

**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

**DATE:** May 14, 2013

**TO:** Board of County Commissioners

**FROM:** Wayne Dalton, Building and Development Services Supervisor *WD*

**VIA:** Penny Ellis-Green, Growth Management Director *PEG*  
Vicki Lucero, Building & Development Services Manager *VL*

**FILE REF.:** CDRC CASE # V 13-5050 Patrick Christopher & Marga Friberg Variance.

**ISSUE:**

Patrick Christopher & Marga Friberg, Applicants, request a variance of Article III, § 2.4.1a.2.b (Access) of the Land Development Code and a variance of Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow the construction of a residence on 15.3 acres.

The property is located at 250C Kalitaya Way off Old Buckman Road, within Section 29, Township 19 North, Range 8 East, (Commission District 1).

**Vicinity Map:**



**REQUEST SUMMARY:**

The Applicants request a variance to allow the construction of a residence on property consisting of five lots which total 15.3 acres. The lots consist of 3.84 acres, 3.87 acres and three 2.5 acre lots. The subject properties are part of a subdivision created in the 1940's with the US Government's "Small Parcel Act" which assisted veterans in acquiring their own property. The properties all have Land Patents from the US Government dating from 1962, and are recognized as legal lots of record.

As part of the permitting process, the Applicants have agreed to consolidate all five lots in order to have the proposed residence on one lot consisting of 15.3 acres. The Applicants intend to sell the property contingent upon the outcome of the variance process and the buyer of the property will be constructing the residence.

The property is accessed by Old Buckman Road (County Maintained Road on BLM Land) and Kalitaya Way (Public Road on BLM Land). Old Buckman Road is a dirt/sand driving surface and is located in, and crosses two FEMA designated Special Flood Hazard Areas, numerous contributing arroyos and drainage ways. The portion of Old Buckman Road that services the property is approximately 9 miles in length. Kalitaya Way is a dirt driving surface and crosses one FEMA designated (SFHA), contributing arroyos and several drainage ways. The portion of Kalitaya Way that services the property is approximately 2.5 miles in length. Both Old Buckman Road and Kalitaya Way do not have an all-weather driving surface and may be frequently impassible during and after inclement weather, and thereby are not all weather accessible.

The Applicants state they are not in a position to upgrade 9 miles of Old Buckman Road to County standards, nor the 2.5 miles of Kalitaya Way. However they are interested in doing all they can to build responsibly. The Applicants also state that after consulting with County staff and the Fire Prevention Division, they understand that there are certain items that can be incorporated into the building plans to substantially enhance the protection against fire danger. These improvements may include a turnaround on the property, a water storage tank, sprinkler system, a vegetation management plan, and compliance with the Urban Wild Land Interface Code for building materials for any proposed structures on the property **(To be determined by Fire Prevention)**.

**This Application was submitted on February 7, 2013.**

**On March 21, 2013, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicants request by a 5-2 vote (Minutes Attached as Exhibit 1).**

**Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request.**

**APPROVAL SOUGHT:** Approval for the construction of a residence on 15.3 acres, which due to site conditions would require a variance from Article III, § 2.4.1a.2.b (Access) of the Land Development Code and a variance of Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management).

**VARIANCES:** Article III, § 2.4.1a.2.b (Access) of the Land Development Code states: “All development sites under this Section shall demonstrate that access for ingress and egress, utility service and fire protection whether by public access and utility easement or direct access to a public right-of-way can be provided and meet the requirements of this Code.”

Article V, § 8.1.3 states “Legal access shall be provided to each lot and each lot must directly access a road constructed to meet the requirements of Section 8.2 of the Code. Parcels to be accessed via a driveway easement shall have a twenty (20) foot all weather driving surface, grade of not more than 11%, and drainage control as necessary to insure adequate access for emergency vehicles.”

Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) states: “At no time shall a permit be issued for a new dwelling unit, site, lot, parcel or tract of land intended for placement of a habitable structure where the site is absent all weather access.”

Article II, § 3 (Variances) of the County Code states: “Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance.” This Section goes on to state “In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.” (**The variance criteria does not consider financial or medical reasons as extraordinary hardships**).

**GROWTH MANAGEMENT AREA:** El Centro, SDA-3

**HYDROLOGIC ZONE:** Basin Fringe Hydrologic Zone, minimum lot size per Code is 50 acres per dwelling unit. Lot size can be reduced to 12.5 acres per dwelling unit with signed and recorded water restrictions.

**ACCESS:** Via FEMA Special Flood Hazard Areas, arroyo and drainage crossings, does not comply with minimum Code criteria.

**FIRE PROTECTION:** Agua Fria Fire District.

**WATER SUPPLY:** Trucked Water/Water Harvesting

**LIQUID WASTE:**

Conventional Septic System

**AGENCY REVIEW:**

<u>Agency</u>	<u>Recommendation</u>
County Fire	Denial
Floodplain Administrator	Denial

**STAFF RECOMMENDATION: Denial of a variance from Article III, § 2.4.1a.2.b (Access of the Land Development Code and denial of a variance of Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management)).**

If the decision of the BCC is to approve of the Applicant's request for variances, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre foot per year. A water meter shall be installed for the proposed home. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance 2002-13).
2. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review and Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).
3. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval for the lot consolidation (As per Article III, § 2.4.2).
4. A note must be placed on the Plat regarding the lack of all weather access to the subject lot. This restriction shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site Access, including access by Emergency vehicles, may not be possible at all times. (As per Ordinance 2008-10).

**EXHIBITS:**

1. March 21, 2013, CDRC Meeting Minutes
2. Letter of request
3. Review Agency Comments
4. Article III, § 2.4.1a.2.b (Access)
5. Article V, § 8.1.3 (Legal Access)
6. Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management)
7. Article II, § 3 (Variances)
8. Site Plan
9. Site Photographs
10. Aerial of Site and Surrounding Area

Member Katz moved to approve the application with staff-imposed conditions. Member Martin seconded.

Member DeAnda said unless the County is willing to support ordinances that have been established to improve situations throughout the County things will not change. She said the flood situation concerned her and other neighboring residents may want to provide housing for their children making the situation direr. She said the property was purchased a few years ago and is not a long standing circumstance for the Leeders. She said she would be voting against this variance. Member Drobnis agreed with Member De Anda.

