

Henry P. Roybal
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: *December 1, 2015*

TO: *Board of County Commissioners*

FROM: *Michael Kelley, Public Works Department Director*

VIA: *Katherine Miller, County Manager*

ITEM AND ISSUE: *BCC Meeting December 8, 2015*

Approval of Application for Business Lease to the New Mexico State Land Office for 320 Acres of State Trust Land Adjacent to the Thornton Ranch Open Space (Public Works / Colleen Baker)

SUMMARY:

The purpose of the Application for Business Lease to the New Mexico State Land Office is to obtain a business lease on 320 acres of State Trust Lands adjacent to Santa Fe County's Thornton Ranch Open Space that will allow the County to continue to manage these lands as part of the open space.

BACKGROUND:

In 2000 Santa Fe County purchased 780 acres from Mr. Gene Thornton that included Petroglyph Hill under the Open Space and Trails Program. Under the purchase agreement, Mr. Thornton transferred the leasehold interest in 320 acres of adjacent State Trust Land to the County. The County has maintained the agricultural lease on the State Trust Land since acquiring the property and manages the lease as part of the Thornton Ranch Open Space.

Staff has been consulting with the SLO over the last several months concerning the development of the Master Plan for the Thornton Ranch Open Space. The SLO property is a significant inholding between the southern boundary of the County open space and the BNSF Railroad. The property is integral to the management of the cultural resources associated with Petroglyph Hill and development of recreational trails within the open space. Santa Fe County previously held an agricultural lease to the property with an annual lease payment of \$230.05. The State Land Office has determined that an agricultural lease is not the appropriate type of lease for open space and advised the County to submit an Application for a Business Lease for the 320 acres in order to construct the proposed trail network through the property and allow public access.

The Business Lease would be for a 25 year term. The State Land Office will complete an appraisal of the property to determine the rental value. The estimated annual rental is \$10,000. The annual rental is included in the FY16 General Fund Budget.

102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX:
505-995-2740 www.santafecountynm.gov

ACTION REQUESTED:

Approval of Application for Business Lease to the New Mexico State Land Office for 320 acres of State Trust Land adjacent to Thornton Ranch Open Space.



NEW MEXICO STATE LAND OFFICE COMMERCIAL RESOURCES DIVISION

STANDARD BUSINESS LEASE APPLICATION PACKET

- I. Business Lease Application Process
- II. Application for Business Lease
- III. Standard Criteria for Surface Surveys
- IV. Standard Criteria for Appraisals
- V. Business Leasing Procedures for the Protection of Cultural Properties
- VI. Request to Lease Land Currently Leased
- VII. Partial Relinquishment, Release and Quitclaim Deed
- VIII. Application to Make Improvements
- IX. Application for Assignment of State Business Lease
- X. Rule 9
- XI. Schedule of Fees

This packet contains information helpful in understanding the Business Lease Process.

Rule 9 applies to every Business Lease.

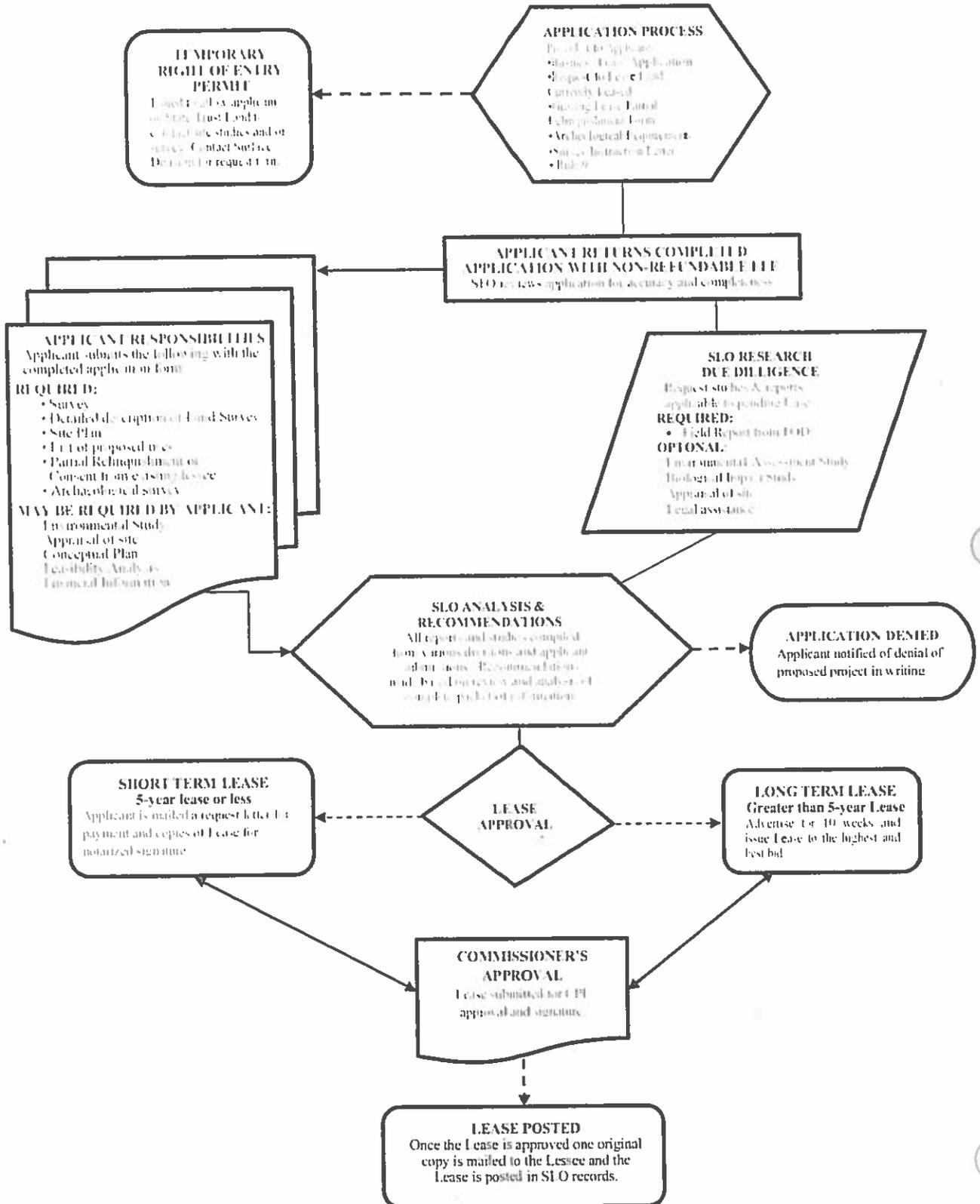
Please read it carefully and let us know if you have questions.

COMMERCIAL RESOURCES DIVISION

(505) 827-5724

COMMERCIAL RESOURCES DIVISION

BUSINESS LEASE APPLICATION PROCEDURE





**NEW MEXICO
STATE LAND OFFICE
COMMERCIAL RESOURCES DIVISION**

APPLICATION FOR BUSINESS LEASE

To: Commissioner of Public Lands
P.O. Box 1148
Santa Fe, New Mexico 87504

New Lease No. _____
(assigned by NMSLO)

Existing Lease No. _____

I, Santa Fe County
(Name of the legal entity, or if applying as an individual, the personal name)

State of New Mexico
(State of incorporation)

a citizen over the age of twenty-one years (or a corporation authorized to do business in New Mexico) do hereby make application for a business lease upon the following described lands, or such portion thereof as may be available for leasing, situated in the County of Santa Fe, State of New Mexico. I submit herewith a \$50.00 non-refundable application processing fee upon the following described lands:

DESCRIPTION OF LAND *(Enter amount of acreage in each Quarter Quarter Subdivision.)*

TOWNSHIP	RANGE	SECTION	ALIQUOT (Subdivision)	ACRES
14N	09E	32	NE4 NE4NW4 S2NW4 NW4SW4	320

Attach a metes and bounds survey with legal description when submitting the application.

*Please give general location or address of property if applicable:

600 Camino Los Abuelos/County Rd. 42, Galisteo, NM 87540

1. State the proposed use of the land:

Natural and cultural resource conservation, non-motorized recreation, interpretation and outdoor education.

2. Enter applicant project name or number *(optional)*:

Thornton Ranch Open Space

3. Is this surface site part of a larger project? If yes, please provide a project summary.

Yes. Santa Fe County owns and manages the Thornton Ranch Open Space that is adjacent to the State Trust Lands described above. The County proposes to manage the State Trust Lands as part of the County's open space. A project summary is attached with the draft Site Plan.

4. Please check the box that matches the lease term you are requesting:

5-year lease.

Long-term "bid lease".* Enter the number of lease years requested: _____

25-year Municipal Lease for City or County Government.

*A "bid lease" means a business lease entered into by the commissioner after the public advertisement and public auction required by the Enabling Act. If you are requesting a "bid lease" please indicate the number lease years you are requesting.

5. Are there any existing improvements on the land: (If so, give type and description): Yes No

6. List all improvements and equipment you intend to place on the land and the approximate value of same, and attach a "Site Plan" showing improvements to be constructed and their location on the trust land: (A separate sheet may be attached with this information.)

The proposed improvements include a non-motorized, multi-use, regional trail along the BNSF Railway corridor on the southern border of the property and an internal network of hiking, mountain biking and equestrian trails. See attached Site Plan.

7. Estimated date for completion of improvements (month, day, year): September 30, 2018

8. Do you intend to sub-lease? Yes No

If yes, list all sub-lessees. Also, please complete "Application to Sublease" for each sub-lessee.

(A copy of all contracts will be required.)

9. If there is an existing surface lessee you will be required to furnish a "Partial General Relinquishment" or "Consent to Lease Land Currently Leased" granting permission to lease trust land under existing lease. Please contact the Commercial Resources Division to verify you are using proper form and obtain contact information for the existing lessee.

10. State the proposed access to the site.

Access to the site will be restricted to non-motorized, recreational trails originating from the trailhead off of County Rd. 42.

11. Please attach your proposed "Close-out Plan." You may be required to post a bond to assure reclamation of the site. You will also be required to remove all your improvements upon termination of the lease.

12. Applicant/Lessee shall be solely liable for compliance with all local, state, federal laws in addition to policies of the State Land Office, including but not limited to:

- a. The Endangered Species Act (ESA) of 1973 as amended (16 USC Ch. 35), 75-6-1 NMSA 1978, 19.21.2 NMAC, 17-2-37 through 17-2-46 NMSA 1978, and 19.33.2 through 19.33.6 NMAC regulating plant and animal species protected at the state or federal level or both; and
- b. The Cultural Properties Act, The Cultural Properties Protection Act, and the Prehistoric and Historic Sites Preservation Act. NMSA 18-6 and 16 USC 416 to 467. Whenever an investigation is required the applicant shall furnish the basic NMCRIS Investigation Abstract and Cultural Resource Findings Report as well as any information obtained through additional survey(s) or other required compliance actions to the NMSLO Trust Land Archaeologist.

13. Enter the applicant contact information and the field contact information:

Applicant Contact: Katherine Miller

Field Contact: Terry Lease

Phone: (505) 986-6200

Phone Number: (505) 992-3038

Mobile: _____

Field E-mail: tjlease@santafecountynm.gov

Email Address: kmiller@santafecountynm.gov

I, _____, the above applicant, do solemnly swear, or affirm,
(Please print name of applicant or of attorney in fact / authorized agent)
that each and every statement made in this application is true and correct to the best of my knowledge and belief.

Signature of Applicant

State of Parent Corporation & Incorporation No.

Printed Name of Signatory

Street Address

Attorney in Fact or Authorized Agent

City, State and Zip Code

Acknowledgment for an individual capacity:

State of _____

County of _____

This instrument was acknowledged before me on the _____ day of _____ (month), 20____ by

_____ (name(s) of person(s)).

(Seal)

Signature of notarial officer

My commission expires: _____

For an acknowledgment in a representative capacity:

State of New Mexico

County of Santa Fe

This instrument was acknowledged before me on the _____ day of _____ (month), 20____ by

_____ (name(s) of person(s)) as Chair

(type of authority, e.g., officer, trustee, etc) of Santa Fe Board of County Commissioners (name of party on behalf of whom instrument was executed.)

(Seal)

Signature of notarial officer

My commission expires: _____

Approved as to form

Santa Fe County Attorney

By: [Signature]

Date: 11/18/15

(Seal) [Signature]

11/22/15

\$50.00 APPLICATION FEE*

* Please make checks payable to "Commissioner of Public Lands". When you provide a check as payment, you authorize the State of New Mexico to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

Applicant: Be sure you give a copy of this to your surveyor

NEW MEXICO STATE LAND OFFICE Standard Criteria for Surface Surveys

1. REQUIRED SURFACE SURVEY

2. Survey plats must show land in aliquot parts. Plats of land surveys used for transactions involving trust lands administered by the Commissioner of Public Lands and the State Land Office (including surveys of lands that may be offered in exchange for state trust lands) must show the land surveyed in aliquot parts, and for any partial quarter-quarter section, lot or partial lot included must show the acreage in each such partial quarter-quarter section, lot or partial lot. The survey plat also must depict all rights of way and easements that affect the land being surveyed and include a reference to the recording information for all documents relating to the creation or use of such rights of way or easements. The survey plat also must show the acreage, by aliquot part, partial quarter-quarter section, lot or partial lot, for each right of way and easement. The survey plat also should include the metes and bounds for each parcel, right of way, or easement. An electronic draft of the survey should be submitted for review by State Land Office staff before the final survey is submitted. In addition to a survey, the Commissioner may require an Improvement Location Report to be prepared in accordance with NMAC Section 12.8.2.10.
3. Separate Legal Description. In addition to a plat, a survey must include a separate legal description of the land surveyed and for each right of way and easement, which must be stated in aliquot parts including any partial quarter-quarter sections, lots or partial lots and must state the acreage for each aliquot part or lot, whether full or partial. The legal description also should include the metes and bounds description for each parcel.
4. Licensed Professional Land Surveyor. Each survey must be performed by a licensed professional New Mexico land surveyor. The survey submitted must contain the land surveyor's original signature.
5. Conformance to Minimum Standards for Surveying in New Mexico. Any survey must conform to the Minimum Standards for Surveying in New Mexico, NMAC Sections 12.8.2.1 through 12.8.2.17 or any replacement regulations, as well as applicable statutes and other law.
6. Electronic Format. Survey plats and legal descriptions should be provided to the State Land Office in electronic as well as paper format, unless the State Land Office has determined that electronic format is not necessary for a particular survey. Please send the complete CAD file and, if available, the shape file.

If you have any questions, please contact:

Rod Martinez, New Mexico State Land Office Mapping Bureau

Phone: (505) 827-5709

Email: rmartine@slo.state.nm.us

Applicant: Be sure you give a copy of this to your appraiser
NEW MEXICO STATE LAND OFFICE
Standard Criteria for Appraisals

1. The appraiser must be approved in advance by the Commissioner of Public Lands, who will be the appraiser's client. No appraisal work should be performed until the appraiser receives an engagement letter from the Chief Appraiser for the Land Office.
2. The appraisal must fully comply with the current edition of the Uniform Standards for Professional Appraisal Practice (USPAP), and applicable portions of the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) when appropriate.
3. The preferred report format is an Appraisal Report, a *Restricted* format may be allowed under special circumstances with prior approval of the Land Office. In either case, however, the report must contain complete sale details¹ and appropriate market-based support for any quantitative (percentage or dollar) adjustments to the sales. When adequate support for specific adjustments is not available, a qualitative analysis may be used, provided that the comparable sales bracket the subject in terms of superior and inferior qualities, and that a detailed discussion of all applicable elements of comparison is included for each sale.
4. The purpose of the appraisal is to estimate the *market value* of the fee simple interest in the subject property, excluding surface and subsurface mineral rights, unless otherwise specified. State Trust land must be appraised based on its *highest and best use* as though in private ownership and available for sale in the open market. Grazing leases issued in accordance with Land Office rules and procedures are seldom representative of market rates and terms, and, therefore, should be given little or no consideration in the valuation of State Trust lands.
5. Where legal access is apparent but not clearly defined by recorded documentation, the suitability and contribution of such access to the highest and best use of the property must be supported by sufficient market evidence and fully discussed within the report.
6. Properties for which a standalone highest and best use cannot be appropriately supported must be appraised as part of a *larger parcel*², as determined by the appraiser and justified in the report based on an analysis of market data using commonly accepted techniques.
7. Appraisals of multiple, related properties may be contained within one report. However, the report must include a separate property description, highest and best use analysis, valuation section, and value conclusion for each *larger parcel*.

Submit one original and two (2) hard copies of the report to:

New Mexico State Land Office, Field Operations Division
310 Old Santa Fe Trail, Santa Fe, NM 87501 or P.O. Box 1148, Santa Fe, NM 87504
Attention: Tyra Sandoval

For additional information, please contact Tyra Sandoval at

Office: (505) 827-4003
E-Mail: tyras@slslo.state.nm.us

¹ Sale information must be sufficient to allow for a site inspection and confirmation of the data by the Land Office.
² Land under the beneficial control of a single entity, having the same or an integrated highest and best use



NEW MEXICO STATE LAND OFFICE Commercial Resources Division

Business Leasing Process for the Protection of Cultural Properties

“archaeological survey” means a Class III intensive field inventory conforming to standards in the Rules promulgated under the Cultural Properties Act, specifically NMSA 1978, Section 18-6-5 and accepted by the archaeological profession and as described in detail in the United States Bureau of Land Management BLM Manual Supplement, State Office, New Mexico, Release No. 8-19 or any replacement.

“Cultural Properties Review Committee” means the cultural properties review committee created by and given powers in the New Mexico Cultural Properties Act, specifically NMSA 1978, Section 18-6-4 (1969).

“cultural property” means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

“State Historic Preservation Officer” means the state historic preservation officer whose duties and authority are set out in the New Mexico Cultural Properties Act, specifically, NMSA 1978, Section 18-6-4 (1977).

- * **State Law and the Lessee’s Obligation.** State law protects cultural properties on state land. The law imposes both criminal and civil penalties for excavation, destruction, modification, removal or sale of cultural properties found on state lands without a proper permit. The lessee is expected to know and abide by these laws.
- * **Archaeological Survey.** A person may undertake an archaeological survey before or after entering into a lease agreement; however, a survey must be conducted before engaging in ground disturbance activity. If a person elects to conduct the archaeological survey after entering into a lease agreement, then that lessee must have completed an archaeological survey under a permit issued by the Cultural Properties Review Committee prior to any ground disturbance. *The lessee must submit one copy of the survey report to the Commissioner at the following address: Attn: Trust Land Archaeologist, New Mexico State Land Office, P.O. Box 1148, Santa Fe, NM, 87504-1148.*
- * **Option to Modify or Terminate the Lease.** If the lessee conducts an archaeological survey after entering into a lease the Commissioner may require the lessee to take additional measures to protect cultural properties based on review of and findings presented in the survey report. The lease agreement may specify a specific date by which the Commissioner will notify the lessee of any additional required protective measures.

If additional cultural property protection measures are required either the lessee or the Commissioner may renegotiate any affected term of the lease agreement. If either party determines that it will not be possible or desirable to proceed with the lease given such requirements, then that party may terminate the lease effective immediately. If required protective measures render a portion of the leased land unsuitable for the lessee’s intended purposes, but neither party wishes to terminate the lease, then the lessee may request, and the Commissioner may grant, a *pro rata* reduction in the rental for that portion of the leased land.

- * **Ground Disturbance Permit.** A business lessee may not engage in a ground disturbing activity affecting a total of one acre or more of leased trust land unless the Commissioner has issued a ground disturbance permit to the lessee. The Commissioner may, in his or her discretion, require a ground disturbance permit for an affected area of less than one acre of land.
- * **Lease Provisions.** Further provisions related to the protection of cultural properties, including, where appropriate, the granting of improvement value credits may be included in the lease for costs that a lessee incurs in conducting an archaeological survey or in making provision for the protection of cultural properties.



NEW MEXICO STATE LAND OFFICE

REQUEST TO LEASE LAND CURRENTLY LEASED

APPLICANT'S STATEMENT:

_____ ("Applicant") is an applicant for a State Land Office Business Lease ("Proposed Lease") for the following described state trust lands:

<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>SUBDIVISION</u>	<u>ACRES</u>
----------------	-----------------	--------------	--------------------	--------------

with the following proposed use: _____

for a proposed term of: _____

Applicant states that: (a) Applicant is aware that all or some of the trust land to be covered by the Proposed Lease is currently leased under State Land Office lease number _____ ("Existing Lease"); (b) Applicant's rights and privileges under the Proposed Lease will be subject to rights and privileges of the lessee under the Existing Lease; and (c) the Proposed Lease will not unreasonably interfere with the uses permitted under the Existing Lease. Applicant requests that the lessee under the Existing Lease consent to the Proposed Lease and the Commissioner allow the Proposed Lease.

APPLICANT SIGNATURE:

_____	Dated: _____
By: _____ <i>(print name)</i>	Title: _____

CONSENT OF EXISTING LESSEE:

_____, lessee under State Land Office lease number _____, having read the Applicant's Statement above, does hereby consent to the Proposed Lease.

EXISTING LESSEE SIGNATURE:

_____	_____
By: _____ <i>(print name)</i>	By: _____ <i>(print name)</i>
Title: _____	Title: _____
Dated: _____	Dated: _____



NEW MEXICO STATE LAND OFFICE

PARTIAL RELINQUISHMENT, RELEASE, AND QUITCLAIM DEED

I/We, _____
(Name of individual, or corporation)

and _____
(Name of spouse or additional party(s), if applicable)

whose address is: _____

for consideration paid do (does) hereby relinquish, release, and quitclaim unto the State of New Mexico all their/its right, title, and interest in and to that certain (lease type) _____ Lease No. _____, issued by the State of New Mexico, and now held under assignment No. _____ insofar as the same affects the following described lands:

<u>SECTION</u>	<u>TOWNSHIP</u>	<u>RANGE</u>	<u>SUBDIVISION</u>	<u>ACRES</u>
----------------	-----------------	--------------	--------------------	--------------

WITNESS my/our hand(s) and sealed this _____ day of _____, 20____.

ATTEST: _____
(For use by corporation)

LESSEE SIGNATURE

ADDITIONAL LESSEE SIGNATURE (if applicable)

(PERSONAL ACKNOWLEDGMENT)

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____

(SEAL)

NOTARY PUBLIC

My Commission Expires: _____

(ACKNOWLEDGMENT BY ATTORNEY-IN-FACT)

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____ attorney-in-fact in behalf of

(SEAL)

NOTARY PUBLIC

My Commission Expires: _____

(ACKNOWLEDGMENT BY CORPORATION)

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____, _____, of _____

(Name)

(Title)

(Corporation)

a _____ corporation, on behalf of said corporation.

(SEAL)

NOTARY PUBLIC

My Commission Expires: _____

Approved in favor of the above named Lessee this ____ day of _____ 20____.

COMMISSIONER OF PUBLIC LANDS

Filing fee - \$50.00*

* Please make checks payable to "Commissioner of Public Lands" When you provide a check as payment, you authorize the State of New Mexico to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.



NEW MEXICO STATE LAND OFFICE
Commercial Resources Division

APPLICATION TO MAKE IMPROVEMENTS

I, _____ whose address
(Please print the name of the legal entity, or, if applying as an individual, the personal name)
is _____, _____, _____, _____
(mailing address) (city) (state) (zip code)

herewith make application for the written consent of the Commissioner of Public Lands to make improvements on the lands in Business Lease No. _____, described as follows:

SUBDIVISION SECTION TOWNSHIP RANGE ACRES

PROPOSED IMPROVEMENTS: *(You may submit a separate sheet if additional room is required.)*

_____ Value \$ _____
_____ Value \$ _____
_____ Value \$ _____
_____ Value \$ _____
_____ Value \$ _____

TOTAL VALUE OF IMPROVEMENTS. Value \$ _____ 0.00

Submit "Exhibit A", a plot plan locating all proposed improvements (if applicable).

Estimated time of completion _____
(Day, Month, Year)

(Please print name of applicant or of attorney in fact authorized agent and title)

(Signature of individual or of attorney in fact / authorized agent)

(Date)

I, _____ Aubrey Dunn _____, Commissioner of Public Lands,
hereby give my consent to the above lessee(s) to make improvements as listed above, conditioned upon
the completion of construction and installation of such improvements on or before
_____, 20____.

APPROVAL DATE

COMMISSIONER OF PUBLIC LANDS

APPLICATION FEE \$50.00*

* Please make checks payable to "Commissioner of Public Lands". When you provide a check as payment, you authorize the State of New Mexico to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.



NEW MEXICO STATE LAND OFFICE

ASSIGNMENT OF STATE BUSINESS LEASE

That _____, hereinafter called the Assignor for and in consideration of the sum of _____, in hand paid, the receipt of which is hereby
(state exact amount; if other than money, specify)

acknowledged, do hereby sell, assign, transfer and set over unto _____,
(Name)

_____, _____, _____,
(Address) (City, State, Zip Code) (Phone Number)

hereinafter called the Assignee, that certain _____ lease made and executed by the State of New
(type of lease)
Mexico, through its Commissioner of Public Lands as Lessor, unto _____ as
Lessee bearing the date _____, being designated as Business Lease No. _____, and
being more particularly described as follows:

SECTION TOWNSHIP RANGE SUBDIVISION ACRES

Attach survey and complete legal description labeled "Exhibit A".

The Assignee agrees to assume all obligations of the Assignor to the State of New Mexico insofar as said described lands are concerned and to pay such rentals and to perform such acts as are required by said lease, to the same extent and in the same manner as if the terms and provisions of said lease were fully set out herein. It is further agreed that the Assignee shall succeed to all rights, benefits and privileges granted the Lessee by the terms of said lease.

The Assignor further states and affirms that the consideration recited about is the true and sole consideration paid or promised for the purchase of the improvements on the lands hereinabove described and for the execution of this assignment. It is further understood and agreed that in case it is found that the consideration recited above is not the true and sole consideration or that a false statement has been made in the procurement and approval of this assignment, the master lease or the portion thereof sought to be assigned, shall be subject to cancellation at the option of the Commissioner of Public Lands.

IN WITNESS WHEREOF, the Assignor has hereunto executed this assignment this _____ day of _____, 20____.

ATTEST: _____
(For use by corporation)

LESSEE SIGNATURE

ADDITIONAL LESSEE SIGNATURE (if applicable)

(PERSONAL ACKNOWLEDGMENT)

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____

(SEAL)

NOTARY PUBLIC

My Commission Expires: _____

(ACKNOWLEDGMENT BY ATTORNEY-IN-FACT)

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____ attorney-in-fact in behalf of _____

(SEAL)

NOTARY PUBLIC

My Commission Expires: _____

(ACKNOWLEDGMENT BY CORPORATION)

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____, _____, of _____
(Name) (Title) (Corporation)
a _____ corporation, on behalf of said corporation.

(SEAL)

NOTARY PUBLIC

My Commission Expires: _____

Approved in favor of the above named Assignee this _____ day of _____ 20____.

COMMISSIONER OF PUBLIC LANDS

Filing fee - \$50.00*

* Please make checks payable to "Commissioner of Public Lands" When you provide a check as payment, you authorize the State of New Mexico to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.



