

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: October 27, 2015

TO: Board of County Commissioners

FROM: John Lovato, Development Review Specialist Sr. 

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 15-5060 Homero Arras Variance

ISSUE:

Homero Arras, Applicant, requests a variance of Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow an existing illegally constructed retaining wall, gazebo, and a chicken coup within a FEMA designated Special Flood Hazard Area on a 2.53 acre lot without submitting the required technical analysis.

The property is located at 12 N. Paseo De Angel, within the Traditional Historic Community of La Cienega/La Cieneguilla, within Section 27, Township 16 North, Range 8 East, (Commission District 3).

Vicinity Map:



REQUEST SUMMARY:

On September 17, 2015, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicants request by a 3-2 voice vote.

The subject lot was created in 2007, as part of the Vallecita de Gracia Subdivision. The property currently has a mobile home, a gazebo, a chicken coup, and a retaining wall. A permit for a 1,960 square foot manufactured home was issued in 2014, as permit number #14-291.

The Applicant requests a variance of Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow an illegally constructed 8' retaining wall, 196 square foot gazebo, and an 80 square foot chicken coup within a FEMA designated Special Flood Hazard Area.

On January 12, 2015, the Applicant received a Notice of Violation and a stop work order for unpermitted development on the property as he was constructing the retaining wall, gazebo, and chicken coup. After review of the property, it was determined that the gazebo, retaining wall, and chicken coup were illegally constructed in a FEMA designated Special Flood Hazard Area.

The property consists of 2.53 acres, and approximately 1/3 of the property is located within the FEMA designated Special Flood Hazard Area. There are other buildable areas for the proposed structures outside the FEMA designated Special Flood Hazard Area.

The Applicant states that he constructed the block wall due to people entering his property through the drainage with motorized vehicles and horses and incorporated a gazebo and chicken coup into the design.

Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) states: corals, fences, and barns and other accessory structures are allowed within the Special Flood Hazard Area provided that a detailed technical drainage analysis is performed by a certified licensed engineer, and the structure is not habitable, is designed to have low flood damage, offer minimum resistance to flow of floodwaters, and anchored to prevent floatation.

Placement of walls, fences, and structures in the FEMA designated Special Flood Hazard Area will impede flows and may cause the base flood elevation to rise and cause upstream or downstream flooding.

The Applicant states that he does not want to provide a detailed technical drainage analysis prepared by a certified licensed engineer as the cost would be too much. Therefore, he is requesting a variance.

Article 4, § 4.6 of Ordinance No. 2008-10 states specific variance procedures and criterion that recommending and approval bodies must consider, as follows:

- A. The Board of County Commissioners (Board) after recommendation by the County Development Review Committee (CDRC) shall hear and render judgment on a request for variance from the requirements of this Ordinance.
- B. The CDRC may recommend and the Board take action on an appeal of the Floodplain Administrator's decision only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.
- C. Any person or persons aggrieved by the decision of the Board may appeal such decision to a court of competent jurisdiction within thirty days of the Board's decision.
- D. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- E. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Ordinance.
- F. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C (2) of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- G. Upon consideration of the factors noted above and the intent of this Ordinance, the Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance (Article 1, Section C).
- H. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- I. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

Article 4, § 4.6.J. of Ordinance No. 2008-10 states that the prerequisites for granting a variance are as follows:

- a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- b. Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- d. Variances may be issued by the BCC for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - i. the criteria outlined in Article 4, Section D (1)-(9) are met, and
 - ii. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

The owner of the property Homero Arras, acquired the property by Warranty Deed recorded as Instrument # 1731583 in the Santa Fe County Clerk's records dated March 7, 2014. (Exhibit 3)

Notice requirements were met as per Article II § 2.4.2, of the Land Development 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 August 24, 2015. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on August 24, 2015, as evidence 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 4).

On September 17, 2015, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicants request by a 3-2 voice vote.

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.

This Application was submitted on February 6, 2015. County staff has been working with the Applicant to bring this case before the CDRC and BCC. The Applicant was going to hire a certified Professional Engineer to do the detailed drainage analysis but decided it was too costly and decided to move forward with the variance request.

A technical drainage analysis is required for any structure that is placed within the FEMA designated flood hazard area. The Federal requirements state that the structures to be placed within these areas are not to allow a 1 foot of rise in FEMA designated Special Flood Hazard Areas. Federal guidelines also state that variances for development shall not be allowed if there is a rise in the Base Flood Elevation.

APPROVAL SOUGHT: A variance of Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a 8' retaining wall, a 196 square foot gazebo, and an

80 square foot chicken coup within a FEMA designated Special Flood Hazard Area.