The motion passed by majority [4-3] voice vote with Members Martin, DeAnda and Drobnis voting again.

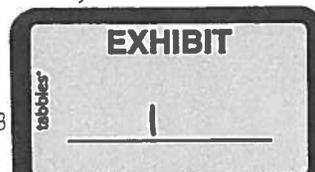
- C. CDRC CASE # V 13-5050 Patrick Christopher & Marga Friberg Variance: Patrick Christopher & Marga Friberg, Applicants, request a variance of Article III, § 2.4.1a.2.b (Access) of the Land Development Code and a variance of Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow the construction of a residence on 15.3 acres. The property is located at 250C Kalitaya Way off Old Buckman Road, within Section 29, Township 19 North, Range 8 East, (Commission District 1). [Exhibit 3: Santa Fe County Fire Department – Official Development Review]

Mr. Dalton read the case caption and staff memo as follows:

“The Applicants request a variance to allow the construction of a residence on property consisting of five lots which total 15.3 acres. The lots consist of 3.84 acres, 3.87-acres and three 2.5-acre lots. The subject properties are part of a subdivision created in the 1940’s with the US Government’s “Small Parcel Act” which assisted veterans in acquiring their own property. The properties all have Land Patents from the US Government dating from 1962, and are recognized as legal lots of record.

“As part of the permitting process, the Applicants have agreed to consolidate all five lots in order to have the proposed residence on one lot consisting of 15.3 acres. The Applicants intend to sell the property contingent upon the outcome of the variance process and the buyer of the property will be constructing the residence.

The property is accessed by Old Buckman Road which is a County maintained road on BLM land, and Kalitaya Way which is a public road on BLM land. Old Buckman Road is a dirt/sand driving surface and is located in, and crosses two FEMA designated Special Flood Hazard Areas, numerous contributing arroyos



and drainage ways. The portion of Old Buckman Road that services the property is approximately nine miles in length. Kalitaya Way is a dirt driving surface and crosses one FEMA designated flood area, contributing arroyos and several drainage ways. The portion of Kalitaya Way that services the property is approximately 2.5 miles in length. Both Old Buckman Road and Kalitaya Way do not have an all-weather driving surface and may be frequently impassible during and after inclement weather, and thereby are not all-weather accessible.

“The Applicants state they are not in a position to upgrade 9 miles of Old Buckman Road to County standards, nor the 2.5 miles of Kalitaya Way. However they are interested in doing all they can to build responsibly. The Applicants also state that after consulting with County staff and the Fire Prevention Division, they understand that there are certain items that can be incorporated into the building plans to substantially enhance the protection against fire danger. These improvements may include a turnaround on the property, a water storage tank, sprinkler system, a vegetation management plan, and compliance with the Urban Wild Land Interface Code for building materials for any proposed structures on the property.”

Mr. Dalton said staff recommends denial of a variance from Article III, § 2.4.1a.2.b, Access, and denial of a variance of Article IV § 4.2 of Ordinance No. 2008-10. Flood Damage and Stormwater Management. However, if the decision of the CDRC is to recommend approval of the Applicants’ request for variances, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre-foot per year. A water meter shall be installed for the proposed home. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk’s Office (As per Article III, § 10.2.2 and Ordinance 2002-13).
2. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review and Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).
3. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval for the lot consolidation (As per Article III, § 2.4.2).
4. A note must be placed on the Plat regarding the lack of all-weather access to the subject lot. This restriction shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site Access, including access by Emergency vehicles, may not be possible at all times. (As per Ordinance 2008-10).

In response to questions of Member De Anda, Mr. Dalton said there were no legal structures in the area and the surrounding area is BLM, Forest and tribal lands.

Member Drobniś asked Marshal Patty if there were difficulties in getting emergency medical services to the site. Marshal Patty said EMS has the same

requirements as Fire and in the County approximately 85 percent of emergency calls are EMS.

The Agua Fria Fire Station would respond to a call for this area but technically it is within the Pojoaque Fire District, stated Marshal Patty. Pojoaque has no access to it. The nearest station is Las Campanas which is a two-man fire station for equipment only. EMS equipment would come from Agua Fria approximately 14 miles away. With good weather and a good road, he estimated it would take 30 minutes to reach the site.

Marshal Patty said the sprinkler requirement would add more time before the structure is lost.

Chair Gonzales identified this application as the most extreme the CDRC has seen in years. He asked whether there was an agreement the applicant could enter into with the County acknowledging that the owner assumes all responsibility in terms of emergency response. Marshal Patty said the Fire Department is bound to respond to any 911 call.

Marshal Patty said this application, to his recollection, is the furthest out with the worst roads. He said there have been calls out on Buckman Road, usually car fires, and there have been times when the department's engines cannot navigate the road. Brush trucks can be used but that road would be difficult.

Duly sworn, Patrick Christopher, 518 Alto Street, Santa Fe, said he and his business partner are both architects and they propose to build a home on the site. He said he has experience working/designing off the grid and they were prepared to consolidate the five lots into one thereby constricting the level of development. The property was created for veterans and the federal government created land patents and then sold the lots. He surmised that the federal administration never inspected this area. Over 80 percent of the development failed and the land was reacquired by the BLM except for approximately 40 lots that are in private hands. He said he and his partner are the first to attempt a development although there are a few illegal dwellings.

Mr. Christopher said they spent over a year getting rights-of-way with BLM. Obtaining a building permit is the next step. He lauded the assistance and professionalism of Mr. Dalton.

Mr. Christopher said they were willing to relieve the County of any emergency response liability; however, it may not be possible. Improvements have been made to Kalitaya but the nine miles on Buckman is over difficult terrain. If San Ildefonso granted access off of 502 the site would be 1.5 miles from a paved road. He said they wanted to move forward and create an off the grid, architecturally responsible solution.

Member DeAnda said she understood the desires of applicants to build in that area but she questioned whether it was appropriate public policy for the applicant to waive all emergency services. Mr. Christopher suggested a disclaimer in the deed.