NEW MEXICO STATE LAND OFFICE

Commercial Resources Division

RULE 9

TITLE 19 **NATURAL RESOURCES AND WILDLIFE**
CHAPTER 2 **STATE TRUST LANDS**
PART 9 **BUSINESS LEASING**

19.2.9.1 **ISSUING AGENCY:** Commissioner of Public Lands - New Mexico State Land Office - 310 Old Santa Fe Trail - P. O. Box 1148 - Santa Fe, New Mexico 87501.
[19.2.9.1 NMAC - N, 05/15/2001]

19.2.9.2 **SCOPE:** Pursuant to Article XIII, Section 2, of the New Mexico State Constitution, the commissioner has jurisdiction over all lands and related resources that the United States granted and confirmed to New Mexico under the New Mexico Enabling Act. This rule, 19.2.9 NMAC, governs the granting of business leases for commercial and business leasehold uses, as well as surface uses that are not otherwise provided for under other state land office rules, on those lands within the commissioner's constitutional jurisdiction.
[19.2.9.2 NMAC - N, 05/15/2001]

19.2.9.3 **STATUTORY AUTHORITY:** N.M. Const. Art. XIII; Section 19-1-1 *et seq.* NMSA 1978; Section 19-7-1 *et seq.* NMSA 1978.
[19.2.9.3 NMAC - N, 05/15/2001]

19.2.9.4 **DURATION:** Permanent.
[19.2.9.4 NMAC - N, 05/15/2001]

19.2.9.5 **EFFECTIVE DATE:** May 15, 2001.
[19.2.9.5 NMAC - N, 05/15/2001]

19.2.9.6 **OBJECTIVE:** The objectives of 19.2.9 NMAC are to obtain revenues from business leasing; to assure protection and maintenance of trust lands; to provide standard lease terms and conditions; and to provide an efficient process for business leasing.
[19.2.9.6 NMAC - N, 05/15/2001]

19.2.9.7 **DEFINITIONS:** As used in 19.2.9 NMAC, the following terms have the meaning set forth in this section. A business lease may add detail to a definition to accommodate lease specific issues.

A. "approval" means written approval and includes only that which has been expressly approved and nothing further which might be implied;

B. "assignment" means any direct or indirect transfer of a lessee's interest in a business lease or improvements, including, but not limited to, any conditional transfer or transfer by operation of law;

C. "authorized improvements" means improvements which have the approval of the commissioner prior to being placed, developed, created, or constructed on, or obtained or developed for the benefit of, or made appurtenant to trust lands, or which have subsequently received that approval;

D. "bid lease" means a business lease entered into by the commissioner after the public advertisement and public auction required by the Enabling Act;

E. "business lease" means a written lease of trust lands issued under this rule, 19.2.9 NMAC, for business, commercial, residential, industrial, or real estate planning and development purposes, or for surface uses that are not otherwise provided for under other state land office rules. The commissioner, in his discretion, shall resolve any uncertainty about whether a lease is a business lease;

F. "collateral assignment" means the conditional assignment to a creditor as security for a debt of a lessee's personal property interest in a business lease or improvements;

G. "commissioner" means the commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule;

H. "improvements" means any of the following:

- (1) any item of tangible property developed, placed, created or constructed on trust lands including, but not limited to, buildings, roadways, equipment and fixtures;
- (2) water rights appurtenant to trust lands, including without limitation any water rights developed or used on trust land for the benefit of the trust land; and,
- (3) any tangible or intangible property, rights, approvals or privileges obtained or developed for the benefit of, or made appurtenant to, trust lands that are designated as improvements in a business lease;

I. "improvement value credit" means a credit granted by the commissioner for permanent improvements which entitles the holder of the credit to certain rights upon the subsequent lease or sale of trust lands as provided in this rule and in a business lease;

J. "lessee" means the party of record at the state land office, who leases trust land from the commissioner under a business lease;

K. "mortgage" means the mortgage to a creditor as security for a debt of a lessee's personal property interest in a business lease or improvements;

L. "non-bid lease" means a business lease entered into by the commissioner without public advertisement and public auction for a term not to exceed five years, or for a term not to exceed twenty-five years pursuant to Section 19-7-54 or 19-7-55 NMSA 1978;

M. "permanent improvements" means those authorized improvements that a business lease specifies shall not be removed upon the termination of the lease. "Permanent improvements" shall include water rights appurtenant to trust land and equipment and fixtures necessary for the development of the water;

N. "removable improvements" means authorized improvements that are not permanent improvements;

O. "rent" means the total of estimated rent payments, including all periodic rents with applicable rent adjustments, percentage rents, initial or periodic fees, or any other incentive payment due during the lease term, and any other payments identified as rent in a business lease;

P. "rent adjustment" means a periodic increase of any rent amount;

Q. "schedule of fees" means a list of administrative fees which is issued and revised by the commissioner from time to time;

R. "state land office" means the New Mexico state land office;

S. "sublease" means a transaction or arrangement whereby a business lessee transfers to another either the use or possession of all or part of leased trust land, or the management and control of all or part of the improvements located on leased trust land;

T. "termination" means the end of a business lease whether by cancellation, relinquishment or the expiration of the lease term;

U. "trust" means the land trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310), and that trust's assets, which are administered through the state land office by the commissioner;

V. "trust land" means all land owned by the trust; and

W. "unauthorized improvements" means improvements that have not received the commissioner's approval.

[19.2.9.7 NMAC - N, 05/15/2001]

19.2.9.8 LEASING STANDARDS:

A. The surface estate of any trust land may be leased under a business lease at the discretion of the commissioner. A business lease may include more than one use, and may encompass more than one parcel of trust land. For lands already under any surface lease, the applicant shall comply with the procedures in 19.2.9.21 NMAC.

B. After receipt of an application as provided in 19.2.9.9 NMAC, the commissioner may request additional information from the applicant, as provided in 19.2.9.10 NMAC, and may enter into negotiations for a non-bid lease.

C. After receipt of an application as provided in 19.2.9.9 NMAC, or on his own initiative, the commissioner may offer to lease trust land under a bid lease as provided in 19.2.9.11 NMAC.

D. Any applicant may withdraw an application for a business lease at any time.

E. Notwithstanding any other provision of 19.2.9 NMAC, and at any time before the execution of a business lease, the commissioner may, at the commissioner's discretion, reject any application or bid submitted under 19.2.9 NMAC and may withhold from business leasing any trust land subject to the commissioner's jurisdiction.

[19.2.9.8 NMAC - N, 05/15/2001]

19.2.9.9 APPLICATION TO LEASE: Any person may propose that the commissioner enter into a business lease by submitting an application on forms prescribed by the commissioner.

A. The application shall, at minimum, be made under oath and shall identify the applicant, the trust land proposed for leasing and the proposed uses of the trust land, including any proposed improvements.

B. The application shall include a written appraisal of the trust land proposed for lease made under oath by a disinterested and credible person. All statements contained in such appraisements, except as to the true value of the

land appraised, must be based upon personal knowledge and not upon information and belief. No such appraisal shall be conclusive upon the commissioner.

C. The application shall include a nonrefundable application fee in the amount established in the schedule of fees.
[19.2.9.9 NMAC - N, 05/15/2001]

19.2.9.10 SUPPLEMENTAL INFORMATION: After review of an application and before entering into a business lease, the commissioner may require additional information and documentation from an applicant, including, but not limited to, an appraisal of the trust land proposed for lease, a survey of the land, a detailed development plan of the land, environmental analyses of the land, and cultural or biological resource investigations of the land.
[19.2.9.10 NMAC - N, 05/15/2001]

19.2.9.11 BID LEASE: The commissioner may, under the following procedures, offer a bid lease to the highest and best bidder at a public auction held at the county seat of the county where the offered trust land, or the major portion of the offered land, is located.

A. **Appraisal.** After a preliminary determination that a bid lease might be advantageous to the trust, the commissioner will cause an appraisal to be made. The appraisal will cover the trust land proposed for lease and any permanent improvements on, appurtenant to, or obtained or developed for the benefit of, the land. Thereafter, if the commissioner determines to offer the land for bid lease, a copy of the appraisal will be furnished to the applicant, if any, and to the holder of the improvement value credit as well as to any other interested parties. Prior to the advertisement of the lease sale, the commissioner shall determine that the terms of the bid lease being offered provide a return to the trust over the duration of the bid lease that is a fair rental value based on the appraisal.

B. **Advertisement.** A notice of the lease sale shall be published once each week for ten (10) consecutive weeks in a newspaper of general circulation published in Santa Fe, and in a newspaper of general circulation published nearest the offered land.

C. **Notice.** The notice of lease sale shall contain:

- (1) The date, time and place of the auction;
- (2) A description of the trust land offered for lease, and any limitations on the uses of the land including any local land use restrictions, covenants, master plans or any restrictions established by the commissioner;
- (3) A summary of the basic provisions of the bid lease, including the term (and any extension periods), the rent (if fixed and not based on the highest bid) and the allowable uses of the trust land offered for lease;
- (4) Any requirements or qualifications for bidders;
- (5) The amounts that a bidder must deposit to pay the costs of the lease sale, the first rental payment and any improvement value credits;
- (6) A brief description of how the commissioner will determine the highest and best bidder; and
- (7) The name of a person to contact at the state land office for additional information on the auction and the trust land offered for lease.

D. **Deposit.** To qualify as a bidder, the prospective bidder shall deposit with the commissioner before the auction or at such other time provided in the notice of lease sale, the following amounts which shall be listed in the notice:

- (1) The costs of the lease sale. The successful bidder shall pay the reasonable costs and expenses related to the lease sale, whether incurred by the state land office or by another entity at the request of the state land office. Such costs and expenses may include, but are not limited to, the costs of appraisals, surveys, advertising, land use planning and brokerage or other real estate fees;
- (2) The first rental payment under the bid lease; and
- (3) If the offered trust land includes permanent improvements, either a sum equal to the improvement value credit attributable to the permanent improvements or a bill of sale or a waiver of payment signed by the holder of the improvement value credit or a bond sufficient to cover the value of the improvements if an appeal of the appraised value is to be taken, unless the prospective bidder is the holder of the improvement value credit. The improvement value credit shall be calculated and paid as provided in 19.2.9.18 NMAC. Upon completion of the lease sale, the commissioner shall return any deposits from unsuccessful bidders.

E. **Qualification of bidders.** The commissioner may establish additional qualifications for bidders based on the nature of the bid lease and the proposed uses of the offered trust land.

F. **Due diligence.** All bidders must undertake their own due diligence in preparation for the lease sale, including, but not limited to, inspecting the offered trust land and reviewing pertinent records and files of the state land office and other public agencies. A prospective bidder must obtain the approval of the commissioner before entering on trust land. The notice of lease sale may provide that additional information concerning the offered trust land is available at

the state land office for viewing by any interested parties. The additional information may include, without limitation, a draft bid lease or a summary of bid lease provisions.

G. Auction. The auction may be conducted by oral auction or by the acceptance of sealed bids or proposals at the time of the auction. If awarded at all, the bid lease shall be awarded to the highest and best bidder.

H. Highest and best bidder. In determining the highest and best bidder, the commissioner shall establish criteria that will be described in the notice of lease sale. The criteria shall enable the commissioner to select the bid that is in the best interests of the trust considering the requirements of the bid lease and the proposed uses of the offered trust land. In addition to any offered bonus or rental amounts, the commissioner may, as appropriate, consider the qualifications of the bidders to develop the land or to construct the improvements contemplated by the proposed bid lease, and to provide the trust with sustainable long-term returns. The commissioner may divide the bid process into stages, and review the qualifications of bidders prior to, or in addition to, reviewing any financial proposals.

I. Execution of bid lease. The successful bidder must deposit with the commissioner all amounts due for the lease sale, including any bonus bid, no later than five business days after the auction, and shall, within thirty days after the auction, enter into the bid lease. The commissioner may extend the period for entering into a bid lease to no greater than one hundred twenty days after the auction. The final bid lease shall not contain any provisions that vary from those described in the notice of lease sale. If the successful bidder does not deposit with the commissioner any amounts due, or enter into the bid lease offered by the commissioner, within the prescribed time periods, the commissioner may reject the bid and either declare another bidder to be the highest and best, or terminate the lease sale.

[19.2.9.11 NMAC - N, 05/15/2001]

19.2.9.12 BUSINESS LEASE:

A. Prerequisites. Before taking possession of the leased trust land, the lessee must provide the commissioner with a legal description and a survey plat showing the exact location of the land.

(1) A legal description must be given in aliquot parts of at least forty (40) acres, or in some other form as may be required by the commissioner such as survey metes and bounds. The description shall include a reference to all encumbrances, easements, or other servitudes burdening or benefiting the trust land.

(2) The commissioner may provide specific instructions on the requirements for a survey plat.

B. Leases. All business leases shall be in a form and contain such provisions as may be prescribed by the commissioner from time to time, which provisions shall be deemed to include all pertinent statutes and state land office rules in effect at the time of lease issuance.

C. Conditions. The commissioner shall establish conditions in a business lease necessary for providing a secure return to the trust, managing the trust land in a commercially reasonable manner and protecting the trust land and any natural and cultural resources on the trust land from waste. Each lessee under a business lease shall have an affirmative duty to diligently prevent and protect against trespass and waste on trust land.

D. Uses. A business lease shall designate the allowable uses of the leased trust land. A business lease may be issued for any use of the surface estate not otherwise provided for under other state land office rules.

(1) The commissioner may establish restrictions on the uses of the trust land, including restrictions contained in local land use rules, covenants or land use plans.

(2) A business lease may be issued to authorize the planning of trust land or the development of trust land pursuant to an approved plan. The lease may require that the lessee obtain local government approvals of the land use plan prior to development. The lease may provide for development to occur in phases, which phases may require further leases or sales of trust land.

E. Rent. Unless otherwise provided in a lease, rent shall be paid in advance in annual installments.

(1) If a business lease has a term of more than five years, the lease shall provide for a rent adjustment of any fixed periodic rent to occur no less often than every five years.

(2) As provided in Section 19-7-34 NMSA 1978, the commissioner shall have a first lien on any improvements on the leased trust land, prior and superior to any other lien or encumbrance, whether created with or without notice of the lien, for rental due or to become due. When any rental is due and unpaid the commissioner may attach all improvements or a portion of the improvements sufficient to pay the unpaid rental together with all costs incurred in the enforcement of the lien.

(3) The commissioner may, upon request and upon provision of adequate security as determined by the commissioner, agree to withhold enforcement of the rental lien. Adequate security may include prepayment of lease rent or some other acceptable form of financial assurance.

F. Mineral reservation. Each business lease shall reserve the mineral estate of the trust land to the commissioner and shall reserve the right to lease the mineral estate, or any portion of the mineral estate, for exploration, development, conservation and production of the mineral resources, including oil and natural gas. The reservation shall include all rights of access over, through or across trust lands necessary for a mineral lease. The commissioner may, in a business lease, agree, upon payment of an additional annual rent, not to exercise the right to lease the trust's mineral rights during the term of the lease. The additional rent shall be sufficient to compensate the trust based on the commissioner's evaluation of the potential mineral value associated with the leased trust land.

G. Easements and right of way. Each business lease shall reserve to the commissioner the right to grant easements and right of way across trust land for any legal purpose. A business lease may provide that any easements or right of way granted across leased trust land shall be located to avoid unreasonable interference with the uses allowed under the lease. A business lease may require that the lessee acquire from the commissioner easements or right of way necessary for the development of the trust lands and may also require or allow the lessee to assign or dedicate its interest in easements or right of way to a public entity.
[19.2.9.12 NMAC - N, 05/15/2001]

19.2.9.13 LEASE EXTENSION AND NEW LEASE:

A. Bid lease. The term of a bid lease may not be extended except as provided in the notice of lease sale and the original bid lease.

B. Non-bid lease. The term of a non-bid lease may not be extended. If, prior to the expiration of a non-bid lease, the lessee wants a new non-bid lease, for the same trust land and the same use, that will commence at the expiration of the current lease, and if the lessee has complied with all the terms of its lease, the lessee shall submit a sworn application, on such forms as the commissioner may require or provide, for a new lease. The commissioner may establish, in a business lease, additional requirements for applying for a new lease.

C. Discretion. Nothing in this rule shall limit the discretion of the commissioner, at the expiration of a business lease, to determine whether it is in the best interests of the trust to reject all applications to lease, or to offer a new non-bid lease on such terms as the commissioner determines or to sell or lease the trust land through a bid process.
[19.2.9.13 NMAC - N, 05/15/2001]

19.2.9.14 SUBLEASE AND ASSIGNMENT:

A. Any assignment or sublease for use of trust lands is void without the approval of the commissioner. The commissioner's approval may be conditioned upon such terms or requirements as are deemed to be in the best interests of the trust. The commissioner may, in a lease, pre-approve certain assignments or subleases that he deems to be in the best interests of the trust.

(1) No assignment or sublease of trust lands under a business lease shall be approved unless the lessee is in compliance with the terms of the lease.

(2) The commissioner's approval of a sublease or assignment shall not relieve the lessee from any liability that may have arisen before the sublease or assignment. The commissioner's approval of a sublease shall not release the lessee from its continuing and primary liability for performance of all terms and obligations under the lease.

(3) The commissioner's approval of a sublease or assignment will not constitute approval of any subsequent sublease or assignment.

B. Applications to sublease or assign shall be made by the current lessee under oath, on forms prescribed by the commissioner, and shall be accompanied by the fees shown on the schedule of fees.

C. No assignment or sublease shall extend the term of a business lease and the lessee shall inform its sublessee or assignee of the terms and conditions of the lessee's business lease.

D. The termination of a business lease shall automatically, and without notice, terminate any sublease, unless otherwise agreed to in writing by the commissioner.

E. A lessee or sublessee may not transfer, change the purpose or use, or move the point of diversion of any water rights that are appurtenant to trust land without the prior approval of the commissioner.
[19.2.9.14 NMAC - N, 05/15/2001]

19.2.9.15 COLLATERAL ASSIGNMENTS AND MORTGAGES:

A. Unless otherwise provided in a business lease, and subject to the prior approval of the commissioner, a lessee's interest in a business lease or improvements may be collaterally assigned or mortgaged by the lessee. An approved collateral assignee or mortgagee shall have a lien on the lessee's interest in the lease, as well as any improvements covered by the collateral assignment or mortgage, but shall not have a lien on the commissioner's interest in the lease and any improvements, or in the commissioner's reversionary interest in the real and personal property subject to the lease. Any attempt to collaterally assign or mortgage a lessee's interest in a business lease, or in any improvements, without the approval of the commissioner, shall be void and shall not vest the purported collateral assignee or mortgagee with any right, title, interest, claim or privilege with respect to such lease or improvements.

(1) A lessee shall apply to the commissioner to collaterally assign or mortgage the lessee's interest in a business lease or any improvements in writing, under oath, and on such form as may be prescribed by the commissioner. The lessee shall include a copy of the proposed collateral assignment agreement or mortgage and pay any applicable fees set out in the schedule of fees.

(2) The commissioner may approve the collateral assignment or mortgage subject to such terms and conditions which he deems to be in the best interests of the trust.

B. If the commissioner gives written notice to a business lessee of a breach of the lease by the lessee, the

commissioner shall also give written notice of the breach to an approved collateral assignee or mortgagee of the business lessee. Such notice shall be sent by certified mail to the most current name and address of the collateral assignee or mortgagee provided to the commissioner and no proof of receipt of such notice by the collateral assignee or mortgagee shall be required.

C. An approved collateral assignee or mortgagee shall have the right to cure a lessee's breach within the time periods provided to the lessee under the lease. A business lease may provide that a collateral assignee or mortgagee may succeed to the rights and duties of the lessee of the business lease under such conditions as are provided in the lease. The commissioner's approval of a collateral assignment or mortgage of improvements does not change the status of any improvements as authorized, unauthorized, removable or permanent improvements.

D. A collateral assignee or mortgagee shall take its interest subject to the following terms and conditions, and the lessee is required to give notice of such terms and conditions to its collateral assignee or mortgagee upon making a collateral assignment or mortgage.

(1) The commissioner is entitled to notice of all proceedings, judicial or non-judicial, to enforce or foreclose the collateral assignment or mortgage.

(2) Any successor in interest to a lessee's interest in a business lease, or in any improvements, that acquires an interest in such property as the result of the enforcement or foreclosure of a collateral assignment or mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, shall be deemed to be an assignee under section 19.2.9.14 NMAC, and will be subject to the approval of the commissioner. Such approval will not be unreasonably withheld; but no successor in interest will be approved by the commissioner unless all sums due under the terms of the lease have been paid in full, and all other pending duties discharged, or unless arrangements satisfactory to the commissioner are made to fully pay such sums or discharge such duties.

[19.2.9.15 NMAC - N, 05/15/2001]

19.2.9.16 APPROVAL OF IMPROVEMENTS: No improvements shall be placed, developed, created or constructed on trust land, or obtained or developed for the benefit of trust land, or made appurtenant to trust land without the prior approval of the commissioner. Such approval may be conditioned upon certain requirements imposed by the commissioner which may include, without limitation, the provision of a bond or other adequate security to assure proper removal of improvements from trust land and the restoration of trust land.

A. A request for the commissioner's approval shall be made in writing on such forms and in such manner as may be required by the commissioner, and shall be accompanied by the fee set forth in the schedule of fees. The commissioner shall not be obligated to approve any improvements.

B. A business lease may identify existing and proposed improvements that are approved by the commissioner when he determines it is in the best interests of the trust.

C. If the commissioner does not grant prior approval for improvements, the commissioner may, in the best interests of the trust, approve improvements after the improvements have been placed, developed, created or constructed on, obtained or developed for the benefit of, or made appurtenant to trust land.

[19.2.9.16 NMAC - N, 05/15/2001]

19.2.9.17 REMOVAL OF IMPROVEMENTS:

A. Upon the termination of a business lease, all removable or unauthorized improvements shall be removed from the trust land unless otherwise provided in the lease or in writing by the commissioner.

(1) No improvement may be removed without the commissioner's approval if a lessee owes rent or any other sums to the commissioner or if any material duties required under the lease remain unperformed.

(2) The commissioner may require, in writing, that designated unauthorized improvements be left in place. Such improvements shall become the property of the commissioner and no person shall be entitled to any improvement value credit for such improvements.

(3) Any improvements left on trust lands without the commissioner's approval shall remain the property and liability of the lessee and shall constitute a nuisance until removed or abandoned. The commissioner may elect to either take any necessary action to abate such nuisance, with all costs and fees incurred in so doing to be additional rent due from the lessee under the lease, or to declare that the improvements are abandoned and have become the property of the commissioner.

B. In all cases where improvements are removed from trust land, the lessee shall be solely liable for the restoration of the trust land to its condition prior to the placement of such improvements. The lessee's obligation to remove improvements and to restore the trust land shall survive the termination of the lease.

C. All costs, fines and fees incurred by the commissioner as a result of improvements left on trust lands without the commissioner's approval, and all costs, fines and fees incurred as a result of damage or waste to trust lands and their improvements during the term of the lease, or arising from or in connection with the lessee's use and occupancy of the trust lands, shall remain the sole liability of the lessee and shall be deemed additional rent due at the time incurred.

[19.2.9.17 NMAC - N, 05/15/2001]

19.2.9.18 IMPROVEMENT VALUE CREDIT:

A. Personal property. Unless otherwise provided in a business lease or in this rule, improvements shall be the property of the lessee. The interest of a lessee in a business lease and in the improvements is a personal property interest. Unless otherwise provided in a business lease, improvement value credit is only granted for permanent improvements and is not granted for removable or unauthorized improvements. Water rights that are appurtenant to trust land shall be developed and held in the name of the commissioner.

B. When payable. When trust lands are sold or leased to a person other than the holder of any improvement value credit, the successor in interest shall pay to the commissioner the amount of the improvement value credit, if any. The commissioner shall pay to the holder of the improvement value credit the amount paid by the successor in interest, less any rent, costs or damages owed to the commissioner.

(1) In lieu of such payment, a successor in interest may file with the commissioner a bill of sale or waiver of payment signed by the holder of the improvement value credit or, if an appeal of the appraised value is taken, a bond sufficient to cover the value of the improvements as determined by the commissioner.

(2) Except for the transfer of funds for improvement value credit paid by a successor in interest as provided in this subsection, the commissioner shall not be liable for the payment of any improvement value credits. The commissioner may require a release or indemnity from the party receiving payment of the improvement value credit.

(3) The holder of the improvement value credit must be identified in the records of the state land office. Unless otherwise provided in a lease or in an assignment, collateral assignment or mortgage of improvements approved by the commissioner and filed with the state land office, the commissioner shall treat the former lessee as the holder of the improvement value credit and the party entitled to payment of any improvement value credit.

C. Calculation of improvement value credit. Unless otherwise provided in a lease, the holder of the credit is entitled to all of the improvement value credit attributable to the permanent improvement.

(1) A business lease may provide that the commissioner shall receive a specified portion of the improvement value credit attributable to a permanent improvement.

(2) Unless otherwise provided in a lease or in a statute, the improvement value credit will be the amount, if any, which the permanent improvement adds to the value of the trust land. The added value shall be determined, at the expense of the lessee or the holder of the credit, by an appraisal conducted by a certified real estate appraiser. The appraisal shall be submitted to the commissioner for review and approval. The commissioner may obtain further appraisals to ascertain the improvement value. The commissioner may require a successor in interest to reimburse the costs of appraising the improvements.

(3) The commissioner shall determine the value of the improvements and his determination shall be final unless the holder of the improvement value credit initiates a contest as provided under Section 19-7-64 NMSA 1978.

(4) A business lease may provide that an improvement value credit may be lost or depreciated if, after termination of the business lease, there is no successor in interest other than the commissioner.

[19.2.9.18 NMAC - N, 05/15/2001]

19.2.9.19 RELINQUISHMENT:

A. A lessee may, with the approval of the commissioner, relinquish to the commissioner the lessee's interest in a business lease. The commissioner may, in a business lease, establish conditions pursuant to which the lessee may, at prescribed times, relinquish all or portions of the lease.

B. A lessee may request relinquishment of the lease on forms prescribed by the commissioner and upon payment of a relinquishment fee, provided that:

(1) the lessee is in compliance with the terms of the lease; and,

(2) all improvements made pursuant to the lease on, for, or appurtenant to the lands leased have been approved by the commissioner and arrangements satisfactory to the commissioner have been made for either the removal or the retention of the improvements.

C. A lessee shall not, by relinquishment, avoid or be released from any liability for known or unknown waste or damage to trust lands, including but not limited to environmental damage, arising from or connected with lessee's use or occupancy of trust lands.

D. A relinquishment shall not be valid or effective until approved by the commissioner. Any attempted relinquishment of the lease, without the commissioner's approval, shall be a breach of the lease.

E. Upon relinquishment, a lessee shall not be entitled to the refund of any rent previously paid; however, a lessee seeking relinquishment in response to a request by the commissioner shall not be charged a fee, and shall be entitled to a pro-rata refund of prepaid rent to be paid only by the successor lessee, purchaser or other successor in interest, if any.

