Henry P. Roybal
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: September 23, 2015

TO: Board of County Commissioners

FROM: John M. Salazar, Development Review Specialist Senior JMS

VIA: Katherine Miller, County Manager
Penny Ellis-Green, Growth Management Director
Vicki Lucero, Building and Development Services Manager
Wayne Dalton, Building and Development Services Supervisor

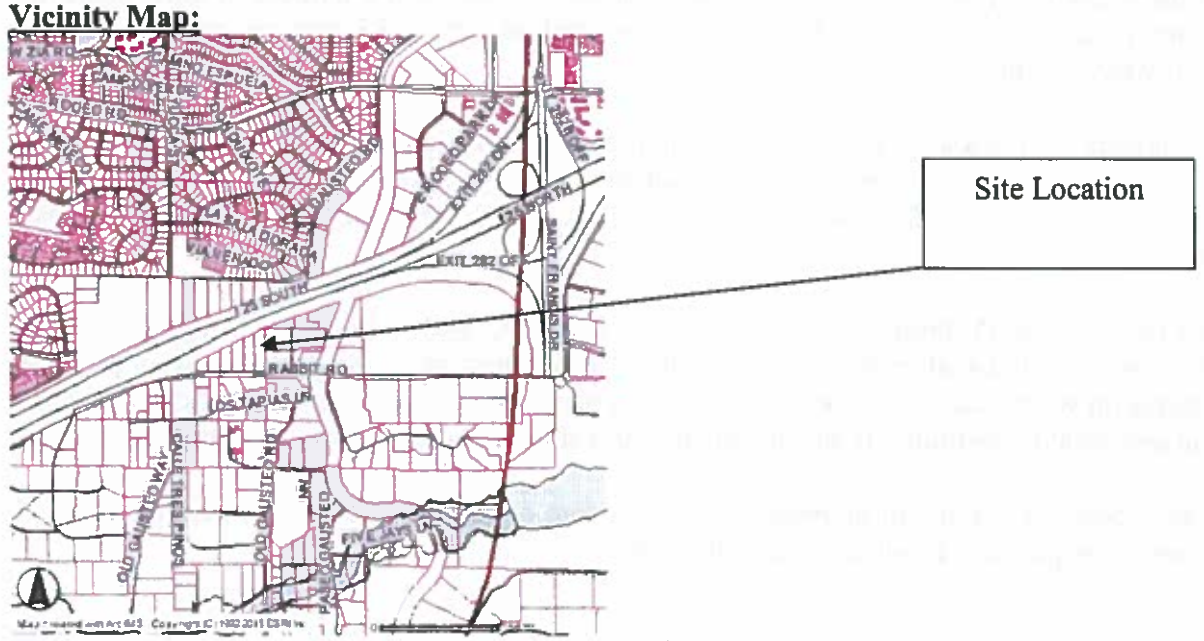
FILE REF.: CDRC CASE # V 15-5140 Vernon DeAguero Variance

ISSUE:

Vernon DeAguero, Applicant, Alberto Alcocer, Agent, request a variance of Article VIII, § 7.15, (Prohibited Signs) of the Santa Fe County Land Development Code, Ordinance No. 1996-10 (Code) in order to allow an existing, unpermitted 96 square-foot sign advertising an off-site business on 2.21 acres.

The property is located at 267 Rabbit Road, within Section 10, Township 16 North, Range 9 East, (Commission District 4).

Vicinity Map:



SUMMARY:

The subject lot was created in 1980, though pre-code deed and is recognized as a legal lot of record. There is currently a residence on the property. The owners of the Property, Vernon, Jennifer and Grace DeAguero, acquired the Property with the house and a smaller, unpermitted sign which advertised an off-site landscaping business, by warranty deed recorded as Instrument #148619 in the records of the Santa Fe County Clerk dated May 24, 2007. (Exhibit 5) The owner then increased the size of the unpermitted sign to 96 square feet and allowed the Agent to advertise his off-site business on this sign.

On November 11, 2014, a Notice of Violation was issued to the Applicant for an illegal commercial advertisement sign posted on the property. A Final Notice of Violation was issued on January 9, 2015. In order to keep the sign and remedy the notice of violation the Applicant is requesting a variance of Article VIII, § 7.15 (Prohibited Signs) of the Land Development Code in order to keep a 96 square foot sign advertising an off-site business on 2.21-acres.

On August 20, 2015, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the variance and removal of the sign by a 3-1 vote with the Chair abstaining from the vote. (Exhibit 10)

The Applicant states that the non-illuminated sign was erected to promote the Agent's business, Clearealty, which measures 12 feet tall by 8 feet wide. The Applicant states that the sign is well within his property and it has helped generate business for the Agent thus generating gross receipt tax revenue for sales which are in excess of a million dollars per year. The sign is positioned on the north side of the property which bounds Interstate 25 right-of-way (Exhibit 4). The Applicant also states that although the Agent's main office is located at 333 Montezuma Avenue, he has given the Agent authorization to hold a New Mexico Real Estate Commission license on his property due to the lack of parking spaces at the Montezuma office. It affords Mr. Alcocer the opportunity to meet clients on the Applicant's property to look for homes in the area. However, neither the Applicant nor the Agent has a Santa Fe County business license on the property and the Agent does not live on or own the property. The Applicant continues to state, "[t]here [are] a number of other signs that are in the vicinity and along the Interstate 25 as well as Hwy 285 that are present and that presumably have permits."

Upon reviewing the photos the Applicant has submitted documenting the billboards along Interstate 25 and Highway 285, these billboard signs are either located on State Highway right-of-way or are legal non-conforming, therefore, no permits have been issued for any of these existing billboard signs. (Exhibit 1)

Article VIII, § 7.15.a, Prohibited Signs of the Code states: "Off-site advertising or billboards. The advertising on any sign shall pertain only to a business, industry or activity conducted on or within the premises on which such sign is erected or maintained." The subject sign would be considered a billboard and would constitute off-site advertising; therefore, the Applicant is requesting a variance.

Under the Code, the maximum allowable size for a sign on a commercially zoned property is 70 square feet. This property is not commercially zoned.

The Applicant will be required by NMDOT to apply for a sign permit per NMDOT Outdoor Advertising Requirements (Exhibit 8) and the New Mexico Highway Beautification Act (Exhibit 9).

Article II, Section 3, Variances, of the 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, an applicant may file a written request for a variance. A Development Review Committee may recommend to the [BCC] and the [BCC] may vary, modify or waive the requirements of the Code upon adequate proof that compliance with a Code provision at issue will result in an arbitrary and unreasonable taking of property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety.

Article II, Section 3.1 concludes that, "[i]n no event shall a variance…be recommended by [the] Development Review Committee nor granted by the [BCC] if by doing so the purpose of the Code would be nullified."

Article II, Section 3.2 states, "[i]n no case shall any variation or modification be more than a minimum easing of the requirements."

Notice requirements were met as per Article II § 2.4.2, of the Code. In advance of a hearing on the Application, the Applicant provided a certification of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for twenty-one days on the property, beginning on July 30, 2015. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on July 30, 2015, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners. (Exhibit 6)

This Application was submitted on June 18, 2015.

Growth Management staff has 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 of a variance of Article VIII, §7.15, Prohibited Signs, of the Land Development Code to allow a 96 square foot sign advertising an off-site business on 2.21 acres.

GROWTH MANAGEMENT AREA: El Centro, SDA-2

HYDROLOGIC ZONE: Basin Hydrologic Zone.

FIRE PROTECTION: Hondo Fire District.

WATER SUPPLY: Domestic Well.

LIQUID WASTE: Conventional Septic System.

VARIANCES: Yes, of Article VIII, §7.15, Prohibited Signs

AGENCY REVIEW:

Agency	Recommendation
N/A	N/A

STAFF RECOMMENDATION: The CDRC and staff recommends denial of a variance of Article VIII, §7.15, Prohibited Signs, of the Code with the condition that the Applicant remove the sign within thirty (30) days from the recording of the Final Order.

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

1. The Applicant shall reduce the sign to 70 square feet which is the maximum size allowed for commercial use.
2. The Applicant must obtain a development permit from the Building and Development Services Division for the sign **(As per Article VIII, § 3).**
3. The placement of additional signs is prohibited on the property **(As per Article VIII, § 7).**
4. The Applicant must apply for a sign permit from NMDOT within thirty days from the recording of the Final Order.
5. The Applicant must obtain a sign permit from NMDOT and provide a copy of the approved permit to the Building and Development Services Division prior to being issued a County sign permit within five days upon receiving a determination from NMDOT.

EXHIBITS:

1. Letter of request
2. Article VIII, §7.15 (Prohibited Signs)
3. Article II, § 3 (Variances)
4. Aerial of site and surrounding area
5. Warranty Deed
6. Site Plan
7. Proof of Noticing
8. NMDOT Outdoor Advertising Requirements (NMAC 18.21.5)
9. New Mexico Highway Beautification Act (NMSA 1978, 67-12-1 to 67-12-15)
10. August 20, 2015 CDRC Minutes

June 18, 2015

Santa Fe County

Dear Santa Fe County Commissioners and to all others to whom it may concern,

My name is Vernon DeAguero and I own the property located at 267 Rabbit Road in Santa Fe, NM. Inside my property there is a 12 feet wide by 8 feet high sign that I authorized my friend and Real Estate Agent, Alberto Alcocer to erect approximately 2 years ago with the intention of helping him promote his business. The sign was professionally produced by Albuquerque Sign and Print Co. with a cost of approximately $1,500.00. We installed it ourselves to save another $1,000.00.

The sign is clearly inside my property, about 8 feet from the property line and it does not have any illumination devices installed in it. It reads: "Clearealty Santa Fe. 505-473-5567" which is the phone number for that office. The sign has generated new business to that office which is good news to us and it also helps generate revenue to the State of New Mexico in Gross Receipt Taxes since that office produces sales in excess of a million dollars per year every year since its inception and over $80,000 year to date in sales commissions.

We like the idea of supporting local business and especially Alberto Alcocer, owner and Qualifying Broker of Clearealty. He was the Broker that helped us in the sale of my Mother's property in Rio Rancho and he also helped us in the purchase of the property that we now occupy. That is a one man office.

In addition to that, we have authorized Alberto Alcocer to hold a New Mexico Real Estate Commission license in this location to meet with clients that are looking for property in the area. Alberto's main office is at 333 Montezuma, Santa Fe, NM 87501 and the parking is very restricted there. It is attached to this letter as Exhibit ONE.

There is a number of other signs that are in the vicinity and along the Interstate 25 as well as Hwy 285 that are present and that presumably have permits.

We would respectfully like to request that a permit for the sign is considered by your Authority.

Sincerely,

Vernon deAguero

Alberto Alcocer.

EXHIBIT

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EXHIBIT ONE

NEW MEXICO REAL ESTATE COMMISSION

ALBERTO ALCOCER

is duly licensed to act as a

Real Estate Qualifying Broker

CLEAREALTY, LLC
333 Montezuma, Suite 10
Santa Fe, NM 87501

License Location:
267 Rabbit Road
Santa Fe, NM 87508

License Number: 18763 **Date Issued: 12/11/2014** **Expires: 12/31/2015**

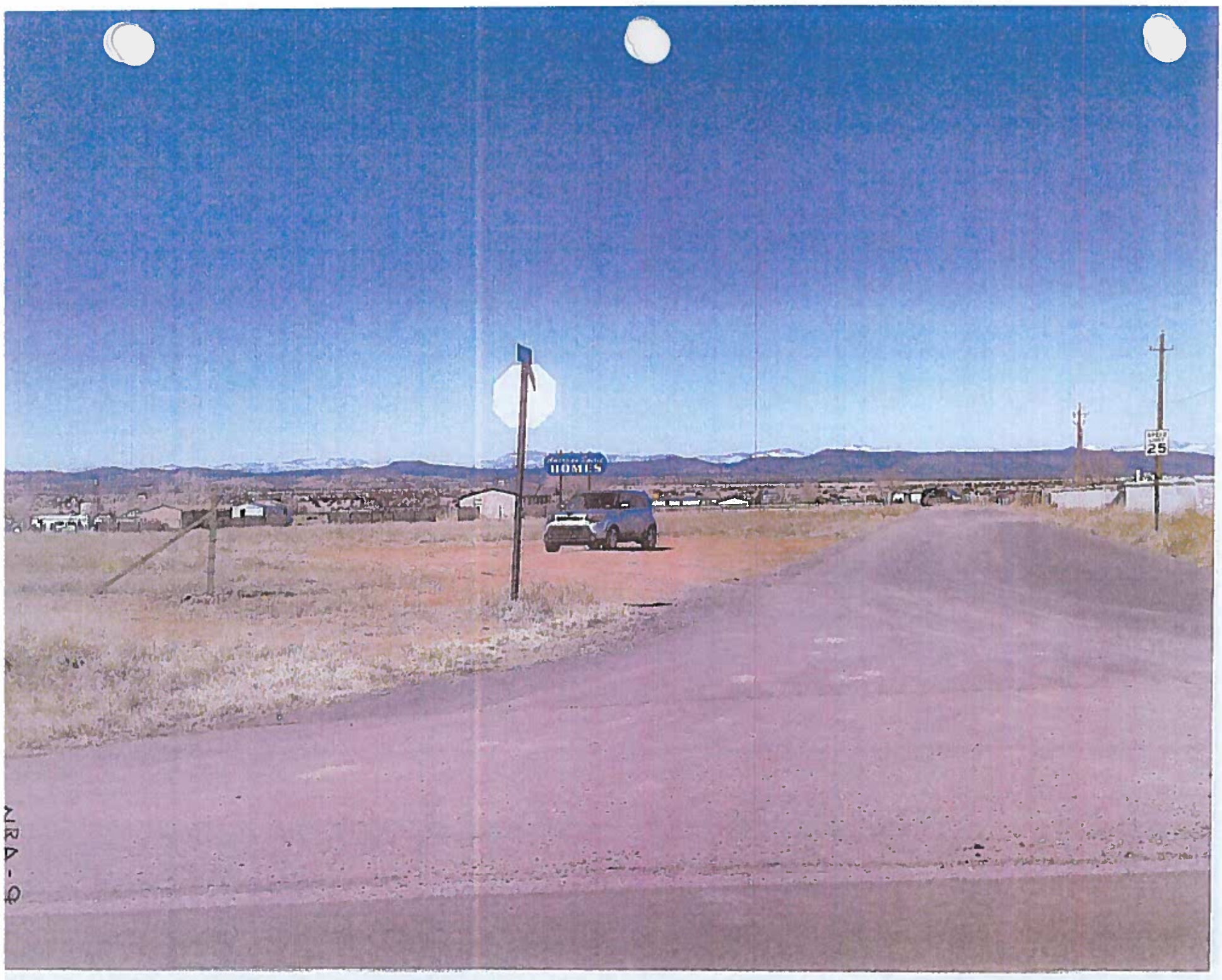
THE STATE OF NEW MEXICO
has issued this license pursuant to the Real Estate License Law,
Section 61-29-1, NMSA 1978, as amended.