Mr. Christopher said there were no wells in the immediate area and their plan was to drill. He said cell phone service was excellent and he has been visiting the

property often for the past few years. In that period he has experienced one flood and he thought the road was maintained a few times a year.

There was no one in the public wishing to speak to this case.

Member Katz said it was obviously a remote area and the question is whether people are allowed to live away from civilization/off the grid. The applicants purchased the property with the knowledge it was remote and emergency service risk was evident. He opined that people should be allowed to live out there if they want to.

Member Drobnis said he couldn't support the application because emergency medical service would not be available.

Member Roybal mentioned that he has relatives 30 to 40 minutes outside of Tierra Amarilla and when it rains, they're stuck. He appreciated the Fire Department's vow to help everyone but you can't bring the city to the country and some people don't want that safety component. He said it was the applicants' choice to live out there.

Member Anaya said without the expertise and response of the EMS he wouldn't be here today and he could not support the application.

Member Katz moved to approve the variance with staff-imposed conditions. Member Roybal seconded and the motion failed by [2-5] majority voice vote with Member Katz and Roybal casting the yea votes.

Member DeAnda moved to deny the variance for case #13-5050. Her motion was seconded by Member Anaya and passed by majority [5-2] voice vote with Members Katz and Roybal voting against.

#### **VIII. PETITIONS FROM THE FLOOR**

None were offered.

#### **IX. COMMUNICATIONS FROM THE COMMITTEE**

None were offered.

#### **X. COMMUNICATIONS FROM THE ATTORNEY**

None were presented.

#### **XI. COMMUNICATIONS FROM STAFF**

Member Drobnis said he would miss the April meeting.

Member Roybal was welcomed to the Committee.

The next CDRC meeting: April 18<sup>th</sup> at 4 p.m.

**XII. ADJOURNMENT**

Having completed the agenda and with no further business to come before this Committee, Chair Gonzales declared this meeting adjourned at approximately 5:35 p.m.

Approved by:

\_\_\_\_\_  
J.J. Gonzales, Chair  
CDRC

ATTEST TO:

COUNTY CLERK

Before me, this \_\_\_\_ day of \_\_\_\_\_, 2013.

My Commission Expires: \_\_\_\_\_  
Notary Public

Submitted by:

Karen Farrell, Wordswork

## Santa Fe County Variance Application: Letter of Intent

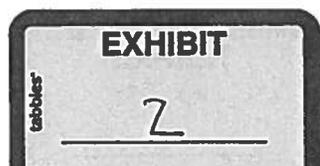
Patrick Christopher and Marga Friberg, applicants

Patrick Christopher and Marga Friberg purchased five lots, totaling 15.3 acres, now known as 250-C Kalitaya Way, in northwest Santa Fe County with the intention of building a modest house. The property is part of a "subdivision" created in the 1940s with the US Government's "Small Parcel Act" to assist veterans wanting to own property. The original surveyed plat for this particular subdivision included hundreds of small lots, mostly 2.5 acres in size, however, only a small percentage of the lots were ever sold. Eventually, the government reclaimed most of the lands which are now under the jurisdiction of the BLM. The lots that we purchased all have Land Patents from the government dating from 1962 and are legal lots of record in Santa Fe County.

Although these lots were surveyed by the government prior to being sold, no infrastructure was provided. The only access to these lots was and still is from the historic roadway, now known as Kalitaya Way, which was an old road from Espanola and San Ildefonso running south to the old town site of Buckman and terminating in Santa Fe. This historic public road appears on maps of the area dating from 1915 and possibly earlier, and until a few years ago, provided public access from Old Buckman Road north to Highway 502 near San Ildefonso Pueblo. The boundary with the Pueblo land now is gated and locked. Several persons in the mapping division of the County believe that this roadway once had a County Road number in years past, but is no longer designated as such.

In an effort to follow all of the requirements to create legal access to our property (the five adjoining lots) we worked with the BLM for over a year to receive a 30-year renewable easement for our driveway which crosses BLM land between Kalitaya Way and our property. It is now our intention to move forward with Santa Fe County and request a building permit.

We began this process over five months ago and have worked diligently with numerous members of the County staff in the course of six meetings and several



site visits to try and accommodate everyone's concerns. In the end, after many hours of brainstorming, it was recommended that we pursue this course of action before the County Board of Commissioners requesting a variance. Last month we were informed by County staff that the new upcoming Land Development Code would not exempt us from the necessity of requesting a variance in order to build on our property.

Although there appear to be excellent building sites on the property, the issue of limited emergency access is our greatest obstacle. According to Captain Patty, his large equipment would not be able to access the property. Regarding the access roads, after leaving Camino La Tierra, the first nine miles of unpaved road are on Old Buckman Road, a County Maintained road. Members of the County Land Use staff, as well as Captain Patty, all agree that Old Buckman Road does not meet County emergency access standards. It has so many open wash crossings that we have not been able to accurately count them. The County's vehicles responding to an emergency call would most likely not be able to drive the nine miles on Old Buckman Road, prior to the turn-off on to Kalitaya Way.

Kalitaya Way is a historic and now primitive roadway which provides the 2.5 miles of access to our property. Although we have driven it in our vehicles every month of the year for the past three years without incident, in no way could it accommodate large scale vehicular traffic. This has always been the only road access to the property, and although passenger and even small scale construction vehicles can manage the road, as they have for decades, it is without question a primitive roadway. We understand this limitation and the added responsibilities that come with living off the grid in an isolated location.

While we are not in a position to upgrade the nine miles of Old Buckman Road to County standards or the 2.5 miles of historic Kalitaya Way, which is a public road on BLM land, we are seriously interested in doing all that we can to build responsibly. After consulting with members of the Land Use staff and Captain Patty, we understand that there are certain things we can incorporate into our building program to substantially enhance the protection against fire danger.

These include:

- 1) Building with fire retardant materials throughout.
- 2) Maintaining a water storage tank of at least 10,000 gallons on site.
- 3) Installing a fire-suppression system in the home.
- 4) Providing additional exit doors from the house.
- 5) Creating a bi-annual road maintenance agreement with a road builder to keep Kalitaya Way passable for vehicular traffic the year around.
- 6) Keeping brush and flammable plant material away from all structures.

