves a new settlement proposal, I will forward it to you following the meeting.