Kurstin S. Johnson,
Commission President

NBA-6

IT'S TIME FOR A
BEER RUN
COURSES
Buffalo
Thunder

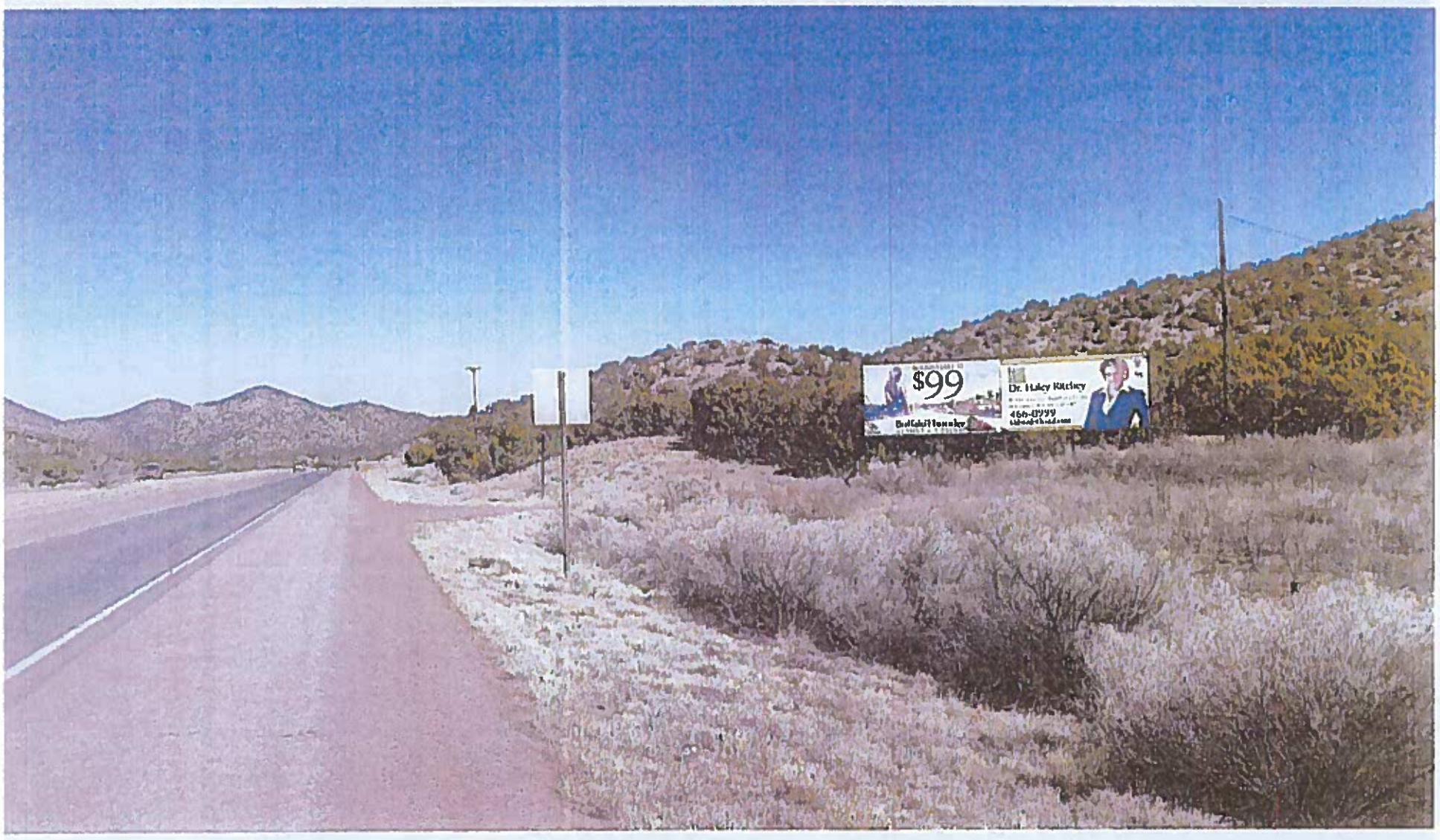
NRA-8



ARA - 9

EXIT 282 • TAKE ST. FRANCIS EXIT
TO CERRILLOS RD. FOLLOW THE SIGNS
SAGE INN
STAY DOWNTOWN FOR LESS
866.433.0335

LRA-11



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SECTION 4 - EXEMPT SIGNS: STANDARDS

4.1 The following types of signs are allowed without a permit, provided the number of signs or the area of the sign does not exceed the following:

a. One (1) sign, of up to one (1) square foot denoting the name and address of the occupants of a premises, a home occupation, private day care or kindergarten, or professional name plate.

b. One (1) sign is allowed for a temporary garage or yard sale which shall be located on the premises where the sale is conducted.

4.2 Applicants requesting additional signs or signs which exceed the standards set forth by sub-section 4.1 shall submit an application for a sign permit pursuant to Section 3, supra.

SECTION 5 - TEMPORARY SIGNS

5.1 Permit Required: Time Limit

a. Signs advertising temporary or one-time events require a permit pursuant to Section 3.

b. Temporary signs may be erected or maintained for a time period not to exceed thirty (30) calendar days unless the sign is denoting the architect, engineer or contractor placed on the premises where construction, repair or renovation is in progress. In such case the sign shall be removed prior to issuance of a certificate of occupancy or prior to the sale, lease or rent of the property, which sign shall be removed when the sale, lease or rental is accomplished.

5.2 Standards and Reviews

a. No temporary sign shall exceed four feet in any one of its dimensions, or sixteen (16) square feet.

b. No temporary sign shall extend over or into any street, alley, sidewalk, right-of-way, visibility triangle, or other public thoroughfare.

c. Permits for temporary signs shall be pursuant to the procedures set forth in Article II, Section 2.

SECTION 6 - POLITICAL CAMPAIGN SIGNS

6.1 Political campaign signs are allowed as follows:

a. No permit is required;

b. No sign shall exceed thirty-two (32) square feet;

c. The owner of property on which the sign is erected must give verbal permission for the placement of the sign prior to erecting the sign; and

d. The sign shall be removed within five days after the election.

SECTION 7 - DESIGN AND OTHER STANDARDS FOR PERMANENT SIGNS

7.1 Permits Required

Sign permits are required as provided in Section 3, infra, for any sign which does not meet the requirements of Section 4, 5, or 6, infra.

7.2 Allowable Number of Signs

For the purpose of determining number of signs, a sign shall be considered to be a single display surface or display device containing elements organized and composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements or where

EXHIBIT 2

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there is reasonable doubt about the relationship of elements, each element shall be considered a single sign.

7.3 Height and Setback Standards

a. Commercial and industrial non-residential zones or districts: the maximum allowable sign height for a free standing sign located at the front property line is five (5) feet. Sign height may be increased a maximum of five (5) feet in height for each twenty-five (25) feet the sign is set back from the front property line. Maximum allowable sign height shall not exceed twenty-five (25) feet.
b. No sign may be located closer than ten (10) feet to any abutting property line.
c. No sign may be located in such a way so as to limit the visibility at intersections, or in any public right-of-way.
d. The minimum setback for ground-mounted masonary or pedestal signs is five (5) feet.
e. The maximum allowable sign height for a building mounted sign is ten (10) feet above the highest point of the structures roof, but in no event shall the sign height be higher than any building code or County ordinance height restriction.

Note: Please refer to Appendix 8-A for sign design guidelines.

7.4 Sign Illumination

Sign illumination shall be either indirect with the source of light concealed from public view, direct, emanating through translucent materials of the sign itself, or by electrically activated gas tubing such as neon. Indirect or reflected illumination shall not exceed ten (10) vertical footcandles in mixed use or traditional community districts and twenty-five (25) vertical footcandles in non-residential districts. Direct or interior illumination shall not exceed one hundred and fifty (150) footlamberts in mixed use or traditional community districts and two hundred and fifty (250) footlamberts in non-residential districts.

7.5 Sign Design

Signs shall be designed in manner both complimentary and compatible with the building and/or premises, and shall be clearly readable through the use of simple lettering styles and subdued colors. General rules for readibility are to use: no more than two (2) simple lettering styles, a simple shape, two colors, less than eight (8) words and three (3) lines, light letters on a darker background. If mounted on a building, the sign should be mounted on the building that the sign relates to. The use of free standing plastic internally illuminated signs is discouraged. Signs shall conform to and reflect local cultural traditions and decorative styles.

7.6 Sign Materials

a. Signs shall be constructed in accordance with the Uniform Building Code requirements.
b. No sign or part thereof shall contain reflective or shining metal.
c. Free standing signs may be trimmed with a material such as wood, simulated wood, or wrought iron, to create an edge to the sign. Such trim shall be in proportion to the sign, not to exceed six (6) inches in width.

7.7 Sign Area

a. The gross geometric area of the face of the sign shall be the sign area, including trim, wall area, or pedestal area.
b. The area of double faced signs shall be computed for one face only.

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c. The supports, uprights or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structure area is designed in such a manner as to form an integral part of the background of the display.

7.8 Free Standing Signs: Base

All free standing signs shall have a base area equal in length to the sign's length along its longest side, and not less than two (2) feet in width and sixteen (16) inches in height, to be installed and maintained by the owner using one or combining the use both of the following:

a. A banco, planter or a low wall compatible and complimentary to the building or premises;
b. Shrubs, flowers or a groundcover.

7.9 Wall Signs

a. A wall or building mounted sign shall not project more than one foot from the wall on which it is displayed and shall not project over public property except where the building wall is less than one foot from the property line. In this case, the sign may project up to one (1) foot from the building wall, provided that it does not impede or endanger pedestrian or vehicular traffic; and
b. A wall or building mounted sign shall, in no case, exceed ten (10) percent of the area of the wall on which it is displayed, or seventy (70) square feet in sign area, whichever is less;
c. The sign area of wall signs shall be counted toward total sign area except as otherwise provided for non-residential districts where there are multiple occupants of a premises;
d. The bracing for wall and building mounted signs must be installed below the parapet walls or otherwise screened from public view.

7.10 Canopy, Marquee and Projecting Signs

a. The area of a canopy or marquee sign shall be counted as a part of the total allowable sign area.
b. All canopy, marquee and projecting signs shall be at least seven (7) feet above grade. However, when such signs are erected over a driveway, the minimum height above the grade shall be fifteen (15) feet.

7.11 Clocks and thermometers when constructed within or as a part of sign or when displayed as a separate sign, shall in addition to other regulations herein for signs, conform to the following special regulations and exceptions:

a. The hands of the clock and the motive mechanism shall not be classed as moving parts.
b. Illuminated numerals shall not be classified as blinking or flashing lights.
c. Clocks and thermometers shall not exceed sixteen (16) square feet.
d. If no advertising is present, the area of such public service signs shall not be computed as part of the sign area.
e. All clock signs shall keep accurate time and all thermometer signs shall accurately record the temperature. If these conditions are not complied with, the instruments shall be promptly repaired or removed.

7.12 No directional or information sign or historic marker shall exceed four (4) square feet.

7.13 Sign area in residential areas

Signs in mixed use or traditional community districts for special uses; or in large scale residential uses are allowed as follows:

a. One (1) sign for the permanent identification of the entrance to the site of a special use shall be permitted, provided it is mounted on a permanent masonry or similar structure and the sign area does not exceed twenty (20) square feet.

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b. If the special use has an entrance on another street, a second sign not to exceed twenty (20) square feet will be permitted.

7.14 Sign Area Size: Commercial or Industrial Non-residential Districts

The allowable sign area that may be displayed by any business, professional, or industrial use shall be calculated by the following method for each type of location:

a. Free standing buildings with a single occupying business or office shall be allowed two (2) identification signs.
b. Each single sign on the premises shall not exceed seventy (70) square feet in sign area.
c. Business offices or other business uses located in commercial or industrial buildings separated by common walls; or a premises where shopping centers or commercial uses or other businesses with multiple occupants, shall calculate permitable sign area based on the front footage of the space being occupied. The rate of calculation shall be one (1) square foot of signage for each linear foot of occupied frontage. The maximum allowable sign area per use shall not exceed seventy square feet.
d. Business offices or other business uses located in industrial or commercial buildings separated by common walls or premises where a shopping center or multiple occupancy commercial uses or other businesses shall not be allowed to utilize individual free standing signs. There is permitted only one (1) directory sign or other free standing sign to identify the premises. The size of this sign is calculated by allowing one square foot for each linear foot of frontage of each business, not to exceed a sign area of one hundred and fifty (150) square feet.
e. For buildings with two (2) front facades located at intersecting arterials, one additional sign is allowed. The maximum sign area for one (1) facade is one hundred (100) percent of the allowed sign and for the second facade the maximum sign size is fifty (50) percent of the allowed sign size.

7.15 Prohibited Signs

a. Off-site advertising or billboards. The advertising on any sign shall pertain only to a business, industry or activity conducted on or within the premises on which such sign is erected or maintained.
b. It is unlawful for any reason to display on any sign or other similar advertising structures any obscene, indecent or immoral matter.
c. No sign shall flash, blink, vary in intensity, revolve or otherwise appear to be in motion.
d. No sign shall have audible devices.
e. No sign shall have movable parts, except for those signs or marquees having design features for changing of legend or inscription.
f. Pennants, tinsel or fringe are not allowed on any sign.
g. No portable sign as defined by Section 8.2 is allowed.
h. Inflatable signs or oversized flags are not allowed.

7.16 Prohibited Locations for Signs

a. No sign or other advertising regulated by the Code shall be erected or maintained:
   1) at the intersection of any street in a manner which obstructs free and clear vision;
   2) at any location where, by reason of position, shape or color, a sign may interfere with, obstruct the view of, or be confused with any authorized sign, signal, or devise; or
   3) which makes use of the words "STOP", "LOOK", "DANGER" or any other words, phrases, symbol or character in such manner as to interfere with, mislead or confuse traffic or drivers of motor vehicles.
b. No sign shall be erected or maintained:
   1) near a triangle sight area;

2) at an intersection, which shall include that portion of public right-of-way and any portion of a corner lot within a triangle formed by a diagonal line extending through points on the two property lines thirty (30) feet from the street corner intersection of the property lines (or the point of intersection of the property lines extended) and intersecting the curb lines. In no event shall such measurement be less than twenty-five (25) feet from the back of the curb at the corner apex.

c. No sign shall be erected or maintained on or over public property. However, wall signs may project over a front property line where the building wall is less than one (1) foot from the property line, providing that such a sign shall not impede or endanger pedestrian or vehicular traffic and the sign projects no more than one (1) foot from the building wall.

d. No sign or part thereof may be erected or constructed and/or maintained upon the roof of any building or on top of any structure.

e. No signs shall be erected, relocated or maintained so as to prevent free ingress to or egress from any door, window or fire escape; no sign of any kind shall be attached to standpipes or fire escapes.

7.17 Sign Removal and Non-conforming Signs

a. Any sign now or hereafter existing which no longer advertises a bona fide business conducted or a product sold on a premises shall be taken down and removed by the owner, agent or person having the beneficial use of the building, lot or structure upon which the sign may be found.

b. Whenever a sign is removed from a building or structure, the building or structure shall be cleaned, painted or otherwise altered, and all sign supports, brackets, mounts, utilities or other connecting devices shall be removed so that there is no visible trace of the removed sign or the supports, brackets, mounts, utilities or other connecting devices.

c. Upon failure to comply with the sign regulations as set forth in the Code, a Code Enforcement Officer is authorized to cause immediate removal of such sign, as follows:

1) For temporary signs in the public right-of-way, verbal notification of the owner shall be given requesting removal within fifteen (15) days. If after this time, the sign is not removed, then the Code Enforcement Officer shall remove the sign at the owner's expense.

2) For non-complying temporary signs on private property, written notification to the owner shall be given requesting compliance or removal within thirty (30) days. If after this time the sign is not removed, a Code Enforcement Officer shall remove the sign at the owner's expense in an amount to be determined by the Code Administrator;

3) For non-complying temporary signs creating a threat to health, safety, and welfare, in a visibility triangle, on a sidewalk or for other reasons, a Code Enforcement Officer shall immediately remove the sign at the owner's expense and shall notify the owner by certified mail;

4) For non-complying temporary signs for which no permit is required, the Code Enforcement Officer shall immediately remove the sign at the owner's expense and shall notify the owner by certified mail, and

5) For non-complying permanent signs, the regular procedure for the violation of the Code shall be followed.