In addition, if it might be helpful, we are willing to sign an agreement with Santa Fe County accepting limited emergency response services due to the remoteness of the property.

We hope that the Commission will grant us the opportunity to proceed with our home construction on our property knowing that we will work closely with the Land Use Development staff to create the safest buildings possible.

Thank you all.

Sincerely,

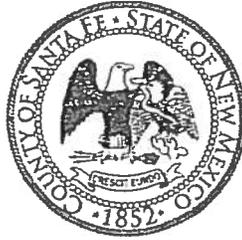


Patrick Christopher and Marga Friberg

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Commissioner, District 1

Virgina Vigil  
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:** March 5, 2013

**TO:** Wayne Dalton, Building and Development Services Supervisor

**FROM:** Vicki Lucero, CFM, Building and Development Services Department Manager,  
Floodplain Administrator *VL*

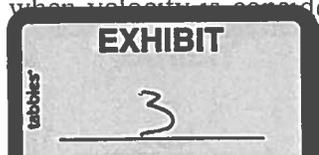
**REF.:** CDRC Case # V 13-5050 Patrick Christopher & Marga Friberg Variance

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The Applicant is requesting approval to allow the construction of a residence on 15.3 acres. The residence will not be benefited by all weather access as required by Code. This application has been reviewed specifically for compliance to Ordinance 2008-10 (Flood Damage Prevention and Stormwater Management Ordinance).

Article 4, Section 4.2 states: "At no time shall a Floodplain Development Permit be issued for a new dwelling unit, site, lot, parcel or tract of land intended for placement of a habitable structure including single family homes, residential subdivisions, etc, when ... the site is absent all weather access. A Floodplain Development Permit will not be issued based upon the following:

1. Old Buckman Road and Kalitaya Way, used to access the subject parcel, are within federally mapped Special Flood Hazard Area, Zone A. The Zone A designation indicates these areas will be inundated by floodwater during the 1% recurrence interval storm event, or 100-year storm. This area is unstudied by FEMA and depth, velocity and duration of inundation are not provided.
2. A portion of Old Buckman Road which provides access to the site, lies within the 100-year floodplain. In addition, the access crosses several arroyos and floodplains along Old Buckman Road and Kalitaya Way, which does not provide dry access for emergency vehicles during storm events.
3. Section 5.11 (Basis for Approval or Denial) (E) states: "Approval or Denial of a Stormwater Management Analysis (none provided by applicant), that approval may not be given when certain relevant factors are present", including "The safety of access to the property in times of flood for ordinary and emergency vehicles "
  - a. The applicant has not provided a Stormwater Analysis which identifies the quantity, depth, and velocity of the flow present in the arroyo crossings. This information would be needed to assess the potential danger of these crossings. Note that flow depths of as little as 12", when velocity is considered, are enough to wash away or



create buoyancy of an average vehicle. Additional danger arises when motorists are unable to view the driving surface and enter inundated areas. Injury or death can occur if the driving surface has been scoured away by high velocity floodwater, and unknowing motorists often attempt to cross these inundated areas without regard for the surface of the road.. Notably, death during flash flood events are surpassed only by hurricane fatalities, and more deaths occur nationwide from flood related deaths than any other natural disaster. This is a dangerous and sometimes deadly situation.

- b. As a minimum, the applicant should be required to provide an analysis of the depth and velocity of flooding expected at these crossings using the methodology and techniques presented in Ordinance 2008-10, and place a culvert or other conveyance as needed based on the report to provide dry access for emergency vehicles.
4. Ordinance 2008-10 contains specific criterion that recommending and approval bodies must consider. These are copied below:
- A. *The Board of County Commissioners (Board) after recommendation by the County Development Review Committee (CDRC) shall hear and render judgment on a request for variance from the requirements of this Ordinance.*
  - B. *The CDRC may recommend and the Board take action on an appeal of the Floodplain Administrator's decision only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.*
  - C. *Any person or persons aggrieved by the decision of the Board may appeal such decision to a court of competent jurisdiction within thirty days of the Board's decision.*
  - D. *The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.*
  - E. *Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Ordinance.*
  - F. *Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C(2) of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.*
  - G. *Upon consideration of the factors noted above and the intent of this Ordinance, the Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance (Article 1, Section C).*
  - H. *Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.*
  - I. *Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's*

*continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.*

*J. Prerequisites for granting variances:*

- 1. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.*
- 2. Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.*
- 3. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.*
- 4. Variances may be issued by the Board for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Article 4, Section D(1)-(9) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.*

**Finding:**

This application does not meet the standards required for placement of a residence as described in the Code and Ordinance 2008-10, and in considering the criteria for variance issuance as noted above does not meet these criteria, therefore as Santa Fe County Floodplain Administrator, **it is recommended that this variance be denied based on the lack of all weather access to the proposed home.**

Be advised that should the BCC recommend approval of this variance, as noted in the federally mandated conditions for variance, FEMA must be notified of this decision as required by Federal Code of Regulations.

Should the BCC approve this case the following note should be placed on the Plat:

**The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site access, including access by Emergency vehicles, may not be possible at all times.**

Daniel "Danny" Mayfield  
Commissioner, District 1

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Katherine Miller  
County Manager

# Santa Fe County Fire Department Fire Prevention Division

## Official Development Review

Date	3/19/2013		
Project Name	Patrick Christopher & Marga Friberg		
Project Location	250-C Kalitaya Way Santa Fe, NM 87594		
Description	Variance for non compliant access	Case Manager	Wayne Dalton
Applicant Name	Patrick Christopher & Marga Friberg	County Case #	13-5050
Applicant Address	P.O. Box 33261 Santa Fe, NM 87594	Fire District	Pojoaque
Applicant Phone	505-794-9416		

