



## Legislation Details (With Text)

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**Title:** A Resolution Accepting the Donation of Property from Daniela F. Cusack for a Public Purpose to the City of Colorado Springs

**Presenter:**  
Dan Higgins, Chief Water Services Officer  
Jerry Forte, P.E., Chief Executive Officer, Colorado Springs Utilities

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. CusackExhibitA, 2. Cusack Arbitrator's Decision & Exhibit A, 3. CusackDaniela Exhibit-A-QCDeed4-19-16, 4. CusackMark Exhibit-A-QCDeed-4-19-16, 5. Cusack 1 - QUIT CLAIM DEED - Exhibit 1, 6. Cusack 2 - QUIT CLAIM DEED - Exhibit 2, 7. Cusack Exhibit-B-BoundaryAgreement-06.15.16revisions, 8. Cusack FrenchCreekDraftLandSurveyPlat050916, 9. Cusack Exhibit-C, 10. Cusack Exhibit-D-License-4-1-15, 11. Cusack Exhibit-D-Licenseagreement, 12. Resolution Accepting Donation (Cusack), 13. CusackExhibitB\_Part 2\_Final Appraisal Report 06-05-15, 14. Cusack Final Appraisal Report 06-05-15, 15. Resolution 84-16

Date	Ver.	Action By	Action	Result
8/23/2016	1	City Council	adopted	Pass

### A Resolution Accepting the Donation of Property from Daniela F. Cusack for a Public Purpose to the City of Colorado Springs

**Presenter:**

Dan Higgins, Chief Water Services Officer  
Jerry Forte, P.E., Chief Executive Officer, Colorado Springs Utilities

**Summary:**

Request for City Council to approve a Resolution to accept the donation of land from Daniela F. Cusack for a Public purpose to the City of Colorado Springs and to approve the settlement agreement resolving the Lawsuit.

**Previous Council Action:**

This matter was brought to City Council as an executive session item through the City Attorney's Office. Dan Higgins briefed City Council on the facts, terms of the settlement agreement, and recommendations for approval. Mr. Higgins suggested approval of the settlement agreement should include Mark Cusack's and Daniela Cusack's agreement to allow a twenty-five (25) foot wide strip of land located within, along and contiguous to the northern boundary of the Property where it abuts the CDOT right-of-way for Highway 24 for the Ute Pass Trail should CDOT refuse to grant El Paso County a right-of-way to extend the Ute Pass Trail. City Council agreed the settlement agreement should include an additional term requiring a 25 foot strip of land for the construction of the Ute Pass

Trail, if necessary. This additional term has been included in the settlement agreement.

**Background:**

The City owns certain real property located in the West ½ of the Southeast ¼ of Section 26, Township 13 South, Range 68 West, of the Sixth Principal Meridian, Colorado located in Ute Pass, west of Colorado Springs and near the town of Cascade. Mark Cusack and Daniella Cusack own land located inside the above-described City owned land. See Exhibit A, Map A, depiction of the subject area and land ownership.

Mark Cusack filed a lawsuit seeking (1) declaratory relief against the City, and (2) a decree quieting title, against Daniela, to a 2.07 acre rectangular tract of land located adjacent to Highway 24 and inside the land owned by the City (“Property”). See Exhibit A, Map A, tract of land depicted as “Subject Tract.”

In 1972, Anne Cusack Johnson conveyed to the City a 50 foot section of land located inside the Property for the purpose of installing and maintaining water delivery pipes and other utilities. However, the conveyance to the City was made after Ms. Johnson had already conveyed the entirety of the Property to other family members. Thus, she did not have authority to grant any interest to the City. The City, believing it had a properly conveyed tract of land, installed pipes and other apparatuses on the 50 foot wide section. Accordingly, the City has a vested interest in the utilities, water source, and delivery system routed to and located on the Property. Based on the City’s interest, Colorado Springs Utilities (“CSU”) contacted Daniella inquiring whether she would sell the Property to the City. Before any negotiations took place, however, Mark filed his Lawsuit.

Mark Cusack had been paying taxes on the Property for several years and therefore claimed ownership under Colorado’s adverse possession statutes. Information developed during the course of the Lawsuit suggests Daniela Cusack is currently the fee owner of the Property. Daniela Cusack, however, indicated she did not have the funds necessary to fight Mark Cusack’s claims and therefore offered to donate the Property to the City for a public purpose. Part of the terms of settlement also require Mark Cusack to sign a Quitclaim Deed granting the City all his purported interests and rights in the Property.

Daniela Cusack will claim a tax benefit for the donation, which requires City Council to approve and accept such a donation via resolution. See the City’s Procedure Manual for the Acquisition and Disposal of Real Property Interest, Chapter 4, Section 4.4. Utilities desires to submit this matter to City Council as a “consent” item for approval during the next regular public meeting on August 23, 2016. Once approved, the settlement and agreements between the parties will go into effect, completely resolving the Lawsuit.

The Parties to the Lawsuit were unable to come to a mutual agreement on certain terms of the settlement agreement and therefore submitted the matter to arbitration for the limited purpose of resolving their objections to the settlement terms. During the arbitration process the parties reached an agreement on all settlement terms. The Parties’ arbiter issued and award, based on the parties’ agreements, and directed the parties to execute the settlement agreement. See Exhibit B, Arbiter’s Award and Settlement Agreement.

The key terms of the settlement agreement include the following:

- Daniela Cusack would transfer ownership of the property crossed by the North Slope Pipeline

to the City.

- Mark Cusack would relinquish all claims to the pipeline corridor parcel.
- The City would agree to limit development of the Ute Pass Trail, or any other public recreational access, on its property to only the east side of the French Creek drainage (see to the east of the green and red lines on Exhibit A, Map B, below). Per the request of City Council during an executive session regarding this matter, the City will except out a 25 foot section of land across the most northern boundary of the Property contiguous to CDOT owned property for the completion of the UTE Pass Trail.
- Utilities would construct and maintain a fence between Highway 24 and the property transferred to the City.
- Utilities will agree to installation of an additional 3 strand barbless wire fence (see green line on Map B) built between Mark Cusack's property and the Ute Pass Trail once it is developed (8-10 years). Mark Cusack is required to pay the cost of maintaining this fence. Additionally, Mark Cusack is authorized to construct a more substantial fence, subject to the approval of the City.
- The City would grant Mark Cusack and Daniela Cusack access to the transferred Property and use of an existing access road over City-owned land for access to their other properties in the western portion of the French Creek drainage.

**Financial Implications:**

N/A

**Board/Commission Recommendation:**

This matter involves land that will be donated to the City and land subject to the Lawsuit, currently owned by the City. Accordingly, this matter was brought directly to City Council for advisement, recommendations, and approval.

**Stakeholder Process:**

Upon approval of the Resolution by City Council and approval of the settlement agreement, the parties will execute all necessary agreements, deeds, and other legal documents and the City's Real Estate Services Manager will execute and file all necessary Deeds, licenses, and easements.

**Alternatives:**

N/A

**Proposed Motion:**

Approve the Resolution authorizing the donation of property from Daniela F. Cusack for a Public purpose to the City of Colorado Springs and approve the settlement agreement resolving the lawsuit entitled; Mark Cusack v. City of Colorado Springs, et al., El Paso County District Court, Case number 2013CV32158.

N/A