6) Billboards or other non-conforming signs: owners or custodians of existing signs affected by this Code shall five years from the effective date of the Code to conform to the applicable sign provisions.

History. Article VIII was completely revised and amended by County Ordinance 1990-11.

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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 3

NBA-18

effect of the proposal in the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship, and relief granted will not be contrary to the public interest, will not create a hazard to air navigation, and will do substantial justice. Additionally, no application for variance may be considered by the County Development Review Committee unless a copy of the application has been furnished to the Airport Manager for advice as to the aeronautical effects of the variance. If the Airport Manager does not respond to the application within 15 days after receipt, the County Development Review Committee may act on its own to grant or deny said application. Any permit or variance granted may be so conditioned as to require the owner of the structure in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary.

History. 1980 Comp. 1980-6. Section 3.4 is new material by County Ordinance 1984-3, adding an administrative procedure to height variation requests in airport overlay zones.

SECTION 4 - SPECIAL PROCEDURE FOR APPROVAL OF DEVELOPMENT ON LOTS WHICH DO NOT MEET LOT SIZE REQUIREMENTS OF CODE

4.1 Dwelling and Customary Accessory Structures

Dwelling and customary accessory structures may be erected on a lot which does not meet the lot size requirements of the Code, provided that:

4.1.1 The lot was in existence on the effective date of the Code (January 1, 1981) as demonstrated by the means listed in Section 4.4; or

4.1.2 The land is a lot which is part of a subdivision and the preliminary plat of the subdivision has been approved by the Board as of the effective date of the Code (January 1, 1981); or

4.1.3 The lot has been created by Small Lot Inheritance Transfer or Small Lot Family Transfer and the requirements of Section 4.3 of this Section are met.

4.2 Requirements of Code Not Involving Size of Lot

All other requirements of the Code including, but not limited to, building height, setback, use, design standards, environmental provisions, water restrictions, development, building and utility permits, and certificates of occupancy, as applicable, shall be met.

4.3 Small Lot Inheritance and Small Lot Family Transfer

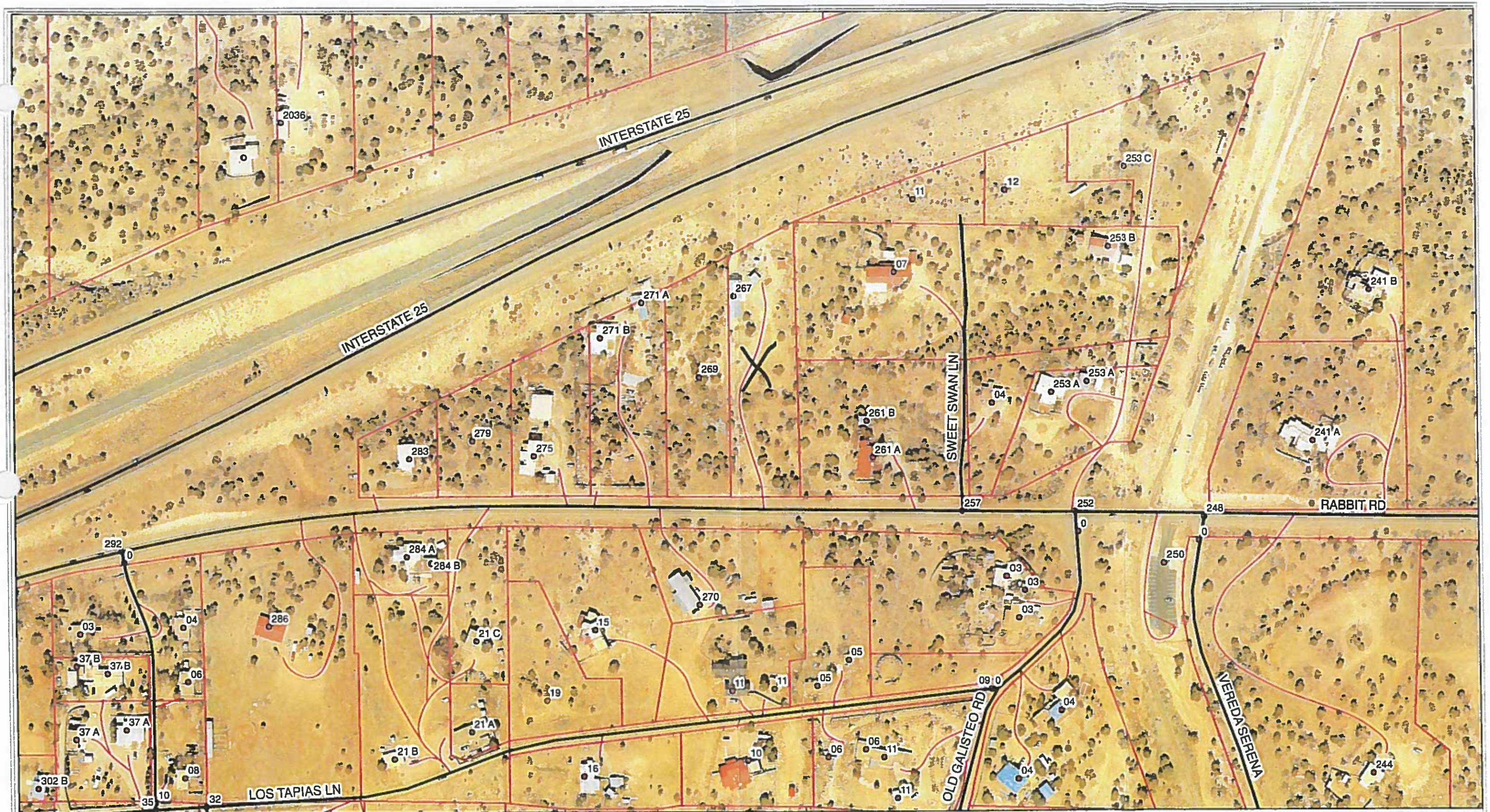
Dwellings and customary accessory structures may be erected on a lot which does not meet size requirements of the Code and is being created by inheritance or family transfer, provided the definitions, restrictions and standards of this Section are met.

4.3.1 Purposes

4.3.1a To maintain local cultural values by perpetuating and protecting a traditional method of land transfer within families, especially within the traditional communities; and

4.3.1b To permit transfers of lots which do not meet the lot size requirements of the Code from grandparents, parents or legal guardians as a one time gift to a child or grandchild in order to provide a more affordable home site for these adult children.

NBA-19



2014 Imagery
2 FOOT CONTOURS

Legend

ROADS

DRIVEWAYS

EXHIBIT
4

1:2,400
1 inch represents 200 feet

0 50 100 200 300 400 Feet

N
W E
S

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

SANTA FE COUNTY

August 12, 2015

NBA-20

PROGRESSIVE TITLE SERVICES
PRO GF # 070300884

SFC CLERK RECORDED 05/24/2007

WARRANTY DEED

JEANNE EGGENHOFER, AN UNMARRIED WOMAN and SUZANNE UMLAND, MARRIED AS HER SOLE AND SEPARATE PROPERTY, for consideration paid, grant to VERNON DEAGUERO and JENIFER DEAGUERO, HUSBAND AND WIFE, GRACE DEAGUERO, AN UNMARRIED WOMAN, AS JOINT TENANTS, whose address is 1417 CAMINO SIERRA VISTA, SANTA FE, NM 87505 the following described real estate in Santa Fe County, New Mexico:

A certain tract or parcel of land, lying and being situate in the NW 1/4 SE 1/4 of Section 10, T. 16 N., R. 9 E., N.M.P.M. County of Santa Fe, State of New Mexico, being more particularly bounded and described, as follows, to-wit:

Beginning at a point for the northeasterly corner of the tract herein described, said point intersects the present (1978) southerly right of way and access control line of Interstate 25 with the easterly meridional 1/16th line of Section 10, from which point the southeasterly corner of said Section 10 marked by a ½" iron pipe and a marked stone bears S. 36° 10' E., a distance of 2,384.22 feet; thence S. 0° 04' E., along the easterly meridional 1/16 line a distance of 603.79 feet to a point on the northerly right of way line of a Frontage Road constructed under New Mexico State Highway Commission project number I-025-5(32)276; thence N. 89° 21' W., along the said right of way line a distance of 169.79 feet to the southwesterly corner of the tract herein described; thence N. 0°06'W., a distance of 532.01 feet to a point on the southerly right of way and access control line of Interstate 25, point on curve; thence northeasterly on 0.765° curve, thru an arc of 1° 24' 17" to the right a distance of 183.64 feet to the point and place of beginning.

Containing 2.213 acres more or less.

All as shown on that certain survey by Morris A. Apodaca, N.M.L.S Number 5300 for Joseph Eggenhofer and Jeanne Eggenhofer dated December 18, 1980.

SUBJECT TO: Restrictions, Reservations and Easements of record.

with warranty covenants.

Witness our hand(s) and seal this 23 day of May 2007.

COUNTY CLERK SANTA FE COUNTY NEW MEXICO

WARRANTY DEED
PAGES: 1

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

I Hereby Certify That This Instrument Was Filed For Record On The 24TH Day Of May, A.D., 2007 at 11 14 And Was Duly Recorded as Instrument # 1484619 Of The Records Of Santa Fe County

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

_____ (Seal)
JEANNE EGGENHOFER

_____ (Seal)
SUZANNE UMLAND

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO

COUNTY OF NEW MEXICO

This instrument was acknowledged before me on May 23 2007, by JEANNE EGGENHOFER.

My Commission Expires: 03-16-2009

OFFICIAL SEAL
Carla Fischer-Ortiz
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: 03-16-2009

_____ Notary Public

STATE OF COLORADO

COUNTY OF El Paso

This instrument was acknowledged before me on May 18 2007, by SUZANNE UMLAND.

My Commission Expires: MY COMMISSION EXPIRES 10/15/07

LINDA POTTER NOTARY PUBLIC STATE OF COLORADO

_____
Notary Public

EXHIBIT
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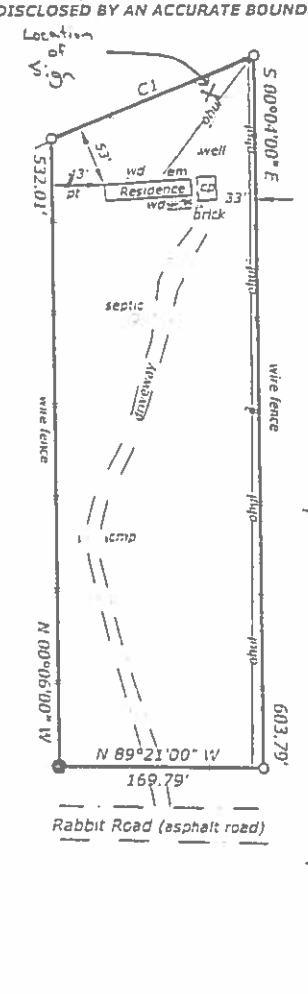
NBA-21

IMPROVEMENT LOCATION REPORT

EXHIBIT "A"

SITUATE AT 267 RABBIT ROAD, NW¼, SE¼ OF SECTION 10, T16N., R9E., N.M.P.M., COUNTY OF SANTA FE, STATE OF NEW MEXICO

THIS REPORT IS NOT FOR USE BY A PROPERTY OWNER FOR ANY PURPOSE. THIS IS NOT A BOUNDARY SURVEY AND MAY NOT BE SUFFICIENT FOR THE REMOVAL OF THE SURVEY EXCEPTION FROM AN OWNER'S TITLE POLICY. IT MAY OR MAY NOT REVEAL ENCROACHMENTS, OVERLAPS, CONFLICTS IN BOUNDARY LINES, SHORTAGES IN AREA, OR OTHER MATTERS WHICH WOULD BE DISCLOSED BY AN ACCURATE BOUNDARY SURVEY.



Reviewed/Acknowledged
Foregoing ILR/Survey

Reviewed/Acknowledged
Foregoing ILR/Survey

LEGEND

- Monument found
- Calculated point, no monument found
- Powerpole
- ohpl — Overhead Utility Line
- cmp — Corrugated metal pipe
- cp — Carport
- em — Electric Meter on Utility Pole
- pt — Propane tank
- wd — Wood deck

CURVE TABLE			
CURVE	DELTA	LENGTH	RADIUS
C1	1°24'17"	183.64	7489.44

PROGRESSIVE TITLE SERVICES

FILE No. 07030084

100 50 0 100
SCALE 1" = 100'

LAND SURVEYING COMPANY
P.O. BOX 4384
SANTA FE, NEW MEXICO 87505
505-473-0003
FAX 471-9050

PROJECT NO. 1609 / ILR

NOTE: THIS IS NOT A BOUNDARY SURVEY FOR USE BY A PROPERTY OWNER FOR ANY PURPOSE.

EXHIBIT
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NBA-22

THE SANTA FE
NEW MEXICAN
Founded 1849

LEGAL #98777

CDRC CASE # V 15-5140

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held to consider a request by Vernon DeAguero, Applicant, Alberto Alcocer, Agent, for a variance of Article VIII, § 7.15 (Prohibited Signs) of the Land Development Code in order to keep a 96 square foot sign advertising an off-site business on 2.213 acres. The property is located at 267 Rabbit Road, within Section 10, Township 16 North, Range 9 East, (Commission District 4).

A public hearing will be held in the County Commission Chambers of the Santa Fe County Courthouse, corner of Grant and Palace Avenues, Santa Fe, New Mexico on the 20th day of August 2015, at 4 p.m. on a petition to the County Development Review Committee and on the 13th day of October 2015, at 5 p.m. on a petition to the Board of County Commissioners.

Please forward all comments and questions to the County Land Use Administration Office at 986-6225.

All interested parties will be heard at the Public Hearing prior to the Commission taking action.
All comments, questions and objections to the proposal may be submitted to the County Land Use Administrator in writing to P.O. Box 276, Santa Fe, New Mexico 87504-0276; or presented in person at the hearing.