Review Type:	Commercial <input type="checkbox"/>	Residential <input checked="" type="checkbox"/>	Sprinklers <input type="checkbox"/>	Hydrant Acceptance <input type="checkbox"/>
	Master Plan <input type="checkbox"/>	Preliminary <input type="checkbox"/>	Final <input checked="" type="checkbox"/>	Inspection <input type="checkbox"/>
	Wildland <input type="checkbox"/>	Variance <input type="checkbox"/>		Lot Split <input type="checkbox"/>
Project Status:	Approved <input type="checkbox"/>	Approved with Conditions <input type="checkbox"/>	Denial <input checked="" type="checkbox"/>	

The Fire Prevention Divison/Code Enforcement Bureau of the Santa Fe County Fire Department has reviewed the above submittal and requires compliance with applicable Santa Fe County fire and life safety codes, ordinances and resolutions as indicated (*Note underlined items*):

### Fire Department Access

*Shall comply with Article 9 - Fire Department Access and Water Supply of the 1997 Uniform Fire Code inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal*

- **Fire Access Lanes**

Section 901.4.2 Fire Apparatus Access Roads. (1997 UFC) *When required by the Chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both.*

▪ **Restricted Access/Gates/Security Systems**

Section 902.4 Key Boxes. (1997 UFC) *When access to or within a structure or an area is unduly difficult because of secured openings or where immediate access is necessary for life-saving or firefighting purposes, the chief is authorized to require a key box to be installed in an accessible location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the chief.*

**Fire Protection Systems**

▪ **Water Storage/Delivery Systems**

*Shall comply with Article 9, Section 903 - Water Supplies and Fire Hydrants of the 1997 Uniform Fire Code, inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.*

Section 903.2 Required Water Supply for Fire Protection. *An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction. When any portion of the facility or building protect is in excess of 150 feet from a water supply on a public street, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided when required by the chief.*

Section 903.3 Type of Water Supply (1997 UFC) *Water supply is allowed to consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow. In setting the requirements for fire flow, the chief may be guided by Appendix III-A.*

Due to the lack of adequate resources for fire flow a minimum 10,000-gallon cistern and draft hydrant shall be installed, tested, approved and operable prior to the start of any building construction. Plans and location for said system shall be submitted prior to installation for approval by this office and shall meet all minimum requirements of the Santa Fe County Fire Department. Details and information are available through the Fire Prevention office.

The water level shall be maintained by an external water source (well), or by a water shuttle system (trucked).

The water storage system shall incorporate the use of a tank water level monitoring system which maintains the minimum required water for fire protection needs at all times. When the tank water level exceeds the required limits, power to the domestic water pump shall be automatically disconnected.

▪ **Fire Extinguishers**

Article 10, Section 1002.1 General (1997 UFC) *Portable fire extinguishers shall be installed in occupancies and locations as set forth in this code and as required by the chief. Portable fire extinguishers shall be in accordance with UFC Standard 10-1.*

Portable fire extinguishers should be installed in occupancies and locations as set forth in the 1997 Uniform Fire Code. Portable fire extinguishers shall be in accordance with UFC Standard 10-1.

**General Requirements/Comments**

▪ **Inspections/Acceptance Tests**

Shall comply with Article 1, Section 103.3.2 - New Construction and Alterations of the 1997 Uniform Fire Code, inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

Prior to acceptance and upon completion of the any permitted work, the Contractor/Owner shall call for and submit to a final inspection by this office for confirmation of compliance with the above requirements and applicable Codes.

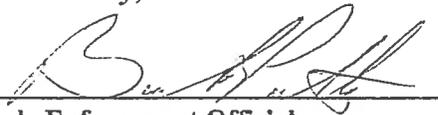
▪ **Permits**

As required

**Final Status**

Recommendation for Final Development Plan is a Denied.

*Buster Patty, Fire Marshal*

  
Code Enforcement Official

3-19-13  
Date

Through: David Sperling, Chief

File: Landuse/Distr Pojoaque. /Patrick Christopher  
3-19-2013

Cy: Case Manager, Wayne Dalton  
Applicant/ Patrick Christopher & Marga Friberg  
District Chief/Nick Martinez  
File

submittal list and explanation with the development permit application form.

2. Reviews

(a) Lot Size Requirement Review

The Code Administrator shall review the application for compliance with the lot size requirements of the Code.

→ (b) Access

(i) All development sites created under this Section shall demonstrate that access for ingress and egress, utility service, and fire protection whether by public access and utility easement or direct access to a public right-of-way can be provided and meet the requirements of this Code.

(ii) Installation of culverts, where applicable, shall be required at intersections of driveways with County roads.

(iii) Road Construction and/or Road Cut Permits must be obtained prior to road or driveways construction. The applicant must provide submittals for new construction pursuant to this Section 2.4.1 and meet standards as applicable and as required in Article V, Section 8, Subdivision Design Standards, and Article VII, Section 3, Terrain Management. Notification of all affected property owners and posting of notice will be required for roads and driveways accessing more than one property.

(c) Special District Review

The Code Administrator shall check the location of the proposed dwelling, and if the location of the proposed dwelling is within a Special Review District as described in Article VI, the Code Administrator shall inform the applicant of any additional submittals or reviews required, if any, and make the applicable review.

(d) Environmental Review

The Code Administrator shall inform the applicant of any additional submittals and make the reviews required under Article VII - Environmental Requirements.

(e) Siting Review

The Code Administrator shall review the application for compliance with the site planning standards. Additional submittals in connection with the siting may be required: site visits to assure compliance with the standards of Section 2.3 of this Article and approval of the Code Administrator will also be required.

(f) Building, Mechanical and Electrical Code Review

The Code Administrator shall cause the submitted plans and specifications to be reviewed for compliance with Article IV - Construction Codes of the Code and for engineering design.

8.1.2 The Santa Fe County Master Plan For Roads

- a. Pursuant to 3-19-9 N.M.S.A., 1978, the Santa Fe County Master Plan for Roads establishes the general location of existing and proposed highway and arterial roads for the purpose of assuring a coordinated system of roads in Santa Fe County.
- b. The Santa Fe County Master Plan for Roads may be amended by resolution from time to time to accommodate changing or changed conditions.

→ 8.1.3 Legal access shall be provided to each lot and each lot must directly access a road constructed to meet the requirements of Section 8.2 of this Article. Parcels to be accessed via a driveway easement shall have a twenty (20) foot all weather driving surface, grade of not more than 11%, and drainage control as necessary to insure adequate access for emergency vehicles.