[19.2.9.19 NMAC - N, 05/15/2001]

19.2.9.20 DEFAULT; REMEDIES: Unless otherwise provided in a business lease, a lessee shall be in default under a business lease if a breach of the lease is not cured within thirty days after the commissioner gives written notice of the breach to the lessee. A breach of the lease may include, without limitation, a failure to pay any rent or other monetary obligation due under the lease, or a violation of any term, condition, or covenant of the lease, or the failure to perform or observe any other obligation of the lessee under the lease.

A. **Notice.** Written notice of a breach shall be sent to the lessee, and to the holder of any collateral assignment or mortgage, at their addresses of record at the state land office, by certified mail. The commissioner need only provide proof of mailing to establish satisfactory compliance with this notice requirement.

B. **Remedies.** On the default of a lessee, the commissioner shall have all the remedies available to the commissioner at law or in equity in New Mexico, and as provided in the business lease, including, without limitation, terminating the lease, retaking possession of the leased trust land with or without termination of the lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of the lessee.

[19.2.9.20 NMAC - N, 05/15/2001]

19.2.9.21 EXISTING LEASES: Except as provided in this section, the commissioner may not lease under a business lease any trust land currently leased under an existing surface lease unless the existing lessee relinquishes his interest in the trust land or the commissioner exercises any right of withdrawal of land which the commissioner may have. Notwithstanding the foregoing, the commissioner may determine that a proposed business lease will not unreasonably interfere with the authorized uses under an existing lease, and may allow a new business lease in compliance with the following requirements.

A. The new business lease shall identify the existing lease, shall state that the new business lessee's rights and privileges are subject to the existing lessee's rights and privileges under the existing lease, unless waived or amended, and shall provide that the new business lessee will not interfere with the uses permitted under the existing lease.

B. The existing lessee must consent in writing to the new business lease.

[19.2.9.21 NMAC - N, 05/15/2001]

HISTORY of 19.2.9 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the State Records Center and Archives:

CPL 69-5, Rules and Regulations Concerning the Sale, Lease and other Disposition of State Trust Lands, 09-02-69.

CPL 71-2, Rules and Regulations Concerning the Sale, Lease and other Disposition of State Trust Lands, 12/16/71.

CPL 77-1, Rules and Regulations Concerning the Sale, Lease and other Disposition of NM Trust Lands, 01/07/77.

Rule 9, Relating To Business Leases On State Lands, 03/11/81

SLO Rule 9, Relating To Business Leases On State Lands, 01/20/84

SLO Rule 9, Relating To Business Leases On State Lands, 06/24/85.

History of Repealed Material:

SLO Rule 9, Relating To Business Leases On State Lands - Repealed, 05/15/2001.



**NEW MEXICO
STATE LAND OFFICE
COMMERCIAL RESOURCES DIVISION**

Effective 10/17/2014

**SCHEDULE OF FEES
FOR
TITLE 19, CHAPTER 2, STATE TRUST LANDS
PART 9, BUSINESS LEASING**

Application for Standard Business and Telecommunications Lease.....	\$50.00
Application to Sublease.....	\$50.00
Collateral Assignment.....	\$50.00
Application to Make Improvements.....	\$50.00
General or Partial Relinquishment Release, and Quitclaim Deed.....	\$50.00
Assignment of State Business Lease.....	\$50.00
Release of Collateral Assignment.....	\$50.00
Request to Lease Land Currently Leased.....	no fee
Application for Billboard Permit.....	\$50.00
Assignment of Billboard Permit.....	\$50.00

ALL PROCESSING FEES ARE NON-REFUNDABLE*

* Please make checks payable to "Commissioner of Public Lands". When you provide a check as payment, you authorize the State of New Mexico to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

THORNTON RANCH OPEN SPACE

Galisteo Basin, New Mexico

Thornton Ranch Open Space is Santa Fe County's largest open space property at 1,904 acres and was formerly part of a 17,000 acre cattle ranch owned by the Thornton family. It is located in the center of the Galisteo Basin, one of the most significant cultural landscapes in the Southwest. The Thornton Ranch Open Space is situated north of Galisteo Creek near the town of Galisteo, NM. The property is bordered on the south by the Burlington Northern Santa Fe Railway (BNSF) and on the northeast by County Rd. 42.

The most distinctive landmark on the property is "Petroglyph Hill," an ancestral Pueblo site that features close to 2,000 petroglyphs ranging in age from the Archaic (1000 B.C.) to the present. The images are a record of the changing cultural landscape in the Galisteo Basin and are listed in the Galisteo Basin Archaeological Sites Protection Act. Santa Fe County purchased the property to preserve this important cultural site and to provide public access and interpretation of the history and ecology of the Galisteo Basin. The County is managing the Thornton Ranch Open Space in the context of the Galisteo Basin and is collaborating with the Bureau of Land Management and other landowners to conserve this unique landscape.

services

site analysis
tribal input
public involvement
master planning
design guidelines

client

Santa Fe County

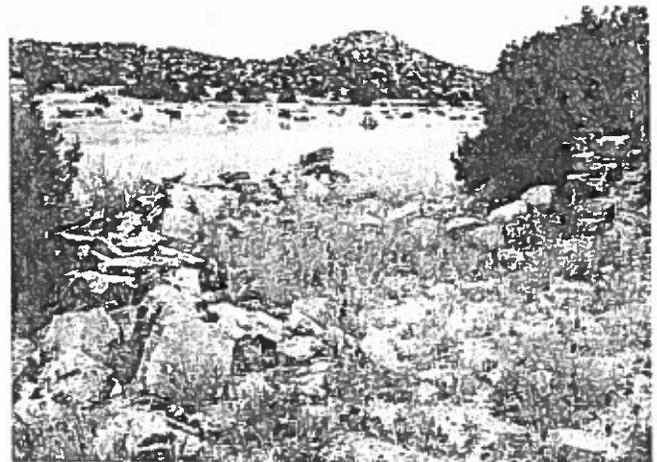
project team

Design Office - project lead
Santa Fe Conservation Trust
AOS Architects
Ecotone
Parametrix
Tamarch

VISTAS OF GALISTEO BASIN FROM PETROGLYPH HILL



RANCH BUILDING REMNANTS



RAILROAD ERA HOTEL RUINS AT THE KENNEDY TOWN SITE



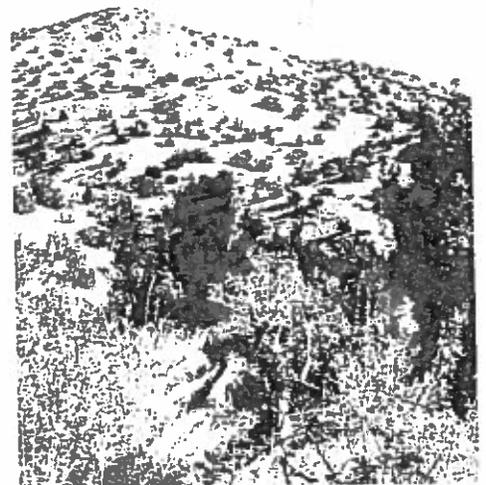
THORNTON RANCH OPEN SPACE

Galisteo Basin, New Mexico

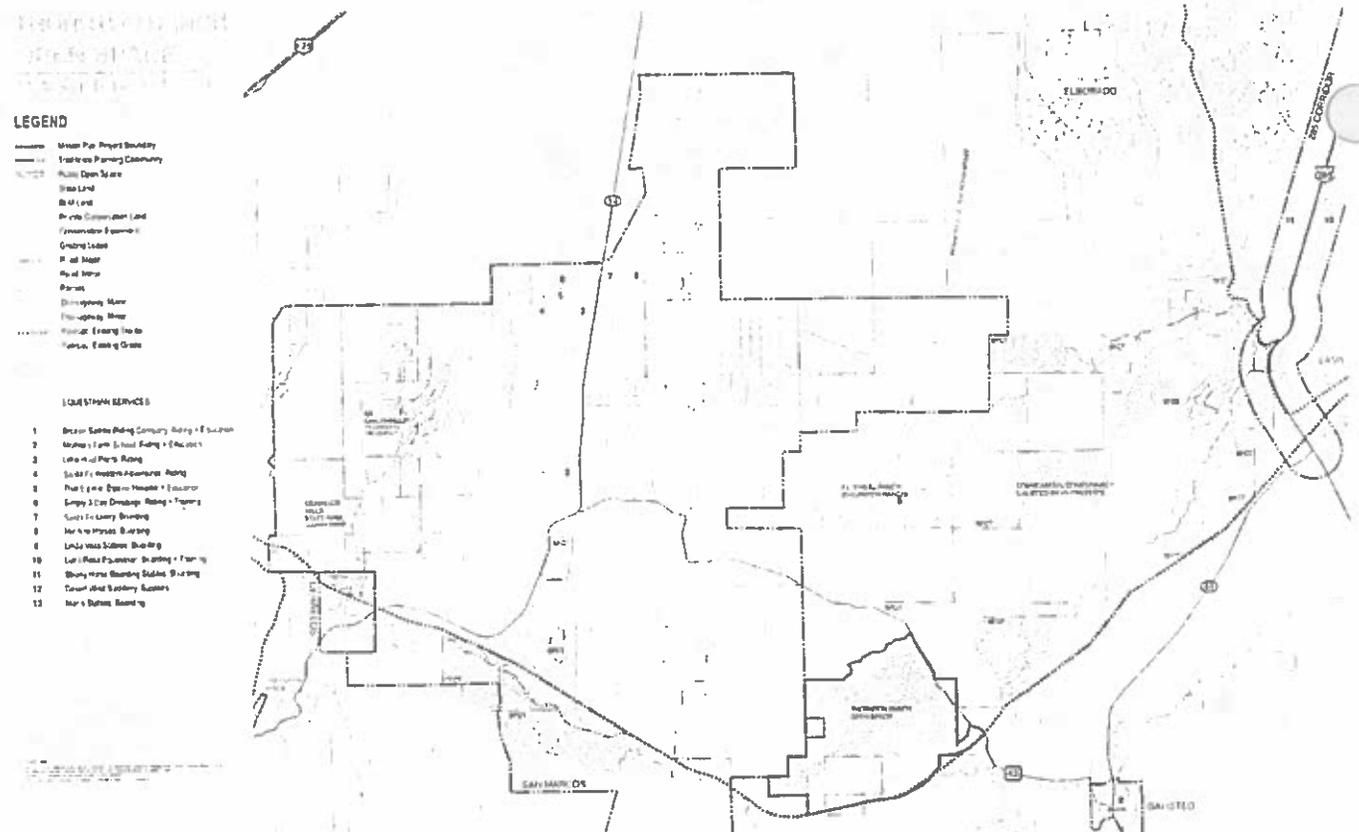
Santa Fe County is in the process of developing a Master Plan for the Thornton Ranch Open Space. This process involves creating an inventory of existing site conditions, completing a 100% survey of the cultural resources, conducting focus group meetings with potential user groups, and then developing a program of resource management activities and site improvements.

The preliminary program includes a trailhead and a potential visitor center off of County Rd. 42, an ADA accessible trail loop from the trailhead, a non-motorized, multi-use regional trail along the BNSF Railway corridor; an internal network of hiking, mountain biking and equestrian trails with connections to the adjacent Bureau of Land Management Burnt Corn Special Recreation Management Area, and a limited access trailhead on the north side of the property for guided educational programs. See the enclosed DRAFT Conceptual Plan for a conceptual layout of the preliminary program. The preliminary program also includes resource management activities such as wildlife habitat improvements, soil conservation, non-native vegetation control, and cultural resource protection. The County is currently reviewing the preliminary program and draft conceptual plan with tribal organizations, public agencies, the public and internally with County administration to develop the Master Plan. The Master Plan will be presented to the County Open Land, Trails and Parks Committee (COLTPAC) for recommendation and to the Santa Fe County Board of County Commissioners for approval.

PETROGLYPH HILL



CONTEXT MAP INVESTIGATION OF THE PROPERTY'S RELATIONSHIPS WITHIN THE GALISTEO BASIN



- LEGEND**
- Mean Parc Property Boundary
 - Historic Property Boundary
 - Public Open Space
 - State Land
 - BLM Land
 - Private Conservation Land
 - Transportation Corridor
 - Gravel Road
 - Road Right
 - Road Left
 - Parcel
 - Developing Area
 - Highways Area
 - Historic Existing Use
 - Historic Existing Grade
- LIQUIDATION SERVICES**
1. Broken Bottle Recycling Company - Recycling
 2. Mountain Park School - Recycling
 3. Loma Verde Park - Recycling
 4. Santa Fe Community Center - Recycling
 5. Santa Fe Community Center - Education
 6. Santa Fe Community Center - Recycling
 7. Santa Fe Community Center - Recycling
 8. Santa Fe Community Center - Recycling
 9. Santa Fe Community Center - Recycling
 10. Santa Fe Community Center - Recycling
 11. Santa Fe Community Center - Recycling
 12. Santa Fe Community Center - Recycling
 13. Santa Fe Community Center - Recycling

DRAFT
CONTEXT MAP
ANALYSIS MAP



THORNTON RANCH OPEN SPACE

MASTER PLAN

LEGEND

- Master Plan Project Boundary
- County Land Boundary
- State Land Boundary
- BLM Land Boundary
- Conservation Conservancy Boundary
- Building Footprint
- Road Major
- Road Minor
- Road, Old (Deep Trench)
- Easement
- Parcel
- Topography, 20-ft Contour
- Topography, 100-ft Contour
- Drainage Way Major
- Drainage Way Minor
- Railroad, Existing Grade
- Railroad, Existing Grade
- Fence (Inventory or 300ft)
- Railroad, Potential
- Scenic Road (County Designated)
- Trail - Pk/Road, Paved
- Trail - Multi-Use, Unimproved
- Potential Open Space Center
- Well
- Windmill
- Gate
- 10-Year Flood Zone, Zone A Flood Hazard
- Slope 0% - 5%
- Slope 5.1% - 10%
- Slope 10.1% - 15%
- Slope 15.1% - 20%
- Slope 20.1% - 25%
- Slope 25.1% - 30%
- Slope > 30.1%



Wind Diagram
Mountain Range Wind Field Diagram

Map Notes:
1. This map is a conceptual plan and is not intended to be used for legal purposes.
2. The map is based on the best available information and is subject to change without notice.
3. The map is not a warranty of any kind and does not constitute an offer of insurance or any other financial product.
4. The map is not a substitute for a professional survey or other engineering or architectural services.
5. The map is not a substitute for a professional engineering or architectural plan.
6. The map is not a substitute for a professional engineering or architectural plan.
7. The map is not a substitute for a professional engineering or architectural plan.
8. The map is not a substitute for a professional engineering or architectural plan.
9. The map is not a substitute for a professional engineering or architectural plan.
10. The map is not a substitute for a professional engineering or architectural plan.

DRAFT SITE ANALYSIS MAP ANALYSIS MAP

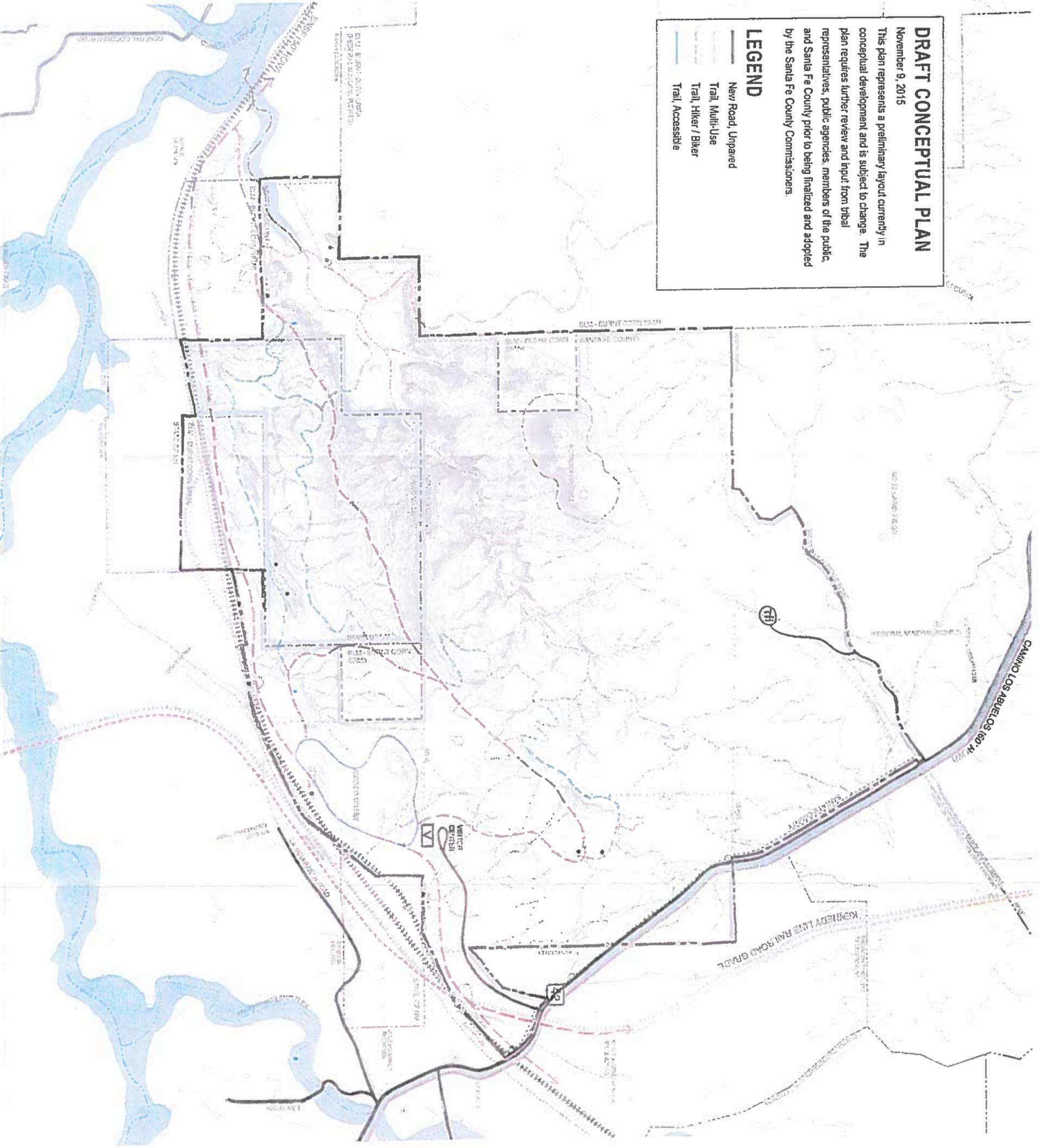


design office produced for Santa Fe County

DRAFT CONCEPTUAL PLAN

November 9, 2015
This plan represents a preliminary layout currently in conceptual development and is subject to change. The plan requires further review and input from tribal representatives, public agencies, members of the public, and Santa Fe County prior to being finalized and adopted by the Santa Fe County Commissioners.

- ### LEGEND
- New Road, Unimproved
 - Trail, Multi-Use
 - Trail, Hiker / Biker
 - Trail, Accessible



Henry P. Roybal
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *November 25, 2015*

TO: *Board of County Commissioners*

FROM: *Michael Kelley, Public Works Department Director*

VIA: *Katherine Miller, County Manager*

ITEM AND ISSUE: *BCC Meeting December 8, 2015*
Amendment Number 2 to a Memorandum of Understanding Between the New Mexico Department of Transportation and Santa Fe County for the Northeast Connector From Saint Francis Drive to Richards Avenue (Public Works / Chuck Vigil)

SUMMARY:

This Memorandum of Understanding (MOU) between the New Mexico Department of Transportation (NMDOT) and Santa Fe County (County) was executed in 2006 to delineate responsibilities between the parties for planning, design and construction of the roadway. This amendment significantly changes the responsibilities between the parties so that NMDOT will be responsible for design and construction of the roadway and the County will be responsible for environmental clearance and right of way acquisition.

BACKGROUND:

The original MOU agreed that the County would, by 2012, design and construct the roadway and, after construction, maintain the roadway. Amendment number 1 to the MOU restated the County's obligation to pay for all design and construction and extended the time of completion to 2018. This amendment will change the responsibility for design and construction from the County to NMDOT and will make the County responsible for right of way acquisition, obtaining environmental clearances and maintenance of the roadway after construction is completed.

ACTION REQUESTED:

Approve subject Amendment No. 2 to Memorandum of Understanding

Attachments:

Contract No.: M00574/2

Vendor No.: 0000054297

**AMENDMENT NO. 2 TO
MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NEW MEXICO DEPARTMENT OF TRANSPORTATION
AND
SANTA FE COUNTY**

THIS AMENDMENT NO. 2 made and entered into this _____ day of _____, 2015, by and between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION**, hereinafter the "**DEPARTMENT**" and the **BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY** hereinafter the "**COUNTY**".

WITNESSETH:

WHEREAS, the **DEPARTMENT** and **COUNTY** entered into a Memorandum of Understanding (MOU) dated June 6, 2006 whereby the **COUNTY** and **DEPARTMENT** agreed to cooperate in the study, design and construction of the Northeast Connector from St. Francis Drive to Richards Ave. in Santa Fe, New Mexico (the "Northeast Connector"); and

WHEREAS, **SECTION NINE – AMENDMENT** of the MOU requires an instrument in writing executed by the parties to effectuate any amendments to the MOU; and

WHEREAS, the **DEPARTMENT** desires and **COUNTY** has agreed to amend certain terms of the MOU; and

WHEREAS, the **DEPARTMENT** desires, and **COUNTY** has agreed to amend items Nos. 1, 2 and No. 5 on page two of the MOU under the heading "THE COUNTY" and to insert a new item Nos. 3 and 4 on page three of the MOU under the heading "THE DEPARTMENT" to provide for changes to

the responsibilities of the parties for the study, design and construction of the Northeast Connector.

NOW THEREFORE, it is mutually understood and agreed by the DEPARTMENT and COUNTY that the MOU for the Northeast Connector dated June 6, 2006 is hereby amended in the following particulars only:

1. Page 2 of the MOU, under the heading "THE COUNTY," Item 1 is deleted and replaced with the following: "The COUNTY agrees that after the construction of the Northeast Connector is completed by the DEPARTMENT, to adopt the Northeast Connector as part of the County road system and will thereafter be responsible for maintenance of the road."
2. Page 2 of the MOU, under the heading "THE COUNTY," Item 2. is deleted.
3. Page 2 of the MOU, under the heading "THE COUNTY," Item 5 is deleted and replaced with the following: "The COUNTY agrees that the Northeast Connector shall be studied using the DEPARTMENT'S Location Study Procedures and that the COUNTY will be responsible for environmental clearance and right-of-way acquisition for the Northeast Connector."
4. Page 3 of the MOU, under the heading "THE DEPARTMENT," a new Item 3 is inserted to read: "3. The DEPARTMENT agrees to design and construct the Northeast Connector after the COUNTY completes the study, environmental clearance and right-of-way acquisition for the Northeast Connector. The DEPARTMENT will be responsible for all costs associated with design and construction of the Northeast Connector."
5. Page 3 of the MOU, under the heading "THE DEPARTMENT," a new Item 4 is inserted to read: "4. The DEPARTMENT agrees to construct the Northeast Connector by federal fiscal year 2020 as it currently is programmed in the Santa Fe MPO TIP for federal fiscal year 2018."
6. This Amendment No. 2 shall be effective as of the late date of execution of this Amendment by the parties.

IN WITNESS WHEREOF, the parties have set their hands and seals this day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____

Date: _____

Secretary

APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S
OFFICE OF GENERAL COUNSEL

By: _____

Date: _____

SANTA FE COUNTY

By: _____

Date: _____

Robert A. Anaya, Chair
Santa Fe County Board of Commissioners

ATTESTATION:

By: _____

Date: _____

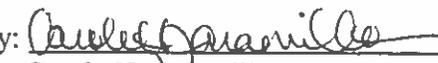
Geraldine Salazar
Santa Fe County Clerk

APPROVED AS TO FORM:

By: 
Gregory S. Shaffer
County Attorney

11/24/15
Date

FINANCE DEPARTMENT:

By: 
Carole H. Jaramillo
Finance Director

11/24/15
Date

Contract # M00574/1
Vendor# 5427

AMENDMENT NO. 1 TO
MEMORANDUM OF UNDERSTANDING

BETWEEN

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

AND

SANTA FE COUNTY

FOR THE NORTHEAST CONNECTOR FROM ST. FRANCIS DRIVE TO RICHARDS AVENUE

THIS AMENDMENT NO. 1, made and entered into this 6TH day of JUNE, 2012 by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION, herein referred to as the "DEPARTMENT", and the BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, a political subdivision of the State of New Mexico, herein referred to as the "COUNTY".

WITNESSETH:

WHEREAS, DEPARTMENT and COUNTY entered into a Memorandum of Understanding (MOU) dated June 6, 2006 whereby COUNTY and DEPARTMENT agreed to cooperate in the construction of the Northeast Connector from St. Francis Drive to Richards Ave. in Santa Fe, New Mexico;

WHEREAS, Section Nine – Amendment requires an instrument in writing and executed by the parties to effectuate any amendments to the MOU;

WHEREAS, the DEPARTMENT desires, and COUNTY has agreed, to amend the term of this MOU; and

WHEREAS, the DEPARTMENT desires, and COUNTY has agreed, to amend Item No. 5 page two (2) under the heading "THE COUNTY" to allow for an extension of time within which to design and construct the Northeast Connector.

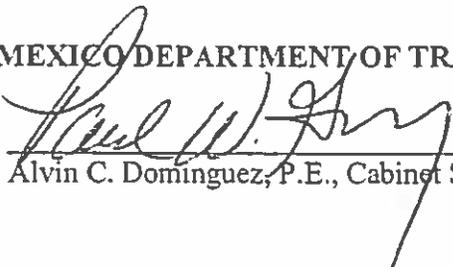
NOW THEREFORE, it is mutually understood and agreed by DEPARTMENT and COUNTY that the Memorandum of Understanding for the Northeast Connector dated June 6, 2006 is hereby amended in the following particulars only:

1. Item No. 5 on Page 2 under the heading "THE COUNTY" shall be deleted and replaced with the following: "The COUNTY agrees that the Northeast Connector shall be designed and constructed within 12 years of execution of this MOU and the COUNTY agrees to be responsible for all costs associated with design and construction";
2. This Amendment No. 1 shall be effective as of the date of execution of the Amendment by all parties.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to Memorandum of Understanding for the Northeast Connector to be executed on the date above written.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By:
for

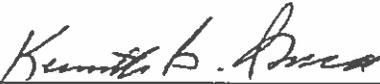

Alvin C. Dominguez, P.E., Cabinet Secretary NMDOT

Date:

6/6/12

APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

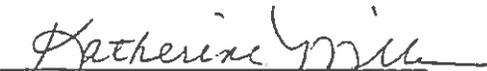
By:


Assistant General Counsel

Date:

6-6-12

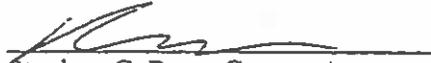
THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY, NEW MEXICO


Katherine Miller, County Manager

Date:

6-1-12

Approved as to Form:


Stephen C. Ross, County Attorney

Date:

6-1-12

107

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NEW MEXICO DEPARTMENT OF TRANSPORTATION
AND
SANTA FE COUNTY**

**FOR THE NORTHEAST CONNECTOR FROM ST. FRANCIS DRIVE TO
RICHARDS AVENUE**

THIS MEMORANDUM OF UNDERSTANDING, (hereinafter referred to as "MOU") is made and entered into this 6TH day of JUNE 2006, by and between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as "the DEPARTMENT") and the **BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY**, a political subdivision of the State of New Mexico (hereinafter referred to as "the COUNTY"), and hereinafter referred to collectively as "the PARTIES."