Published in The Santa Fe New Mexican on July 30, 2015

EXHIBIT
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SANTA FE, NM 87508

OFFICIAL USE

Certified Mail Fee $3.45
$ $2.80
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $ $0.00
☐ Return Receipt (electronic) $ $0.00
☐ Certified Mail Restricted Delivery $ $0.00
☐ Adult Signature Required $ $0.00
☐ Adult Signature Restricted Delivery $
Postage $0.49
Total Postage and Fees $6.74

0501 08
Postmark Here
CORONADO STATION SANTA FE, NM
AUG 06 2015
08/06/2015

Sent To MR. LAWRENCE PACHECO
Street and Apt. No., or PO Box No. 270 Rabbit ROAD
City, State, ZIP+4® Santa Fe NM 87508

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7015 1520 0001 6560 7158

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OFFICIAL USE

Certified Mail Fee $3.45
$ $2.80
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $ $0.00
☐ Return Receipt (electronic) $ $0.00
☐ Certified Mail Restricted Delivery $ $0.00
☐ Adult Signature Required $ $0.00
☐ Adult Signature Restricted Delivery $
Postage $0.49
Total Postage and Fees $6.74

0501 08
Postmark Here
CORONADO STATION SANTA FE, NM
AUG 06 2015
08/06/2015

Sent To ROBIN WILLIAMS
Street and Apt. No., or PO Box No. 7 SWEET SWAN LANE
City, State, ZIP+4® SANTA FE NM 87508

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7015 1520 0001 6560 7141

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SANTA FE, NM 87508

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Certified Mail Fee $3.45
$ $2.80
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $ $0.00
☐ Return Receipt (electronic) $ $0.00
☐ Certified Mail Restricted Delivery $ $0.00
☐ Adult Signature Required $ $0.00
☐ Adult Signature Restricted Delivery $
Postage $0.49
Total Postage and Fees $6.74

0501 08
Postmark Here
CORONADO STATION SANTA FE, NM
AUG 06 2015
08/06/2015

Sent To MR. RANDALL NIEMAN
Street and Apt. No., or PO Box No. 12 SWEET SWAN LANE
City, State, ZIP+4® SANTA FE NM 87508

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7015 1520 0001 6560 7110

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SANTA FE, NM 87508

OFFICIAL USE

Certified Mail Fee $3.45
$ $2.80
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $ $0.00
☐ Return Receipt (electronic) $ $0.00
☐ Certified Mail Restricted Delivery $ $0.00
☐ Adult Signature Required $ $0.00
☐ Adult Signature Restricted Delivery $
Postage $0.49
Total Postage and Fees $6.74

0501 08
Postmark Here
CORONADO STATION SANTA FE, NM
AUG 06 2015
08/06/2015

Sent To MR. RANDALL NIEMAN
Street and Apt. No., or PO Box No. 12 SWEET SWAN LANE
City, State, ZIP+4® SANTA FE NM 87508

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7015 1520 0001 6560 7127

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SANTA FE, NM 87508

OFFICIAL USE

Certified Mail Fee $3.45
$ $2.80
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $ $0.00
☐ Return Receipt (electronic) $ $0.00
☐ Certified Mail Restricted Delivery $ $0.00
☐ Adult Signature Required $ $0.00
☐ Adult Signature Restricted Delivery $
Postage $0.49
Total Postage and Fees $6.74

0501 08
Postmark Here
CORONADO STATION SANTA FE, NM
AUG 06 2015
08/06/2015

Sent To MR. FRANK MARTINEZ
Street and Apt. No., or PO Box No. 261-A RABBIT ROAD
City, State, ZIP+4® SANTA FE NM 87508

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7015 1520 0001 6560 7134

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SANTA FE, NM 87508

OFFICIAL USE

Certified Mail Fee $3.45
$ $2.80
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $ $0.00
☐ Return Receipt (electronic) $ $0.00
☐ Certified Mail Restricted Delivery $ $0.00
☐ Adult Signature Required $ $0.00
☐ Adult Signature Restricted Delivery $
Postage $0.49
Total Postage and Fees $6.74

0501 08
Postmark Here
CORONADO STATION SANTA FE, NM
AUG 06 2015
08/06/2015

Sent To MR. JOSE RODRIGUEZ
Street and Apt. No., or PO Box No. 271 RABBIT ROAD
City, State, ZIP+4® SANTA FE NM 87508

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

NBA-24

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 21 TRAFFIC CONTROL SIGNAGE
PART 5 OUTDOOR ADVERTISING REQUIREMENTS

18.21.5.1 **ISSUING AGENCY:** New Mexico Department of Transportation.
[18.21.5.1 NMAC - Rp, 18 NMAC 21.5.1, 02/14/14]
[P.O. Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5460]

18.21.5.2 **SCOPE:** This part applies to all state agencies and the general public.
[18.21.5.2 NMAC - Rp, 18 NMAC 21.5.2, 02/14/14]

18.21.5.3 **STATUTORY AUTHORITY:** This part is promulgated pursuant to the provisions of the New Mexico Highway Beautification Act, Sections 67-12-1 et seq., NMSA 1978; and Sections 67-3-6, 67-3-11 and 67-3-14 NMSA 1978.
[18.21.5.3 NMAC - Rp, 18 NMAC 21.5.3, 02/14/14]

18.21.5.4 **DURATION:** Permanent.
[18.21.5.4 NMAC - Rp, 18 NMAC 21.5.4, 02/14/14]

18.21.5.5 **EFFECTIVE DATE:** February 14, 2014, unless a later date is cited at the end of a section.
[18.21.5.5 NMAC - Rp, 18 NMAC 21.5.5, 02/14/14]

18.21.5.6 **OBJECTIVE:** The purpose of this part is to implement and enforce the New Mexico Highway Beautification Act, Sections 67-12-1 et seq., NMSA 1978.
[18.21.5.6 NMAC - Rp, 18 NMAC 21.5.6, 02/14/14]

18.21.5.7 **DEFINITIONS:**

A. **"Abandoned sign"** or **"discontinued sign"** means any outdoor advertising device that:
(1) is without copy for a period of six (6) months; or
(2) where the permit holder no longer has the right to occupy or possess the site on which the outdoor advertising device is located.

B. **"Advertisement"** means copy, information or content on an outdoor advertising device designed, intended or used to advertise or inform.

C. **"Apron support"** means paneling on the exterior of an outdoor advertising device which serves as a decorative/ornamental feature; an apron support shall not include advertisements, but may include a sign owner name plate.

D. **"Beautification Act"** means the New Mexico Highway Beautification Act, Sections 67-12-1 et seq., NMSA 1978.

E. **"Bona fide commercial or industrial activity"** means a commercial or industrial activity which is carried on for profit and which operates for at least six (6) continuous months of the year and with a valid twelve (12) month business license issued by a city, county, or state whether or not a permanent structure is located where the commercial or industrial activity takes place.

F. **"Centerline of highway"** means a line equidistant from the edges of the median separating the main-traveled way of a divided interstate, NHS or primary highway or the centerline of the main-traveled way of a non-divided interstate, NHS or primary highway.

G. **"Changeable electronic variable message sign" or "CEVMS"** means an outdoor advertising device that changes the advertisement on the sign electronically or mechanically, or by remote control, by movement or rotation of panels or slats, light emitting diodes (LED), or an electronic sign that utilizes changeable electronic variable message technology through a programmable display of variable text or symbolic imagery to form multiple advertisements. Changeable electronic variable message signs include, but are not limited to, tri-vision and other rotating slat technology. The use of changeable electronic variable message sign (CEVMS) technology, shall not, in itself, constitute the use of flashing, intermittent or moving light or lights.

H. **"Commercial or industrial activity"** means those activities generally recognized as commercial or industrial by zoning authorities in New Mexico, except that none of the following shall be considered a commercial or industrial activity:
(1) outdoor advertising devices;

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(2) agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands;

(3) transient or temporary activities;

(4) activities not visible from the main-traveled way;

(5) activities conducted in a building principally used as a residence;

(6) railroad track and minor sidings and supporting building and fixtures, except for depots open to the public at least six (6) hours per day;

(7) activities located in their entirety more than six hundred sixty (660) feet from the nearest edge of the right-of-way line outside urban areas;

(8) feeder pens and dairy activities;

(9) camping or overnight parking unless such facilities are equipped with adequate parking accommodations, modern sanitary facilities and drinking water, and which are licensed or approved by an appropriate governmental agency.

I. **"Commission"** means the state transportation commission.

J. **"Copy"** means an advertisement which depicts activities or advertising which may include gas price, lottery and other add-ons where such add-ons are fully contained within the physical boundaries of the advertising face and reference the static advertisement to which they are attached. Add-ons shall display only numbers, shall remain static for no less than eight (8) seconds in duration, shall achieve a transition to another static display in less than two (2) seconds, and shall not contain or utilize transitional elements or any movement at all between copy changes. Copy may also include self-promotion or public service messages as long as the entire advertising face of the outdoor advertising device is covered.

K. **"Customary maintenance"** means the usual state of maintaining a sign in order to keep it in a good state of repair while not changing the general structure of the sign significantly. Customary maintenance of a non-conforming sign means maintaining the sign so that it remains substantially the same as it was on the effective date of the Beautification Act. Reasonable repair and maintenance of the sign, including a change in advertising content, is not a change which would terminate non-conforming rights.

L. **"Department"** means the New Mexico department of transportation.

M. **"Directional signs"** means signs containing directional information about public places owned or operated by federal, state or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, education, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

N. **"Erect"** means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way establish or bring a sign into being.

O. **"Face"** means the advertising surface on a sign. Each sign may contain more than one face; each face shall require a separate permit.

P. **"Freeway"** means a divided arterial highway for through traffic with full control of access.

Q. **"Interstate system"** means that portion of the national system of interstate and defense highways located within this state as may now or hereafter be officially so designated by the commission and approved pursuant to 23 U.S.C. Section 103.

R. **"Legible"** means capable of being read without visual aid by a person of normal visual acuity.

S. **"Maintain"** means to allow to exist.

T. **"Main-traveled way"** means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways or parking areas.

U. **"Mobile type sign"** means an outdoor advertising device that is attached or placed on mobile vehicles or trailers or other mobile devices or objects outside of the right-of-way, and is not permanently affixed to real property or a sign structure.

V. **"National highway system" or "NHS"** means the federal aid system which includes the interstate system; the National Highway System consists of the highway routes and connections to transportation facilities that serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and major travel destinations that meet national defense requirements, and that serve interstate and interregional travel and commerce.

W. **"Non-conforming sign"** means an outdoor advertising device lawfully in existence on the effective date of the Beautification Act, whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, which continues to exist and complies with customary maintenance

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requirements, but which currently does not meet all requirements of 18.21.5 NMAC or the Beautification Act due to state law passed at a later date or due to changed conditions. A non-conforming sign may also include an outdoor advertising device whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, which continues to exist and complies with customary maintenance requirements, but which currently does not meet all requirements of 18.21.5 NMAC or the Beautification Act. Illegally erected or maintained outdoor advertising devices shall not be considered non-conforming outdoor advertising devices.

X. **"Official signs and notices"** means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with authorization contained in federal, state or local law for the purpose of carrying out an official duty or responsibility. Historical markers authorized by law and erected by state or local government agencies or non-profit historical societies shall be considered official signs.

Y. **"Off-premise sign"** means any outdoor advertising device which advertises an activity, service or product not conducted on the property upon which the outdoor advertising device is located.

Z. **"On-premise sign"** means an outdoor advertising device, which advertises activities, conducted on the property upon which the sign is located, and which is located within the area actually utilized for the purpose of the activity it advertises.

AA. **"Outdoor advertising device"** means any surface and supporting structure, visible from the main-traveled way of the interstate system, NHS or primary system, and designed, intended, or used to advertise or inform, and includes, but is not limited to, a sign, billboard, changeable electronic variable message sign (CEVMS), device, display, face, surface, light, figure, person, animal, painting, drawing, posting, plaque, poster, banner, graffiti, art, sculpture, statue, building structure, wall, fence, utility system, tower, bridge, motor vehicle, trailer, marine craft, holding tank, natural feature (such as a tree or rock), object, or other thing, whether permanently affixed to the real estate or mobile, portable, or temporary in nature, and regardless of size, which may support multiple faces. Each advertising surface shall be considered a separate face. Any structure used or intended to be used to support such a face shall be considered a part of the outdoor advertising device.

BB. **"Primary system"** means the federal and primary system in existence on June 1, 1991.

CC. **"Public service signs"** means signs located on school bus stop shelters, which signs:

(1) identify the donor, sponsor, or contributor of the shelters;

(2) contain public service messages;

(3) contain no other content;

(4) are located on school bus shelters which are authorized or approved by city, county, or state law, regulation or ordinance and at places approved by the city, county, or state agency controlling the highway involved; and

(5) may not exceed thirty-two (32) square feet in area, and not more than one sign on each shelter shall face in any one direction.

DD. **"Ranch/farm notices", "service club notices" and "religious notices"** mean signs and notices which do not exceed eight (8) square feet, are erected and authorized by law, and relate to the name of ranch/farm, service club, charitable organization or religious services and directions to it.

EE. **"Roadway"** means an open, generally public way for the passage of vehicles, people and animals.

FF. **"Safety rest area"** means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right of way of the interstate system, NHS or primary system.

GG. **"Sign"** means any outdoor advertising device as defined in 18.21.5.7 NMAC.

HH. **"State law"** means a state constitutional provision or statute, or an ordinance or rule enacted or adopted by a state agency or political subdivision of a state pursuant to the state constitution or to a state statute.

II. **"Unzoned land"** means an area which has not been zoned by a properly constituted zoning authority according to legally prescribed procedure.

JJ. **"Unzoned commercial or industrial area"** means unzoned lands upon which there is located a bona fide commercial or industrial activity and the area along the highway extending outward one thousand (1,000) feet from and beyond the edge of such commercial or industrial activity and extending perpendicular from the centerline of highway to a depth of six hundred sixty (660) feet from the nearest edge of the right-of-way line on the same side of the highway as the commercial or industrial activity.

KK. **"Urban area"** means an area including and adjacent to a municipality or other urban place having a population of five thousand (5000) or more, as determined by the latest available federal census, within boundaries to be fixed by the commission, subject to any necessary approval by any federal agency, department or personnel.

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LL. **"Visible"** means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity, except that within urban areas, "visible" means within six hundred sixty (660) feet of the nearest edge of the right-of-way line.

MM. **"Zoned commercial or industrial area"** means an area which is reserved for business, commerce, trade, manufacturing, or industry, pursuant to a validly promulgated state law or regulation or local ordinance whose validity for outdoor advertising purposes is determined by the department pursuant to the provisions of 18.21.5.28 NMAC.

[18.21.5.7 NMAC - Rp, 18 NMAC 21.5.7, 02/14/14]

18.21.5.8 **SIGNS ALLOWED:** Only the following outdoor advertising devices may be erected or maintained:

A. directional signs and other official signs and notices;

B. signs on a piece of property giving notice that the specific land or improvements alone are offered for sale or lease;

C. on-premise signs that are in compliance with 18.21.5.12 NMAC;

D. signs located within six hundred sixty (660) feet of the nearest edge of the right-of-way, in zoned commercial or industrial areas;

E. signs located within six hundred sixty (660) feet of the nearest edge of the right-of-way in unzoned commercial or industrial areas;

F. signs located beyond six hundred sixty (660) feet of the right-of-way, located outside of urban areas, visible from the main-traveled way of the interstate system, NHS or primary system and erected with the purpose of the content being read from such main-traveled way;

G. signs lawfully in existence on October 22, 1965, determined by the commission, subject to any necessary federal approval, to be landmark signs of historic or artistic significance worthy of preservation including signs on farm structures or natural surfaces, and which requirements are set forth in 18.21.5.15 NMAC;

H. signs lawfully in existence on the effective date of the Beautification Act, whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, and which continue to exist and be maintained lawfully, but which currently do not meet all requirements of 18.21.5 NMAC or the Beautification Act due to state law passed at a later date or due to changed conditions. Illegally erected or maintained outdoor advertising devices shall not be considered non-conforming outdoor advertising devices;

I. signs whose owner obtained a department outdoor advertising permit(s) with permit renewal fees paid current thereafter, which continues to exist and complies with customary maintenance requirements, but which currently does not meet all requirements of 18.21.5 NMAC or the Beautification Act. Illegally erected or maintained outdoor advertising devices shall not be considered non-conforming outdoor advertising devices.

[18.21.5.8 NMAC - Rp, 18 NMAC 21.5.8, 02/14/14]

18.21.5.9 **RECLASSIFICATION OF HIGHWAYS:**

A. Any sign lawfully erected along a highway which is not part of the interstate system, NHS or primary system at the time of the sign's erection and which sign becomes subject to the provisions of the Beautification Act and this rule due to the reclassification of the highway as part of the NHS system, shall remain a legal non-conforming and compensable sign so long as all permits for the sign are timely obtained and all permit fees timely paid. The failure to timely obtain permits and timely pay permit fees shall render such a sign illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

B. Permits and permit fees for the class of signs described in this section are timely obtained and timely paid if obtained and paid for the next calendar year following the reclassification, notification of which shall be sent to the sign owner by the department.