8.1.4 Dead end roads may not serve more than thirty (30) dwelling units, except that the Code Administrator with the concurrence of the Fire Marshal may approve the development of more than thirty (30) lots on a dead end road. The Code Administrator may require a second access for any development with fewer than thirty (30) dwelling units where issues of public health, safety and welfare exists.

8.1.5 Coordination of Roads With Surrounding Property

- a. The arrangement of roads in a development shall provide for the continuation or appropriate projection of existing or proposed highway or arterial roads in surrounding areas according to the Santa Fe County Master Plan for Roads, and shall provide reasonable means of ingress and egress to surrounding property.
- b. Where land is subdivided into large tracts or where there is a potential for further subdivision or development of subsequent phases exists, the proposed development shall be designed to provide for a coordinated road system for the entire tract.
- c. Where it is in the public interest to establish a right-of-way or access to property which adjoins a proposed development, the right-of-way shall be extended to the boundary of the property which is the subject of a development application. The right-of-way shall either be dedicated to the County or granted to the Owner's Association, subject to a conditional dedication governed by Article V, Section 8.1.9. Such right-of-way shall be designated on the master or phase development plan and on the plat as a public access.

8.1.6 Access to highways and arterials: buffering requirements

- a. Where a proposed subdivision contains lots abutting or adjacent to an arterial or highway, it shall be planned so as to avoid having lots having frontage on said thoroughfares.
- b. The subdivision shall be laid out to have a minimum number of intersections with arterials or highways, and where appropriate, shall provide at least two separate points of ingress and egress to assure adequate access, and shall be designed for all weather conditions. Driveways from lots shall access local roads and may access collector roads on a limited basis as approved by the County Development Review Committee.
- c. Where the subdivision is traversed by or is adjacent to a state or federal highway, and in addition to these regulations, the subdivision must satisfy the New Mexico State Highway Department Regulations Covering Design and Construction of Driveways on Non-Controlled Access Highways in New Mexico, a copy of which is on file in the office of the Code Administrator for public inspection.
- d. Where a subdivision borders on or contains a railroad right-of-way or a limited access highway right-of-way, a parallel road or frontage road may be required at a distance suitable for the appropriate use of the intervening land. Such distances shall also be

**ARTICLE 4**

**FLOODPLAIN DEVELOPMENT PERMIT PROCEDURAL REQUIREMENTS**

**SECTION 4.1 AREAS REQUIRING A FLOODPLAIN DEVELOPMENT PERMIT**

A. For development within a designated SFHA, including lands which are traversed by, bisected by, or directly adjacent to the SFHA designated on the effective FIRM as described in Article 2, §2.2C, Article 3, §3.2 and Article 3, §3.10, a Floodplain Development Permit issued by the Floodplain Administrator in conformity with the provisions of the Ordinance shall be secured pursuant to Article 3, §3.3(B) prior to commencement of construction.

**SECTION 4.2 NON-ELIGIBLE NEW DEVELOPMENT OR CONSTRUCTION**

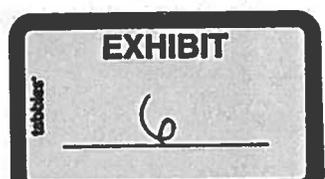
At no time shall a Floodplain Development Permit be issued for a new dwelling unit site, lot, parcel or tract of land intended for placement of a habitable structure including single family homes, residential subdivisions, modular home sites and modular home subdivisions where the site is:

- i. An alternative buildable area located outside the limits of the SFHA is available;
- ii. Unable to be removed from the SFHA through the formal FEMA map revision process described in Article 4, § 4.4;
- iii. Absent all weather access.

**SECTION 4.3 PROCEDURES FOR SUBDIVISION PROPOSALS**

All subdivision proposals which include area traversed by, bisected by, or directly adjacent to SFHA, including manufactured home parks and manufactured home subdivisions shall be required to secure a Floodplain Development Permit per Article 4, §4.4, and:

- A. SFHA may be used in computation of density;
- B. SFHA may be utilized to meet open space criteria;
- C. Primary and secondary subdivision access as required by County Code must be all weather access;
- D. For phased subdivisions, an overall Master Drainage Analysis shall be provided which demonstrates that floodplain management policies and stormwater management criteria will be compliant with this Ordinance and function independently in each phase, or construction of the entire conveyance system will be required in the first phase of construction.



### 2.5 Zoning

In connection with the review of an application for a development permit with respect to matters described in the New Mexico Statutes concerning zoning, the procedures concerning zoning matters set forth in the New Mexico Statutes, as amended from time to time, shall apply in addition to the review procedures provided in the Code. The time limits established in this Article II may be extended if required, in order to comply with the procedures concerning zoning matters.

### 2.6 Subdivisions

In connection with review of an application for a development permit with respect to matters described in the New Mexico Subdivision Act, as it may be amended from time to time, the procedures for review provided for in Article V of the Code and the New Mexico Subdivision Act shall apply in addition to the review procedures provided in this Article II of the Code. The time limits established in this Article II shall be extended if required in order to comply with the procedures concerning subdivision matters.

### 2.7 Other Requirements

The time limits set forth in this Article II shall be extended in order to comply with other provisions of the Code providing for time limits in connection with reviews and requirements under the Code.

## → SECTION 3 - VARIANCES

### 3.1 Proposed Development

Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the Board and the Board may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking or property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. In arriving at its determination, the Development Review Committee and the Board shall carefully consider the opinions of any agency requested to review and comment on the variance request. In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

### 3.2 Variation or Modification

In no case shall any variation or modification be more than a minimum easing of the requirements.