VARIANCES:

A variance of Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management)

GROWTH MANAGEMENT AREA:

El Centro, SDA-2

HYDROLOGIC ZONE:

The property is located within the Traditional Historic Community of La Cienega Basin Hydrologic Zone. Minimum lot size in this area is 10 acres per dwelling unit. Lot size can be reduced to 2.5 acres per dwelling unit with proof of 100 year water supply through a geohydrologic reconnaissance report, and adoption of water use covenants.

FIRE PROTECTION:

La Cienega Fire Department.

WATER SUPPLY:

Domestic Well

LIQUID WASTE:

Conventional Septic System

AGENCY REVIEW:

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

STAFF RECOMMENDATION:

Staff's recommendation and the decision of the CDRC was to recommend denial of a variance of Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) and removal of the structures within the FEMA designated Special Flood Hazard Area.

If the decision of the BCC is to approve 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 Department for the gazebo, wall, and chicken coup. (As per Article II, § 2).
2. The retaining wall must be approved and stamped and certified by a licensed Professional Engineer.

EXHIBITS:

1. September 17, 2015, CDRC Meeting Minutes
2. Letter of Request
3. Real Estate Contract
4. Legal Notice
5. Article 3, § 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management)
6. Article 4, § 4.6 (Variance Procedures) of Ordinance No. 2008-10
7. Site Plan
8. Site Photographs
9. Aerial of Site and Surrounding Area
10. Letter of Opposition (LCVA)

V. APPROVAL OF MINUTES: August 20, 2015

Member Lopez moved approval and Member Gray seconded. The motion to approve the minutes passed by unanimous voice vote.

VI. NEW BUSINESS

- A. CDRC CASE # V 15-5060 Homero Arras Variance: Homero Arras, Applicant, requests a variance of Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow an existing illegally constructed retaining wall, gazebo, and a chicken coup within a FEMA Special Flood Hazard Area on a 2.53 acre lot without submitting the required technical analysis. The property is located at 12 N. Paseo de Angel, within the Traditional Historic Community of La Cienega/La Cieneguilla, within Section 27, Township 16 North, Range 8 East (Commission District 3)

Wayne Dalton, Building & Services Supervisor, presented the staff report as follows

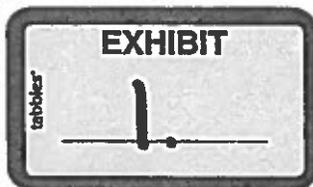
"The Applicant requests a variance of Article III, Section 3.5 of Ordinance No. 2008-10, Flood Damage and Stormwater Management, to allow an illegally constructed 8' retaining wall, 196 square foot gazebo, and 80 square foot chicken coup within a FEMA designated Special Flood Hazard Area.

"On January 12, 2015, the Applicant received a Notice of Violation and a stop work order for unpermitted development on the property as he was constructing the wall, gazebo, and chicken coup. After review of the property and the FEMA Special Flood Hazard Area, it was determined that the gazebo, retaining wall, and chicken coup were illegally constructed in a FEMA designated Special Flood Hazard Area.

"The property consists of 2.53 acres, and approximately 1/3 of the property is located within the FEMA designated Special Flood Hazard Area. There are other buildable areas for the proposed structures outside the FEMA designated Special Flood Hazard Area.

"The Applicant states that he constructed the block wall because people are entering his property through the drainage with motorized vehicles and horses and he incorporated a gazebo and chicken coup into the design.

"Article III, Section 3.5 of Ordinance No. 2008-10 states that: corrals, fences, and barns and other accessory structures are allowed provided that a detailed technical drainage analysis is performed by a certified licensed engineer, and the structure is not habitable, designed to have low flood damage, offer minimum resistance to flow of floodwaters, and anchored to prevent floatation. Placement of walls,



fences, and structures in the FEMA designated Special Flood Hazard Area will impede flows and may cause the base flood elevation to rise and cause upstream or downstream flooding.

"The Applicant states that he does not want to provide a detailed technical drainage analysis prepared by a certified licensed engineer as the cost would be too much. Therefore he is requesting a variance.

"A technical drainage analysis is required for any structure that is placed within the FEMA designated flood hazard area. The federal requirements state that the structures to be placed within these areas are to not allow a one-foot of rise in FEMA designated Special Flood Hazard Areas. Federal guidelines also state that variances for development shall not be allowed if there is a rise in the Base Flood Elevation."