[18.21.5.9 NMAC - Rp, 18 NMAC 21.5.9, 02/14/14]

18.21.5.10 **SIGNS PROHIBITED:** No outdoor advertising device may be erected or maintained which:

A. physically intrudes upon the right-of-way or by being of such a distracting nature so as to dangerously divert driver's attention from the roadway;

B. attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device;

C. prevents the driver of a vehicle from having a clear and unobstructed view of pre-existing official signs and approaching or merging traffic;

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D. contains, includes or is illuminated by any flashing, intermittent or moving light or lights;

E. is lighted in any way unless the lighting is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the interstate system, NHS or primary system, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle;

F. moves or has any animated or moving parts;

G. is erected or maintained upon trees or painted or drawn upon rocks or other natural features;

H. is structurally unsafe or in disrepair as determined by the department;

I. is an abandoned sign as defined in 18.21.5.7 NMAC;

J. is located in an area zoned by a local government, but which local zoning does not amount to or come within a comprehensive zoning plan, or which is created primarily to permit outdoor advertising, as determined by the department pursuant to the provisions of 18.21.5.28 NMAC;

K. is a mobile type sign as defined in 18.21.5.7 NMAC; or

L. violates any of the provisions of 18.21.5 NMAC.

[18.21.5.10 NMAC - Rp, 18 NMAC 21.5.10 & 39, 02/14/14]

18.21.5.11 SIGN CONTENTS PROHIBITED: Signs containing the following copy are prohibited:

A. the imitation or simulation of official U.S. interstate, state or county highway sign shields within advertising displays; and

B. any words that could be construed as a command, such as "stop, turn right (or left)," or any such words whether used alone or in combination on signs which duplicate or resemble official signs and notices so as to cause a motorist to be misled in any manner.

[18.21.5.11 NMAC - Rp, 18 NMAC 21.5.11, 02/14/14]

18.21.5.12 ON-PREMISE SIGNS: On-premise signs are limited to signs advertising on-premise activities only and shall adhere to the following requirements.

A. Signs must be used only to advertise the activities conducted on the property where the sign is located.

B. There must be a regularly used building, service, repair, processing, storage, or parking area used in conjunction with the on-premise activity.

C. Land, whether contiguous or not, and whether owned or not, that is not used as part of the major activity as set forth herein, but is surplus if held for future use, shall not qualify as a part of the immediate on-premise area, including railroad mainline tracks, siding, spurs and loading docks.

D. The lands that are directly used as an integral part of the principal activity of the subject advertised, even though the sign site and principal activity are separated by a roadway, shall be deemed to be contiguous.

E. On-premise parking lots, storage areas, and servicing areas are those areas regularly used in conjunction with on-premise activity and in which surfacing and lighting are continuously maintained.

F. Upon the termination or cessation for twelve (12) consecutive months of the activities, services or products advertised by an on-premise sign along the interstate system, NHS or primary system, the sign advertising that activity shall no longer qualify as an on-premise sign and shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.12 NMAC - Rp, 18 NMAC 21.5.42, 02/14/14]

18.21.5.13 OFF-PREMISE CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS (CEVMS) - SPECIFICATIONS:

A. The use of changeable electronic variable message sign (CEVMS) technology, shall not, in itself, constitute the use of flashing, intermittent or moving light or lights.

B. Off-premise changeable electronic variable message signs (CEVMS) shall be allowed, regardless of the technology used, provided such signs shall:

(1) utilize only one (1) advertisement at any given time for each advertising face, and do not display, contain or utilize multiple advertisements or displays;

(2) contain a static display that shall remain for no less than eight (8) seconds in duration;

(3) achieve a transition to another static display in less than two (2) seconds and shall not contain or utilize transitional elements or any movement at all between copy changes, except tri-vision signs;

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(4) not incorporate or display any illumination that changes in intensity during the static display or transition period as described above;

(5) change copy uniformly in a fluid, seamless transition not capable of being detected, except tri-vision signs;

(6) not exceed a maximum surface area of six hundred seventy-two (672) square feet per advertising face, with a maximum length of forty-eight (48) feet and a maximum height of fourteen (14) feet; length and height measurements shall include border and trim, but shall not include any ornamental base or apron support;

(7) not be placed within one thousand (1,000) feet of another off-premise changeable electronic variable message sign on the same side of the highway, regardless of face orientation, except for those tri-visions signs lawfully permitted and erected prior to the effective date of this rule;

(8) not contain or include any advertisements that employ the use of intermittent or flashing light or lights or that are illuminated by intermittent or flashing light or lights;

(9) not include animated, flashing, scrolling, or full-motion video elements, and may not incorporate or display segmented or traveling advertisements;

(10) be shielded so as to prevent light from being directed at any portion of the main-traveled way, or if not so shielded, are of such low intensity or brilliance so as not to cause glare or impair the operation of a motor vehicle or violate the New Mexico Night Sky Protection Act, Sections 74-12-1 et seq., NMSA 1978, to the extent it applies;

(11) have brightness levels capable of being measured and such brightness shall be limited to an acceptable, safe level or measurement, as follows: CEVMS shall utilize automatic dimming technology to adjust the brightness of the sign relative to ambient light so that at no time shall a sign exceed a brightness level of three tenths (0.3) foot candles above ambient light, as measured using a foot candle meter and in conformance with the following process: light measurements shall be taken with the meter aimed directly at the advertisement or sign face, or at the area of the sign emitting the brightest light if that area is not the advertisement or sign face; measurements shall be taken as follows:

Table: CEVMS Sign Brightness

Sign Face Area	Distance of Measurement
681-1200 sq. ft.	350 feet
385-680 sq. ft.	250 feet
300-384 sq. ft.	200 feet
200-299 sq. ft.	150 feet
150-199 sq. ft.	136 feet
125-149 sq. ft.	118 feet
100-124 sq. ft.	107 feet
75-99 sq. ft.	96 feet
50-74 sq. ft.	83 feet
35-49 sq. ft.	67 feet
25-34 sq. ft.	56 feet
15-24 sq. ft.	47 feet
1-14 sq. ft.	36 feet

(12) not incorporate, utilize or emit any sound or noise capable of being detected or emit any smoke, scent or odors;

(13) not contain, incorporate or utilize any interactive component or medium, and not interact or interface with drivers, pedestrians or the general public;

(14) not interfere with or direct, or attempt to direct, the movement of traffic, or resemble or simulate any warning or danger signal, or any official traffic control device, and not contain wording, color, shapes or likenesses of official traffic control devices;

(15) contain a default mechanism so that in the event 50% or more of a sign has failed, the sign will immediately revert to a black screen and remain in such condition until the malfunction is corrected; in all such cases, the malfunctioning sign must be expediently repaired;

(16) utilize sufficient safeguards to prevent unauthorized access, use or hacking of changeable electronic variable message signs and related technology, including infrastructure, hardware, software and networks, by unauthorized users;

(17) be continuously monitored twenty-four (24) hours per day by the device owner or the permit holder, including monitoring of hardware, software, network and other infrastructure; and

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(18) comply with all applicable provisions, restrictions and prohibitions regarding outdoor advertising devices contained in federal and state law.

C. With the exception of tri-vision signs legally permitted and erected prior to the effective date of this rule, any changeable electronic variable message sign existing prior to the effective date of this rule, 18.21.5 NMAC, shall conform with this section within sixty (60) days of the effective date of this section or such changeable electronic variable message sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.
[18.21.5.13 NMAC - N, 02/14/14]

18.21.5.14 OFF-PREMISE CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS (CEVMS) - ADDITIONAL REQUIREMENTS:

A. **Permit required.** A person desiring to erect, install, convert or maintain an off-premise changeable electronic variable message sign shall obtain a new permit from the department pursuant to this rule for that use prior to erection, installation, conversion or maintenance of the sign.

B. **Location.** No sign utilizing changeable electronic variable message technology may be erected, installed, converted or maintained outside the limits of any municipality, town or village, or within the boundaries or limits of any designated scenic byway, or outside the boundaries or limits of any designated scenic byway where the intent or result is that the changeable electronic variable message advertisements are oriented to, or visible or legible from, the scenic byway.

C. **Modification.** The permit holder and the owner of the sign are responsible for any changes, alterations or modifications to the advertisements or to the use of the changeable electronic variable message sign made by an unauthorized user, or by an advertiser authorized to facilitate such changes, alterations or modifications.

D. **Conversion.**

(1) An existing static outdoor advertising device may be converted to a changeable electronic variable message sign, provided the existing sign:

(a) has been approved by the local government;
(b) is a legal, conforming sign;
(c) is in good repair;
(d) has had all permit fees timely paid; and
(e) does not violate any applicable sections of this rule or of the Beautification Act.

(2) No existing static outdoor advertising device may be converted to changeable electronic variable message sign technology if the existing sign has a non-conforming or grandfathered status.

(3) The conversion of a static outdoor advertising device to a changeable electronic variable message sign must be approved by the applicable local governmental entity.

(4) The application shall include written assurance from the applicant that the sign structure will meet or exceed current engineering standards or practices and all applicable building codes.

(5) The conversion of a static outdoor advertising device to a changeable electronic variable message sign must be accomplished within one hundred twenty (120) days after the issuance of the applicable permit.
[18.21.5.14 NMAC - N, 02/14/14]

18.21.5.15 LANDMARK SIGNS:

A. An outdoor advertising device shall qualify as a landmark sign of historical or artistic significance under 23 U.S.C. Section 131 upon presentation, to the department, of satisfactory proof as determined by the department, that the sign has been lawfully in place and maintained at the same location for a period of twenty-five (25) years or more, and that the sign:

(1) has not substantially changed in size, lighting or advertising content after designation as a landmark sign;

(2) has not been significantly altered from its historic appearance, or, if it has been altered, is potentially restorable to its historic function and appearance;

(3) is structurally safe or can be made safe without significantly altering its historical appearance; and

(4) complies with all applicable requirements of this rule.

B. Any substantial change or significant alteration, as determined by the department, after designation as a landmark sign shall result in termination of the sign's landmark status.
[18.21.5.15 NMAC - Rp, 18 NMAC 21.5.12, 02/14/14]

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18.21.5.16 DIRECTIONAL SIGN REQUIREMENTS:

A. **Directional signs prohibited.** The following signs are prohibited:

(1) signs advertising activities that are illegal under federal or state laws in effect at the location of those signs or at the location of those activities;

(2) signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging or intersection traffic;

(3) signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features;

(4) obsolete signs;

(5) signs which are structurally unsafe or in disrepair;

(6) signs which move or have any animated or moving parts; and

(7) signs located in safety rest areas, parklands or scenic areas.

B. **Size requirement of directional signs.** No sign shall exceed the following limits:

(1) maximum area - one hundred fifty (150) square feet;

(2) maximum height - twenty (20) feet; and

(3) maximum length - twenty (20) feet.

C. **Dimensions.** All dimensions include border and trim, but exclude supports.

D. **Lighting of directional signs.** Signs may be illuminated, subject to the following:

(1) signs, which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited;

(2) signs which are not effectively shielded so as to prevent beams or rays of light from being directed by any portion of the traveled way of an interstate system, NHS or primary system or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited; and

(3) no sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device or signal.

E. **Spacing of directional signs.**

(1) Each location of a directional sign must be approved by the department.

(2) No directional sign may be located within two thousand (2,000) feet of an interchange or intersection at grade along the interstate system or other freeways (measured along the interstate system or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).

(3) No directional sign may be located within two thousand (2,000) feet of the safety rest area, parkland or scenic area.

(4) No two directional signs facing the same direction of travel shall be spaced less than one (1) mile apart.

(5) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity.

(6) Signs located adjacent to the interstate system shall be within seventy-five (75) air miles of the activity.

(7) Signs located adjacent to the primary system shall be within fifty (50) air miles of the activity.

F. **Permitted content of directional signs.** The content of directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers or exit numbers. Descriptive words or phrases, and pictorial or photograph representations of the activity or its environs are prohibited.

[18.21.5.16 NMAC - Rp, 18 NMAC 21.5.20, 02/14/14]

18.21.5.17 LANDOWNER PERMISSION: No outdoor advertising device shall be erected or maintained without documentation that the applicant or permit holder has the legal right to occupy or possess the site on which the outdoor advertising device is to be located or currently resides. Violation of this provision shall render the outdoor advertising device illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.17 NMAC - N, 02/14/14]

18.21.5.18 MAXIMUM SIZE AND AREA LIMITATIONS:

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A. The maximum area of the face of any outdoor advertising device, including any embellishments, extensions or add-ons, shall be eight hundred (800) square feet, except as otherwise provided in this rule. Length and height measurements shall include border and trim, but shall not include any ornamental base or apron support.

B. Exceptions to the maximum size and area limitations are:

(1) stacked signs, which shall be limited to three hundred fifty (350) square feet per face;

(2) directional signs, which shall be limited to a maximum area of one hundred fifty (150) square feet and no more than twenty (20) feet in any dimension;

(3) public service signs, which shall be limited to thirty-two (32) square feet;

(4) ranch/farm notices, service club notices and religious notices, which shall not exceed eight (8) square feet; and

(5) CEVMS signs, which shall not exceed a maximum surface area of six hundred seventy-two (672) square feet per advertising face, with a maximum length of forty-eight (48) feet and a maximum height of fourteen (14) feet; length and height measurements shall include border and trim, but shall not include any ornamental base or apron support.

C. The areas shall be measured by the smallest square, rectangle, triangle, circle or combination thereof which will encompass the basic advertising face.

D. A sign may have two or more faces that are placed back-to-back, side-by-side, stacked, or in a "V" type construction with not more than two (2) faces presented in each direction, and each face must be separately permitted.

E. The maximum area of any single advertisement on a single face shall not exceed eight hundred (800) square feet, or, in the case of stacked signs, no more than three hundred fifty (350) square feet.

F. Two (2) sign faces presented in the same direction may be presented as one (1) face on legal conforming signs by covering both faces and the area between the faces with an advertisement, as long as the size limitations of Subsection A of this section are not exceeded.

[18.21.5.18 NMAC - Rp, 18 NMAC 21.5.13, 02/14/14]

18.21.5.19 MINIMUM SPACING REQUIREMENTS: For all signs other than directional signs and CEVMS signs.

A. **Interstate systems and access-controlled freeways.** No two (2) signs on the same side of the right-of-way shall be spaced less than five hundred (500) feet apart inside and outside villages and cities.

B. **NHS or primary systems.** Outside of incorporated villages and cities, no two (2) signs on the same side of the right-of-way shall be spaced less than three hundred (300) feet apart. Inside incorporated villages and cities, no two (2) signs on the same side of the right-of-way shall be spaced less than one hundred (100) feet apart.

C. **Interstate systems, NHS and primary systems.** Any sign adjacent to an interstate, NHS or primary system which is located within the control area of the interstate system must meet the minimum spacing requirements of the interstate system specified in Subsection A of this section.

D. **Exceptions.**

(1) On-premise, directional signs and official signs and notices or illegal signs within the right-of-way shall not be counted nor shall measurements be made from them for purposes of determining compliance with the five hundred (500), three hundred (300) or one hundred (100) foot spacing requirements.

(2) CEVMS signs shall comply with minimum spacing requirements contained in 18.21.5.13 NMAC.

E. **Intersections, interchanges and safety rest areas.** Outside of incorporated villages and cities, no sign shall be placed within five hundred (500) feet of an interchange, or an intersection at grade, or a roadside safety rest area on any portion of an interstate system or primary system which is an access-controlled highway. The five hundred (500) feet shall be measured from the beginning or ending of the pavement widening at the exit from the entrance to the main-traveled way. The minimum spacing requirement provisions do not apply to signs separated by buildings or other obstructions in such a manner that only one (1) sign located within the minimum spacing requirement distance of this subsection is visible from the highway system at a time.