RECITALS

WHEREAS, each party is a public agency or political subdivision of the State of New Mexico and empowered to enter into this MOU; and

WHEREAS, the parties agree that Interstate 25 (hereinafter referred to as "I-25") within Santa Fe County between Old Pecos Trail and Richards Avenue is an important highway corridor and that the mobility, function, operational efficiency and safety of this corridor must be preserved in the interest of the public health, safety and welfare; and

WHEREAS, the DEPARTMENT and the COUNTY agree the Metropolitan Transportation Plan is a Multi-Modal plan that covers all of the different modes of transportation; and

WHEREAS, the COUNTY has identified the need for a northeast connector between St. Francis Drive and Richards Avenue as part of the Metropolitan Transportation Plan; and

WHEREAS, the DEPARTMENT and the COUNTY are aware that requests to develop property in this area have been and continue to be numerous and that, unchecked, the cumulative impacts on the safety, mobility and function of the highway may be adverse; and

WHEREAS, the owners of certain properties in this area wish to proceed with development and improvements to those properties, and have obtained, or may

obtain certain development approvals that are conditioned upon development of the Northeast Connector project; and

~~WHEREAS, the owners of these properties in conjunction with Santa Fe County and the New Mexico Department of Transportation have the responsibility to provide for safe and efficient access to those properties; and~~

WHEREAS, DEPARTMENT regulations (Title 18, Chapter 31 Part 6, NMAC) authorizes establishment of access management requirements for traffic safety and authorizes protection of the functional integrity of the state highway system and the public and private investment in that system; and

WHEREAS, the COUNTY, in conjunction with the DEPARTMENT, intend to develop an interim transportation plan to address the development of the portion of the Northeast Connector that extends between St. Francis Drive and Richards Avenue in connection with the pending development, so as to permit reasonable development without compromising the functionality and needs of the proposed commuter rail, and preserving the right to subsequently secure any rights-of-way required for a multi-modal transportation system and to otherwise act in conformity Metropolitan Transportation Plan and other transportation planning efforts.

NOW THEREFORE, to ensure the functional integrity of a multi-modal transportation system, the DEPARTMENT and COUNTY agree, as follows:

THE COUNTY:

1. The COUNTY agrees to design, construct a Northeast Connector south of I-25 between St. Francis Drive and Richards Avenue and, after construction, to adopt the Northeast Connector as part of its county road system and shall thereafter be responsible for maintenance of the road. *amended*
2. The COUNTY may, through the appropriate written agreement, delegate this responsibility to a developer of properties in the area. *Ø*
3. The COUNTY agrees to coordinate with the DEPARTMENT concerning any proposed access points from the Northeast Connector.
4. The COUNTY agrees that the northeast connector will be designed and constructed to a minimum of frontage road standards as defined by the AASHTO requirements for Geometric Design of Highways and Streets and approved by the DEPARTMENT.
5. The COUNTY agrees that the Northeast Connector shall be designed and constructed within 6 years of execution of this MOU and the COUNTY agrees to be responsible for all costs associated with design and construction. *12 yrs amended*
6. The COUNTY agrees to cooperate in the development and finalizations of a comprehensive Corridor Study of I-25 between from NM 599 and

the Old Pecos Trail Interchange, including, but limited, to the Northeast Connector.

7. The COUNTY agrees to modify the existing intersections as set forth in ~~the State Access Management Manual and other application~~, federal and state regulations, including the intersection of St. Francis Drive and Old Agua Fria Road, and the railroad crossing on the Northeast Connector, and to obtain approval of this work from the DEPARTMENT.
8. The COUNTY agrees to facilitate access control line modifications that may result from the easement granted within Interstate Rights of Way, including a metes and bounds description of the proposed easement and shall be in a format acceptable to the DEPARTMENT. The easement document will then be recorded at Santa Fe County.
9. The COUNTY shall cooperate with the DEPARTMENT to preserve the DEPARTMENT's right to subsequently secure any rights-of-way required for a multi-modal transportation system and to otherwise act in conformity with the Metropolitan Transportation Plan and other transportation planning efforts. The COUNTY shall also cooperate with the DEPARTMENT to preserve the departments right to use the Northeast Connector for highway purposes if deemed necessary.

The DEPARTMENT:

1. The DEPARTMENT agrees to grant an easement through a Transfer Agreement or other appropriate document for the purpose of the construction of the Northeast Connector on portions of the existing I-25 right-of-way. The easement or transfer shall be conditioned upon the appropriate environmental clearances and any requirement imposed by the state or federal governments.
2. The DEPARTMENT agrees to incorporate the proposed regional transportation plan as part of the Corridor Study on I-25 from NM 599, Santa Fe Bypass, to the Old Pecos Trail Interchange.
3. *APL*

Both PARTIES agree to further maintain the cohesion, continuity of direction and spirit of cooperation between the PARTIES by providing an on-going channel of communication involving development requests, access permits and conditions along this segment. In this regard, the DEPARTMENT will keep the COUNTY informed on any access permit approvals and conditions; the COUNTY will keep the DEPARTMENT informed on the status and conditions involving large residential subdivision and commercial development approval requests and changes to access as a result of land use modifications.

This document shall remain in force and effect until such time as changes or modifications hereto are deemed appropriate through agreement of both PARTIES. Such changes or modifications anticipated that may present additional opportunities for reevaluation or amendment include, but are not limited to, changes to the roadway classification, addition of frontage roads or other physical changes that

affect access management requirements and future evolution of the highway and regulatory environment.

SECTION ONE -- EQUAL OPPORTUNITY COMPLIANCE:

The DEPARTMENT and the COUNTY agree to abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. In accordance therewith, the DEPARTMENT and the COUNTY agree to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the DEPARTMENT or the COUNTY is found to be not in compliance with these requirements during the term of this Agreement, the DEPARTMENT or the COUNTY agree to take appropriate steps to correct these deficiencies.

SECTION TWO -- CIVIL RIGHTS LAWS AND REGULATIONS COMPLIANCE:

The DEPARTMENT and the County shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. The DEPARTMENT and the COUNTY further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by the DEPARTMENT of Labor Regulations (41 CFR Part 60). Accordingly, 49 CFR Part 21 is applicable to this Agreement and incorporated herein by reference.

SECTION THREE -- NEW MEXICO TORT CLAIMS ACT:

As between the parties hereto, each party shall be responsible for liability arising from personal injury or damage to person and property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred as a result of the other party's acts or omissions in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort

Claims Act. The COUNTY and its "public employees" as defined in the New Mexico Tort Claims Act, and the DEPARTMENT and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. ~~No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.~~

SECTION FOUR -- THIRD PARTY BENEFICIARY CLAUSE:

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury (ies) to person(s), damage to property (is), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

SECTION FIVE -- APPLICABLE LAW:

The Laws of the State of New Mexico shall govern this Agreement.

SECTION SIX -- SEVERABILITY:

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

SECTION SEVEN -- SCOPE OF THE AGREEMENT:

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

SECTION EIGHT -- EFFECTIVE DATE AND TERM:

This Agreement shall not be effective until executed by the Secretary of the DEPARTMENT or her designee. The term of this Agreement is from the Official Date of Entry of the Agreement until such time as it is terminated in writing. Both Parties shall agree to termination.

SECTION NINE -- AMENDMENT:

This Agreement shall not be altered, changed or amended except by an instrument in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates specified below.

~~NEW MEXICO STATE DEPARTMENT OF TRANSPORTATION~~

By: [Signature]
Secretary or Designee

Date: 6-6-06

Approved as to form and legal sufficiency by the Department's Office of General Counsel

By: [Signature]
General Counsel

Date: 6-1-06

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY, NEW MEXICO

By: [Signature]
Harry B. Montoya, Chair

Date: 5-26-06

ATTEST:

[Signature] 5/30/06
for Valerie Espinoza, County Clerk

Approved as to form:

[Signature]
Stephen C. Ross, County Attorney

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Hollan
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Date: December 1, 2015

To: Santa Fe Board of County Commissioners

From: Robert Griego, Planning Manager *RG*
Rosemary Bailey, Housing Specialist *RB*

Via: Penny Ellis-Green, Growth Management Director *PEG*

Re: **DIRECTION OF AN ALTERNATE MEANS OF COMPLIANCE REQUEST FOR
LA PRADERA**

ISSUE:

At the September 8, 2015, meeting the Board of County Commissioners considered a request from La Pradera and directed staff to review homes built by the Santa Fe Community Housing Trust (Housing Trust) in La Pradera as an Alternative Means of Compliance to meet La Pradera's Affordable Housing Agreement. The specific request was for the County to consider whether La Pradera should be given credit for fifteen (15) of the twenty-five (25) affordable homes that were built through the Housing Trust as an Alternative Means of Compliance in accordance with the Affordable Housing Ordinance 2012-1, as amended. Ordinance 2012-1 provides for Alternative Means of Compliance, including:

otherwise providing Affordable Units in a manner that is consistent with the goals and objectives of this Ordinance (including providing rental home in lieu of homes for purchase, so long as the initial market value rental payment do not exceed that which an affordable buyer would have to pay to purchase a home in the income ranges specified in the affordable housing regulations.

In accordance with the existing Affordable Housing Agreement, La Pradera is currently obligated to provide an additional 15 homes: 7 in Tier 1; 3 in Tier 2, 4 in Tier 3 and 1 in Tier 4. Staff has reviewed the affordable housing files at the Housing Trust for the units proposed by La Pradera as an Alternative Means of Compliance in accordance with Ordinance 2012-1. Staff also confirmed that the Housing Trust holds a lien for each of these units and many of these also contained a lien from Mortgage Finance Authority. Staff reviewed the affordable housing units based on the first mortgage for the homes and did not consider the additional liens in the determination of the affordable housing units.

Table 1: Remaining Affordable Housing Units Required and Units Built in La Pradera

AH Income Tiers	Remaining AH Agreement Units for La Pradera	Housing Trust AH Units Built in La Pradera	Housing Trust AH Units Built in La Pradera which meet County AH Maximum Target Prices
Tier 1	7	7	1
Tier 2	3	11	10
Tier 3	4	5	5
Tier 4	1	2	2
Total	15	25	18

Affordable Housing Units Built:

Staff has determined that the first mortgage for 18 of the units proposed for Alternative Means of Compliance were below the maximum housing price for the income tier of the buyer in the ranges identified in Table 1. However, La Pradera's Affordable Housing Agreement requires 7 units be in Tier 1. Only one unit that was built in Tier 1 meets the Maximum Housing Price requirement for this tier. The Maximum Target Price for a Tier 1 home with three bedrooms is \$118,250. The Housing Trust did develop more units for each of the other tiers than required by the Affordable Housing Agreement.

Long Term Affordability

Ordinance 2015-2 provides:

Each affordable housing agreement include a lien, mortgage or other instrument to create a mortgage or lien in favor of the County in the amount of the difference between the Maximum Target Housing Price and ninety-five percent of the unrestricted fair market value of the Affordable Unit at the time of the initial sale, as determined by an appraisal approved by the County.

The liens to the Affordable Housing Units through the Housing Trust in La Pradera are held by the Housing Trust and not Santa Fe County. Therefore, these units will not be able to meet the definition of Long-term Affordability in accordance with Ordinance 2015-2. However, staff recognizes that these held by the Housing Trust will be part of their affordable housing program.

None of the units have a mortgage or lien in favor of the County, which precludes the County from assuring long-time affordability in accordance with the ordinance.

SUMMARY:

Staff has determined that the following criteria was met for 9 Units in accordance with Affordable Housing Ordinance and Regulations to include:

1. Homes were sold to income qualified individuals;
2. Housing price sold for each income tier;
3. Homes sold were eligible housing types;
4. Affordable Units were reasonably distributed in the development; and
5. Affordable Units sold to first time homebuyers.

An additional nine (9) units met the Affordable Housing Requirements but were not in accordance with the La Pradera Affordable Housing Agreement for each Income Tier.

The existing affordable housing agreement with La Pradera includes a provision that allows the non-profit to hold a lien in lieu of the County affordability lien provided that certain provisions are met. This would require the County to review the liens in accordance with the Affordable Housing Agreement.

STAFF RECOMMENDATION:

Staff recommends that the Board provide direction for an Alternative Means of Compliance Request for La Pradera. Staff proposes the following options for consideration by the Board:

Option 1:

Provide direction to staff to allow a submittal for Alternative Means of Compliance for nine (9) AH units. This option would require La Pradera to complete an additional 6 AH units in Tier 1 required by the existing Affordable Housing Agreement.

For this option, the applicant would need to submit an application to amend the Master Plan, Affordable Housing Plan, Affordable Housing Agreement, Plat, and development plan in accordance with Ordinance 2012-1 and 2006-2.

Option 2:

Provide direction to staff to allow a submittal for Alternative Means of Compliance for La Pradera for the remaining 15 homes required with the existing Affordable Housing Agreement. This option would allow the 9 additional homes built by the Housing Trust in Tiers 2, 3, and 4 to meet the obligation for Tier 1 for La Pradera.

For this option, the applicant would need to submit an application to amend the Master Plan, Affordable Housing Plan, Affordable Housing Agreement, Plat, and development plan in accordance with Ordinance 2012-1 and 2006-2.

Option 3:

Reject Request for an Alternative Means of Compliance because it does not provide any means for the County to enforce long-term affordability. Under this option, the developer would have to comply with the existing Affordable Housing Agreement.

Attachments:

- Exhibit A: Ordinance 2012-1 and 2006-2
- Exhibit B: Existing Amended and Restated Santa Fe County Affordable Housing Agreement for La Pradera
- Exhibit C: Plat showing Affordable Housing units built in La Pradera

SANTA FE COUNTY ORDINANCE NO. 2006-02

AN ORDINANCE REQUIRING AFFORDABLE HOUSING IN PROJECTS AND MINOR PROJECTS DEVELOPED WITHIN THE NORTHERN AND CENTRAL AREA OF THE COUNTY, CREATING THE POSITION OF AFFORDABLE HOUSING ADMINSTRATOR, PROVIDING FOR ENACTMENT OF AFFORDABLE HOUSING REGULATIONS, PROVIDING FOR INCENTIVES TO AMELIORATE THE COST OF PROVIDING AFFORDABLE HOUSING, ENSURING LONG-TERM AFFORDABILITY, PROVIDING FOR ALTERNATE MEANS OF COMPLIANCE AND MEANS TO ADDRESS HARDSHIP SITUATIONS, AMENDING ORDINANCE NOS. 1996-10, 1997-03, 2000-13, 2001-7, AND 2002-1, REPEALING SECTION K OF ORDINANCE NO. 2000-12, AND REPEALING ORDINANCES NO. 1997-02, 1997-10 and 2000-11.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY:

Section One. Purpose and Intent. The purpose of this Ordinance is to provide increased housing opportunities within a broad range of incomes for current and future residents of Santa Fe County. The intent is to encourage new development to achieve a reasonable balance between market rate housing and Affordable Housing through the use of incentives and other means to help offset potential costs.

Section Two. Applicability. This Ordinance shall apply to each Project and Minor Project within the unincorporated areas of central and northern Santa Fe County shown on Attachment A not otherwise governed by the Santa Fe County Exterritorial Zoning Ordinance, Ordinance No. 1997-4, as amended. This Ordinance shall apply to an existing approved master plan and shall apply to an application for approval of master plan, preliminary development plan or preliminary plat.

Section Three. Definitions. For purposes of this Ordinance, the following definitions shall apply:

A. "Affordable Housing" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Eligible or Entry Market Buyer, where the Eligible Housing Unit is occupied by the Eligible or Entry Market Buyer as a primary residence.

B. "Affordably Priced Housing Unit" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Eligible Buyer within Income Ranges 1, 2, or 3 respectively.

C. "Affordable Housing Administrator" means the County employee charged with administering this Ordinance, making recommendations and taking other actions as set forth in this Ordinance.

D. "Affordable Housing Plan" means a written plan that describes how an applicant intends to comply with the Affordable Housing requirements of this Ordinance, and which specifies the general location, number and types of Affordable Units that will be built.

E. "Affordable Housing Regulations" refers to regulations developed and updated periodically by the Board of County Commissioners to govern implementation and administration of this Ordinance.

F. "Affordable Unit" means an Affordably Priced Housing Unit or an Entry Market Housing Unit.

G. "Appreciation" means the amount an Affordable Unit has increased in value since the first sale of the unit to an Eligible Buyer using an initial sales price that has been adjusted by an index specified in the Affordable Housing Regulations.

H. "Area Median Income" means the median income of the Santa Fe Metropolitan Statistical Area, adjusted for various household sizes, published by the United States Department of Housing and Urban Development and amended annually pursuant to data published by the United States Department of Housing and Urban Development.

I. "Code Administrator" means the Santa Fe County Land Use Director, or his/her designee.

J. "Community Water System" has the same meaning as that phrase is given in the Land Development Code, Ordinance No. 1996-10 (as amended), a water supply system that serves five (5) or more dwelling units or commercial units through facilities that are under central or common ownership and/or management and that utilize permitted water rights instead of a domestic well, including public water supply systems such as those operated by Santa Fe County and the City of Santa Fe.

K. "Eligible Buyer" means the buyer of an Eligible Housing Unit whose Annual Gross Income is one hundred percent (100%) or less than the Area Median Income.

L. "Eligible Housing Type" or "Unit" means a housing unit, attached or detached, that is constructed in compliance with applicable codes. Design standards for an Eligible Housing Type or Unit shall be further categorized within the Affordable Housing Regulations according to housing type, number of bedrooms, number of bathrooms and minimum square footages of heated residential area.

M. "Entry Market Buyer" means a buyer of an Eligible Housing Type of Unit whose Annual Gross Income is between 101% to 120% of the Area Median Income.

N. "Entry Market Housing Unit" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Entry Market Buyer within Income Range 4 respectively.

O. "Income Range" means the income range used to determine the Maximum Target Home Price for each Eligible Housing Type. For purposes of this Ordinance, the Income Ranges are as follows:

1. Income Range 1: 0% to 65% of the Area Median Income.
2. Income Range 2: 66% to 80% of the Area Median Income.
3. Income Range 3: 81% to 100% of the Area Median Income.
4. Income Range 4: 101% to 120% of the Area Medium Income.

P. "Maximum Target Housing Price" means the highest price at which an Eligible Housing Type or Unit may be sold to an Eligible or Entry Market Buyer in the appropriate Income Range and otherwise satisfy the affordable housing requirements of this Ordinance. The Maximum Target Housing Prices for each Eligible Housing Type and Income Range shall be included in the Affordable Housing Regulations, and the

Maximum Target Housing Prices shall be amended from time to time as the Area Median Income, interest rates, or other appropriate indices change. The Maximum Target Housing Price shall not include any options, lot premiums or upgrades chosen by the Eligible or Entry Market Buyer so long as the options, premiums and upgrades are published by the seller in advance as part of its marketing efforts and so long as the options are reasonably comparable to those offered to other buyers of the same housing type and do not exceed the sum of \$2,000 in total.

Q. "Major Project" means any division of property into twenty-five (25) or more parcels for purpose of sale, lease or other conveyance of one or more single-family residences.

R. "Minor Project" means subdivision of a parcel or parcels into between five (5) and no more than twenty-four (24) or parcels (inclusive of any Affordable Housing provided as a result of the application of requirements of this Ordinance) for purpose of sale, lease or other conveyance of one or more single-family residences.

S. "Project" means any Major Project or Minor Project.

Section Four. Affordable Housing Requirements.

A. Of the total housing provided in any Major Project, no less than thirty percent (30%) shall be Affordable Housing as defined herein. Of the total housing provided in any Minor Project, no less than sixteen percent (16%) shall be Affordable Housing as defined herein.

B. The distribution of the Affordable Units provided in connection with a Major Project shall include Affordably Priced Housing Units provided equally to Eligible Buyers in Income Range 1 (7.5%), Income Range 2 (7.5%), Income Range 3 (7.5%), and Entry Market Housing Units provided to Entry Market Buyers in Income Range 4 (7.5%). The distribution of the Affordable Units provided in connection with a Minor Project, except as otherwise set forth in Section Five of this Ordinance, shall include Affordably Priced Housing Units provided equally to Eligible Buyers in Income Range 1 (4%), Income Range 2 (4%), Income Range 3 (4%), and Entry Market Housing Units provided to Entry Market Buyers in Income Range 4 (4%).

C. If a fractional portion of an Affordable Unit remains when determining the required number of Units, the following requirements apply:

1. Where the fractional remainder is greater than 0.5, an additional unit shall be required.

2. Where the fractional remainder is 0.5 or less, a residual fee shall be required in accordance with the Affordable Housing Regulations.

D. Affordable Housing shall be integrated into the overall design and layout of the Project, and the Affordable Units shall be reasonably dispersed within the Project. An appropriate mix of housing types and sizes may be included in the Project so long as it otherwise complies with this Ordinance. At a minimum, the general location, total number of units, a description as to the type and design of those units, the general pricing structure, and the proposed phasing of the Affordable Housing shall be identified in the Affordable Housing Plan and the exact location of the Affordable Units shall be identified in the Affordable Housing Agreement.

E. Affordable Housing shall be provided in phases if the Project is otherwise to be phased, but the proportion of Affordable Units offered for sale within any

phase must not be less than the proportion of the total number of lots to be developed within all phases of the Project and the total number of Affordable Units to be offered within all phases of the Project.

F. An applicant shall submit an Affordable Housing Plan as a part of the application for approval of a Project. The Affordable Housing Plan shall describe, in detail, how the applicant intends to comply with the Affordable Housing requirements of this Ordinance, and shall specify whether alternative means of compliance or hardship conditions will be claimed and, if so, the grounds for doing so. The Affordable Housing Plan shall be submitted at the earliest phase of the review process and shall be included as a part of the development review for that development. The Affordable Housing Administrator may request additional information from the applicant, or reject or require amendments to a proposed Affordable Housing Plan if the proposed Affordable Housing Plan fails to meet the requirements of this Ordinance or the Affordable Housing Regulations. The Affordable Housing Plan will be incorporated into the Affordable Housing Agreement that shall be filed and recorded with a final development plan or a final plat, whichever instrument is the first to be recorded.

G. A final plat shall not be recorded until the applicant has entered into an Affordable Housing Agreement with the County.

Section Five. [Reserved]

Section Six. Affordable Housing Regulations.

A. The Affordable Housing Administrator shall recommend and present to the Board of County Commissioners proposed Affordable Housing Regulations contemporaneous with consideration of this Ordinance.

B. The Affordable Housing Regulations ultimately adopted by the Board of County Commissioners shall include, at a minimum, the following:

1. The application submittal requirements necessary to reasonably evaluate compliance with this Ordinance, the requirements governing the Affordable Housing Plan and Affordable Housing Agreement.

2. The form of the Affordable Housing Agreement, including standard terms and conditions for providing Affordable Housing within a Project, the location, housing type(s) and size(s) and the Maximum Target Housing Price(s) of the proposed Affordable Units, a description of how the Affordable Units will be marketed and sold to Eligible Buyers or Entry Market Buyers, and a requirement that the Affordable Housing Agreement be filed and recorded with the Final Plat;

3. A reasonable process for certifying Eligible or Entry Market Buyers by the County or its agent that, to the extent possible, takes no more than fifteen (15) business days from the date a potential buyer applies for certification;

4. Reasonable fees to be charged for certification of Eligible or Entry Market Buyers;

5. The form of the Certificate of Compliance to be issued upon compliance with the terms of this Ordinance;

6. A Maximum Target Housing Price for each income range;

7. Minimum design requirements including the number of bathrooms and the minimum residential square footages of heated area according to the number of bedrooms;

8. [Reserved]

9. The method used to determine and periodically adjust the Maximum Target Housing Price, including the methodology to be used to determine the initial market price for each Eligible Housing Type and a means to discount the market price by the same percentages to determine the price for each category of Eligible Housing Type and for each Income Range;

10. The method for determining fees associated with this Ordinance, including cash payments as an alternative means of compliance and residual fees;

11. Rules for applying the residual fee standards in Section 4(C)(2) of this Ordinance;

12. A methodology for evaluating cash payments pursuant to Section 16(A)(2) of this Ordinance;

13. A methodology for evaluating property dedications pursuant to Section 16(A)(3) of this Ordinance;

14. A methodology for evaluating proposed cash payments for alternative means of compliance pursuant to Section 16(F)(1) of this Ordinance;

15. A methodology for evaluating property dedications for alternative means of compliance pursuant to Section 16(F)(3) of this Ordinance;

16. Criteria and procedures for reducing the County's share of the Appreciation and the Affordability Mortgage or Lien pursuant to Section 18(C) of this Ordinance; and

17. Any other matter deemed necessary by the Board of County Commissioners.

C. The Affordable Housing Regulations shall be adopted by resolution of the Board of County Commissioners, and shall be amended from time to time as deemed necessary and to account for changes in indices used to make calculations required by this Ordinance and the Affordable Housing Regulations.

Section Seven. Rental of Affordable Units. An Eligible or Entry Market Buyer shall not lease an Affordable Housing Unit that is provided pursuant to this Ordinance unless the proposed tenant is an immediate family member of the Eligible or Entry Market Buyer, the Eligible or Entry Market Buyer is under duress by reason of unemployment, family medical emergency, is unable to sell the Affordable Unit for an amount equal to or greater than the original sale price or other unique circumstances of hardship, and the proposed lease of the premises is approved in writing by the Affordable Housing Administrator.

Section Eight. Water for Affordable Housing. Notwithstanding the provisions of Article V, Section 5.2.2.g.(9) of the Santa Fe Land Development Code and Ordinance No. 2005-02 (Master Plan Procedures), or any Resolution governing operations of the Santa Fe County Water Resources Department, a Project shall not be required to transfer water rights to the County for the Affordably Priced Housing Units as required by

application of Section 4(A) of this Ordinance, so long as at the time of application the County holds adequate water rights to supply the Affordably Priced Housing Units and is otherwise capable of supplying the Affordably Priced Housing Units.

Section Nine. Density Bonus for Affordable Housing.

A. A Major Project that utilizes a Community Water System may receive increased density to accommodate the Affordably Priced Housing Units pursuant to the requirements contained within this Ordinance.

B. A Minor Project may receive increased density to accommodate the Affordably Priced Housing Units pursuant to the requirements contained within this Ordinance so long as the Project provides no less than thirty percent (30%) Affordable Housing, and so long as: (i) the Project utilizes a Community Water System, and (ii) clustering concepts are incorporated into the Project.

C. The density bonus permitted by this Section shall not exceed 2/3 unit for each Affordably Priced Housing Unit provided and as otherwise permitted by application of the Land Development Code, not to exceed an increased density of fifteen percent (15%) attributable to the Project in total.