Mr. Dalton said staff recommends denial of a variance of Article III, Section 3.5 of Ordinance No. 2008-10 and removal of the structures within the FEMA designated Special Flood Hazard Area. 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 Department for the gazebo, wall, and chicken coup. (As per Article II, § 2)
2. The retaining wall must be approved and stamped and certified by a licensed Professional Engineer.

Chair Katz pointed out the large bluff appeared behind the wall and questioned whether the wall would increase flood damage. Ms. Lucero said in addition to flooding, it could cause erosion on the bluff side of the wall. She said it could displace some of the water and increase velocity causing damage downstream.

Duly sworn, Homero Arras, applicant, appeared with Alejandra Seluja translating for him. Ms. Seluja provided the following information from Mr. Arras' testimony: He built the wall because people, horses and motorized vehicles were coming onto his property. The wall protected his chickens. He has 20 years in the construction industry and the wall he built has a solid foundation. The wall has provided him greater privacy and motorized vehicles are not invading his land. Since the wall is already built, he did not see the need for the engineer and he is not willing to take it down. He is here asking the CDRC if he can keep his wall.

Member Anaya asked the applicant whether he had photos of the footings, rebar, etc. Mr. Arras said he does not. He offered that he had receipts itemizing the materials he purchased. Mr. Arras said he does everything related to construction and identified that the backhoe was his for his private use.

In response to questions, Mr. Arras indicated through the interpreter that he recognized there was an arroyo but was unaware that it was considered a flood zone. He

was not made aware of the FEMA situation when he purchased the property and the legal papers were all in English.

There was no one present in the public to speak on this issue and the public hearing was closed.

Member Anaya moved to support staff recommendation and deny the variance on CDRC Case V 15-5060. Member Lopez seconded. Initially, the motion tied and then passed by majority [3-2] vote with Chair Katz voting. Members Lopez, Anaya and Katz voted for the motion to deny and Member Gonzales and Gray voted against.

Staff confirmed that the applicant was made aware of the issues in Spanish. Ms. Lucero said there are two members of Land Use staff with strong Spanish language skills and the applicant had the opportunity to meet with those staff members several times

- B. CDRC CASE # Z/P&FDP 14-5200 Spotlight RV Park Master Plan/ Preliminary/Final Development Plan: Rick Anaya, Applicant, requests Master Plan, Preliminary and Final Development Plan approval under Large Scale Residential to allow an RV park consisting of 54 RV spaces, 20 horse stalls, public bathroom/shower facilities and an existing residence on 11.57 acres. The property is located at 16 Ella Dora Road, within Section 31, Township 10 North, Range 9 East (Commission District 3)
[Exhibit 1: Utilities Revised Memorandum dated 9/15/15]

John Michael Salazar, case manager, presented the staff report as follows:

"Large Scale Residential Uses are allowed anywhere in the County provided the requirements of the Code are met. The Applicant states that the proposed RV park will be designated as a transit park as opposed to a destination park. Transit parks typically have guests who stay no longer than three days, as a quick stop before their final destination. Each of the proposed 54 RV spaces are to be designed to provide access to water, power and sewage for RV owners along with a barbecue grill and a picnic table. Each space will be constructed using base course material and each space will be landscaped with one evergreen tree.

"The Applicant is proposing to develop the proposed RV park in three phases. The first phase will consist of design and building the water, fire protection sewage system with the appropriate connections for water and sewer for 21 RV spaces on the western end of the development. The existing residence will be converted into living quarters with an attached office for the park manager. The bathroom and laundry facilities along with four horse corals and four tack sheds would be constructed in this first phase as well. The Applicant is estimating this phase to be completed within 12 months from permit issuance.

"Phase two will consist of building 18 more RV spaces with water and power connections along with 4 more horse corrals and 4 tack sheds. This phase is estimated to be completed within 12 months as well. Phase three will consist of the construction of the final 15 RV spaces with water and power connections along with construction of the remaining horse stalls and tack sheds. This phase is estimated to be constructed within 12 months with a total estimated time of three years to complete the entire development."

Mr. Salazar stated that staff reviewed this application and has found the following facts support Staff's inability to fully recommend approval of the Application to the County Development Review Committee: the submittal meets all requirements for Article V, § 5, Master Plan Procedures; however, the submittal does not meet the requirements of Article V, § 7, Development Plan Requirements, as the Application lacks an accurate water budget, proof of water availability, Environment Department approval for a discharge permit, the design of a community liquid waste system, the design of a community water system, drainage, grading and erosion control plans, cut sheets detailing the proposed lighting, and signs exceeding the amount allowed by Code.

Staff at this time cannot recommend approval for Preliminary and Final Development Plan, stated Mr. Salazar. He said staff can support the master plan and he requested two motions from the CDRC, one regarding the master plan and the second regarding the preliminary and final development plan.