### 3.3 Granting Variances and Modifications

In granting variances, and modifications, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

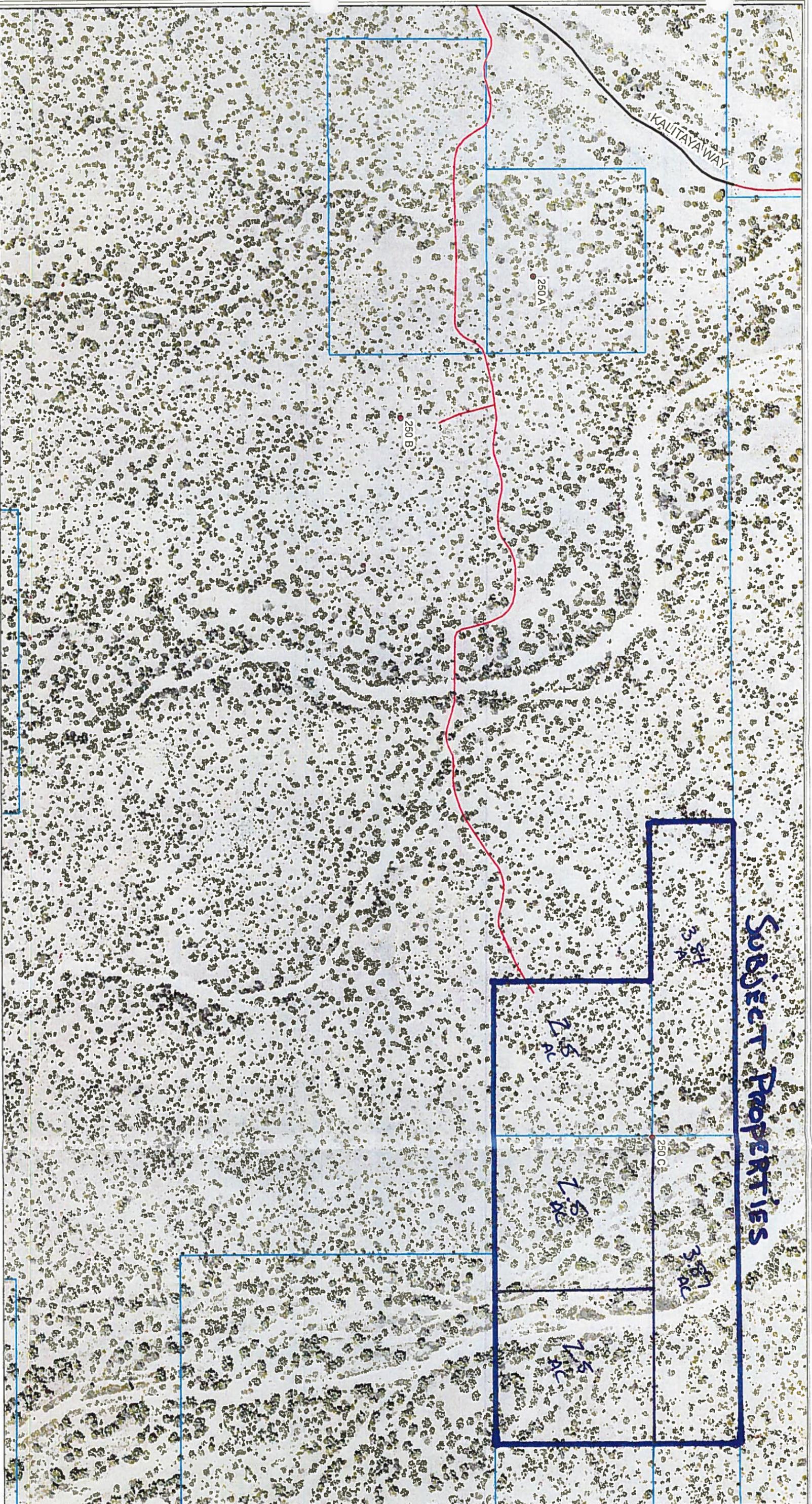
### 3.4 Height Variance in Airport Zones

All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the

EXHIBIT

7

II - 9



**SUBJECT PROPERTIES**

**Legend**

-  ROADS
-  DRIVEWAYS
-  Parcels

1:2,344

1 inch represents 195,3125 feet



2008 Orthophotography  
2 FOOT CONTOURS

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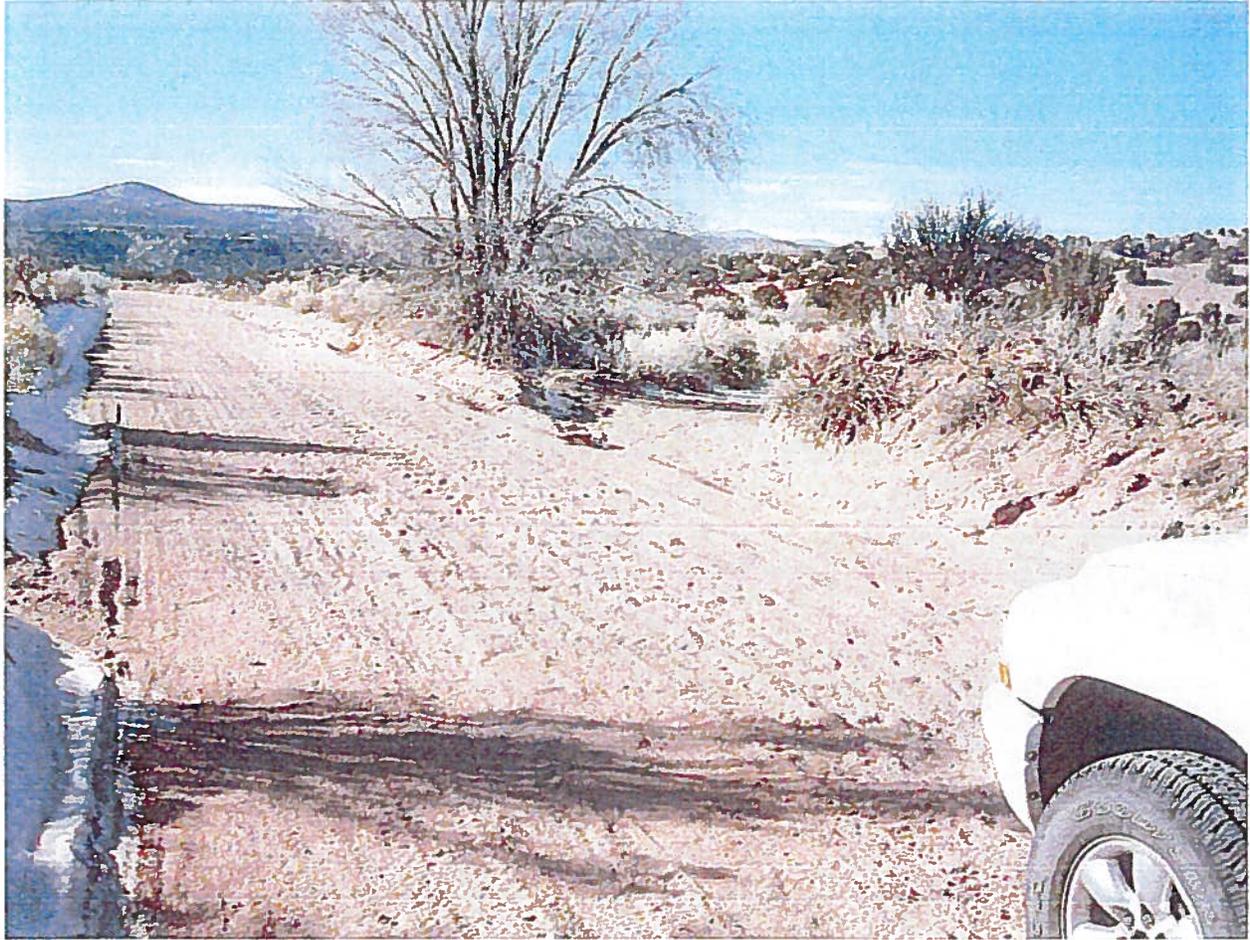
**EXHIBIT**