D. The affordability requirements for a Project shall be determined prior to applying any density bonus.

E. Density bonuses of not more than twenty percent (20%) attributable to the Project as a whole may be approved by the Board of County Commissioners on a case-by-case basis, so long as the Project remains compatible with surrounding uses and the impacts to adjacent areas are minimal.

Section Ten. Incentives for Energy Efficiency. A Project that provides energy efficiency measures within the Project as a whole shall be permitted to apply all the incentives described in this Ordinance to each Entry Market Housing Unit. The criteria to evaluate a proposal to provide energy efficiency measures shall be more specifically described in the Affordable Housing Regulations.

Section Eleven. Relief from Development Fees. Notwithstanding the provisions of Article V, Section 6 ("Fees and Levies") Article XII of the Santa Fe County Land Development Code, a Project that provides Affordable Housing as required by this Ordinance shall be relieved of the obligation to pay development fees for each Affordably Priced Housing Unit provided within the Project.

Section Twelve. Relief from Additional Santa Fe County Water Utility Connection Charges. A Project that provides Affordable Housing as required by this Ordinance shall be relieved of the obligation to pay additional water connection charges (excluding the costs of creating a line extension pursuant to a Water Service Agreement) for each of the Affordably Priced Housing Unit that exceed the cost of the water meter.

Section Thirteen. Reduction of Lot Size for Affordable Units. A Minor Project that is not eligible for a water rights transfer waiver (Section Eight, herein) or a water allocation or density bonus (Section Nine, herein), may reduce the lot area for each Affordably Priced Housing Unit to the minimum permitted by applicable Regulations of

the New Mexico Environmental Department, so long as the Affordably Priced Housing Unit whose lot sizes are reduced pursuant to this Section are reasonably dispersed throughout the Project. The reduction in lot size shall not alter the hydrologic standards set forth in the Santa Fe County Land Development Code.

Section Fourteen. [Reserved.]

Section Fifteen. Other Incentives Authorized by Article 27, New Mexico Affordable Housing Act. The County may donate land for construction of affordable housing or an existing building for conversion or renovation into affordable housing or may provide or pay the costs of infrastructure necessary to support affordable housing projects if permitted under the terms of a separate ordinance enacted pursuant to NMSA 1978, Section 6-27-1 et seq.

Section Sixteen. Alternate Means of Compliance.

A. A Project may alternatively meet all or a portion of its obligation to provide Affordable Housing by:

1. providing Affordable Units outside the Project but within central and northern Santa Fe County, as shown on Attachment A, subject to the provisions of Section Sixteen (D) of this Ordinance;
2. making a cash payment that is equal to or greater value than would have been required if the Project had been constructed or created Affordable Units as provided in this Ordinance, applying the methodology set forth in the Affordable Housing Regulations; or
3. dedicating property suitable for construction of Affordable Units outside the Project but within central and northern Santa Fe County, as shown on Attachment A, whose value is equal to or greater than that which would have been required if the Project had been constructed or created Affordable Units as provided in this Ordinance, applying the methodology set forth in the Affordable Housing Regulations.

B. Review and approval of a proposal to use an alternative means of compliance provided by this Section shall be conducted during the review of application for approval of the master plan, preliminary plat or development plan, as appropriate. Alternatively, a person desiring to develop a Project may apply for concept approval of a proposed Affordable Housing Plan prior to applying for approval of a Project, in which case the application shall be processed in the same manner as an application for a master plan is processed. Concept approval of an alternative means of compliance shall not imply nor commit to an approval for future development.

C. Where an alternative means of compliance pursuant to Section 16 (A)(1) is proposed, both the Project and its off-site affordable housing component shall be considered and processed as a single Project, except as provided in Section 16 (D) of this Ordinance.

D. Where an alternative means of compliance pursuant to Section 16 (A)(1) is proposed (hereinafter referred to as "the sending project") but the off-site Affordable Units (hereinafter referred to as "the receiving project") are to be located within an area governed by the Santa Fe County Exterritorial Zoning Ordinance,

Ordinance No. 1997-4, as amended, or the platting and planning jurisdiction of any municipality (hereinafter referred to collectively as "the Extraterritorial Zone"), the provisions of Section 16 (C) shall not apply. The receiving project must receive final development plan and plat approval from the Extraterritorial Zoning Authority or, in areas without an extraterritorial zoning ordinance or regulations, from the appropriate municipality, prior to the approval of the final development plan and plat for the sending project.

E. In deciding whether to accept a proposed alternative means of compliance pursuant to Section 16 (A)(1), the County shall consider the following where applicable:

1. whether implementation of a proposed alternative means of compliance would overly concentrate Affordable Units in an area or within the proposed Project in a location where such a concentration would be inappropriate given present or future conditions;
2. if the proposal involved providing Affordable Units outside the Project area, whether the cumulative number of Affordable Units required of both the sending and receiving projects is met;
3. if the proposal involves providing Affordable Units outside the Project area, whether there is adequate existing infrastructure, including water systems, liquid waste facilities and transportation systems, to support the Affordable Units in the proposed location, whether infrastructure for water and liquid waste disposal systems can serve the proposed alternative site or project, and whether the commitment to provide such service has been confirmed in a commitment letter, or water or wastewater service agreement;
4. if the proposal involves providing Affordable Units outside the Project area, whether there is a specific need or market for Affordable Units in the location where proposed;
5. if the proposal involves providing Affordable Units outside the Project, whether the property where the Affordable Units are proposed to be located is suitable for residential use and residential development; and
6. if the proposal provides an overall greater public benefit than if the Affordable Units were constructed within the Project or Minor Project.

F. In deciding whether to accept a proposed alternative means of compliance pursuant to Sections 16 (A)(2) or (A)(3), the County shall consider the following where applicable:

1. whether the proposed cash payment is equal to or greater than the cost of constructing equivalent Affordable Units within the Project, applying the methodology set forth in the Affordable Housing Regulations;
2. whether a proposed cash payment or dedication of property creates a substantial surplus of funds within the dedicated housing fund or trust specific to that purpose;
3. whether the appraised value of the property proposed to be dedicated is equal to or greater than the total estimated value of the affordable units that would have been constructed within the Project, applying the methodology set forth in the Affordable Housing Regulations; and

4. whether a cash payment or property provides a greater overall public benefit than if the Affordable Units were constructed within the Project or Minor Project that would have otherwise provided for mixed-income development.

G. The method for determining whether the total cash payment amount or value of property proposed for transfer is sufficient shall be established in the Affordable Housing Regulations.

H. Incentives described in Sections 8 through 15 of this Ordinance may only be applied to a Project utilizing alternative means of compliance if the Board of County Commissioners specifically finds that this Ordinance, when applied to the Project, would result in economic infeasibility of the Project.

Section Seventeen. Hardship Conditions.

A. The Board of County Commissioners or, if a Board of Adjustment is created by the Board of County Commissioners of Santa Fe County, then the Board of Adjustment, may waive one or more of the requirements set forth in this Ordinance if a condition of hardship exists as set forth in this Section.

B. A condition of hardship shall exist for purposes of this Section, as follows:

1. A condition of hardship exists where the Project fails to qualify for any incentive set forth herein, where the Project fails to demonstrate eligibility for an alternative means of compliance, where application of the provisions of this Ordinance would result in economic infeasibility of the Project, and where complying with the requirements of this Ordinance would deprive a property owner of substantially all economically viable use of the subject property taken as a whole contrary to the Constitution of the United States or the Constitution of the State of New Mexico.

2. A condition of hardship exists for a Minor Project when an Affordable Unit (or lot created for an Affordable Unit) cannot be sold within a reasonable period of time without causing a loss on the Minor Project taken as a whole.

Section Eighteen. Long-term Affordability.

A. Each Affordable Housing Agreement shall include a form of lien, mortgage or other instrument (hereinafter referred to as "the Affordability Mortgage or Lien") that shall be executed and recorded along with the deed conveying the Affordable Unit to the first buyer, and that instrument shall create a mortgage or lien in favor of the County in the amount of the difference between the Maximum Target Housing Price and ninety-five percent of the unrestricted fair market value of the Affordable Unit at the time of initial sale, as determined by an appraisal approved by the County. The lien, mortgage or other instrument shall be duly executed and recorded in the Office of the County Clerk.

B. The lien, instrument, or mortgage shall contain a provision that creates a right of first refusal in favor of the County to purchase the Affordable Unit or the right to broker resale of the Affordable Unit to an Eligible or Entry Market Buyer at the then fair market value of the Affordable Unit. This instrument shall require the owner of an Affordable Unit to provide the County with fifteen (15) days written notice of intent to sell the Affordable Unit during which period the County may indicate its intent to purchase the unit or broker a purchase and sale of the unit to an Eligible Buyer. The

instrument shall further provide the County with an additional 60 days after it has notified the owner of its intent to purchase the unit or broker a purchase and sale of the unit to complete the transaction. If the County fails to notify the owner of its intent to purchase the unit or broker a purchase of the unit within the allotted time period, or if it does not complete the transaction within the allotted time period, the owner shall have the right to sell the unit to any buyer at an unrestricted price.

C. The lien, mortgage or other instrument shall also provide that if the Affordable Unit is sold or refinanced during the ten year period beginning on the date of sale of the Affordable Unit to the first buyer thereof, the County shall share in any Appreciation; the seller's share of the resulting appreciation shall be measured by multiplying the number of full years that have elapsed from the date of first sale of the Affordable Unit by 0.10 and then multiplying that result by the Appreciation. If the sale price is insufficient to close the transaction and satisfy the County's share of the Appreciation and the Affordability Mortgage or Lien, the County's share shall be reduced according to criteria set forth in the Affordable Housing Regulations.

D. The form of the instrument described in subsection 18(A), above, and the methodology for determining the initial market value of the Affordable Unit shall be specified in the Affordable Housing Regulations.

E. Any lien, mortgage, or other instrument referred to in this Section shall be released and satisfied through an appropriate instrument at the time of sale of the Affordable Unit and the appropriate instrument shall be recorded in the Office of the County Clerk documenting the release and satisfaction thereof. Any amounts collected from application of any affordability mortgage or lien pursuant to Section 18(A), above, shall be paid to the County contemporaneously with release of said instrument.

F. An Affordability Mortgage or Lien may be temporarily released for the limited purpose of closing a subsequent purchase and sale of an Affordable Unit so long as an affordability mortgage or lien is executed by the buyer and recorded as provided in this Section.

G. Any amounts collected from application of any Affordability Mortgage or Lien shall be deposited into a fund created in the County treasury or separate trust whose sole purpose shall be to support Affordable Housing within Santa Fe County or, alternatively, transferred to the Santa Fe County Housing Authority to support Affordable Housing within Santa Fe County. The fund or trust shall be governed by rules and requirements set forth in a separate Ordinance enacted pursuant to NMSA 1978, Section 6-27-1 et seq.

H. [Reserved]

I. Where the then owner of an Affordable Unit is under extreme duress by reason of unemployment, family medical emergency, divorce, or death and is unable to sell the Affordable Unit for an amount equal to or greater than the original sale price or for other unique and extreme circumstances of hardship, the Affordable Lien may be compromised or released.

Section Nineteen. Affordable Housing Administrator. The position of Affordable Housing Administrator is established. The Affordable Housing Administrator shall administer the Affordable Housing Ordinance, manage the fund or trust established pursuant to Section 17(G) of this Ordinance and a separate ordinance enacted pursuant to

NMSA 1978, Section 6-27-1 et seq., act as an ombudsman to the development review process, and have other responsibilities set forth in this Ordinance. The salary and benefits of the Affordable Housing Administrator shall be paid from proceeds collected pursuant to Paragraph 17(G) of this Ordinance and a separate ordinance enacted pursuant to NMSA 1978, Section 6-27-1 et seq., to the extent permitted by law.

Section Twenty. Affordable Housing Ordinance Review. The Affordable Housing Administrator shall prepare an Affordable Housing Report and present it to the Board of County Commissioners by the first anniversary of the effective date of this Ordinance. The purpose of the report is to measure the overall effectiveness of the Ordinance and to identify any deficiencies. In the report, the Affordable Housing Administrator shall recommend any amendments necessary to rectify those deficiencies. A similar report shall be developed and presented annually thereafter. If, at a future date, the provisions contained herein no longer meet the purpose and intent provided in Section One of this Ordinance, the Board of County Commissioners may consider appropriate amendments to this Ordinance or may repeal this Ordinance in whole or in part.

Section Twenty-One. Repeal and Amendment of Existing Ordinances.

A. Upon the effective date of this Ordinance, Ordinance Nos. 1997-02, adopted March 5, 1997, 1997-10, adopted August 12, 1997, and 2000-11, adopted September 26, 2000, shall be and hereby are repealed.

B. Upon the effective date of this Ordinance, Ordinance No. 1996-10 (the "Santa Fe County Land Development Code"), first adopted September 10, 1996, as amended, shall be and hereby is amended, as follows:

1. A new subsection 2.4.1a(1)(a)(vii) is adopted which shall provide as follows: "2.4.1a(1)(a)(vii). Submittals required by Ordinance No. 2006-02 ("Affordable Housing")."

2. A new subsection 2.4.2b(1)(a)(vii) is adopted which shall provide as follows: "2.4.2b(1)(d): Submittals required by Ordinance No. 2006-02 ("Affordable Housing")."

3. Art. III, Section 11.1 shall be amended with the following additional language, to be placed at the end of the Section: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-02 ("Affordable Housing")."

4. Art. III, Section 11.2 shall be amended with the following additional language, to be placed at the end of the Section: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-02 ("Affordable Housing")."

5. A new subsection 7.1.2(dd) of Art. V shall be and hereby is adopted which shall provide as follows: "7.1.2(dd): Submittals required by Ordinance No. 2006-02 ("Affordable Housing")."

C. Upon the effective date of this Ordinance, Section 10.1.2 of Ordinance No. 1997-03, as amended, shall be and hereby is amended with the following additional

language, to be placed at the end of the Section: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-02 ("Affordable Housing")."

D. Upon the effective date of this Ordinance, Art. XV, Section K, Section 3.B., Exhibit 1 ("Zoning Matrix"), Col. N, 1b, 5b, 6b, 8b of Ordinance No. 2000-12 ("the Community College District Ordinance"), adopted December 11, 2000, shall be and hereby are repealed.

E. Upon the effective date of this Ordinance, a new Section 3.4.1.c(2) of Ordinance 2000-13 (the "Tesuque Community Zoning District"), adopted December 11, 2000, shall be and hereby is amended as follows: "2) where affordable housing that is provided pursuant to Ordinance No. 2006-02 ("Affordable Housing")."

F. Upon the effective date of this Ordinance, a new Section 4.4.2 of Ordinance 2002-1 ("Madrid Community Planning District"), adopted January 8, 2002, shall be and hereby is adopted which shall provide as follows: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-02 ("Affordable Housing")."

G. Any ordinance, regulation or policy that is inconsistent with this Ordinance shall be, and hereby is, repealed.

Section Twenty-Two. Severability. The provisions of this Ordinance are severable and if any individual provision of this Ordinance is held invalid by a Court of Law, then the offending provision shall be stricken but the remaining provisions shall remain in full force and effect.

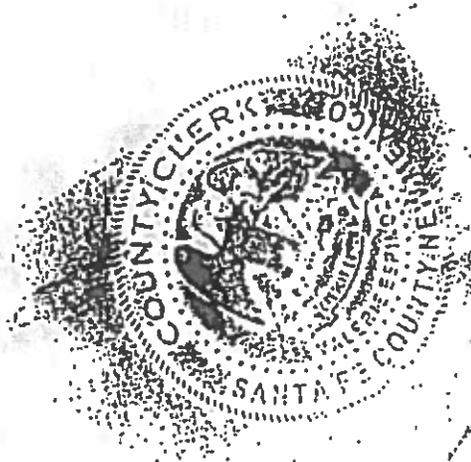
PASSED AND ENACTED THIS 14th DAY OF FEBRUARY, 2006.

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY, NEW MEXICO

By *[Signature]*
Harry B. Mendoza, Chair

ATTEST:
[Signature]
Valerie Espinoza, County Clerk

Approved as to form:
[Signature]
Stephen C. Ross, County Attorney

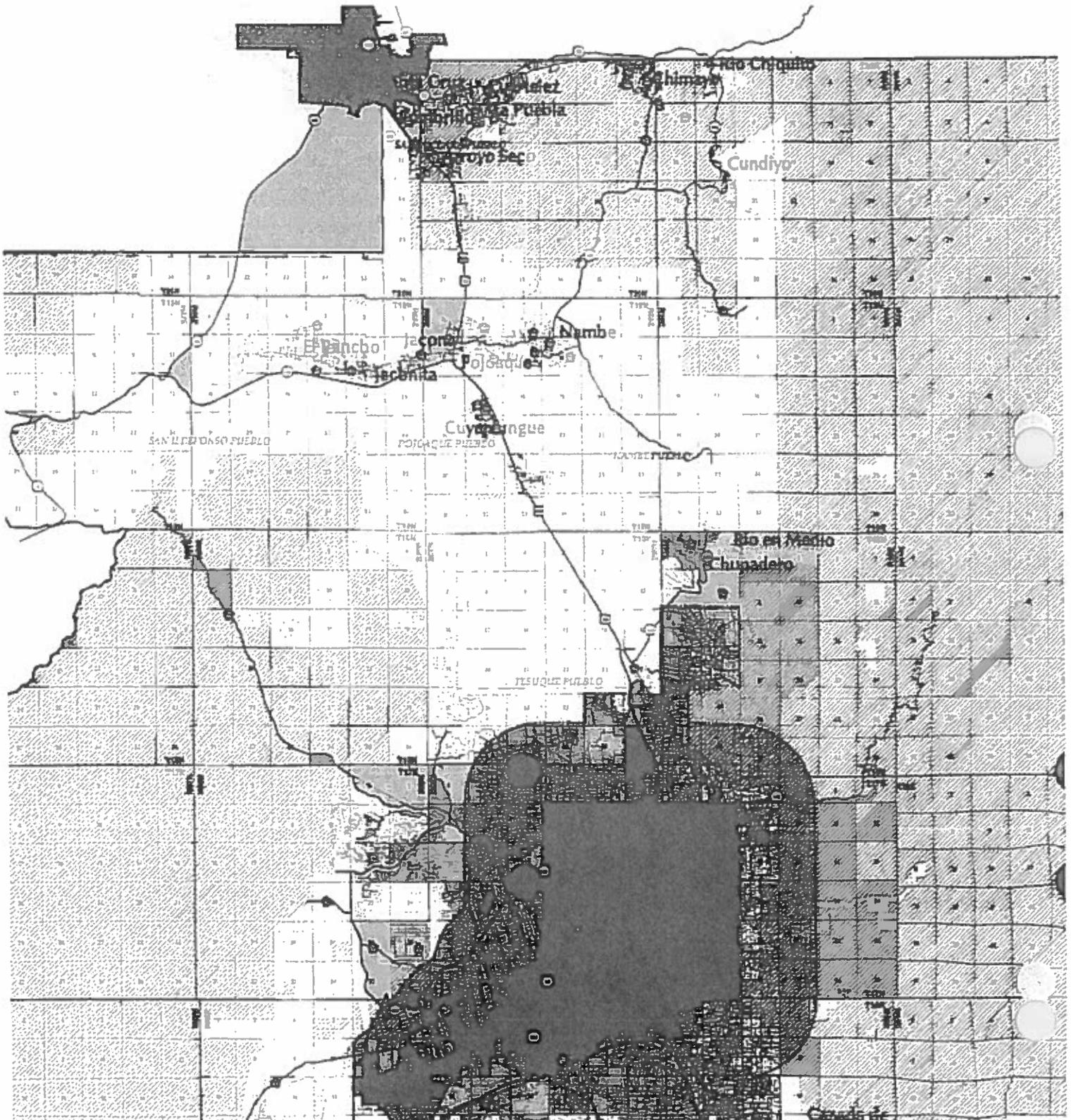


COUNTY OF SANTA FE) BCC ORDINANCE
STATE OF NEW MEXICO) ss PAGES: 14
I Hereby Certify That This Instrument Was Filed for
Record On The 20th Day Of February, A D. 2006 at 06:48
And Was Duly Recorded as Instrument # 1420817
Of The Records Of Santa Fe County
Deputy *[Signature]* Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

SFC CLERK RECORDED 02/20/2006

Santa Fe County Affordable Housing Ordinance 2006-2

Northern and Central Santa Fe County



THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

ORDINANCE NO. 2012-1

AN ORDINANCE CONCERNING THE COUNTY'S AFFORDABLE HOUSING PROGRAM; REPEALING SPECIFIED PORTIONS OF ORDINANCES NO. 2006-02, 2009-01 AND 2010-09; ENACTING REPLACEMENT PROVISIONS THAT REDUCE THE AMOUNT OF AFFORDABLE HOUSING FROM 30% TO 15% OF THE TOTAL HOUSING PROVIDED IN A MAJOR PROJECT, AND REDUCING FROM 16% TO 8% THE AFFORDABLE HOUSING PROVIDED IN A MINOR PROJECT; AMENDING THE AFFORDABILITY LIEN; AND PROVIDING FOR THE REMAINDER OF THE AFFORDABILITY LIEN TO DECLINE TO MATCH THE APPRECIATION SHARE LIEN TO PROTECT LONG-TERM AFFORDABILITY.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY THAT SPECIFIED PORTIONS OF ORDINANCES NO. 2006-02, 2009-01 AND 2010-09 ARE HEREBY REPEALED AND REPLACEMENT PROVISIONS ENACTED AS FOLLOWS:

Section One. Subsections 4(A) and 4(B) of Ordinance No. 2006-02 ("Affordable Housing Requirements") shall be and are repealed and new subsections 4(A) and 4(B) enacted as follows:

"Section Four. Affordable Housing Requirements.

"A. Of the total housing provided in any Major Project, no less than fifteen percent (15%) shall be Affordable Housing as defined herein. Of the total housing provided in any Minor Project, no less than eight percent (8%) shall be Affordable Housing as defined herein.

"B. The distribution of the Affordable Units provided in connection with a Major Project shall include Affordably Priced Housing Units provided equally to Eligible Buyers in Income Range 1 (3.75%), Income Range 2 (3.75%), Income Range 3 (3.75%), and Entry Market Housing Units provided to Entry Market Buyers in Income Range 4 (3.75%). The distribution of the Affordable Units provided in connection with a Minor Project, except as otherwise set forth in Section Five of this Ordinance, shall include Affordably Priced Housing Units provided equally to Eligible Buyers in Income Range 1 (2%), Income Range 2 (2%), Income Range 3 (2%), and Entry Market Housing Units provided to Entry Market Buyers in Income Range 4 (2%)."

Section Two. Subsection 16(A) of Ordinance No. 2006-02 shall be and hereby is repealed and a new subsection 16(A) enacted as follows:

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"Section Sixteen. Alternate Means of Compliance.

"A. A Project may alternatively meet all or a portion of its obligation to provide Affordable Housing by:

"1. providing Affordable Units outside the Project but within central and northern Santa Fe County, as shown on Attachment A, subject to the provisions of Section Sixteen (D) of this Ordinance;

"2. making a cash payment that is equal to or greater value than would have been required if the Project had been constructed or created Affordable Units as provided in this Ordinance, applying the methodology set forth in the Affordable Housing Regulations;

"3. dedicating property suitable for construction of Affordable Units outside the Project but within central and northern Santa Fe County, as shown on Attachment A, whose value is equal to or greater than that which would have been required if the Project had been constructed or created Affordable Units as provided in this Ordinance, applying the methodology set forth in the Affordable Housing Regulations; or

"4. otherwise providing Affordable Units in a manner that is consistent with the goals and objectives of this Ordinance (including providing rental homes in lieu of homes for purchase, so long as the initial market value rental payments do not exceed that which an affordable buyer would have to pay to purchase a home in the income ranges specified in the affordable housing regulations).

Section Three. Section One of Ordinance No. 2009-01 (amending subsection 18(A) ("Long-term Affordability") of Ordinance No. 2006-02) shall be and hereby is repealed together with Ordinance No. 2010-09 and a new subsection 18(A) of Ordinance No. 2006-02 shall be adopted as follows:

"A. Each Affordable Housing Agreement shall include a form of lien, mortgage or other instrument (hereinafter referred to as "the Affordability Mortgage or Lien") that shall be executed and recorded along with the deed conveying the Affordable Unit to the first buyer, and that instrument shall create a mortgage or lien in favor of the County in the amount of the difference between the Maximum Target Housing Price and ninety-five percent of the unrestricted fair market value of the Affordable Unit at the time of initial sale, as determined by an appraisal approved by the County, which specifies that the value of the mortgage or lien is calculated at any given point by multiplying the number of full years that have elapsed from the date of first sale of the Affordable Unit by 0.10 and then multiplying that result by the difference between the Maximum Target

Housing Price and ninety-five percent of the unrestricted fair market value of the Affordable Unit at the time of initial sale. The liens, mortgages or other instruments shall be duly executed and recorded in the Office of the County Clerk.

Section Four. All other provisions of Ordinances No. 2006-02, 2009-01 and 2010-9 shall remain in force.

PASSED, APPROVED AND ADOPTED this 31st day of January, 2012.

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

By: *Liz Stefanics*
Liz Stefanics, Chair

ATTEST:
Valerie Espinoza
Valerie Espinoza, Santa Fe County Clerk

APPROVED AS TO FORM:
Stephen C. Ross
Stephen C. Ross, Santa Fe County Attorney



COUNTY OF SANTA FE) BCC ORDINANCE
STATE OF NEW MEXICO) ss PAGES: 3

I Hereby Certify That This Instrument Was Filed for
Record On The 6TH Day Of February, 2012 at 08:24:25 AM
And Was Duly Recorded as Instrument # 1659433
Of The Records Of Santa Fe County

Marcella Delgado Witness My Hand And Seal Of Office
Deputy Valerie Espinoza
County Clerk, Santa Fe, NM

SFC CLERK RECORDED 02/06/2012





SEE CLERK RECORDED 02/10/2013

**AMENDED AND RESTATED
SANTA FE COUNTY
AFFORDABLE HOUSING AGREEMENT
LA PRADERA**

This Amended and Restated Santa Fe County Affordable Housing Agreement (the "Amended and Restated Agreement") for La Pradera is entered into this 12th day of December, 2012, between Gardner Associates LLC and La Pradera Associates LLC as developers of La Pradera (the "Applicant") and Santa Fe County (the "County").