He indicated that staff recommends Master Plan approval with the following conditions:

1. The Applicant shall address all redline comments prior to recordation of the Master Plan.
2. The Applicant shall submit an approved access permit from NMDOT prior to recordation of the Master Plan.

Mr. Salazar stated that staff recommends denial of the Preliminary and Final Development Plan; however, should the CDRC grant approval for Preliminary and Final Development Plan, Staff recommends the imposition of 12 conditions.

Mr. Salazar confirmed that the applicant will utilize an onsite well to the project. A request for the transfer of water rights has not occurred and there is no opinion from the OSE as they have not received any materials. He referred to the County Utilities' memo.

Ms. Lucero said the applicant will be required to establish a community water system for the development.

Duly sworn, Mark Lopez, 5 Jay's Lane, Santa Fe, agent for applicant Rick Anaya and stood for questions. Chair Katz noted that staff recommends against approval of the preliminary and final plan until water-related issues are resolved. Mr. Lopez said the applicant was aware of that recommendation.

Duly sworn, Sandra and Emilio Olivias, appeared in opposition of the request. Ms. Olivias said she lives 300 yards east of the proposed site. The area is residential and

they have lived there over 20 years. She expressed concern about the water table and noted there was livestock in the area.

Ms. Olivias said 54 RV spaces and 20 horse stalls on 11 acres was dense. There is a building on the property and this would threaten the rural characteristic of the area.

Mr. Olivias noted that the applicant has already subdivided the property and that began in 2012. He pointed out 54 trailers with two persons per trailer and the potential for 20 horses caused great concern for them.

There were no other speakers and Chair Katz closed the public hearing.

Chair Katz reminded the CDRC that staff has requested two motions: one dealing with the master plan and the second, the preliminary and final plat.

Member Anaya noted that the applicant states within the application that he will be purchasing water from Sam King. The Kings have a tremendous amount of water rights within the Estancia Valley, stated Member Anaya.

Chair Katz appreciated the potential for the water rights; however, the actual purchase of rights has not occurred. He further noted that according to the test results of the onsite well, it cannot produce adequate water for the development.

Member Lopez said he too would be more comfortable moving forward with this application if the water rights were purchased.

Member Gonzales moved to deny the entire application – preliminary and final development plan. Member Gray seconded. The motion passed by unanimous voice vote.

Recognizing staff requested two motions, Chair Katz requested separate action regarding the master plan zoning.

Member Gonzales moved to deny the master plan zoning. Member Lopez seconded. The motion passed by majority [3-1] with Member Gray voting against.

~~C. CDRC CASE # Z/V/S 10-5363 St. Francis South Master Plan Amendment and Variance. Vegas Verdes, LLC, Applicant, JenkinsGavin Design and Development Inc., Agents, request a Master Plan Amendment to establish the maximum allowable residential density of 250 dwelling units and 760,000 square feet of non-residential development on 68.94. In order to obtain the density requested the Applicants are requesting a variance of Article III, Section 10 (Lot Size/Density Requirements) of the Santa Fe County Land Development Code, Ordinance No. 1996-10 (Code). The property is located on Rabbit Road, via St. Francis Drive, within Section 11, Township 16 North, Range 9 East (Commission District 4) [Exhibit 2: Letter from Whaley & MacGregor opposing the request; Exhibit 3: Developer provided map of the site, master plan map, lot typical information, and SGMP designation]~~

This letter is designed to get permission to have my retain wall. The purpose by the fact that I built is because people used as a fun area. For example they used with motorcycles, horses, etc, in it was destroying. Is a water lease that is connected with the stream. The use of this fence is to expand and use it as a soil retainer. As well as allowing me to use it as a place to have my chickens. I also have placed a small 14'x14' Gazebo for my horses in the arroyo.

Homero Arroyo

EXHIBIT

2.

Prepared By and Return to:

Fidelity National Title of New Mexico, Inc
300 Paseo De Peratta, Suite 101
Santa Fe, NM 87501

GF# FT000154943-NM21

WARRANTY DEED

JK2, Inc., a New Mexico Corporation

for consideration paid, grant to

Homero Arras, an unmarried man

whose address is 705 E. Alameda Unit 7, Santa Fe, NM 87501 the following described real estate in Santa Fe County, New Mexico:

Lot 1, Block 2 of Vallecita de Gracia Subdivision, as shown on plat of survey filed on January 14, 2011 in Plat Book 726, Page 021-025, as Instrument No. 1623646, records of Santa Fe County, New Mexico.

with warranty covenants.