[18.21.5.19 NMAC - Rp, 18 NMAC 21.5.15 & 16, 02/14/14]

18.21.5.20 UNZONED COMMERCIAL OR INDUSTRIAL AREAS:

A. **Measurements.** An unzoned commercial or industrial area shall be measured from the outer edge of the regularly used buildings, parking lots, storage or processing areas of the activities, and not from the property line of the activity, unless the property line and outer edge of the building, parking lots, storage or processing areas

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of the activities coincide. Such measurements shall be along or parallel to the edge of the right-of-way on the same side of the highway as the sign site.

B. **Temporary unzoned commercial or industrial areas.** Buildings or open sales areas actively used for commercial or industrial activities for six (6) or more consecutive months shall qualify an area as an unzoned commercial or industrial area, provided a twelve (12) month business license for that activity is obtained from the local governing authority.

C. **Simulated commercial activity.** Buildings or activities constructed or initiated to simulate legitimate commercial or industrial activity but not constituting commercial or industrial activity, shall not be used as a basis for determining unzoned commercial or industrial areas.

D. **Farming-agriculture and related activities.** The following shall not constitute an unzoned commercial or industrial area:

(1) use of feeder pens and dairy activities; and

(2) roping arenas, rodeo grounds, or fair grounds, unless the activities are open to the public and are conducted continuously for six (6) consecutive months or more during each calendar year.

E. **Municipal land ownership.** Municipal property located in an area governed by these rules that is not zoned, whether within or outside city, town or village limits, must conform to these rules in every respect concerning the unzoned commercial or industrial area. This requirement also applies to signs intended to advertise the local community or local community services.

[18.21.5.20 NMAC - Rp, 18 NMAC 21.5.17, 18, 19, 40 & 41, 02/14/14]

18.21.5.21 LIGHTING RESTRICTIONS: Signs shall not be placed with illumination that interferes with the effectiveness of any official traffic sign or device. Signs shall not contain, include or be illuminated by flashing, intermittent or moving light or lights (except that part necessary to give public service information such as time, date, temperature, weather or similar information). The term flashing lights is not limited to actual lighting, and includes stationary and moving reflective disks and rotating slats that reflect light in a flashing or moving manner, and that create the effect of flashing or moving light. No sign shall cause beams or rays of light of such intensity or brilliance to be mistaken for a warning or danger signal as to cause glare or impair the vision of any driver's operation of a motor vehicle.

[18.21.5.21 NMAC - Rp, 18 NMAC 21.5.21, 02/14/14]

18.21.5.22 APPLICATION FOR SIGN PERMIT:

A. **Permit required.** No outdoor advertising device or face allowed under Subsections A, D, E, F and G of 18.21.5.8 NMAC may be erected or maintained unless the owner of the outdoor advertising device or face first obtains a permit for the device or face from the department. Exceptions to this requirement are:

(1) signs on a piece of property giving notice that said specific land or improvements alone are offered for sale; generalized real estate signs are not excepted; and

(2) on-premise signs that are in compliance with 18.21.5.12 NMAC.

B. **Change in size, location or materials.** Any change, reconfiguration, conversion to CEVMS, addition of lighting, or change in location or upgrade in size or materials of the outdoor advertising device shall require a new application. The outdoor advertising device shall match the permit description.

C. **New highway construction.** A permit will not be issued for a sign to be located along a new interstate system, NHS or primary system, until the system is accepted by the department and is open to traffic in accordance with federal and state law.

D. **Application form.** To obtain a permit for an outdoor advertising device a person shall first file an application with the department. A person may obtain an application by contacting the department at 505-827-5460 or accessing the department's website at www.dot.state.nm.us.

E. **Contents of application and fee.** An application for an outdoor advertising device permit shall contain:

(1) the applicant's name, mailing address, telephone number, fax number and e-mail address;

(2) a description and location of the outdoor advertising device;

(3) documentation that the applicant has the legal right to possess and occupy the site upon which the outdoor advertising device will be located or currently resides; and

(4) a non-refundable application fee of seven hundred fifty dollars ($750) for changeable electronic variable message signs, or four hundred dollars ($400) for all other outdoor advertising devices, except that directional sign applications need not be accompanied by a fee.

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F. **Completeness.** When the department receives an application for an outdoor advertising device permit, the department shall check the application for completeness.

(1) If the application is not complete, the department shall contact the applicant for additional information. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the application shall be deemed denied.

(2) If the application is complete, the department shall review the application.

[18.21.5.22 NMAC - Rp, 18 NMAC 21.5.22, 23 & 29, 02/14/14]

18.21.5.23 ISSUANCE OF SIGN PERMIT:

A. **Site review.** In reviewing an application for an outdoor advertising device permit, the department shall conduct a site review and inspection to ensure that the description, location and other information contained in the application are in compliance with this rule.

B. **Permit.** If the site review and inspection results are satisfactory to the department, and all other applicable requirements, standards and specifications have been met, the department shall issue a permit and send an approval letter to the applicant. The department shall otherwise issue a denial letter stating the reasons for denial of the permit.

C. **Term.** The department shall issue a sign permit on a calendar year basis, January 1 through December 31; sign permits shall be valid from the date of their issuance until the following December 31.

D. **Transfer permitted.** A holder of a sign permit may transfer the permit to a new holder, upon filing with the department a transfer form signed by the current and future permit holders within ninety (90) days of the transfer of legal interest in the outdoor advertising device that is subject to the permit. The transfer form shall include any change of address and contact information, and a photocopy of any lease or sale agreement pursuant to such transfer. Any change in size, location, or materials of the outdoor advertising device shall require a new application.

[18.21.5.23 NMAC - N, 02/14/14]

18.21.5.24 RENEWAL OF SIGN PERMIT: Every permit shall be renewed annually and accompanied by a renewal fee in the amount of twenty-five dollars ($25.00) for the calendar year. Effective January 1, 2015, the annual renewal fee for every permit shall be forty dollars ($40.00). The department shall issue renewal invoices, which shall be paid within thirty (30) days of receipt. The failure to timely renew a permit shall render the permit invalid and subject to revocation. In that event, the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

[18.21.5.24 NMAC - Rp, 18 NMAC 21.5.25, 02/14/14]

18.21.5.25 SIGN PERMIT TAGS:

A. Upon the approval of an application for a permit, the department shall issue a sign permit tag for the specific sign at a given location.

B. A sign permit tag shall be valid from the date of its issuance until the following December 31 unless otherwise notified by the department. Upon annual renewal of the permit pursuant to the provisions of 18.21.5.24 NMAC, the validity of the sign permit tag shall continue for that calendar year.

C. Permit tags are transferable with the ownership of signs, but shall not be relocated from one (1) site to another. A permit tag shall be issued to a specific sign at a specific location and shall not be transferred from one (1) location to another. Any change in size, location, or materials of the outdoor advertising device shall require a new permit tag.

D. Permit tags shall be displayed, legible and visible at all times. If a permit tag is lost or stolen, the sign owner shall contact the department for a replacement. There shall be a twenty-five ($25) charge for each replacement.

E. Within thirty (30) days of issuance of the sign permit tag (one hundred twenty (120) days should the sign not be constructed at the date of such issuance), the sign permit tag shall be affixed to the sign on its face in the lower corner nearest the highway right-of-way line, or to the surface of the upright leg or pole of the sign nearest the right-of-way line.

[18.21.5.25 NMAC - Rp, 18 NMAC 21.5.24 & 27, 02/14/14]

18.21.5.26 SIGN OWNER NAME PLATES: All signs must have affixed the sign owner's name on a separate name panel of durable material fastened to the sign. A commercial sign company shall limit the name plate

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to its trade name only, provided that the trade name is as indicated on all the company's outdoor advertising permit applications.
[18.21.5.26 NMAC - Rp, 18 NMAC 21.5.30, 02/14/14]

18.21.5.27 SIGN CONSTRUCTION TIME LIMITS: When a sign which is the subject of the issuance of a permit and tag is not erected at the date of such issuance, such sign must be erected within one hundred twenty (120) days after such issuance, with the tag properly affixed, or the permit and tag shall be void. Upon written request to the department, a one-time sixty (60) day extension to erect a previously permitted sign may be granted.
[18.21.5.27 NMAC - Rp, 18 NMAC 21.5.26, 02/14/14]

18.21.5.28 LOCAL ZONING AUTHORITIES: Local political subdivisions shall have authority under their own zoning laws to create zoned commercial or industrial areas, and the valid action of such local political subdivision in this regard will be accepted for the purposes of these rules. The department will not issue permits for the erection of new signs in areas where county and municipal zoning ordinances are in effect and which require a permit to be issued for such signs by the county or municipal authority, unless the applicant has received a local permit for the sign from the governmental authority promulgating such ordinances, and a photocopy of the approved local permit application or a letter granting approval is attached to the department's sign permit application. If the department determines that the local zoning does not amount to or come within a comprehensive zoning plan, or that it is created primarily to permit outdoor advertising devices, a permit for the erection of the outdoor advertising device shall be denied. In determining whether a zoning action is created primarily to permit outdoor advertising devices, the department may consider various factors, such as, but not limited to, the expressed reasons for the zoning change; the zoning for the surrounding area; the actual land uses nearby; the existence of plans for commercial or industrial development; the availability of utilities (such as water, electricity and sewage) in the newly zoned area; and the existence of access roads or dedicated access to the newly zoned area.
[18.21.5.28 NMAC - Rp, 18 NMAC 21.5.28, 02/14/14]

18.21.5.29 CUSTOMARY MAINTENANCE OF SIGNS:

A. Customary maintenance shall be performed on all permitted signs. For the purpose of this section, a sign owner shall be allotted six (6) months to restore and replace copy, at which time the department may give a thirty (30) day notice to the owner to revitalize the sign or remove it as an abandoned sign. If the owner fails to revitalize the sign or remove it as an abandoned sign within thirty (30) days, the permit shall be revoked and the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

B. No sign owner shall erect, maintain, dismantle or remove any outdoor advertising device from or in the right-of-way of any interstate system, NHS or primary system. Any sign owner violating this subsection shall have the sign permit revoked whether or not the sign is conforming and such action shall render the sign illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.
[18.21.5.29 NMAC - Rp, 18 NMAC 21.5.35, 02/14/14]

18.21.5.30 CUSTOMARY MAINTENANCE OF NON-CONFORMING SIGNS:

A. Customary maintenance of non-conforming signs may only include the following:

(1) changing existing non-structural external light fixtures for energy efficiency;

(2) replacing structural components with the same materials consistent with this rule, including replacement of poles, but only if not more than 1/2 of the total number of poles of the sign are replaced in any twelve (12) month period and the same material is used for the replacement poles;

(3) nailing, cleaning and painting, and replacement of nuts and bolts;

(4) changes in the advertisement; and

(5) plumbing or leveling the structure.

B. Customary maintenance of non-conforming signs shall not include the following:

(1) any increase in the size of the sign from the date of its non-conformance, or increasing the size or dimension of the sign face, or adding a face;

(2) any structural change resulting in an increase in the sign's value; any such increase in value shall be deemed non-compensable should the sign be acquired by the department through the condemnation process;

(3) adding CEVMS or other changeable message capability, except that gas price, lottery and other add-ons utilizing changeable message technology may be allowed where the use of that technology would not result

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in a change to the physical structure of the outdoor advertising device, such as the addition of electrical or other power, including solar power, guy wires and bracing where the structure did not have such features at the time of its non-conformance, and where the gas price, lottery and other add-ons are included within the structure's copy;

(4) adding lighting, attached or unattached, to a sign that previously did not have lights;

(5) adding bracing, guy wires or other reinforcing devices;

(6) changing the vertical support materials, such as replacing wooden supports with metal, or replacing I-beams with a monopole;

(7) changing the configuration of the sign structure, such as changing a "V" sign to a stacked or back-to-back sign, or a single-face sign to a double face or back-to-back sign;

(8) merging or consolidating multiple faces into a single face, whether on the same or separate outdoor advertising devices; and

(9) except at the request of a governmental authority, removing and erecting the structure, or changing the physical location of the sign or the direction of the sign face.

C. A non-conforming sign destroyed by natural causes, such as, but not limited to, wear and tear, deterioration and weather, may not be reconstructed and its permit shall be revoked. Reconstruction shall render the sign a new structure and result in revocation of its permit and the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

D. Non-conforming signs which have been destroyed due to vandalism and other criminal or tortious acts may be re-erected in kind.

E. For purposes of this section, "destroyed" means completely down, or where more than 50% of the upright supports of a sign structure are physically damaged such that normal repair practices of the industry would, in the case of wooden sign structures, require replacement of the broken supports, and, in the case of metal sign structures, require replacement of at least 25% of the length above ground of each broken, bent or twisted support.
[18.21.5.30 NMAC - Rp, 18 NMAC 21.5.36, 02/14/14]

18.21.5.31 RIGHT-OF-WAY:

A. It is unlawful for any sign owner or his agents to damage the landscape of any right-of-way. These damages are more specifically described as follows:

(1) cutting trees or vegetation on the right-of-way for the purpose of facilitating the readability of an outdoor advertising device;

(2) damage to any landscaping, such as grass, shrubs, rocks, gravel or cement; or

(3) damage to any improvements in the right-of-way such as fences, ditches and structures.

B. Access gates shall not be installed in any right-of-way or access control fencing, nor shall right-of-way or access control fencing be cut, altered or damaged in any way.

C. The sign owner shall reimburse the state for the costs of replacing any damaged improvements or features or for returning all features to their original condition, and the sign owner's permits shall be revoked for any signs involved in such acts and the involved signs shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

D. Any outdoor advertising device which has been erected in such a manner that all or part of the device encroaches into or upon the right-of-way of any interstate system, NHS or primary system, as defined by the Beautification Act, shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

E. Stopping or parking on the right-of-way of any access-controlled highway, or violation of the access control line to service any outdoor advertising device, is unlawful and may constitute grounds for revocation of the permit as to such outdoor advertising device. In the event of such revocation the outdoor advertising device which is the subject of the revoked permit shall be deemed illegal and non-compensable and subject to removal at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC.

F. If vegetation on the right-of-way must be cut or otherwise maintained for the purpose of facilitating the readability of an outdoor advertising device, the owner of the outdoor advertising device, or the permit holder or landowner shall contact the department's office of the district engineer for the district where the device is located and request cutting or other maintenance of the vegetation.
[18.21.5.31 NMAC - Rp, 18 NMAC 21.5.32, 37, 38 & 43, 02/14/14]

18.21.5.32 LOCATION VIOLATIONS: Any outdoor advertising device which has been erected and maintained under permit, but is at variance from the location set forth in the permit application, and which location

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variation has not resulted from department's actions, may have its permit revoked and the sign deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of 18.21.5.33 NMAC. Where a location variation results from department's actions, the department's permit file may be amended to reflect the actual location of the outdoor advertising device.
[18.21.5.32 NMAC - Rp, 18 NMAC 21.5.32, 02/14/14]

18.21.5.33 REMOVAL OF SIGNS:

A. Compensable signs. Any outdoor advertising device that meets the requirements of Subsection A of Section 67-12-6 NMSA 1978 may be acquired by the commission by agreement or condemnation in the manner provided by law, with just compensation paid pursuant to Subsection B of Section 67-12-6 NMSA 1978.

B. Non-compensable signs. Any outdoor advertising device, which has been erected or maintained:

(1) in violation of the permit and permit fee requirements of the Beautification Act or this rule; or

(2) in accordance with all permit and permit fee requirements of the Beautification Act and this rule, but which violates the standards, specifications and requirements of the Beautification Act and this rule; shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of this section.