RECITALS:

WHEREAS, the County and the Applicant entered into the Affordable Housing Agreement for La Pradera on September 10, 2004 (the "Agreement"); and

WHEREAS, the County and the Applicant entered into the Amended Affordable Housing Agreement for La Pradera on January 10, 2006 (the "First Amendment"); and

WHEREAS, the County and the Applicant entered into the Affordable Housing Agreement for La Pradera Phase II on April 23, 2007 (the "Phase II Agreement"); and

WHEREAS, the County and the Applicant entered into the Affordable Housing Agreement for La Pradera Phase III on April 23, 2007 (the "Phase III Agreement"); and

WHEREAS, the County and the Applicant entered into the Second Amended Affordable Housing Agreement for La Pradera on June 5, 2007 (the "Second Amendment"); and

WHEREAS the County and the Applicant entered into the First Amendment to the Phase III Agreement on September 23, 2010 (the "First Phase III Agreement Amendment"); and

WHEREAS, the County and the Applicant entered into the Second Amendment to the Phase III Agreement on September 23, 2010 (the "Second Phase III Agreement Amendment"); and

WHEREAS, the County and the Applicant entered into the Third Amended Affordable Housing Agreement for La Pradera on September 23, 2010 (the "Third Amendment") which identified the following thirty-six (36) lots as providing affordable homes within the County's Affordable Housing Program: 51A, 51B, 32, 34(1 unit), 35, 39, 53, 54, 9, 22, 23A, 23B, 48, 71, 72, 80, 82, 87, 98, 99, 102, 118, 123, 141, 142, 164, 166, 167, 168, 169, 170, 198, 205, 222, 224 and 226; and

WHEREAS, the County has adopted Santa Fe County Ordinance No. 2000-12 (the "Community College District") and the Community College District Affordable Housing Regulations, dated July 31, 2002 (the "Regulations") which have governed these agreements and amendments; and

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WHEREAS, the Applicant has submitted and the County has approved a master plan amendment and preliminary and final plat and development plan approval (the "Approval") that results in the creation of twenty-seven (27) additional residential units on September 13, 2011; and

WHEREAS, Santa Fe County Ordinance No. 2006-02 (the "Affordable Housing Ordinance") and Santa Fe County Resolution 2010-189 (the "Affordable Housing Regulations") were in effect at the time of the Approval, making the Approval subject to a thirty percent (30%) affordable housing requirement and all other requirements set forth in the Affordable Housing Ordinance and Affordable Housing Regulations; and

WHEREAS, subsequent to the date of the Approval, the County approved Santa Fe County Ordinance No. 2012-01 (the "2012 Ordinance") which reduces the thirty percent (30%) affordable housing requirement for a major project to fifteen percent (15%); and

WHEREAS, the Applicant desires that the County apply the fifteen percent (15%) affordable housing requirement to the Approval, which would result in a reduction of the required affordable housing for the Approval from eight (8) Affordable Units to four (4) Affordable Units; and

WHEREAS the County and the Applicant wish to restate and amend their previous Agreements entirely, for the sake of clarity and simplicity, and through this Amended and Restated Agreement the parties shall memorialize the Applicant's obligations under the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations.

AGREEMENT

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

The Agreement, as amended, the Phase II Agreement and the Phase III Agreement, as amended, are further amended and restated by this Amended and Restated Agreement.

1. **Definitions.** All capitalized terms have the same meanings given them in the Affordable Housing Ordinance and Affordable Housing Regulations.
2. **Certification of Previous Qualified Transactions.** From the date of the Agreement up until the date of execution of this Amended and Restated Agreement, Applicant has identified thirty-six (36) lots on which it would build or cause to be built Affordable Units and has delivered twenty-five (25) Affordable Units that are Qualified Transactions in compliance with the Regulations. Six (6) of these Affordable Units were sold in Income Range 1; ten (10) Affordable Units were sold in Income Range 2; and nine (9) Affordable Units were sold in Income Range 3. Adding the four (4) Affordable Unit requirement of the Approval to the original thirty-six (36) Affordable Unit Requirement, the total Affordable Unit Requirement shall be forty (40) Affordable Units.
3. **Controlling Affordable Housing Ordinance and Regulations.** The Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations shall apply to

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La Pradera and shall govern the Applicant's performance of all obligations under this Amended and Restated Agreement, unless otherwise stated herein. The applicable affordable housing percentage requirement for La Pradera, including the Approval, is fifteen percent (15%).

4. **Required Affordable Units.** To comply with the fifteen percent (15%) affordable housing requirement for La Pradera set forth in Section 3 and the forty (40) Affordable Units required for La Pradera for all approved master plans, plats and development plans up to and including the Approval, Applicant agrees to cause to be built and sold to Eligible Buyers and Entry Market Buyer an additional fifteen (15) Affordable Units within La Pradera for the Maximum Target Housing Prices for Income Ranges 1, 2, 3 and 4 set forth in the Affordable Housing Regulations. The County may revise the Maximum Target Housing Prices by December 31, 2012 and the Applicant agrees to be subject to this revision. Until this revision is made, the Applicant shall be subject to the current Maximum Target Housing Prices in the Affordable Housing Regulations. The Maximum Target Housing Prices represent the maximum effective purchase prices to be paid by the Eligible Buyer or Entry Market Buyer, after any subsidies are applied, including the County Affordability Mortgage and Lien. The contract sales prices, as set forth in the HUD-1 settlement statement, for all Affordable Units may be greater than the Maximum Target Housing Prices and shall be set between ninety five percent (95%) and one hundred percent (100%) of the unit's appraised value. These fifteen (15) Affordable Units are in addition to the twenty-five (25) Affordable Units already completed: Applicant agrees to cause to be built and sold seven (7) units in Income Range 1; three (3) units in Income Range 2; four (4) units in Income Range 3 and one (1) unit in Income Range 4. All Affordable Units shall meet the minimum structural requirements, minimum bedrooms and bathrooms, minimum heated floor area, and other requirements set forth in the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations, unless otherwise stated herein. The Applicant shall make available two, three and four bedroom Affordable Units for sale, however, the final mix of unit types shall be determined by the market.

5. **Adjustment of Maximum Target Housing Prices.** The Maximum Target Housing Prices as defined in Section 4 shall be adjusted every three (3) years from the date of execution of this Amended and Restated Agreement. The adjustment shall correspond to an increase or decrease in the revised Maximum Target Housing Prices in the Affordable Housing Regulations, and shall be limited to the lesser of five percent (5%) of the Maximum Target Housing Prices set forth in the Affordable Housing Regulations, using the anticipated December 31, 2012 revision, or the change in the Maximum Target Housing Prices in the Affordable Housing Regulations between the anticipated December 31, 2012 revision and the Maximum Target Housing Prices in effect three (3) years from the date of this Amended and Restated Agreement. In the case of documented substantial and unanticipated increases in the cost of construction that would cause the Applicant to terminate development in La Pradera if no action were taken, the Applicant may request the County to amend this Amended and Restated Agreement. Action on such a request may only be taken by the Board of County Commissioners, in its sole discretion.

6. **Adjustment of Maximum Target Housing Prices Due to Homeowners Association Fees.** In the event that the homeowners' association fee applicable to an Affordable Unit exceeds \$100 per month (regardless of the billing cycle), the Maximum Target Housing Price, as

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defined in Section 4, for the Affordable Unit shall be reduced by the Applicant so that the buyer's mortgage loan principal amount is reduced by the amount that the monthly fee exceeds \$100. Applicant must disclose the homeowners' association fee to the County and make any required adjustment to the Maximum Target Housing Price in order for the Affordable Unit sale to be certified as a Qualified Transaction.

7. **Alternate Means of Compliance in Lieu of Construction.** Notwithstanding any provision of the Affordable Housing Ordinance and 2012 Ordinance, the parties may agree to an Alternate Means of Compliance for the fulfillment of the Applicant's affordable housing obligations. This Alternate Means of Compliance may involve cash payment, land donation or a combination of both, in the amount of the required total contribution to be made under the Alternate Means of Compliance. Any land donation would be for a housing project (s) within La Pradera. The County would agree to offset the amount to be paid under the Alternate Means of Compliance by the appraised value of the land contributed, as determined by an MAI appraiser. The Applicant would agree to contribute in cash the difference between the appraised value of the land and the total contribution required under the Alternate Means of Compliance. Upon receipt of the required contributions, the County would issue a certificate of compliance with this Amended and Restated Agreement. Applicant may utilize the Alternate Means of Compliance only if the language in the current Affordable Housing Ordinance, 2012 Ordinance, and Affordable Housing Regulations is amended to make this approach an economically feasible option.

8. **Development Schedule.** The parties agree that the development schedule for La Pradera, including individual phases, shall use the same ratio for the number of constructed Affordable Units as to the number of constructed market units. For example, in a 100-lot subdivision in which 15 units are required to be affordable, three (3) Affordable Units must be constructed for every twenty (20) market units constructed. If the required number of Affordable Units are not built in a particular twenty (20) unit increment, and the Applicant has not been granted an Affordable Lot Substitution per Section 9, or has not made payment per Section 17 - Remedies, the County may withhold permit approvals of homes in future increments, or impose the payment provisions of Section 17 for the number of required and unsold Affordable Units.

9. **Integration of Affordable Units in the Project.** The lots designated in Exhibit A are the lots upon which Affordable Units shall be built in conformance with the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations. The Applicant may replace a designated Affordable Lot with an alternate Affordable Lot within the subdivision by submitting a lot substitution form, Exhibit B, for consideration by the Affordable Housing Administrator. Absent approval by the Affordable Housing Administrator, the lot substitution will not be implemented.

10. **Marketing Plan.** In accordance with the Affordable Housing Plan, Applicant agrees to market the Affordable Units in the following manner:

- By distribution of flyers and other promotional media.
- By providing information to non-profit entities designated by the County to perform homebuyer training and assist first time homebuyers.

11. **Closing of Qualified Transactions.** All Qualified Transactions shall be closed in accordance with the procedures in this Section.

A. **Notice of Closing: Appraisal.** The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualified Transaction. The notice shall include:

1. The name of the Eligible or Entry Market Buyer (s) as well as a copy of their Certification of Eligibility;
2. The date and time of the scheduled closing;
3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s);
4. An appraisal of the Affordable Unit being sold, which appraisal shall (i) be prepared by a properly licensed, certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible or Entry Market Buyer; and (iii) has been prepared within the previous six (6) months.

B. **Recordation of Affordability Mortgage and Lien.** The Affordable Housing Ordinance's goals of having Affordable Units owner-occupied by Eligible Buyers or Entry Market Buyers and maintaining long term affordability shall be achieved through the execution at closing of a County Affordability Mortgage and Lien, which contains a right of first refusal and shared appreciation requirements, as set forth in the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations. At least two (2) business days prior to the date of the scheduled closing, the County shall deliver to the title company (with a copy to the Applicant and the Eligible Buyer or Entry Market Buyer) the Affordability Mortgage and Lien along with written instructions to the closing agent concerning the execution, recording, and returning of the Affordability Mortgage and Lien. Any cost associated with the recording and returning of the Affordability Mortgage and Lien shall be borne by the Applicant.

C. **Settlement Statement.** The Applicant shall cause the title company to transmit, within ten (10) days of the closing of a Qualified Transaction, a copy to the County of the Settlement Statement (HUD-1) for the Qualified Transaction, signed by the seller and purchaser.

D. **Certificate of Compliance.** Upon receipt and review by the County of the closing statement from the title company or the Applicant, the County shall issue a Certificate of Compliance for the Qualified Transaction.

12. **Affordability Lien and Maintenance of Long-Term Affordability.** Notwithstanding the provisions of Section 11, County and Applicant agree that the Applicant may provide the required Affordable Units through a program with a non-profit housing organization where the non-profit holds a lien in lieu of the County affordability lien provided that the total lien held by the non-profit, including its cash subsidy, can be no greater than three (3) times the amount of cash proven to be contributed by the non-profit from its own funds to subsidize the homeowner. Furthermore, the principal amount of the lien shall equal the contract sales price as shown on the

HUD-1 settlement statement, which includes all liens; less the effective sales price, which is the affordable buyer's first mortgage amount plus downpayment from their own funds; less the cash subsidy contributed by entities other than the non-profit. If there remains a difference between the total principal amount of the lien that is allowed per the above formula and the maximum lien amount that can be retained by the non-profit, as set forth above, the difference shall become the principal amount of a subordinate County affordability mortgage and lien. The effective sales price paid by the Eligible Buyer or Entry Market Buyer after any subsidy shall be less than or equal to the Maximum Target Housing Price, as set forth in the Affordable Housing Regulations. Applicant agrees that the contract sales price for an Affordable Unit must be set between ninety-five percent (95%) and one hundred percent (100%) of the unit's appraised value. Applicant agrees that the note and mortgage instruments used by the non-profit to secure this lien shall represent a deferred payment, non-amortizing, zero percent (0%) loan that shall not include a shared appreciation provision, nor include a right of first refusal with the County and must be approved by the Affordable Housing Administrator. Applicant agrees that the difference between the cash subsidy provided by the non-profit and the total amount of the lien retained by the non-profit shall, upon payoff of this subsidy loan, be committed to affordable housing programs for households in Santa Fe County, per an agreement between the non-profit and the Applicant, a copy of which shall be provided to the County prior to the first closing of an Affordable Unit under this Amended and Restated Agreement. Applicant agrees that for such a transaction to be certified as a Qualified Transaction, all other provisions of Section 11 of this Amended and Restated Agreement must be satisfied, along with all provisions of the Affordable Housing Ordinance, 2012 Ordinance and Affordable Housing Regulations, unless otherwise stated herein.

13. **Affordable Housing Credit for Qualifying Market Rate Transaction.** County and Applicant agree that the Applicant shall receive an affordable housing credit for a Qualifying Market Rate Transaction to an Eligible Buyer or Entry Market Buyer income-certified by the County as qualifying to purchase within a designated Income Range at a contract sales price, as set forth in the HUD-1 settlement statement, equal to or less than the Maximum Target Housing Price for the applicable housing type and Income Range, as set forth in the Affordable Housing Regulations. Applicant may charge any lot premium or option provided that total contract sales price is equal to or less than the Maximum Target Housing Price for the applicable housing type and Income Range, as set forth in the Affordable Housing Regulations. Furthermore, the contract sales price of the Qualifying Market Rate Transaction must be set between ninety five percent (95%) and one hundred percent (100%) of the unit's appraised value and the Qualifying Market Rate Transaction must comply with Section 14 of this Amended and Restated Agreement and all other provisions of the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations, unless otherwise stated herein. For a Qualifying Market Rate Transaction, the County agrees that there shall be no County affordability lien or shared appreciation with the County, unless the County provides other assistance where program regulations require such instruments.

14. **Closing of Qualifying Market Rate Transactions.** All Qualifying Market Rate Transactions shall be closed in accordance with the procedures in this Section.

A. **Notice of Closing: Appraisal.** The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualifying Market Rate Transaction. The notice shall include:

REC'D PLANNING DEPARTMENT 02/15/2013

1. The name of the Eligible or Entry Market Buyer(s) as well as a copy of their Certification of Eligibility;
2. The date and time of the scheduled closing;
3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s).
4. An appraisal of the market rate unit being sold, which appraisal shall (i) be prepared by a properly licensed, certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible or Entry Market Buyer; and (iii) have been prepared within the previous 6 months.

B. Affordability Mortgage and Lien. If an Eligible or Entry Market Buyer is buying a market rate home where the contract sales price, as set forth in the HUD-1 settlement statement, is less than or equal to the Maximum Target Housing Price for the applicable housing type and Income Range within which the Eligible or Entry Market Buyer qualifies, as set forth in the Affordable Housing Regulations, there shall be no Affordability Mortgage and Lien or Shared Appreciation, unless the County provides other assistance where program regulations require such instruments.

C. Settlement Statement. The Applicant shall cause the title company to transmit, within ten (10) days of the closing of a Qualifying Market Rate Transaction, a copy to the County of the Settlement Statement (HUD 1) for the Qualifying Market Rate Transaction, signed by the seller and purchaser.

D. Affordable Housing Credit and Certificate of Compliance. Provided that the Applicant complies with all provisions of this Amended and Restated Agreement, the Affordable Housing Ordinance, the 2012 Ordinance and the Affordable Housing Regulations, unless otherwise stated herein, and upon receipt and review by the County of the closing statement from the title company or the Applicant, the County shall grant the Applicant affordable housing credit within the Eligible Buyer's or Entry Market Buyer's Income Range for a Qualifying Market Rate Transaction and shall issue a Certificate of Compliance for the transaction.

15. Incentives. In consideration of Applicant's obligations hereunder and in accordance with the Affordable Housing Ordinance and 2012 Ordinance, the County has agreed to provide the following incentives to the Applicant:

A. Relief from Development Fees. County agrees to waive all development fees for each Affordably Priced Housing Unit and Entry Market Housing Unit to be provided by Applicant hereunder.

B. Relief from County Water Utility Connection Charge. County agrees to waive any water connection charges that exceed the cost of the water meter for each of the Affordably Priced Housing Units and Entry Market Housing Unit to be provided by Applicant hereunder; provided, however, that nothing herein shall relieve Applicant of any obligation it

may have under any Water Service Agreement with the County to provide a line extension or other infrastructure to the Affordably Priced Housing Units and Entry Market Housing Unit.

C. Water for Affordably Priced Housing Units. County agrees to supply the Affordably Priced Housing Units and Entry Market Housing Unit identified in Section 4 above with water, including all necessary water rights pursuant to Section 8 of the Affordable Housing Ordinance, provided that the Affordably Priced Housing Units and Entry Market Housing Unit are constructed. This does not obligate the County to provide a water line extension or other water infrastructure to the development.

16. **Successors, Assigns and Buyers of Affordable Lots.** Applicant's obligations hereunder shall be binding upon its successors and assigns as well as any developer, contractor, or other third party (other than an Eligible Buyer or Entry Market Buyer) to whom an Affordable Lot identified in Exhibit A is transferred. Applicant agrees to provide County with ten (10) business days advance written notice of its intent to transfer an Affordable Lot to someone other than an Eligible Buyer or Entry Market Buyer, along with a request for lot substitution as set forth in Section 9 of this Amended and Restated Agreement.

17. **Remedies.** Applicant acknowledges and agrees that, but for the Affordable Housing Agreement, County would not have approved the final master plan, plat and phases for La Pradera. Applicant further acknowledges and agrees: (i) that because the integrated Affordable Units to be provided by Applicant are a public good, no adequate remedy exists at law to remedy Applicant's failure to fulfill its obligations hereunder; and (ii) that it would be inconvenient and unfeasible for County to accurately measure the value of some of the incentives that Applicant received hereunder; and (iii) an appropriate remedy for Applicant selling Affordable Lots to non-Eligible Buyers or non-Entry Market Buyers, as the case may be, or for Applicant to not provide the required number of Affordable Units in La Pradera or a phase of La Pradera, is to: (a) pay the County 50% of the Maximum Target Housing Price set forth in the Affordable Housing Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range; (b) collect all development fees and water connection charges that were waived for each house on an Affordable Lot; (c) collect the current market price of water rights utilized by the County to provide water to each house on an Affordable Lot.

In the event Applicant does not sell Affordable Units to Eligible Buyers or Entry Market Buyer in the amount required in Section 4 within five (5) years, which time may be extended by the County if a proportional number of market rate units also remains unsold, and has not paid the County 50% of the Maximum Target Housing Price set forth in the Affordable Housing Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range, the County shall be entitled to:

- A. Execute an injunction halting all construction or development on La Pradera until such time as Applicant remedies its breach and complies with its obligations hereunder;
- B. Refuse to grant preliminary or final plat approval for any future phase of La Pradera;

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- C. Collect all development fees and water connection charges that were waived for each house on an Affordable Lot that Applicant sold to a non-Eligible Buyer or non-Entry Market Buyer, as the case may be;
- D. Collect the current market price of water rights utilized by the County to provide water to each house on an Affordable Lot that Applicant sold to a non-Eligible Buyer or non-Entry Market Buyer, as the case may be.
- E. Receive title at no cost to all remaining identified Affordable Lots, per Exhibit A.
- F. Receive 50% of the Maximum Target Housing Price set forth in the Affordable Housing Regulations, for each required, yet unsold Affordable Unit, defined as a three bedroom unit, in the applicable Income Range.
- G. Notwithstanding the foregoing provisions, whenever a period of time or specified date is herein prescribed for action to be taken by any party, there shall be excluded from the computation of any such period of time or an extension of such specified date, any delays due to strikes, riots, acts of God (excluding weather delays reasonably and historically known to occur, as defined by a ten (10) year average of the U.S. Meteorological Survey data, or similarly and mutually acceptable data, in the geographical area of the Property), shortages of labor or materials outside of the parameters typically found in the geographical area of the Property, war, terrorism or governmental laws, regulations, restrictions or moratoriums (except to the extent waived or otherwise not applied to the project or the Property) and unforeseeable delays by the project lender; provided, however, that both Parties shall use their best and diligent efforts to mitigate the effects of such occurrences with respect to the required action. Subject to the foregoing, time is of the essence with respect to each and every provision of this Amended and Restated Agreement.

18. **Miscellaneous Provisions.**

A. If any provision of this Amended and Restated Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Amended and Restated Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

B. This Amended and Restated Agreement shall be construed and enforced in accordance with the Affordable Housing Ordinance, the 2012 Ordinance and Affordable Housing Regulations and the laws of the State of New Mexico.

C. No actions taken by the parties following a breach of any of the terms contained in this Amended and Restated Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.

D. This Amended and Restated Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Amended and Restated Agreement. No prior or contemporaneous agreement, covenant or

understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Amended and Restated Agreement.

E. At the request of the County, Applicant shall provide the County with such documentation the County deems relevant to establish Applicant's compliance with this Amended and Restated Agreement. Any failure by Applicant to comply with this subparagraph shall constitute a breach of this Amended and Restated Agreement, subjecting Applicant to the per unit payment provisions of Section 17 above, multiplied by the number of Affordable Units for which information has been requested.

F. This Amended and Restated Agreement shall not relieve Applicant from complying with present or future County ordinances, duly adopted resolutions or regulations applicable to development within the County.

~~G. This Amended and Restated Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties thereto.~~

H. This Amended and Restated Agreement must be filed and recorded.

I. Entering into this Amended and Restated Agreement does not prohibit Applicant or Applicant's buyers from applying for downpayment assistance from the County under the program which may be in effect at that time.

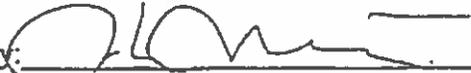
19. This Amended and Restated Agreement shall terminate upon the County issuing a certificate of compliance with the Amended and Restated Affordable Housing Agreement in accordance with Section 7.5 of the Affordable Housing Regulations. The County may terminate this Amended and Restated Agreement and impose all Section 17 enabled payments for the required, yet unsold Affordable Units and recapture the cost of any granted incentives in the event of a breach of the Amended and Restated Agreement by Applicant.

IN WITNESS WHEREOF, the parties have duly executed this Amended and Restated Affordable Housing Agreement as of this 12th day of December, 2012.

APPLICANT:

GARDNER ASSOCIATES, LLC
A New Mexico Limited Liability corporation

By:


John J. McCarthy, Managing Member

2/1/13
Date

LA PRADERA ASSOCIATES, LLC

REC CLERK RECORDED 02/15/2013

A New Mexico Limited Liability Company

By: [Signature]
John J. McCarthy, Managing Member

2/1/13
Date:

SANTA FE COUNTY

APPROVED AS TO FORM:

By: [Signature]
Board of County Commissioners

By: [Signature]
Stephen C. Ross, County Attorney

SANTA FE COUNTY AFFORDABLE HOUSING ADMINISTRATOR

[Signature]
By: Katherine Miller, County Manager

[Signature]
By: Steven Brugger, AICP

2/1/13
Date:

ATTEST:

[Signature] 2/15/2013
GERALDINE SALAZAR
COUNTY CLERK

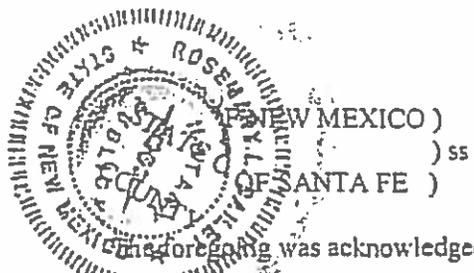


COUNTY OF SANTA FE) AMENDED HOUSING AGREE
STATE OF NEW MEXICO) ss PAGES: 16

I Hereby Certify That This Instrument Was Filed for Record On The 18TH Day Of February, 2013 at 10:13:03 AM And Was Duly Recorded as Instrument # 1696785 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Deputy [Signature] Geraldine Salazar
County Clerk, Santa Fe, NM





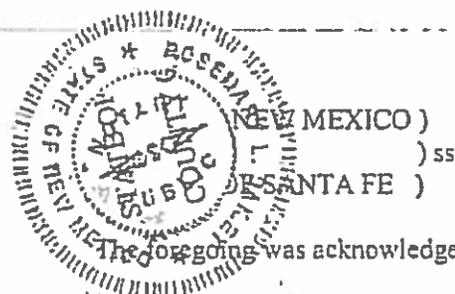
The foregoing was acknowledged before me this 1st day of February, 2013 by

John J. McCarty (name), Managing Member (title) of Parner and associates
and da pradera, New Mexico corporations, on behalf of said corporation.

Rosemary J. Bailey
Notary Public

My commission expires:
March 2, 2013

CLERK RECORDS 02/15/2013

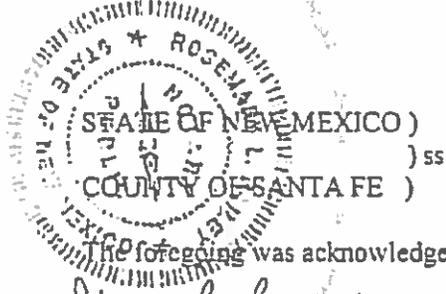


The foregoing was acknowledged before me this 7th day of February, 2013 by

Kathleen DeLeon (name), Chair Board of (title) of the Santa Fe County Board of
County Commissioners.

Rosemary J. Bailey
Notary Public

My commission expires:
March 2, 2013



The foregoing was acknowledged before me this 1st day of February, 2013 by

Steve L. Bruger (name), affordable housing administrator (title) of the Santa Fe County
Affordable Housing Program.

Rosemary J. Bailey
Notary Public

My commission expires:
March 2, 2013

Exhibit A
AFFORDABLE UNIT PRICING, INCOME RANGES AND OTHER DATA

	Income Level 1	Income Level 2	Income Level 3	Income Level 4	Total
Phase 1	51A, 51B,	32, 34 (1 unit) 35, 39, 53, 54,	9, 22, 23A, 23B, 48,		13
Phase 2	141	71, 98, 102	99, 118, 123, 142		8
Phase 3	166, 167, 168	164, 169, 170	198		7
Phase 4	222, 224, 226,		205		4
Phase 5	72, 80, 82		87		4
Phase 6					
Master Plan Amendment	76	218	220	145	4
TOTAL	13	13	13	1	40

Homes constructed pursuant to this Amended and Restated Agreement shall comply with Section 3 of the Affordable Housing Regulations, unless otherwise stated herein. Plans for all homes to be constructed shall be designed with HERS Rating of 70 or below.

Notes: 1) Designated Affordable Lots highlighted in red remain to be built as set forth in this Amended and Restated Agreement; 2) Designated Affordable Lots in black have been built upon and are Qualified Transactions in compliance with the Regulations.

SEC CLERK RECORDED 02/13/2013

Exhibit B - PLAN SHOWING AFFORDABLE UNIT LOT DESIGNATIONS

CLERK RECORDED 02/18/2013

Exhibit C: LOT SUBSTITUTION FORM

I, _____, Affordable Housing Administrator for Santa Fe County, do hereby approve/disapprove the Applicant's request to substitute Lot # ___ in La Pradera for Affordable Lot # _____, identified in Exhibit A as one of the required Affordable Lots. Exhibit A to the Amended and Restated Agreement for La Pradera is hereby modified through the execution of this document.