SUBJECT TO: Patent, reservations, restrictions, and easements of record and to taxes for the year 2014, and subsequent years.

Witness our hands and seals this 5th day of March, 2014

JK2, Inc., a New Mexico Corporation

BY: *James W. Brown*
James W. Brown, Director/President

ACKNOWLEDGEMENT

STATE OF NEW MEXICO

COUNTY OF Bernalillo

This instrument was acknowledged before me this 5th day of March, 2014 by James W. Brown, Director/President on behalf of JK2, Inc., a New Mexico, a New Mexico Corporation

My Commission Expires:

(Seal)

Teresa C. Jardis
Notary Public



OFFICIAL SEAL
TERESA C. JARDIS
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 2-2-18



SANTA FE NEW MEXICAN

Payment Receipt

Monday, August 24, 2015

Transaction Type: Payment

Ad Number: 0000137064

Apply to Current Order: Yes

Payment Method: Credit Card

Bad Debt: -

Credit Card Number: xxxxxxxxxxxxxx0463 - Visa

Credit Card Expire Date: October 2015

Payment Amount: \$89.68

Amount Due: \$0.00

Reference Number:

Charge to Company: The New Mexican, Inc.

Category: Classified

Credit to Transaction Number:

Invoice Text:

Invoice Notes:

Customer Type: Voluntary

Customer Category:

Customer Status: Active

Customer Group: .Default

Customer Trade:

Account Number: 23314

Phone Number: 5056602707

Company / Individual: Individual

Customer Name: ARRAS

HOMERO

Customer Address: 12 N PASEO DE ANGEL

SANTA FE, NM 87507 USA

Check Number:

Routing Number:

EXHIBIT

4.

tabbles

Street, Apt. No., or PO Box No. 2420 SYCAMORE LOOP
 City, State, ZIP+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

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SANTA FE, NM 87507

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Sent to: ERASHIO Y OLIVERA LUIZ SANTS
 Street, Apt. No., or PO Box No. 4 N. PASEO DE ANGEL
 City, State, ZIP+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

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SANTA FE, NM 87507

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Sent to: CARLOS EVAN SANTS
 Street, Apt. No., or PO Box No. 4 N. PASEO DE ANGEL
 City, State, ZIP+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

Street, Apt. No., or PO Box No. 17 N. PASEO DE ANGEL
 City, State, ZIP+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

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FEEDS, NM 87552

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Sent to: CARLOS Y AURA VALDES ARATJO
 Street, Apt. No., or PO Box No. HC 74 BOX 402
 City, State, ZIP+4 FEEDS, N.M. 87552
 PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
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ALBUQUERQUE, NM 87111

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Sent to: J K 2 INC
 Street, Apt. No., or PO Box No. 11741 SKY VALLEY WAY NW
 City, State, ZIP+4 ALBUQUERQUE, NM 87111
 PS Form 3800, August 2006 See Reverse for Instructions

Street, Apt. No., or PO Box No. 125 N. PASEO DE ANGEL
 City, State, ZIP+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

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SANTA FE, NM 87505

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Sent to: RIGOBERTO GUTIERREZ
 Street, Apt. No., or PO Box No. 125 N. PASEO DE ANGEL
 City, State, ZIP+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

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SANTA FE, NM 87501

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Sent to: MARK Y NICHELLE LIMA
 Street, Apt. No., or PO Box No. 13 N. PASEO DE ANGEL
 City, State, ZIP+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

Sent to: CARLOS EVAN SANTS
 Street, Apt. No., or PO Box No. 4 N. PASEO DE ANGEL
 City, State, ZIP+4 SANTA FE, N.M. 87507

Sent to: J K 2 INC
 Street, Apt. No., or PO Box No. 11741 SKY VALLEY WAY NW
 City, State, ZIP+4 ALBUQUERQUE, NM 87111

Sent to: MARK Y NICHELLE LIMA
 Street, Apt. No., or PO Box No. 13 N. PASEO DE ANGEL
 City, State, ZIP+4 SANTA FE, N.M. 87507

REAL ESTATE CONTRACT

THIS CONTRACT IS MADE in triplicate this 7th day of March, 2014, by JK2, Inc., a New Mexico Corporation whose address is 11741 Sky Valley Way NE, Albuquerque, NM 87111 hereinafter called the Seller, and Homero Arras, an unmarried man, whose address is 705 E. Alameda Unit 7, Santa Fe, NM 87501 hereinafter called the Purchaser. Whenever a masculine pronoun is used, it shall also be considered as referring to the female gender and plural pronouns, whichever is proper.