C. Notice. Any such removal under Subsection B of this section shall be preceded by notice via certified mail, to the owner of the outdoor advertising device and to the owner of the land upon which the device is located, if known, of the failure to conform and that if the device is not brought into conformity within thirty (30) days, the device must be removed within thirty (30) days or will be subject to removal by the department at the owner's expense. If the defects are not corrected and the outdoor advertising device is not removed within thirty (30) days after the date of notice, the department shall revoke the permit and the sign shall be deemed illegal and non-compensable and subject to removal by the department at the expense of the sign owner pursuant to the provisions of this section.

D. State immunity. Agents or employees of the department who remove illegal outdoor advertising devices in compliance with the Beautification Act and these rules shall be immune from criminal prosecution or civil liability for the injury, loss or destruction of any property which occurs in connection with the removal.

E. Interference. Landowners who interfere with the removal of signs from their property, preventing either the sign owner or the department from removing same, may be liable for the additional costs of removal associated with the landowner's interference.
[18.21.5.33 NMAC - Rp, 18 NMAC 21.5.31, 32, 33 & 34, 02/14/14]

18.21.5.34 PENALTIES FOR REPEATED VIOLATIONS:

A. In addition to the specific penalties set forth in this rule, the department may suspend permitting privileges if repeated violations by a permit holder, sign owner or landowner establish a pattern or practice of disregard for these rules, as determined by the department. A notification of such intent to suspend permitting privileges will be sent to the permit holder, sign owner or landowner stating the grounds upon which the proposed suspension is based.

B. Upon receipt of a notice of intent to suspend, the permit holder, sign owner or landowner shall have a right to a hearing before the department on whether the suspension should be imposed. To request a hearing, the permit holder, sign owner or landowner shall submit a written request within fourteen (14) days from the date of receipt of the notice.

C. The department shall assign a hearing officer within fifteen (15) days of receipt of the hearing request, and the hearing officer shall schedule a hearing within thirty (30) days of being assigned as hearing officer, and shall notify the requesting party of the time, date and place of the hearing.

D. The requesting party may present information orally and in writing at the hearing. The requesting party may at their own expense be represented by legal counsel.

E. After considering all written and oral views presented at the hearing, the hearing officer shall within thirty (30) days after the date of the hearing make a written explanation and determination and submit it to the department's chief engineer for consideration and final decision. Within thirty (30) days from the hearing officer's determination, the department's chief engineer shall make a final decision and the department shall furnish the requesting party with the final decision in writing.

F. A party aggrieved by the chief engineer's decision shall have the right to seek judicial review through the appropriate court system.
[18.21.5.34 NMAC - Rp, 18 NMAC 21.5.44, 02/14/14]

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HISTORY OF 18.21.5 NMAC:

History of Repealed Material: 18 NMAC 21.5, Outdoor Advertising Requirements, filed 9/16/98 - Repealed effective 02/14/14.

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not more than ninety days nor less than five days, or by both fine and imprisonment in the discretion of the judge.

History: 1953 Comp., § 55-10-10, enacted by Laws 1957, ch. 234, § 10.

Emergency clause. — Laws 1957, ch. 234, § 11, makes the act effective immediately. Approved March 29, 1957.

Am. Jur. 2d and C.J.S. references. — 40 Am. Jur. 2d Highways, Streets and Bridges §§ 604, 605.

40 C.J.S. Highways § 247.

ARTICLE 12

Highway Beautification

Sec.
67-12-1. Short title.
67-12-2. Definitions.
67-12-3. Public policy.
67-12-4. Outdoor advertising prohibited; exceptions.
67-12-5. Outdoor advertising; regulations; permits.
67-12-6. Outdoor advertising; acquisition; compensation; removal.
67-12-7. Outdoor advertising; safety rest areas; information centers.
67-12-8. Leases, franchises or concessions to individuals for private commercial operation of tourist information centers prohibited; penalty.
67-12-9. Junkyards; license required.
67-12-10. Junkyards; screening; acquisition; removal; compensation.
67-12-11. Junkyards; abatement of nuisance.
67-12-12. Powers of commission.
67-12-13. Construction of act.
67-12-14. Acquisition of land for scenic beauty.

67-12-1. Short title.

This act [67-12-1 to 67-12-14 NMSA 1978] may be cited as the "Highway Beautification Act."

History: 1953 Comp., § 55-11-1, enacted by Laws 1965, ch. 65, § 1.

67-12-2. Definitions.

As used in the Highway Beautification Act [67-12-1 to 67-12-14 NMSA 1978]:

A. "interstate system" means that portion of the national system of interstate and defense highways located within this state as may now or hereafter be officially so designated by the commission and approved pursuant to Title 23, United States Code;

B. "primary system" means that portion of connected main highways located within this state as may now or hereafter be officially so designated by the commission and approved pursuant to Title 23, United States Code;

C. "commission" means the state highway commission;

D. "outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other object which is designed, intended or used to advertise or inform, any part of which is located within six hundred sixty feet of the nearest edge of the right-of-way, and is visible from the main-traveled way of the interstate or primary systems or those located beyond six hundred sixty feet of the right-of-way, located outside of urban areas, visible from the main-traveled way of the system and erected with the purpose of their message being read from such main-traveled way;

E. "safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right-of-way of the interstate or primary systems;

F. "information center" means a site established and maintained at a safety rest area for the purpose of informing the public of places of interest within the state and providing other information the commission considers desirable;

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G. "junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled or wrecked automobiles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material;

H. "automobile graveyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts;

I. "junkyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying or selling junk, or for the maintenance or operation of an automobile graveyard any portion of which is located within one thousand feet of the nearest edge of the right-of-way of the interstate or primary systems and it includes garbage dumps and sanitary fills; and

J. "urban area" means an area including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available federal census, within boundaries to be fixed by the state highway commission, subject to any necessary approval by any federal agency, department or personnel.

History: 1953 Comp., § 55-11-2, enacted by Laws 1956, ch. 65, § 2; 1971, ch. 108, § 1; 1975, ch. 193, § 1.

67-12-3. Public policy.

In order to promote public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways and to preserve and enhance the scenic beauty of lands bordering public highways, it is the public policy of this state to regulate the erection and maintenance of outdoor advertising and the establishment, operation and maintenance of junkyards in areas adjacent to the interstate and primary systems in accordance with the Highway Beautification Act [67-12-1 to 67-12-14 NMSA 1978]. The legislature finds that regulation of outdoor advertising and junkyards is for a highway purpose.

History: 1953 Comp., § 55-11-3, enacted by Laws 1956, ch. 65, § 3.

67-12-4. Outdoor advertising prohibited; exceptions.

A. No outdoor advertising shall be erected or maintained except:

(1) directional and other official signs and notices authorized or required by law, including, but not limited to, signs and notices pertaining to houses of worship, natural wonders and scenic and historic attractions;

(2) signs, displays and devices advertising the sale or lease of property upon which they are located;

(3) signs, displays and devices advertising activities conducted on the property upon which they are located, provided that the bisection of a parcel of land by a highway right-of-way acquisition shall not in itself be construed as converting the property into more than one parcel;

(4) signs, displays and devices located in areas which are zoned as industrial or commercial under authority of law;

(5) signs, displays and devices located within six hundred sixty feet of the nearest edge of the right-of-way, in unzoned industrial or commercial areas as defined by regulations promulgated by the commission, provided that no area shall be considered to be an unzoned commercial or industrial area unless and until a regulation defining the area as unzoned commercial or industrial is promulgated by the commission; and

(6) signs lawfully in existence on October 22, 1965, determined by the state highway commission, subject to any necessary federal approval, to be landmark signs of historic or artistic significance worthy of preservation including signs on farm structures or natural surfaces.

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B. All outdoor advertising shall conform with standards and specifications, shall bear permits and have paid therefor permit fees, as required by the Highway Beautification Act [67-12-1 to 67-12-14 NMSA 1978] and regulations promulgated pursuant thereto or authorized thereby, except that permits shall not be required or fees paid for outdoor advertising included in Paragraphs (1), (2) and (3) of Subsection A of this section.

C. Nothing herein to the contrary withstanding, any outdoor advertising which was lawfully in existence on the effective date of the Highway Beautification Act and has continued to so exist may remain in place until the outdoor advertising is acquired by the commission, or condemnation in relation thereto is commenced by the commission, whichever first occurs, but only if and so long as all provisions of Subsection B of this section are complied with.

History: 1953 Comp., § 55-11-4, enacted by Laws 1955, ch. 65, § 4; 1957, ch. 140, § 1; 1971, ch. 108, § 2; 1975, ch. 174, § 1; 1975, ch. 193, § 2.

Effective date. — Laws 1955, ch. 65, contains no effective date provision, but was enacted at a session which adjourned on February 18, 1955. See N.M. Const., art. IV, § 23.

Am. Jur. 2d and C.J.S. references. — 39 Am. Jur. 2d Highways, Streets and Bridges § 288.

40 C.J.S. Highways § 217.

67-12-5. Outdoor advertising; regulations; permits.

A. The commission may promulgate regulations concerning:

(1) the definition of unzoned industrial or commercial areas adjacent to the interstate and primary systems;

(2) the removal of outdoor advertising so required or authorized under the Highway Beautification Act [67-12-1 to 67-12-14 NMSA 1978];

(3) permits for the erection and maintenance of outdoor advertising; and

(4) standards and specifications pertaining to outdoor advertising, including, but not limited to, construction, maintenance, spacing, lighting, size and location.

B. Regulations promulgated by the commission under this section shall be consistent with the public policy of this state as declared in the Highway Beautification Act and national standards promulgated pursuant to Title 23, United States Code.

C. The commission shall establish and collect uniform fees for the issuance of permits for outdoor advertising. The fees shall not be more than the actual cost to the commission of enforcement and administration of this act, or five dollars ($5.00) per year, whichever is greater, for each sign, display and device. All fees so collected shall be paid to the state treasurer for credit to the state road fund.

D. Any permit fee payable for the years 1966 through 1971 inclusive shall be deemed timely paid if, but only if, the fee is received by the commission prior to July 1, 1971. For the year 1972 and every year thereafter, the permit fee shall be deemed timely paid if, said fee is received by the commission on or before the first day of the year for which said fee is being paid. Failure of timely payment of the permit fee for any outdoor advertising except those included in Subsections A (1), A (2) and A (3) of Section 67-12-4 NMSA 1978 shall render the outdoor advertising subject to removal by the commission without any compensation whatsoever and at the expense of the owner of the outdoor advertising.

History: 1953 Comp., § 55-11-5, enacted by Laws 1956, ch. 65, § 5; 1957, ch. 140, § 2; 1971, ch. 108, § 3.

Am. Jur. 2d and C.J.S. references. — 39 Am. Jur. 2d Highways, Streets and Bridges § 288.

40 C.J.S. Highways § 247.

67-12-6. Outdoor advertising; acquisition; compensation; removal.

A. The commission may acquire by agreement or condemnation, all outdoor advertising and property rights pertaining thereto, and remove the outdoor advertising if the outdoor advertising, at the time of said acquisition:

(1) bears the requisite permit;

(2) has timely paid all permit fees, past and present, required in connection with the erection and maintenance thereof;

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(3) conforms with standards, specifications and requirements contained in regulations promulgated by the commission; and

(4) was lawfully in existence on the effective date of the Highway Beautification Act [67-12-1 to 67-12-14 NMSA 1978] and has continued to so exist, or was lawfully erected subsequent to said effective date.

The condemnation shall be exercised by eminent domain in the manner provided by law, and each interested party shall have the right to a separate trial as to the respective interests involved.

B. Whenever outdoor advertising and property rights pertaining thereto are acquired by the commission pursuant to Subsection A of this section:

(1) the owner of the outdoor advertising shall be paid just compensation by the commission equal to the fair market value of the outdoor advertising which is to be deemed a trade fixture; and

(2) the owner of the land upon which the outdoor advertising is located shall be paid just compensation equal to the value of his right to have the outdoor advertising erected and maintained on the land.

C. The right to compensation as provided in Subsection B of this section shall not be affected solely by the failure of any outdoor advertising to conform to standards, specifications and requirements contained in regulations promulgated by the commission relating to any subject other than permits or permit fees unless the commission has given notice by certified mail to the owner of the land upon which the outdoor advertising is located, and to the owner of the outdoor advertising if his name appears thereon, advising of the failure to conform and ordering that the outdoor advertising be made to so conform or be removed within thirty days from the date of such notice. If the failure to conform is corrected within the said thirty days then the failure to conform shall be deemed cured for all purposes; if, however, the defect is not corrected within the thirty days, the commission may thereafter remove the outdooor advertising at the expense of the owner of the outdoor advertising without any compensation whatsoever. This subsection specifically does not apply in any manner to permit fees, and no notice whatsoever shall be required in connection with the permit fees.

D. Compensation shall not include any element of damages which is not subject to federal aid participation under the federal Highway Beautification Act of 1965, as has been or may be hereafter amended or superseded, or otherwise.

E. In any case where outdoor advertising has been removed under the Highway Beautification Act, and the removal is compensable under that act, but the commission has not paid just compensation or instituted condemnation proceedings therefor, the owner of the outdoor advertising, or the owner of the land upon which it is located, or both, may bring actions against the commission as provided in Section 42-1-23 NMSA 1978, for recovery of such compensation.

F. All outdoor advertising other than that meeting all the requirements of Subsection A of this section is declared to be a public nuisance and in contravention of law. Therefore and otherwise, the commission may remove or cause the removal of all outdoor advertising other than that meeting all the requirements of Subsection A of this section which removal shall be without any compensation whatsoever and at the expense of the owner of the outdoor advertising.

G. Removal of outdoor advertising by or at the request of the commission, its agents or employees, in compliance with the Highway Beautification Act, does not subject such removal or the persons performing it to criminal prosecution or give rise to any liability to any person or entity for the injury, loss or destruction of any property which occurs in connection with the removal.

History: 1953 Comp., § 55-11-6, enacted by Laws 1956, ch. 65, § 6; 1967, ch. 140, § 3; 1971, ch. 108, § 4; 1975, ch. 193, § 3.

Effective date. — Laws 1956, ch. 65, contains no effective date provision, but was enacted at a session which adjourned on February 15, 1956. See N.M. Const., art. IV, § 23.

Emergency clause. — Laws 1975, ch. 193, § 4, makes the act effective immediately. Approved April 7, 1975.

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Federal Highway Beautification Act. — The Federal Highway Beautification Act of 1965, referred to in Subsection D of this section, is compiled as 23 U.S.C. §§ 131, 135 and 319.

Am. Jur. 2d and C.J.S. references. — 39 Am. Jur. 2d Highways, Streets and Bridges § 233.
40 C.J.S. Highways § 217.

67-12-7. Outdoor advertising; safety rest areas; information centers.

In order to provide information in the specific interest of the traveling public, the commission may authorize outdoor advertising at safety rest areas and at information centers.

History: 1953 Comp., § 55-11-7, enacted by Laws 1965, ch. 65, § 7.
Am. Jur. 2d and C.J.S. references. — 39 Am. Jur. 2d Highways, Streets and Bridges § 233.

40 C.J.S. Highways § 217.

67-12-8. Leases, franchises or concessions to individuals for private commercial operation of tourist information centers prohibited; penalty.

A. The state highway department or any lessee of highway department property shall not grant any lease, sublease, franchise or concession to any private person, corporation, association, partnership or firm for the purpose of operating any commercial tourist information center or similar tourist facility on lands owned or controlled by the state, without prior approval of the legislative finance committee.

B. Any lease, sublease, franchise or concession in violation of this section is void, and any person authorizing or executing such lease, sublease, franchise or concession on behalf of the state highway department or its lessee is guilty of a petty misdemeanor and, in addition to any other penalty prescribed by law, shall be removed from public office.