RECEIVED
RECORDED
02/13/2013



La Pradera Affordable Housing Lots

Legend

La Pradera Subdivision Phases 1-6



Housing Trust Lots



La Pradera Lots



Minor Roads



Major Roads



Railroad Lines



Major Streams and Arroyos



City of Santa Fe



This information is for reference only.
Santa Fe County assumes no liability for errors associated with the use of these data. Users are solely responsible for confirming data accuracy when necessary.



Santa Fe County
Growth Management
Department
Planning Division

Nov. 30, 2015
la_pradera_affordable_housing_lots.mxd



Henry P. Roybal
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *November 25, 2015*

TO: *Board of County Commissioners*

FROM: *Michael Kelley, Public Works Department Director*

VIA: *Katherine Miller, County Manager*

ITEM AND ISSUE: *BCC Meeting December 8, 2015*

A Memorandum of Understanding Between the City of Santa Fe and Santa Fe County for the Senior Campus @ Caja del Rio Allowing Discharge into County Wastewater Collection System and then into City Wastewater Collection and Treatment System (Public Works/Claudia Borchert)

SUMMARY:

This Memorandum of Understanding (MOU) between the City of Santa Fe (City) and Santa Fe County (County) allows for the Senior Campus @ Caja del Rio (Senior Campus) to discharge wastewater from a County wastewater collection system into the City's wastewater collection and treatment system.

BACKGROUND:

Senior Campus proposes to develop a skilled nursing facility, an assisted living facility, a memory care facility, and an independent living community on a 28-acre parcel of land north of the Caja del Rio Road - Highway 599 Frontage Road intersection outside the City limit. The sewer collection will become part of the County utility, but the sewage will ultimately discharge into the City's collection system and conveyed to the City's wastewater treatment plant for treatment. Therefore, in accordance with the process described in City of Santa Fe Ordinance No. 2008-53, Section 2, the County submitted an application for sewer service to the Water-Wastewater Review Team (WWRT) on September 5, 2014.

Following the WWRT recommendation, staff from the City and the County prepared the attached MOU for consideration by the respective governing bodies.

DISCUSSION:

The MOU is beneficial to both the County and the City in providing economic development to the region, with short-term construction dollars and long-term stable jobs and tax revenue. The MOU is

scheduled to be before the City's Public Utilities Committee on December 2, 2015, and if it is approved, it will be heard at the subsequent City Council meeting. If the MOU is approved by the City and the County, the Senior Campus will become a County retail sewer customer, and the County will pay the City for the wastewater generated per the City's wholesale sewer rates.

ACTION REQUESTED:

Approve subject Memorandum of Understanding

Attachments:

A MOU Between the City of Santa Fe and Santa Fe County for the Senior Campus @ Caja del Rio Allowing Discharge into County Wastewater Collection System and then into City Wastewater Collection and Treatment System which includes Exhibits A, B, C and D.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SANTA FE AND
SANTA FE COUNTY ALLOWING WASTEWATER DISCHARGE FROM THE
SENIOR CAMPUS @ CAJA DEL RIO INTO A COUNTY WASTEWATER
COLLECTION SYSTEM AND THEN INTO THE CITY WASTEWATER
COLLECTION AND TREATMENT SYSTEM**

The City of Santa Fe ("City") and Santa Fe County ("County") enter into this Memorandum of Understanding this ____ day of _____, 2015, for a new sanitary sewer connection and sewer services for the Senior Campus @ Caja Del Rio ("Senior Campus"). The Senior Campus will construct and dedicate sewer infrastructure to the County that will connect to the City's existing wastewater collection system. A site map of the proposed Senior Campus is included in Exhibit A, the land title survey is Exhibit B, and the legal special warranty deed is Exhibit C.

RECITALS

1. The City and the County entered into a "Settlement Agreement and Mutual Release of Claims" on May 19, 2008 ("Settlement Agreement"), which addressed issues of annexation in general, the presumptive city limits, and the need to "establish sensible water and wastewater utility service areas for the City and County."

Under Section 2(m) of the Settlement Agreement, "The City shall provide water and wastewater service within the presumptive city limits and shall not provide water and wastewater service outside the presumptive city limits unless required by a current contract with a customer, decrees of a court, or applicable rulings of the Public Regulation Commission, unless otherwise agreed upon between the City and the County in a separate written agreement."

2. The Senior Campus is located outside the presumptive city limits as defined in the Settlement Agreement.
3. The Senior Campus is campus that includes a skilled nursing facility, an assisted living facility, a memory care facility, and an independent living community that will benefit both the City and the County in the form of increased jobs and tax revenue.
4. Section 22-6.2 of the Santa Fe City Code ("SFCC") provides a process whereby connections to the City's sewer system outside of the City of Santa Fe presumptive City limits can be established under specific conditions as shown in Recital (1) above, including review by a water/wastewater review team (City-County WWRT) made up of "City and County staff from the Water Division, the Wastewater Division, the City attorney's office, the County Attorney's Office, the Land Use Departments and the Office of Affordable Housing."
5. Santa Fe County Utilities Division ("SFCU") submitted a letter application to the City-County WWRT on behalf of the Senior Campus requesting connection of the Senior Campus to the City's wastewater collection and treatment system on September 5, 2014.

6. On September 18, 2014 the WWRT met to review the application (see Exhibit D). The WWRT members determined that the application was complete and that the application met the requirements of SFCC Section 22-6.2.

AGREEMENT

1. Connection of the Senior Campus to City's Wastewater Collection and Treatment System. The Senior Campus is authorized to connect to the County wastewater collection system (to be constructed by the developer and dedicated to the County) and discharge its wastewater into the City's wastewater collection and treatment system via the County system (see Exhibit D).
2. Dedication to the City of a Portion of the County Wastewater Collection System. Upon the City's request, the County shall require the Developer (Senior Campus) to construct and dedicate to the City the portion of the County's wastewater collection system and easements that is gravity sewer or low pressure sewer and located within the City's presumptive City limits. This portion of the sewer system shall be designed and constructed to City standards as approved by the City's Wastewater Management Division.
3. Compliance with Federal, State, and Local Law. The County agrees to maintain and operate the County wastewater collection system as required by all applicable federal, state, and local laws and shall comply with all applicable requirements imposed upon City utility customers. The City's affordable housing ordinance, SFCC Section 14-8-11(D), does not apply, pursuant to SFCC Section 22-6.2(G).
4. Metering Requirements. The County shall meter water use of the Senior Campus pursuant to SFCU Customer Service Policies adopted by Resolution No. 2012-88, as the same may be amended from time to time. The County will collect the metered usage pursuant to SFCU Customer Service Policies. The County will report the metered water usage and other pertinent billing information to the City on a monthly basis for use in calculating the invoice for the wastewater bill to be paid by the County in accordance with the City's most current rates.
5. Utility Expansion Charges. The County shall collect and pay the City's Utility Expansion Charge incurred by Senior Campus under SFCC Section 22-6.6.
6. Service Fees. The County agrees to pay to the City the sum of the City's monthly service fees under SFCC Section 22.7, as it may be amended from time to time, for wastewater collection and treatment services provided for the wastewater discharge by the Senior Campus.
7. SFCC Section 22.9 and SFCC Section 22.10. The County agrees that the discharges from any commercial/industrial properties within the Senior Campus shall be subject to the provisions of SFCC Section 22.9, *Industrial Pretreatment Regulations and Procedures*, and SFCC Section 22.10, *Wastewater Extra Strength Surcharge Program*, as they may be amended from time to time.

8. Pre-treatment Requirements. If determined to be necessary by the City, the City will issue an industrial wastewater discharge permit under SFCC Section 22.9, in which case all permit conditions and requirements must be met by the Senior Campus or any other occupant of the property as a condition of service.
9. Service Area. Except as otherwise authorized in separate agreements between the City and County, the County will not permit properties outside of the designated service area shown as Tract "1" set forth in Exhibit "B" to connect to the City's wastewater collection and treatment system without prior written approval from the City and County pursuant to the Settlement Agreement.
10. Successors & Assigns. This Memorandum of Understanding will inure to the benefit of the Parties' successors or assigns.
11. Amendments. This MOU may be amended in writing by agreement of all the parties.
12. Effective Date and Term. This agreement shall be effective upon the signature of all the Parties and shall be perpetual; provided, however, that the County may terminate this agreement when it is willing and able to provide wastewater treatment services for the Senior Campus through its own or another wastewater treatment system; that the City may terminate this agreement for failure by the County or Senior Campus to comply with the provisions of this agreement; and that this agreement may be terminated by either party pursuant to Paragraph 12, Bateman Act Compliance. If the City intends to terminate this agreement for failure to comply, the City shall give the County one hundred twenty days advance, written notice of termination, during which period the County shall have the right to cure the failure to comply.
13. Bateman Act Compliance. The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made or given by the City and County to perform under this Agreement. If sufficient appropriations and authorizations are not made or given by the City or County, this Agreement may be terminated or this Agreement may be amended in accordance with Paragraph 11. A party's decision as to whether sufficient appropriations are available shall be accepted by the other party and shall be final.
14. New Mexico Tort Claims Act. Neither the City nor the County waive any of the limitations and immunities of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30.
15. No Third-Party Beneficiaries. The parties do not intend to create, and this Agreement does not create, any third-party beneficiaries under this Agreement. Without limiting the generality of the foregoing, no action to enforce the terms of this Agreement or for damages for breach thereof may be brought against either party by any person who is not a party to this Agreement.

For the City:

Javier Gonzales, Mayor
City of Santa Fe

Date

Attest:

Yolanda Y. Vigil, City Clerk

Date

Approved as to Form:

Kelley Brennan, City Attorney

Date

Oscar Rodriguez, Finance Director

Date

For the County:

Robert A. Anaya, Chair, Board of
County Commissioners of Santa Fe County

Date

Approved as to Form:

Gregory S. Shaffer, Santa Fe County Attorney

Date

Attest:

Geraldine Salazar, Santa Fe County Clerk

Date

Carole H. Jaramillo, Santa Fe County Finance Director

Date

e-Recorded 1725405 12/13/13 SFC

SPECIAL WARRANTY DEED

Foundation of the Knights Templar, a Delaware corporation d/b/a Easter Seals El Mirador, who acquired title as Easter Seals Santa Maria El Mirador ("Grantor"), for consideration paid, grants to *Caja del Rio Holdings, LLC*, a New Mexico limited liability company ("Grantee"), whose address is 8814 Horizon Boulevard NE, Suite 400, Albuquerque, New Mexico 87113, the real property located in Santa Fe County, New Mexico described in Exhibit A attached hereto.

SUBJECT TO: Easements, reservations and restrictions of record.

SUBJECT TO: Taxes for 2013 and subsequent years.

With special warranty covenants.

This deed includes an assignment and conveyance of any and all water rights appurtenant or related to the real property described in Exhibit A including, but not limited to, ground water rights, surface water rights and all rights in any ditch or water company or cooperative.

Witness my hand and seal this 13th day of December, 2013.

FOUNDATION OF THE KNIGHTS TEMPLAR,
a Delaware corporation d/b/a Easter Seals El
Mirador, who acquired title as Easter Seals
Santa Maria El Mirador

By: [Signature]
Its: Executive Director



[Notary Acknowledgment on Following Page]

COUNTY OF SANTA FE)	SPECIAL WARRANTY DEED
STATE OF NEW MEXICO) ss	PAGES: 3
I Hereby Certify That This Instrument Was Filed for Record On The 13TH Day Of December, A.D., 2013 at 04:17:01 PM And Was Duly Recorded as Instrument # 1725405 Of The Records Of Santa Fe County	
Deputy - FFISCHER	Witness My Hand And Seal Of Office Geraldine Salazar County Clerk, Santa Fe, NM

MOU-EXHIBIT C

EXHIBIT A
to
Special Warranty Deed

A certain tract of land, designated as Tract 1 within the Northeast 1/4 Section 2, Township 16 North, Range 8 East, N.M.P.M., Santa Fe County, New Mexico.

Beginning at the Northeast corner Section 2, T16N, R8E, N.M.P.M., marked by an original USGLO marked stone, beginning at the Northeast corner of the above mentioned tract thence S 00 Degrees 29' 06" W, 447.36 feet to the true point and place of beginning:

Thence from said point of beginning, S 00° 29' 06" W, a distance of 873.89 feet to the Southeast corner of this tract; Thence, N 89° 58' 31" W, 1048.51 feet to the Southwest corner of this tract, a point on the East right-of-way-line of Gaja Del Rio Road; Thence along said right-of-way N 36° 00' 33" W, a distance of 56.29 feet, to the beginning of a corner; Thence along said curve having a Radius of 11534.16; a Delta of 5° 17' 57", (Chord = N 38° 39' 39" W - 1066.37) and an Arc distance of 1066.75 feet to the Northwest corner of this tract; Thence leaving said Right of Way, S 89° 56' 35" E, a distance of 1753.82 feet; Thence S 24° 23' 05" E, 3.27 feet to the true point and place of beginning.

All as shown on "ALTA/ACSM Land Title Survey of Tract 1...being a portion of Lots 10, 11 and 22 within Section 2, T16N, R8E, NMPM...", prepared by Richard A. Morris NMPS #10277, dated 10/20/2013.



City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909

www.santafenm.gov

Javier M. Gonzales, Mayor

Councilors:

Peter N. Ives, Mayor Pro Tem, Dist. 2

Patti J. Bushee, Dist. 1

Signe I. Lindell, Dist. 1

Joseph M. Maestas, Dist. 2

Carmichael A. Dominguez, Dist. 3

Christopher M. Rivera, Dist. 3

Ronald S. Trujillo, Dist. 4

Bill Dimas, Dist. 4

August 31, 2015

Jeff Stuve
Cauwels & Stuve Realty &
Development Advisors LLC
8814 Horizon Blvd NE, Suite 400
Albuquerque, NM 87113

Dear Mr. Stuve,

The City of Santa Fe has completed the review of the Senior Campus at Caja del Rio impacts to the City of Santa Fe water system per contract number 15-0806. The Water Division found no issues that need to be addressed with the proposed design under the current conditions.

There are several fire hydrants shown on a dead end 8" line in the proposed development. These hydrants would not provide more than 1500 gpm combined flow as reviewed by the City of Santa Fe Water Division criteria.

Attached is the fire flow analysis for the proposed development. If you have any questions, please contact Dee Beingessner at (505) 955-4231.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Schiavo".

Nick Schiavo
Public Utilities Director

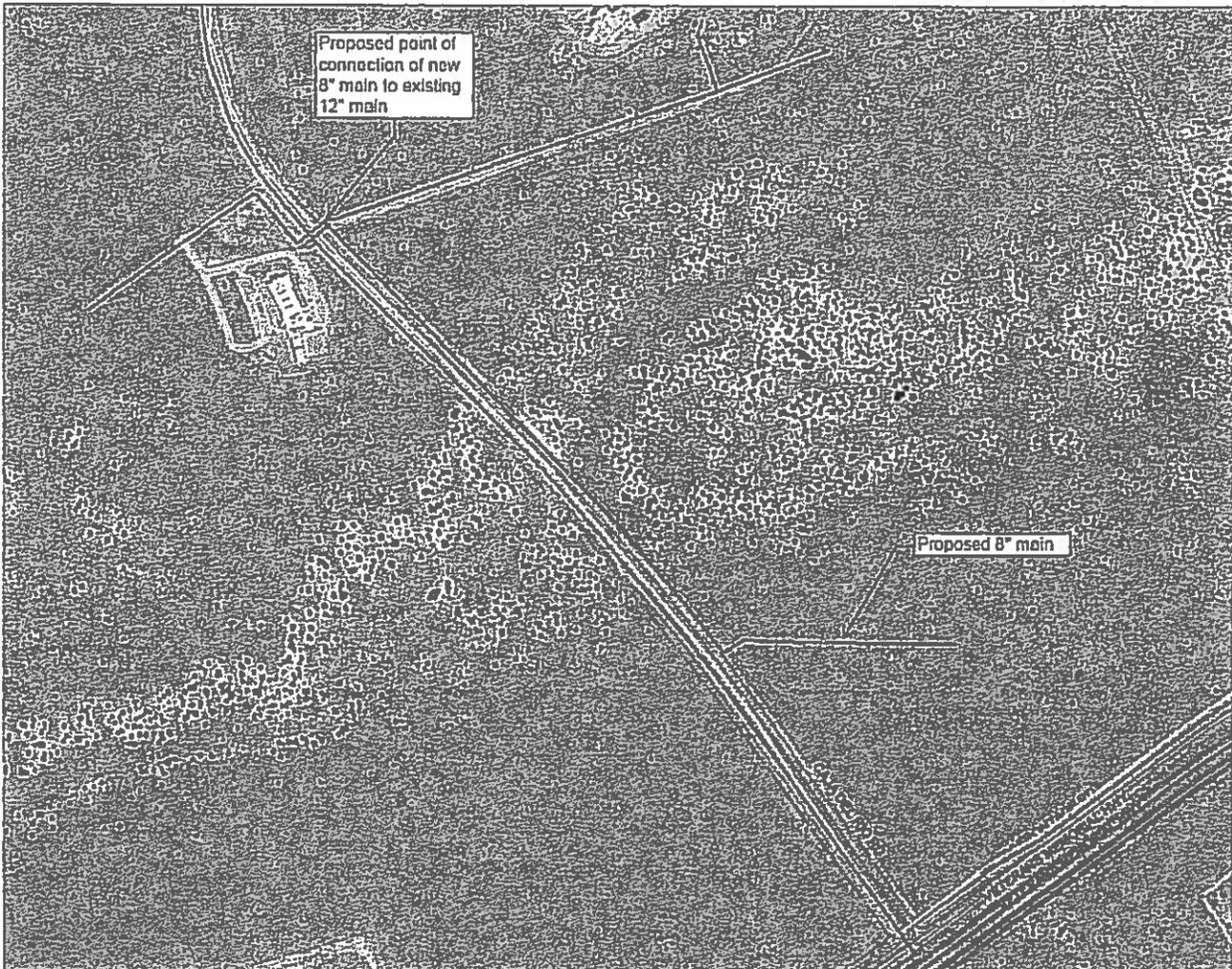
MOU - EXHIBIT D

	Fire Flow (gpm)	Residual (psi)	Junction	Main Size	TOTAL
Proposed Senior Facility on Caja del Rio	1500		64 J-80297*	8	1500

Total combined flow as shown in the water model for more than one hydrant operating at a time is 1500 gpm because the line is an 8" dead end main.

Available Flow (gpm)	Residual Pressure (psi)
0	128.85
250	125.61
500	119.09
750	109.52
1,000.00	97.08
1,250.00	81.88
1,500.00	64.01
1,750.00	43.53
2,000.00	20.5
2,202.68	0

* J-80297 is the last fire hydrant on the 8" main



MOU - EXHIBIT D

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

SANTA FE COUNTY UTILITIES

September 5, 2014

Water/Wastewater Review Team
C/O Stan Holland, P.E.
Wastewater Division
73 Paseo Real
Santa Fe, New Mexico 87507

**RE: WATER/WASTEWATER REVIEW TEAM APPLICATION FOR THE
SENIOR CAMPUS AT CAJA DEL RIO**

Dear Team Members:

Jenkins Gavin Design and Development Inc., on behalf of Caja del Rio Holdings LLC, is seeking wastewater services for their proposed development at 28 Caja del Rio Road, north of the NM 599 Frontage Road. The proposed development lies outside of the boundary of the Presumptive City Limits of the City of Santa Fe and within the boundary of Santa Fe County. In accordance with City Ordinance 2008-53, Jenkins Gavin Design and Development Inc. is seeking review by the Water and Wastewater Review Team (WWRT) at the meeting to be held on September 18, 2014.

Description of Existing and Proposed Facilities & Water Budget & Health, Safety and Welfare Reasons for the Connection

On August 1, 2014, Jenkins Gavin Design and Development Inc. submitted an application to the City of Santa Fe Public Utilities Department. Their application contains a description of the proposed project, a water budget and a description of the Health, Safety and Welfare reasons for connection to the City's Wastewater Treatment Facilities. Santa Fe County is supportive of the conclusion in the application that additional impacts to the aquifer are better avoided by connecting this development to the City's sanitary sewer system. Please find a copy of the application attached.

Availability of Wastewater Services

On June 18, 2014, Santa Fe County Utilities (SFCU) issued a conditional letter titled **WATER/SEWER SERVICE AVAILABILITY, CAUWELS 7 STUVE REALTY 7 DEVELOPMENT ADVISOR, LLC** to Jenkins Gavin Design and Development Inc.

• Physical: 424 NM 599 Santa Fe, NM 87507 • Mailing: P.O. Box 276 Santa Fe, NM 87504 • Phone (505) 992-9870
• Fax (505) 992-3028 • www.santafecountynm.gov

MOU - EXHIBIT D

concerning the subject property (copy attached). In that letter, SFCU sets forth the conditions for providing water and wastewater services to this property. With respect to sewer service, the letter points out that SFCU does not have any infrastructure in the immediate area and posits that privately owned, on-site, Advance Treatment Units (ATUs) may be the only option for sewer service to this property. However, in the event that a connection to the City's sanitary sewer is approved through the WWRT process, SFCU would own and operate any public sewer collection infrastructure up to the point of connection with the City's system (after the developer constructed it to County standards and dedicated it to SFCU) and the subject property would be serviced as SFCU sewer customers.

Last, it is unclear whether or not the applicant needs to demonstrate a certified Santa Fe Homes Proposal as set forth in Section 14-8.11 SFCC 1987 in this case.

SFCU respectfully submits the attached application and supporting materials on behalf of the applicant. If the application is deemed to be complete, SFCU requests that this application be added to the agenda of the WWRT meeting to be held on September 18, 2014. Please contact SFCU's Infrastructure Manager (Robert George) at (505) 992-3046 if you need additional information regarding this application.

Sincerely,



Claudia Borchert, Director
Santa Fe County Utilities Division

CB:RG/rjg

Encl: Application to WWRT from Jenkins Gavin Design and Development Inc.
SFCU Conditional Water/Sewer Service Availability Letter

CC: Vicky Lucero, Building and Devepment Manager, Santa Fe County Growth
Management Department (sent via email, with enclosures)
Jennifer Jenkins, Jenkins Gavin Design and Development Inc. (sent via email,
with enclosures)
Bryan Romero, Interim Director, Wastewater Management Division, City of
Santa Fe (sent via email, with enclosures)
Nick Schiavo, Public Utilities Director, City of Santa Fe, (sent via email, with
enclosures)



jenkinsgavin
DESIGN & DEVELOPMENT INC.

August 1, 2014

Nicholas Schiavo, P.E., Director
Public Utilities Department
City of Santa Fe
801 W. San Mateo
Santa Fe, NM 87505

**RE: Senior Campus @ Caja del Rio
Request for Sewer Service**

Dear Nick:

This letter and the attached Utility Service Application are submitted on behalf of Caja del Rio Holdings, LLC in request for a sewer service connection in accordance with the provisions of City Ordinance 2008-53, for consideration by the Public Utilities Committee at the September 3, 2014 meeting. The subject property is a 28-acre parcel located in Santa Fe County at 28 Caja del Rio Road north of the NM 599 Frontage Road (the "Property").

Proposed Land Use and Water Budget

The Property will be developed in four phases as a senior continuum of care campus as reflected in the attached Master Plan. Uses will include a skilled nursing rehabilitation facility, a memory care facility, assisted living, and independent living. Per the attached water budget, the annual water use is estimated at 67.9 afy.

Health, Safety and Welfare

There is not currently an existing Santa Fe County sewer line serving the Property. Therefore, an on-site system is the only other, and least desirable, alternative for wastewater treatment in the absence of a City connection. The proliferation of septic tanks and on-site treatment systems at the City's perimeter poses a serious risk to the integrity of our aquifers. Furthermore, the City Wastewater Division is in the business of treating modern society's waste stream and creating an asset (treated effluent) that can be used to support irrigation needs in and around the City. Currently, treated effluent is supplied to the MRC, Santa Fe Country Club, and the Downs. The balance not delivered to customers is released down the Santa Fe River to support the riparian ecosystem in La Cieneguilla. Increasing the City's supply of treated effluent provides many economic and environmental benefits for the community. The City's Wastewater Division is uniquely situated, organized and capitalized to provide wastewater service to areas outside of the

City limits, and the collection/treatment of wastewater into treated effluent should be viewed as an asset both for the enterprise fund and as an environmental service.

Infrastructure Requirements

Requisite sewer line improvements will be constructed and dedicated to Santa Fe County, which will then connect to the City system. As shown on the attached map, a new sewer main is proposed connecting to the existing line in Paseo de River, which would extend north along the 599 Frontage Road right-of-way to Caja del Rio.

The following documentation is submitted herewith for your reference:

1. Utility Service Application
2. Survey Plat
3. Master Plan
4. Water Budget
5. Sewer Line Map

Your consideration of this request is greatly appreciated. Please do not hesitate to contact me if you have any questions or require additional information.

Thank you.

Sincerely,

JENKINS GAVIN DESIGN & DEVELOPMENT, INC.



Jennifer Jenkins

cc: Kyle Harwood, esq.

Attachments

MOU - EXHIBIT D

**City of Santa Fe, New Mexico
UTILITY SERVICE APPLICATION**

*Fill in all highlighted fields on this application. Applicant must sign and date application.

- Check one only:
- Sewer Service Technical Evaluation Request
 - Water Service Technical Evaluation Request
 - Agreement for Metered Service (AMS)
 - Agreement to Construct and Dedicate Public Improvements (ACD)
 - Annexation Application Water Budget
 - Water Offset Program/Water Rights Compliance Evaluation Request

WORK ORDER # _____

Applicant Name: Caja del Rio Holdings, LLC
 Project Address: 28 Caja del Rio Rd.