1. SALE: The Seller, in consideration of the promises and agreements herein made by the Purchaser, agrees to sell and convey to the Purchaser the following described real estate, hereinafter called the Property, in the County of Santa Fe and State of New Mexico: (12 N. Paseo de Angel, Santa Fe NM 87507)

Lot 1, Block 2 of Vallecita de Gracia Subdivision, as shown on plat of survey filed on January 14, 2011 in Plat Book 726, Page 021-025, as Instrument No. 1623646, records of Santa Fe County, New Mexico.

Subject To: Patent, reservations, restrictions and easements of record and to taxes for the year 2014 and subsequent years.

The Seller agrees, upon completion of all terms and conditions of this contract by the Purchaser, that the Purchaser shall then receive the Warranty Deed and related documents placed in escrow with this Contract

2 PRICE AND PAYMENT: The Purchaser agrees to buy the above-described Property and to pay Seller therefore the total sum of Ninety Thousand and no/100 (\$90,000.00), payable as follows: Fourteen Thousand Five Hundred Dollars (\$14,500.00), cash down payment, the receipt of which is hereby acknowledged, and the balance of Seventy Five Thousand Five Hundred Dollars and no/100 (\$75,500.00), payable as follows:

Purchaser shall pay the Seller the principal sum of (\$75,500.00) in monthly principal and interest payments of (\$450.45), at the rate of (6.0%), amortized over (30) years from said contract date. The first monthly payment shall be due on the 7th day of June 2014 and on the 7th day of each month thereafter.

The interest for March and April, shall be deferred and collected at the time of the full payoff of said contract.

Balloon payment for the remaining principal balance and unpaid interest shall be due within (36) months from said contract date.

The Buyer will receive a 5% discount on the principal balance if it is paid in full before the 24th month of said contract date.

There shall be a grace period of (10) days after due date granted to the Purchaser. If payment is not received after the (10) consecutive day: a late fee of (\$40.00) shall be assessed.

There shall be no prepayment penalty.

Buyer shall be responsible for payment of Property Taxes and shall provide proof of payment to the Seller annually.

The payments as above provided shall be paid to the escrow agent and continue until the entire unpaid balance of the purchase price (exclusive of any prior lien or obligation being assumed) plus any accrued interest due to the seller is fully paid. Said unpaid balance shall bear interest at the rate of (6.0%) per annum from the effective date of April 7, 2014.

APPLICATION OF PAYMENTS: Check and initial only one of the following two paragraphs.

(a) Payments, excepting prepayments, shall be applied to regularly scheduled installments in the Initials order in which the same were due and shall be credited as though, the payments were made on their respective due dates.

(b) Payments shall be applied as of the date of receipt by Escrow Agent first to accrued interest then to principal balance of this Contract.

Initials
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All payments shall be assumed to be regular payments, and not prepayments, unless otherwise specified by Purchaser in writing at the time of delivering such payments to Escrow Agent. Unless otherwise provided, Purchaser may prepay the unpaid balance in whole or in part at any time. Any prepayment shall be credited first to accrued interest, then to the principal balance of this Contract exclusive of assumed liens or obligations, then to assumed liens or obligations as described in this paragraph. Notwithstanding any prepayments, Purchaser shall make the next regularly scheduled payments

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Should Purchaser fail to make any of the payments or perform any other obligations required hereunder, including the payment of any assumed obligation, and if Seller's attorney makes written demand therefore pursuant to Paragraph 5 below, the Purchaser shall pay within the time allowed the additional sum of \$250.00, unless otherwise stated, for Seller's attorney's fees.

The following lien(s) or obligation(s) is currently outstanding on the property:
Type of Lien or Obligation Holder Loan Number Recording Data: Book & Page

NONE

IF ANY LIENS(S) OR OBLIGATION(S) IS/ARE CURRENTLY OUTSTANDING ON THE PROPERTY, CHECK AND INITIAL ONLY ONE OF THE FOLLOWING THREE PARAGRAPHS. ONLY THAT PARAGRAPH SHALL APPLY.

(a) Purchaser assumes and agrees to pay the above-mentioned prior lien(s) or obligation(s) in accordance with its/their terms. Purchaser shall make the installment payments on the prior lien(s) or obligation(s), together with installment payments on this Contract, to the Escrow Agent named below, who will remit the payments to the person or company to whom they are payable. Purchaser shall advise the Escrow Agent of any change in the amount of the payment due on any assumed obligation(s). Failure to make such payments at the time required shall be a default under this Contract. At such time as the unpaid balance of the purchase price due the seller is fully paid, this Escrow shall terminate and the purchaser shall thereafter make the installment payments on said prior lien(s) or obligation(s) directly to the Seller, person(s) or company(ies) to whom they are payable.