History: 1953 Comp., § 55-11-7, enacted by Laws 1969, ch. 60, § 1.
Am. Jur. 2d and C.J.S. references. — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 253, 254.

40 C.J.S. Highways § 233.

67-12-9. Junkyards; license required.

A. No person shall establish, operate or maintain a junkyard, without first obtaining a junkyard license from the commission. The commission shall establish and collect uniform fees for the issuance of junkyard licenses. The fee shall not be more than the actual cost to the commission of enforcement and administration of the Highway Beautification Act [67-12-1 to 67-12-14 NMSA 1978], or ten dollars ($10.00) per year per junkyard, whichever is greater. The fees shall be paid to the state treasurer for credit to the state road fund.

B. No junkyard license shall be issued for the establishment, operation or maintenance of a junkyard except for junkyards:

(1) screened by natural objects, plantings, fences or other appropriate means so as not to be visable from the main-traveled way of the interstate or primary systems, or otherwise removed from sight, all in conformity with regulations relating thereto promulgated by the commission, if any; or

(2) located within areas zoned for industrial use under authority of law; or

(3) located within unzoned industrial areas as determined by actual land uses and defined by regulations promulgated by the commission; provided that no area shall be deemed to be an unzoned industrial area unless and until the commission has promulgated regulations defining same.

C. Nothing herein to the contrary withstanding, no junkyard lawfully in existence on the effective date of the Highway Beautification Act, which has continued to so exist and has had timely paid therefor all license fees required by the Highway Beautification Act shall be denied a junkyard license, if proper application is made and the requisite fee te

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therefor, until such junkyard has been screened or otherwise removed from sight by the commission at its expense.

D. Any fee for a junkyard license payable for the years 1966 through 1971 inclusive, shall be deemed timely paid if, but only if, the fee is received by the commission prior to July 1, 1971. For the year 1972 and every year thereafter, the license fee shall be deemed timely paid if, but only if, said fee is received by the commission on or before the first day of the year for which said fee is being paid. Failure of timely payment of said fee shall render the junkyard subject to removal, disposal and abatement by the commission without any compensation whatsoever, and at the cost of the owner thereof.

History: 1953 Comp., § 55-11-8, enacted by Laws 1966, ch. 65, § 8; 1971, ch. 108, § 5.

Effective date. — Laws 1966, ch. 65, contains no effective date provision, but was enacted at a session which adjourned on February 18, 1966. See N.M. Const., art. IV, § 23.

67-12-10. Junkyards; screening; acquisition; removal; compensation.

A. The commission may screen, at its expense, any junkyard located within one thousand feet of the nearest edge of the right-of-way of the interstate and primary systems and visible from the main-traveled way thereof, if the commission considers such screening feasible and the junkyard:

(1) was lawfully in existence on the effective date of the Highway Beautification Act [67-12-1 to 67-12-14 NMSA 1978], and has continued to so exist, or the junkyard lawfully came into existence subsequent thereto under circumstances whereby screening or removal from sight were not required by law; and

(2) has had timely paid therefor all license fees, past and present, required in connection with the establishment, operation and maintenance thereof.

B. If the commission does not consider such screening economical or feasible due to the topography of the land or otherwise, it may require the relocation, removal or disposal of the junkyard or junk thereon located by negotiation or condemnation, if the junkyard meets the requirements of Paragraphs (1) and (2) of Subsection A.

C. Whenever relocation, removal or disposal is required by the commission pursuant to Subsection B:

(1) the owner of the junkyard shall be paid just compensation therefor by the commission, which shall include, but not be limited to, acquisition costs, leasehold value and moving costs; and

(2) the owner of the land upon which the junkyard is located shall be paid just compensation equal to the value of his right to have the junkyard established, operated and maintained on the land.

D. Compensation shall not include any element of damages which is not subject to federal aid participation by virtue of the federal Highway Beautification Act of 1965, as has been or may hereafter be amended or superseded, or otherwise.

E. In any case where a junkyard has been removed, relocated or disposed of, pursuant to the Highway Beautification Act, and such removal is compensable under it, but the commission has not paid just compensation or instituted condemnation proceedings therefor, the owner of the junkyard or the owner of the land upon which it is located, or both, may bring action against the commission as provided in Section 42-1-23 NMSA 1978, for recovery of such compenation.

F. The commission may remove, relocate or dispose of, or cause the removal, relocation or disposal of all junkyards other than those described in Subsections A and B hereof, without any compensation whatsoever and at the expense of the owner of the junkyard.

G. Removal, relocation or disposal of junkyards by or at the request of the commission, its agents or employees in compliance with the Highway Beautification Act does not subject such removal or the persons performing same to criminal prosecution or give rise to any liability to any person or entity for the injury, loss or destruction of any property which occurs in connection with the said removal.

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H. When the commission determines that it is in the best interest of the state, it may acquire such land or interest in land as is necessary to provide adequate screening for junkyards.

History: 1953 Comp., § 55-11-9, enacted by Laws 1966, ch. 65, § 9; 1967, ch. 140, § 4; 1971, ch. 108, § 6.
Effective date. — Laws 1966, ch. 65, contains no effective date provision, but was enacted at a session which adjourned on February 18, 1966. See N.M. Const., art. IV, § 23.
Federal Highway Beautification Act. — See 67-12-6 NMSA 1978 and notes thereto.

67-12-11. Junkyards; abatement of nuisance.

The establishment, operation or maintenance of any junkyard contrary to the provisions of the Highway Beautification Act [67-12-1 to 67-12-14 NMSA 1978] is a public nuisance. In addition to all other remedies and powers granted to the commission by the Highway Beautification Act, the commission may cause the public nuisance to be abated, by application to the district court of the county in which the subject junkyard is located, or otherwise as provided by law.

History: 1953 Comp., § 55-11-10, enacted by Laws 1966, ch. 65, § 10; 1971, ch. 108, § 7.
C.J.S. reference. — 39A C.J.S. Highways § 143.

67-12-12. Powers of commission.

The commission may:

A. promulgate regulations it deems necessary to implement and enforce the Highway Beautification Act [67-12-1 to 67-12-14 NMSA 1978]; and

B. enter into agreements with the secretary of commerce pursuant to Title 23, United States Code, relating to the control of outdoor advertising and junkyards in areas adjacent to the interstate and primary systems, and to take action in the name of the state to comply with the terms of the agreements.

History: 1953 Comp., § 55-11-11, enacted by Laws 1966, ch. 65, § 11.
Cross-reference. — For Scenic Highway Zoning Act not to derogate powers under this act, see 67-13-16 NMSA 1978.

67-12-13. Construction of act.

Nothing in the Highway Beautification Act [67-12-1 to 67-12-14 NMSA 1978] affects the provisions of any lawful ordinance or regulation which is more restrictive than the Highway Beautification Act.

History: 1953 Comp., § 55-11-12, enacted by Laws 1966, ch. 65, § 12; 1971, ch. 108, § 8.
Emergency clause. — Laws 1971, ch. 108, § 11, makes the act effective immediately. Approved March 15, 1971.
Separability clause. — Laws 1971, ch. 108, § 10, provides for the severability of the act if any part or application thereof is held invalid.
Repealing clause. — Laws 1971, ch. 108, § 9, repeals 55-11-13, 1953 Comp.

67-12-14. Acquisition of land for scenic beauty.

A. The commission may acquire and improve land necessary for the restoration, preservation and enhancement of scenic beauty within and adjacent to the interstate and primary systems, including acquisition for publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the right-of-way and reasonably necessary to accommodate the traveling public.

B. The interest in land acquired and maintained under this section may be the fee simple or any lesser interest determined by the commission to be reasonably necessary to accomplish the purposes of the Highway Beautification Act [67-12-1 to 67-12-14 N

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1978]. The acquisition may be by gift, agreement, purchase, exchange, condemnation or otherwise. Acquisition through condemnation shall be in accordance with Sections 42-2-1 through 42-2-21 NMSA 1978.

C. Acquisition of any land under this section is for highway purpose.

History: 1953 Comp., § 55-11-14, enacted by Laws 1955, ch. 65, § 14.

Separability clause. — Laws 1955, ch. 65, § 17, provides for the severability of the act if any part or application thereof is held invalid.

Repealing clause. — Laws 1955, ch. 65, § 15, repeals 22-9-54 and 22-9-60, 1953 Comp.

Am. Jur. 2d reference. — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 89, 153.

ARTICLE 13

Scenic Highway Zoning

Sec.
67-13-1. Short title.
67-13-2. Legislative declaration.
67-13-3. Definitions.
67-13-4. Creation of scenic highway zones.
67-13-5. Boundaries of scenic highway zones.
67-13-6. Board powers; delegation allowed.
67-13-7. Decision of board final.
67-13-8. Administrative powers of board.
67-13-9. Zoning authority.
67-13-10. Zoning; regulations and restrictions; public hearings required; notice.
67-13-11. Appeals; grounds; stay of proceedings.
67-13-12. Zoning; petition for review; time limit; restraining order.
67-13-13. Zoning enforcement.
67-13-14. Conflicts between zoning regulations and other laws.
67-13-15. Authority to contract.
67-13-16. Application of act.

67-13-1. Short title.

This act [67-13-1 to 67-13-16 NMSA 1978] may be cited as the "Scenic Highway Zoning Act."

History: 1953 Comp., § 55-14-1, enacted by Laws 1973, ch. 17, § 1.

Am. Jur. 2d reference. — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 89, 158.

67-13-2. Legislative declaration.

It is declared as a matter of legislative determination that:

A. the powers and duties provided in the Scenic Highway Zoning Act [67-13-1 to 67-13-16 NMSA 1978] will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants of New Mexico;

B. the operation of zoning ordinances and agreements authorized in the Scenic Highway Zoning Act is in the public interest and constitutes a part of the established and permanent policy of the state;

C. the scenic highway zones hereby authorized will be a special benefit to the property within and adjacent to them;

D. the notice provided in the Scenic Highway Zoning Act for each hearing and action to be taken is reasonably calculated to inform any person of interest in any proceedings hereunder which may directly and adversely affect his legally protected interests; and

E. for the accomplishment of these purposes, the provisions of the Scenic Highway Zoning Act shall be broadly construed.

History: 1953 Comp., § 55-14-2, enacted by Laws 1973, ch. 17, § 2.

67-13-3. Definitions.

As used in the Scenic Highway Zoning Act [67-13-1 to 67-13-16 NMSA 1978]:

A. "board" means a board of county commissioners;

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VI. NEW BUSINESS

A. **CDRC CASE # V 15-5140 Vernon DeAguero Variance.** **Vernon DeAguero, Applicant, Alberto Alcocer, Agent, request a variance of Article VIII, § 7.15 (Prohibited Signs) of the Land Development Code in order to allow an existing, unpermitted 96 square foot sign advertising an off-site business on 2.213 acres. The property is located at 267 Rabbit Road, within Section 10, Township 16 North, Range 9 East, Commission District 4**

John Salazar, case manager, provide the staff report as follows:

"On November 11, 2014 a Notice of Violation was issued to the Applicant for an illegal commercial advertisement sign posted on the property. A Final Notice of Violation was issued on January 9, 2015. The Applicant is requesting a variance of the Land Development Code in order to keep a 96 square foot sign advertising an off-site business.

"The Applicant states that the non-illuminated sign was erected to promote the Agent's business, Clearealty, which measures 12 feet tall by 8 feet wide. The Applicant states that the sign is well within his property and it has helped generate business for Mr. Alcocer thus generating gross receipt tax revenue for sales which are in excess of a million dollars per year. The sign is positioned on the north side of the property which bounds Interstate 25 right-of-way. The Applicant also states that although Mr. Alcocer's main office is located at 333 Montezuma Avenue, he has given Mr. Alcocer authorization to hold a New Mexico Real Estate Commission license on his property due to the lack of parking spaces at the Montezuma office. It affords Mr. Alcocer the opportunity to meet clients on the Applicant's property to look for homes in the area. However, neither the Applicant nor Mr. Alcocer has a Santa Fe County business license on the property. The Applicant continues to state, 'There [are] a number of other signs that are in the vicinity and along the Interstate 25 as well as Hwy 285 that are present and that presumably have permits.'

"Upon reviewing the photos the Applicant has submitted, these billboard signs are either located on State Highway right-of-way or are legal non-conforming, therefore, no permits have been issued for any existing billboard signs. Article VIII, Section 7.15.a of the Land Development Code states: 'Off-site advertising or billboards. The advertising on any sign shall pertain only to a business, industry or activity conducted on or within the premises on which such sign is erected or maintained.'

" The subject sign would be considered a billboard and would constitute off-site advertising; therefore, the Applicant is requesting a variance."Under the Code, the maximum allowable sign for a commercially zoned property is 70 square feet. The Applicant will be required by NMDOT to apply for a sign permit per

EXHIBIT 10

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NMDOT Outdoor Advertising Requirements and the New Mexico Highway Beautification Act."

Mr. Salazar said staff has reviewed the application and recommends denial of the variance with the condition that the Applicant remove the sign within thirty days from the recording of the Final Order. If the decision of the CDRC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions:

1. The Applicant must obtain a development permit from the Building and Development Services Division for the 96 square foot sign (As per Article VIII, § 3).
2. The placement of additional signs is prohibited on the property (As per Article VIII, § 7).
3. The Applicant must apply for a sign permit from NMDOT within thirty days from the recording of the Final Order.
4. The Applicant must obtain a sign permit from NMDOT and provide a copy of the approved permit to the Building and Development Services Division.
5. The sign shall be no larger than 70 square feet. [Added at staff report]

Member Gonzales asked whether the applicant uses the residence to conduct real estate business. Mr. Salazar said there is a real estate commission license at the property as well as a property on Montezuma in the city. He understood Mr. Alcocer meets clients at the Rabbit Road site.

Mr. Salazar stated that the request does not qualify as a home occupation since Mr. Alcocer does not live in the home. The sign advertises an offsite business. He added that if the CDRC were to approve the variance, the sign would need to be adjusted to meet County sign regulations.

The Notice of Violation issued to the property owner was initiated by a call from the Department of Transportation to County Code Enforcement.

Duly sworn and appearing as agent for the applicant was Alberto Alcocer, Santa Fe. Mr. Alcocer said he sold the applicant, Vernon DeAguero, the property in question and is also a close friend. There had been a sand and gravel sign on the property and Mr. DeAguero suggested replacing it with a sign promoting Mr. Alcocer's real estate business. He confirmed that his business is located on Montezuma; however, there are parking issues and he has been meeting clients on Rabbit Road. He agreed to the five staff-imposed conditions.

There were no other speakers on this case.

Member Martin moved to deny CDRC Case V 15-5140, Vernon DeAguero variance request and require that the Applicant remove the sign within 30 days from the recording of the Final Order. Member Booth seconded and the motion passed by

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majority [2-1] voice vote. Member Gonzales voted against the motion and Chair Katz did not vote.

B. **PETITIONS FROM THE FLOOR**

None were offered.

C. **COMMUNICATIONS FROM THE COMMITTEE**

None were presented.

D. **COMMUNICATIONS FROM THE ATTORNEY**

None were presented.

E. **MATTERS FROM LAND USE STAFF**

An update on the disposition of CDRC cases by the BCC was distributed.

F. **NEXT MEETING**

The next meeting was scheduled for September 17, 2015.

G. **ADJOURNMENT**

Having completed the agenda, Chair Katz declared this meeting adjourned at approximately 4:15 p.m.

Approved by:

Frank Katz, CDRC Chair

ATTEST TO:

Geraldine Salazar

COUNTY CLERK

Before me, this 17th day of September 2015.

My Commission Expires:

Notary Public

Submitted by:
Karen Farrell, Wordswork

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