**8**

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March 13, 2013



Buckman Road





Buckman Road



Buckman Road



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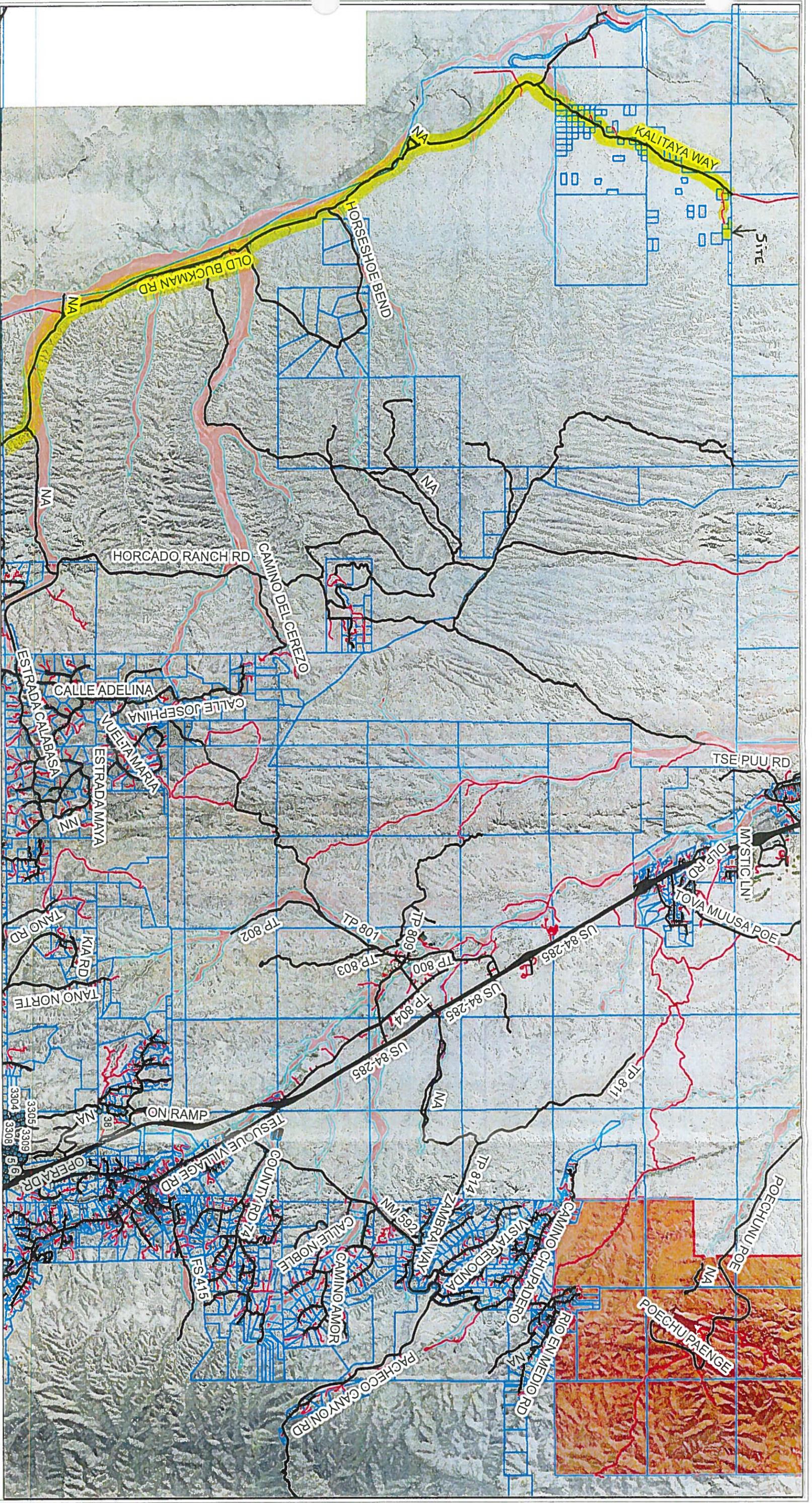


Kalitaya Way



Kalitaya Way

Buildable Site



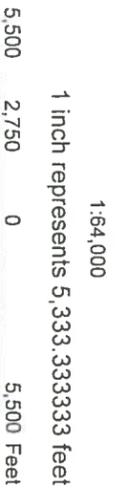
**Legend**

-  ROADS
-  DRIVEWAYS
-  Parcels

tabbler

**EXHIBIT**

10



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2 FOOT CONTOURS

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**SANTA FE COUNTY**

March 13, 2013

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