(b) Purchaser assumes and agrees to pay the above-mentioned prior lien(s) or obligation(s) in accordance with its/their terms. Purchaser shall make the installment payments on the prior lien(s) or obligation(s) directly to the person or company to whom payable. Failure to make such payments at the time required shall be a default under this Contract.

(c) Purchaser does not assume or agree to pay the above described lien(s) or obligation(s). All payments due on such lien(s) or obligation(s) shall be remitted by the Escrow Agent to the person or company to whom they are payable out of the payments made by Purchaser. If the payments due from Purchaser are insufficient to satisfy the amounts due to be made on the above-described lien(s) or obligation(s), Seller shall pay Escrow Agent such additional funds as are necessary to keep such lien(s) or obligation(s) current.

Should Purchaser fail to pay any such installment payments prior to the same becoming delinquent, Seller may pay the same for the protection of the Property and his interest therein. Payment by Seller shall not be deemed a waiver of Purchaser's default, and the amount so paid by Seller shall be immediately due and payable to Seller and shall bear interest until paid at the same rate as provided in Paragraph 2 above.

3. PURCHASER TO PAY INSURANCE, TAXES AND PAVING LIENS, AND SELLER'S RIGHTS:

(a) Insurance. The Purchaser agrees to keep the insurable improvements upon the Property insured against the hazards covered by fire and extended coverage insurance, with an insurance company satisfactory to Seller in the sum of not less than SVacant Land, for the benefit of Purchaser and Seller as their interests may appear, and furnish a copy of the insurance policy or certificate of the insurance policy to Seller annually prior to expiration of existing insurance.

(b) Taxes. Unless otherwise stated herein, the property taxes for the current year have been divided and prorated between Seller and Purchaser as of the date of this Contract, and the Purchaser is responsible for and will pay the taxes and assessments of every kind hereafter billed.

Purchaser will have the Property assessed for taxation in Purchaser's name. Upon request by Seller, Purchaser will send copies of the paid tax receipts each year to Seller.

(c) Paving and Other Improvement Liens and Standby Charges. Unless otherwise stated herein, the Purchaser assumes any paving and/or other improvement lien and/or stand by charges now assessed against the Property and agrees to pay all installments of principal and interest thereon that hereafter become due.

(d) Seller's Rights. Should the Purchaser fail to pay insurance premiums and assessments, paving liens, improvement liens or standby charges, or other such matters prior to the same becoming delinquent, Seller may pay the same (but is not obligated to do so) for protection of the Property and his interest therein. Payment of such charges shall not be deemed a waiver of any default of Purchaser for failure to pay such charges, and such amounts as have been so paid shall be immediately due and payable to Seller, and shall bear interest until paid at the same rate as provided in Paragraph 2 above.

4. PURCHASER'S RIGHT, SELLER'S RETENTION OF INTEREST:

Purchaser shall be entitled to take possession of the Property and retain possession unless and until Purchaser's interests under this Contract shall be terminated by Seller as provided in Paragraph 5 below. Legal title to the Property shall remain in Seller's name until this contract has been fully performed upon the part of Purchaser and the Warranty Deed delivered as specified.

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5. SELLER'S RIGHTS IF PURCHASER DEFAULTS:

(a) **Default Notice.** Time is of the essence in this contract, meaning that the parties shall perform their respective obligations within the times stated. If Purchaser fails to make any of the payments required in Paragraph 2, herein, at the times specified, or fails or refuses to maintain insurance or to pay taxes, assessments or other charges against the Property, or fails or refuses to repay any sums advanced by the Seller under the provisions of Paragraph 3 above, the Seller may make written demand upon the Purchaser, with such notice to specify the default and the curative action required, at his address as follows **705 E. Alameda Unit 7, Santa Fe, NM 87501** or at such other address that Purchaser may designate by a notarized statement delivered to the Seller, which change of address will be effective on the seventh (7th) calendar day after receipt by the Seller.

(b) **Manner of Giving Default Notice.** Notice in writing shall be given by certified mail, return receipt requested, addressed to the Purchaser at the effective address for Purchaser as provided in Paragraph 5(a), with a copy to Escrow Agent. Purchaser expressly acknowledges that notice to him by mail, in the manner above specified, is sufficient for all purposes, regardless of whether he actually receives such notice.