***Required - Attach a Plat of the Property (legal lot of record and proposed development)**

Plat Filing Information: Year 2010 Book 722 Page 045 Township, Range, Section: T16N, R8E, S2
 Location: (check one only) Inside Corporate City Limits _____ Outside Corporate City Limits
 Property Uniform Property Code: 1-049-096-456-46 Existing Well: Yes _____ No
 Legal Description including lot size: Tract 1, 28.0 acres

Short Description of Project: Senior Campus including skilled nursing facility, memory care, assisted living & independent living
 Construction Start Date: Spring 2015

***RESIDENTIAL PROJECT - Complete the following**

- 1. Type of project: (i.e. Single Family Residence, Subdivision, Lot split, Apartments) Senior Apartments
- 2. Total number of lots approved on final plat/development plan: 1
- 3. Total number of homes existing or under construction: 0
- 4. Size of service requested: (5/8", 3/4", 1" or 2") 2"

*Please fill in all categories below that apply for which water service is requested:

--- COMPLETED BY APPLICANT ---		--- COMPLETED BY STAFF ---	
Number of Lots or Units		Water Use Factors	Annual Water Demand
_____	Single Family Dwelling Unit, lot size less than 6,000 sq. ft.	.15 afy per d.u.	_____
_____	Single Family Dwelling Unit, lot size 6,000-10,890 sq. ft.	.17 afy per d.u.	_____
_____	Single Family Dwelling Unit, lot size greater than 10,890 sq. ft.	.25 afy per d.u.	_____
_____	Mobile Home (in Mobile home park)	.17 afy per d.u.	_____
_____	Accessory Dwelling Unit	.09 afy per d.u.	_____
_____	Apartment/Condominium	.16 afy per d.u.	_____
<u>180</u>	Senior Complex	.12 afy per d.u.	<u>21.6</u>
_____	Total	Total Residential Water Demand	<u>21.6</u> AFY

MOU - EXHIBIT D

**City of Santa Fe, New Mexico
UTILITY SERVICE APPLICATION**

***COMMERCIAL PROJECT - Complete the following**

Type of Project: (i.e. Office, Retail, Mixed, etc.) Institutional Senior Services
 Total gross floor area of building: 243,000 square feet
 Total area of lot, tract or parcel: 11.3 acres
 Automatic Fire Sprinkler System: Yes No
 Building Construction Type: TBD
 Building Square Footage: 243,000
 Site Plan Attached: Yes No

*Please check all use categories below that are planned for the building and the gross floor areas of each use within the proposed building.

Please refer to attached Water Budget

---- COMPLETED BY APPLICANT ----

---- COMPLETED BY STAFF ----

<u>Check Type of Use</u>	<u>Gross Floor Area</u>	<u>Water Use Factors</u>	<u>Annual Water Demand</u>
Commercial			
<input type="checkbox"/> Office – Non-medical	_____	(0.70 afy per 10,000 s.f.)	_____
<input type="checkbox"/> Medical Office	_____	(0.72 afy per 10,000 s.f.)	_____
<input type="checkbox"/> Office – City/State	_____	(0.58 afy per 10,000 s.f.)	_____
<input type="checkbox"/> Research and Development Lab	_____	(1.18 afy per 10,000 s.f.)	_____
<input type="checkbox"/> Manufacturing – Goods	_____	(0.21 afy per site)	_____
<input type="checkbox"/> Manufacturing – Consumables	_____	(2.33 afy per site)	_____
<input type="checkbox"/> Laundromat, Commercial	_____	(0.78 afy per machine)	_____
<input type="checkbox"/> Laundromat, Other	_____	(0.22 afy per machine)	_____
<input type="checkbox"/> Drycleaner	_____	(0.41 afy per site)	_____
<input type="checkbox"/> Plant Nursery	_____	(0.56 afy per 10,000 s.f.)	_____
<input type="checkbox"/> Gyms with showers	_____	(8.94 afy per site)	_____
<input type="checkbox"/> Gyms without showers	_____	(0.77 afy per site)	_____
<input type="checkbox"/> Salons	_____	(0.21 afy per site)	_____
<input type="checkbox"/> Pet Grooming	_____	(0.52 afy per site)	_____
<input type="checkbox"/> Pet Daycare	_____	(0.11 afy per site)	_____
<input type="checkbox"/> Retail, Large (Individual stores or shopping areas > 75,000 sq ft)	_____	(0.45 afy per 10,000 s.f.)	_____
<input type="checkbox"/> Neighborhood Center/Medium Retail (Individual stores or shopping areas 75,000-25,000 sq ft)	_____	(0.43 afy per 10,000 s.f.)	_____
<input type="checkbox"/> Retail, Small (Individual stores or shopping areas < 25,000 sq ft)	_____	(0.06 afy per site)	_____
<input type="checkbox"/> Gallery	_____	(0.60 afy per site)	_____
<input type="checkbox"/> Grocery Store	_____	(1.27 afy per 10,000 s.f.)	_____
<input type="checkbox"/> Restaurant (full service)	_____	(0.02 afy per seat)	_____
<input type="checkbox"/> Restaurant (limited service)	_____	(1.63 afy per Site)	_____
<input type="checkbox"/> Gasoline Station w/ Car Wash	_____	(1.56 afy per Site)	_____

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_____ Gasoline Station

_____ (0.88 afy per Site)

**City of Santa Fe, New Mexico
UTILITY SERVICE APPLICATION**

_____ Car Wash (full service) _____
_____ Car Wash (limited service) _____
_____ Auto Repair _____
_____ Car Rental _____

(5.66 afy per Site) _____
(0.94 afy per Wash Bay) _____
(0.12 afy per site) _____
(0.12 afy per site) _____

_____ Car Sales _____

(0.07 afy per 10,000 s.f.) _____

_____ Self Storage _____

(0.13 afy per site) _____

_____ Wholesale, Warehousing _____
_____ Industrial, Manufacturing _____

(0.4 afy per 10,000 s.f.) _____
(applicant estimate of water use) _____

_____ Church w/ day care or school) _____
_____ Church w/o day care or school) _____

(1.3 afy per Site) _____
(0.6 afy per Site) _____

_____ Hotel No. of rooms _____
_____ Motel No. of rooms _____

(.13 afy per room) _____
(.09 afy per room) _____

Public Services

_____ School, Elementary _____
_____ School, Middle or Junior High _____
_____ School, Senior High _____
_____ Schools, Daycare _____

(0.53 afy per 100 students) _____
(1.68 afy per 100 students) _____
(2.64 afy per 100 students) _____
(0.85 afy per 100 kids) _____

_____ Places of Worship _____
_____ With Daycare and school _____

(0.15 afy per site) _____
(0.95 afy per site) _____

_____ Parks _____

(1.48 afy per acre) _____

Other (not listed above) Please attach
water demand calculations and assumptions used

(with attachment) _____

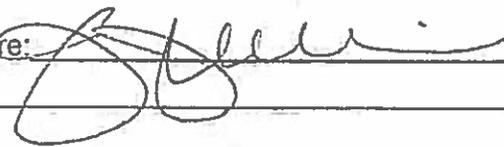
Total Floor Area _____

Total Commercial Water Demand 46.3 AFY

Total Residential Water Demand 21.6 AFY

TOTAL PROJECT WATER DEMAND 67.9 AFY

**City of Santa Fe, New Mexico
UTILITY SERVICE APPLICATION**

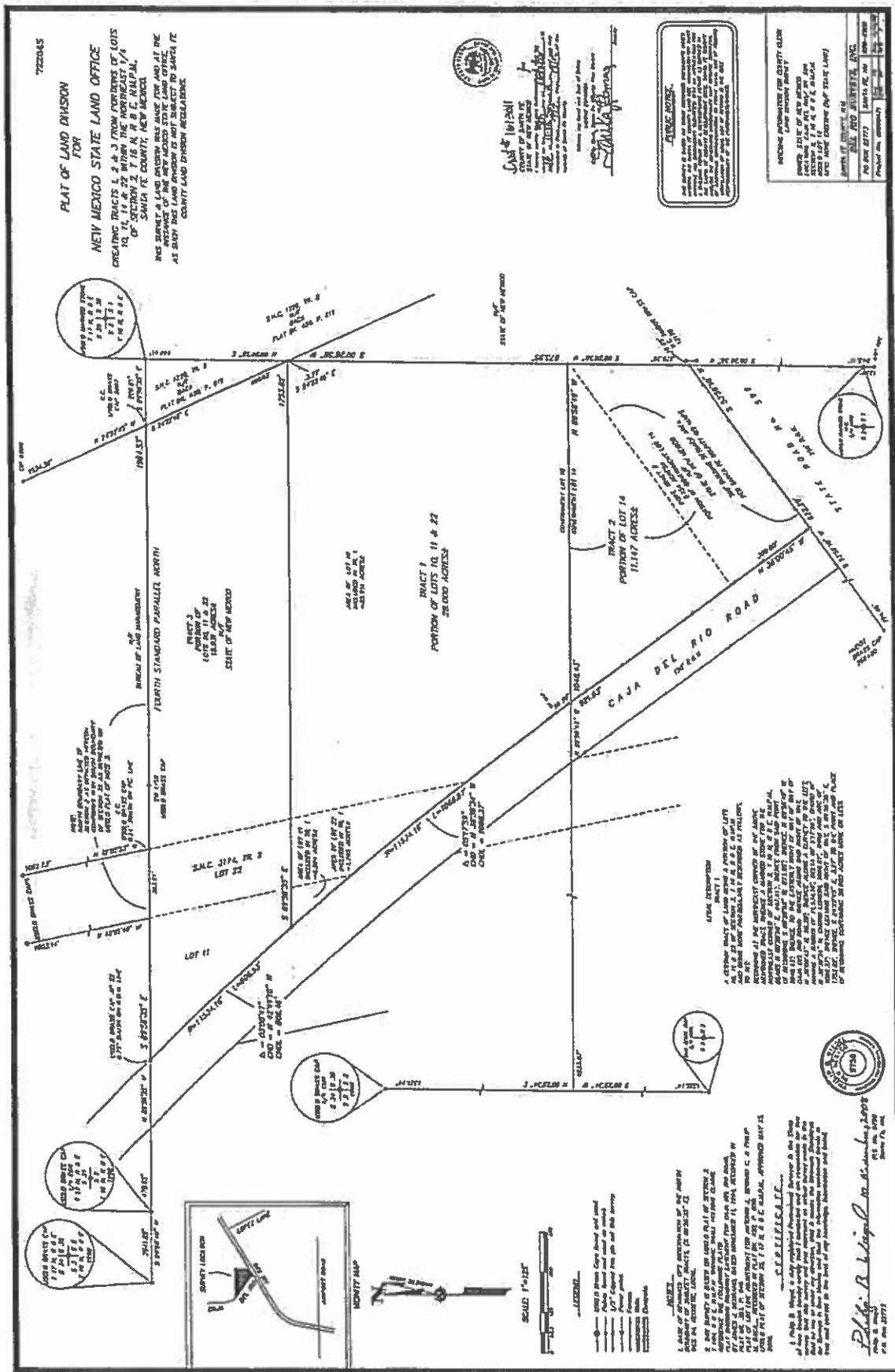
<p>OWNER: <u>Caja del Rio Holdings, LLC</u> Mailing Address: <u>8814 Horizon Blvd. NE</u> <u>Suite 400</u> <u>Albuquerque, NM 87113</u> Phone Number: <u>(505) 246-5711</u> Mobile Number: _____</p>	<p>*Only If Applicable AGENT: <u>Jennifer Jenkins / Jenkins Gavi</u> Title: _____ Mailing Address: <u>130 Grant Ave. #101</u> <u>Santa Fe, NM 87501</u> Phone Number: <u>820-7444</u> Mobile Number: <u>930-6149</u></p>
<p>Information Provided By: Check one: Owner _____ Agent <input checked="" type="checkbox"/></p>	
<p>Signature: <u></u> Date: <u>7.17.14</u></p>	
<p>Technical Evaluation to be Sent to: Check one: Owner _____ Agent <input checked="" type="checkbox"/></p>	

COMMENTS: _____

APPLICANTS, PLEASE NOTE:

- Ordinance 2008-53, prohibits new connections outside the presumptive city limits including the Agua Fria traditional historic community (AFTHC) unless specific conditions are met. Applications for service outside the presumptive city limits and AFTHC must include documentation showing these conditions are met or the application will be rejected. The documents required are shown below.
- A map of the proposed project in relation to the existing city limits and the presumptive city limits
- A detailed description of the proposed development including the type and size of proposed land uses
- The health, safety and welfare or other legal reason for the connection
- A site water budget
- Documentation from the County of Santa Fe that county water service is not available
- Documentation from the wastewater division regarding sewer availability
- A certified Santa Fe Homes Proposal as set forth in Section 14-8.11 SFCC 1987 if applicable

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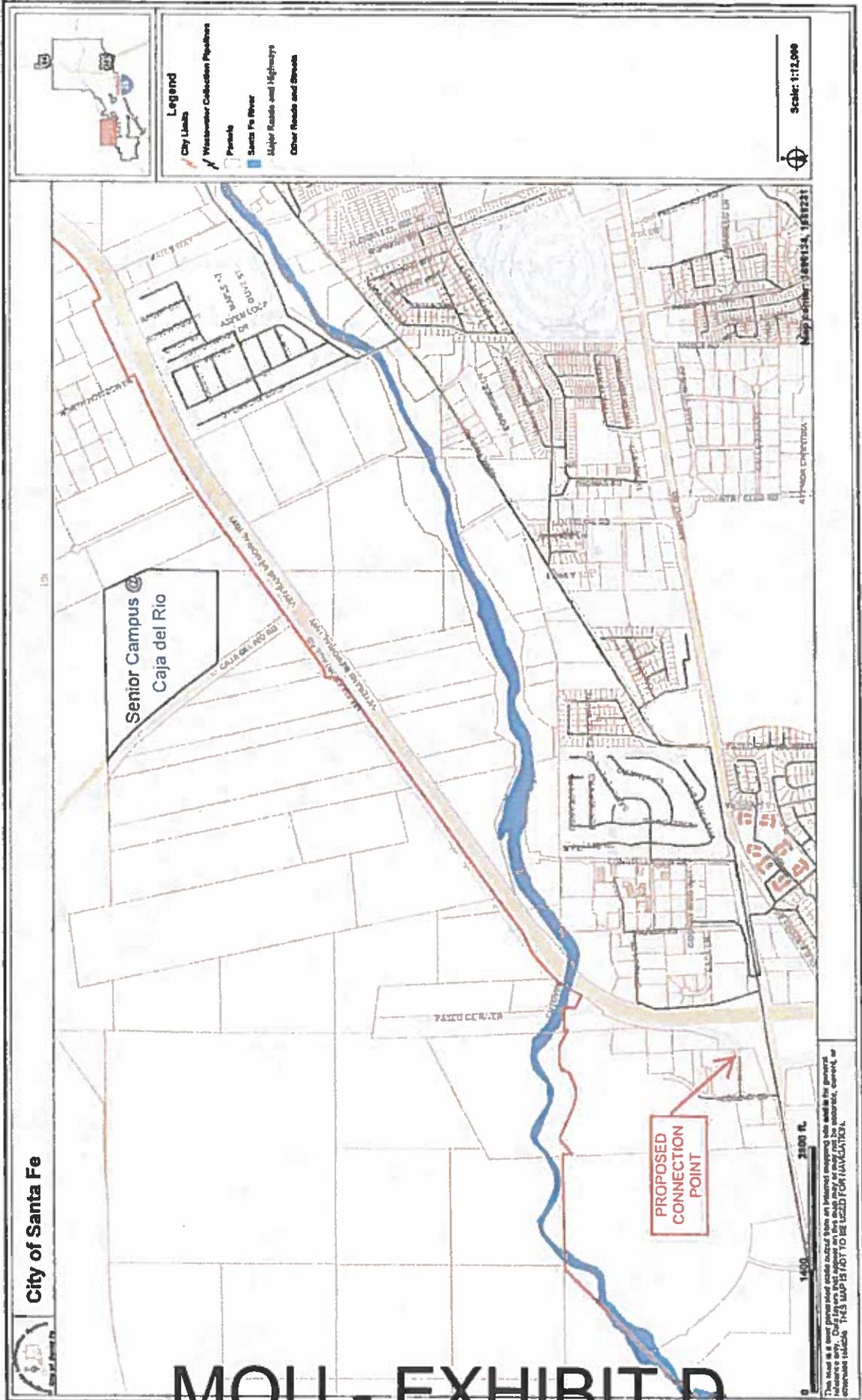
Conceptual Water Budget

Senior Campus @ Caja del Rio
Master Plan Submittal
June 6, 2014

Use	Size	Formula	AFY
Skilled Nursing Facility (Phase 1)	58,000 sf	2.4 afy/10,000 sf	13.9
Memory Care Facility	35,000 sf	2.4 afy/10,000 sf	8.4
Assisted Living Facility	200 residents	0.12 afy/du*	24.0
Independent Senior Housing	180 du's	0.12 afy/du*	21.6
TOTAL			67.9 AFY

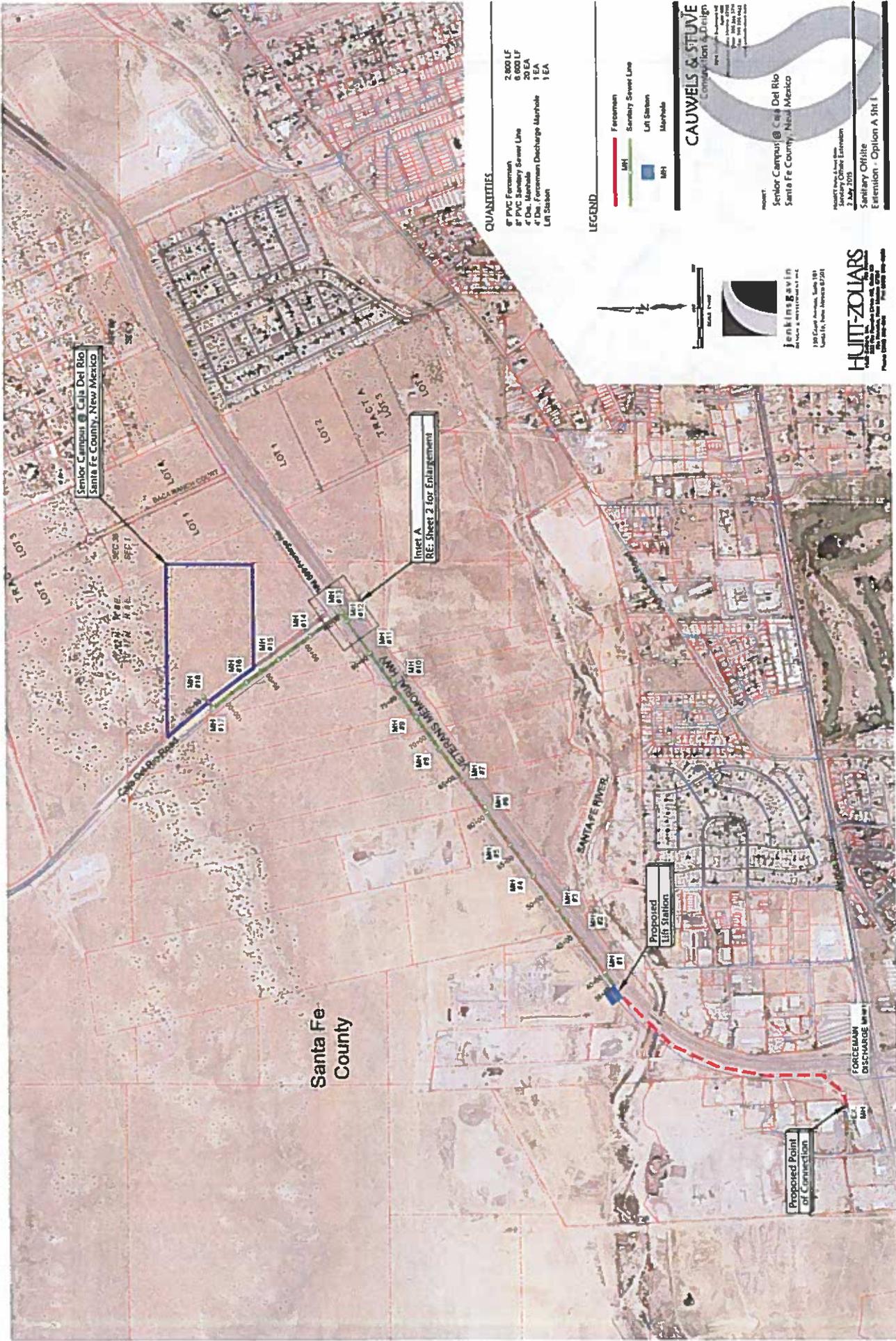
* Source: City of Santa Fe standard water budget formulas per Resolution 2009-116.

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This map is a best effort product and does not constitute an intended engineering plan used in the general reference only. This map is not to be used for construction, design, or other purposes. THE MAP IS NOT TO BE USED FOR NAVIGATION.



QUANTITIES

2,000 LF	Forcemain
20 EA	Lift Station
1 EA	Manhole

LEGEND

- Forcemain
- Secondary Sewer Line
- Lift Station
- Manhole

CAUWELS & STUVE
 Consulting & Design
 1000 North 1st Street
 Santa Fe, NM 87501
 Phone: 505.825.1100
 Fax: 505.825.1101
 www.cauwels.com

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 www.huitzolars.com

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Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

June 18, 2014

Jennifer Jenkins & Colleen C. Gavin, AIA
JenkinsGavin Design & Development, Inc.
130 Grant Avenue, Suite 101
Santa Fe, NM 87501

**RE: WATER/SEWER SERVICE AVAILABILITY, CAUWELS & STUVE
REALTY & DEVELOPMENT ADVISORS, LLC**

Dear Ms. Jenkins and Ms. Gavin:

The Santa Fe County Utilities (SFCU) Division is in receipt of your 4/15/2014 request, submitted on behalf of Cauwels & Stuve Realty & Development Advisors, LLC, concerning water and sewer service for a property under development at 28 Caja Del Rio Road. The development project is known collectively as "Continuum of Care". The Continuum of Care development plan proposes to build out approximately 28 acres of currently undeveloped property, phased over the next ten years, to include a 58,000 square-foot (sf) skilled nursing facility, a 150,000-sf assisted-living facility, a 35,000-sf memory care facility and 180,000 sf of independent living community. The water budget you submitted for the project at full build out is 69.7 acre-feet/year.

Please be aware that any statements made herein refer solely to the parcel and development concept you have described in your written inquiry and appurtenant documentation you submitted. If the parcel location or development concept is modified, or the construction conditions are modified in the future, this letter will be automatically invalidated, unless otherwise indicated in writing by SFCU.

Water Availability

SFCU is **ready, willing, and able to provide water service** to Continuum of Care, provided the following conditions are met before preliminary plat approval:

- 1) The Board of County Commissioners (BCC) approves New Water Deliveries for Continuum of Care, as required by Resolution 2006-57, "Adopting A Santa Fe County Water Resource Department Line Extension and Water Service Policy".
- 2) Continuum of Care will provide SFCU with data and calculations upon which the water budget was established. The applicant's water budget shall be premised on the SF County Conservation Ordinance 2002-13, which enumerates required water conservation measures. SFCU may adjust the Continuum of Care's water budget as appropriate.

• Physical: 424 NM 599 Santa Fe, NM 87507 • Mailing: P.O. Box 276 Santa Fe, NM 87504 • Phone (505) 992-9870
• Fax (505) 992-3028 • www.santafecountynm.gov

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- 3) The BCC approves the project's proposed water budget of 69.7 acre-feet/year, which is in excess of the maximum of 35 acre-feet/year identified in Resolution 2006-57, Section IX.C. It is Continuum of Care's responsibility to justify the "extraordinary circumstances" that merit an exception to the water allocation limit.
- 4) Continuum of Care compensates SFCU for the quantity of water rights and supply assigned to Continuum of Care per Resolution 2006-57, Article X and IV.A.3 of Attachment A, currently valued at \$11,000 per acre-foot.
- 5) Continuum of Care meets all other conditions in Resolution 2006-57, Resolution 2012-88, and all other SFCU water-related ordinances and resolutions.
- 6) Continuum of Care is responsible for the design and construction of this project in its entirety and pays for all costs associated with the water system. Santa Fe County is not responsible for any costs incurred in order to ensure compliance with the County's ordinances or other applicable rules and regulations.
- 7) Continuum of Care agrees to construct and dedicate all infrastructure needs identified by the SFCU.
- 8) Continuum of Care obtains a letter from the City of Santa Fe Water Division (City) that identifies what, if any, additional water utility infrastructure is needed in order supply the proposed 69.7 acre-foot-year demand.
- 9) Continuum of Care agrees to construct and dedicate all infrastructure needs identified by the City's water utility hydraulic modeling.

After preliminary plat approval, Continuum of Care will need to enter into a Water Delivery Agreement with SFCU, which will specify requirements, like construction standards (e.g., line-taps and meter cans), inspections, and dedications.

Water Infrastructure and Line Extension Requirements

SFCU has a 12-inch distribution waterline approximately one-half mile from the proposed property boundary. If your development decides to connect to the existing 12-inch distribution waterline, SFCU will require your development to extend the waterline from its existing location to your development and to extend it to the furthest property development boundary. The proposed connections and waterlines will be required to comply with the American Waterworks Association (AWWA) and Standards the New Mexico Standard Specifications for Public Works Construction (NMAPWA) 2006 Edition or subsequent revisions and the SFCUD standards and specifications.

Conditions of Service:

- 1) Applicant must obtain submit the water infrastructure and line extension design approval from SFCU before final plat approval.
- 2) The applicant is responsible for the design and construction of this project in its entirety and pays for all costs associated with the water system. Santa Fe County is not responsible for any costs incurred in order to ensure compliance with the County's ordinances or other applicable rules and regulations.
- 3) Each dwelling unit will be metered separately. The project utility engineer shall consult with SFCU to properly size the meter based on anticipated demands.

Sewer Service

SFCU does not have utility wastewater service available to Continuum of Care at this point.

The likely option for sewer service for Continuum of Care consists of privately owned and operated advance treatment units (ATUs) that would be installed for each lot or clusters of lots or gravity lines that dispose of treated wastewater to leach fields. Such ATUs would be permitted by the New Mexico Environment Department pursuant to the Liquid Waste Disposal and Treatment Regulations (20.7.3 NMAC) or the Water Quality Control Commission Regulations (20.6.2 NMAC), as appropriate. Given the nature of liquid waste from a nursing facility, SFCU may require pre-treatment of the sanitary sewer waste. SFCU would not be involved with the ownership, operation or maintenance of the ATUs, nor would the owners of these systems be customers of SFCU.

Conditions of Agreement:

- 1) Applicant must submit the sewer service design to SFCU for review before final plat approval.
- 2) The applicant is responsible for the design and construction of this project in its entirety and pays for all costs associated with the wastewater system. Santa Fe County is not responsible for any costs incurred in order to ensure compliance with the County's ordinances or other applicable rules and regulations.
- 3) If SFCU is willing and able to provide sewer collection, treatment and disposal services for this area at some point in the future, your development (including future private owners) would be required to decommissioned the ATUs and connect to SFCU sanitary sewer system at the developments expense. County ownership/maintenance of the system stops at the sewer main where lateral sewer connects.

SFCU Acceptance:

Following the successful design and construction of the facilities and upon verification that all requirements of the County's ordinances have been met to the SFCU's satisfaction as outlined in a Water Delivery Agreement, SFCU will accept ownership of and adopt all water supply facilities as part of its infrastructure for operations and maintenance.

We look forward to working with you toward the successful completion of this project. Please contact SFCU Associate Engineer Paul Casaus at (505) 986-6364 or contact me at 992-9872 if you have any questions and or concerns.

Respectfully,



Claudia Borchert, Director
Santa Fe County Utilities Division

CB:PC/RJG

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• Fax (505) 992-3028 • www.santafecountynm.gov

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CC: Vicki Lucero, Building and Development Manager, Santa Fe County Growth
Management Department (via email to: vlucero@santafecountynm.gov)
Greg Shaffer, Santa Fe County Attorney (via email to gshaffer@santafecountynm.gov)
Nick Schiavo, Public Utilities Director, City of Santa Fe (via email to:
naschiavo@ci.santa-fe.nm.us)

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