(c) **Purchaser's Failure to Cure Default Results in Termination of Contract or Acceleration of Entire Unpaid Balance.** If the Purchaser fails or neglects to cure any default within thirty (30) days after the date Seller's default notice is mailed, then the Seller may, at his option either declare the whole amount remaining unpaid to be then due and proceed to enforce payment of the entire remaining unpaid balance, plus any accrued interest, together with reasonable attorney's fees, or he may terminate Purchaser's rights to the Property and retain all sums paid as liquidated damages to that date for the use of the property, and all rights of Purchaser in the Property shall thereupon end. If the final day for curing the default shall fall on a Saturday, Sunday, or non-business day of the Seller, then the period for curing the default shall extend to the close of business on the next regular business day of the Seller.

Acceptance by Seller of any payment tendered shall not be deemed a waiver by Seller, or extension of the time for cure, of any other default under this Contract. In the event of termination, Purchaser hereby waives any and all rights and claims for reimbursement for improvements he may have upon the Property.

(d) **Affidavit of Uncured Default and Election of Termination.** A recordable affidavit made by Seller, his agent, or Escrow Agent, identifying the parties, stating the legal description of the Property or the recording data of this Contract and stating the date that notice was duly given as provided above, that the specified default has not been cured within the time allowed and that the Seller has elected to terminate, and delivered to the Escrow Agent shall be conclusive proof for the Escrow Agent and any subsequent Purchaser or encumbrancer for value of such uncured default and election of termination.

(e) **Purchaser Becomes Tenant.** Upon termination, Purchaser has no continuing right to possession. If Purchaser remains in possession of the Property after this Contract has been terminated as above provided, Purchaser shall then become a tenant at will, for a rental amount equivalent to the installment payment theretofore required as monthly payments under this Contract, with the first such rental payment due immediately, in advance, and such tenancy being subject to termination by other party upon thirty (30) days separate prior written notice. Seller's acceptance of such rental payment(s) shall not be deemed as any waiver of his rights, nor shall it constitute any manner of estoppel.

(f) **Legal Right to Evict Purchaser.** Forcible entry and detainer proceedings, in addition to any other appropriate legal remedies, may be utilized by the Seller if necessary to obtain possession of the Property following termination of this Contract and termination of Purchaser's continued tenancy thereafter. If such proceedings are filed, Purchaser shall be liable for Seller's reasonable attorney's fees plus the legal costs of such action.

6. TITLE INSURANCE OR ABSTRACT:

Unless otherwise provided herein, Seller is delivering a Contract Purchaser's Title Insurance Policy to Purchaser or Abstract of Title to Escrow Agent at the time this Contract is made, showing merchantable title to the Property as of the date of this Contract, subject to the matters referred to in this Contract, and Seller is not obligated to provide any other or further evidence of title.

7. PURCHASER'S RIGHT TO SELL:

(A) **First Provision:** Purchaser shall be entitled to sell, assign, convey or encumber his entire interest in this Contract (but not a portion thereof) and the Property to any person or entity, hereinafter called Assignee, and may retain a security interest therein, without obtaining the consent or approval of the Seller. The Purchaser shall not, however, be released from his obligations hereunder by any such sale, assignment, conveyance or encumbrance. In the event Purchaser does sell, assign, convey or encumber said interest, then Purchaser, his Assignee, or any subsequent Assignee shall deliver a copy of such written sale, assignment, conveyance or encumbrance document to Escrow Agent.

Such sale, assignment, conveyance or encumbrance document shall specify the address of the Assignee and upon receipt of such document by the Escrow Agent, Seller shall only be required to send notice of default to the most recent Assignee who has given notice of such sale or assignment and his address to the Escrow Agent as provided herein. If such document is not received by the Escrow Agent, any notice of default need be sent only to the last person or entity and address for which written notice has been provided to the Escrow Agent as provided herein.

(B) **Special Alternative Provision:**

CAUTION: THE FOLLOWING PROVISION SEVERELY RESTRICTS THE RIGHT OF PURCHASER TO SELL, ASSIGN, CONVEY OR ENCUMBER THIS CONTRACT AND THE PROPERTY. If the parties wish to invoke this provision, they should check the box as indicated and each initial as provided. If the Special Alternative Provision is elected, the First Provision does not apply.

XX Purchaser shall not be entitled, directly or indirectly, to sell, assign, convey or encumber all or any portion of the Purchaser's interest in this Contract or in the Property without first obtaining the written consent of Seller, and Seller shall not be under any obligation of any kind to give such consent. In the event that Purchaser shall, directly or indirectly, sell, assign, convey or encumber or contract to sell, assign, convey or encumber, directly or indirectly, all or any portion of the Purchaser's interest in this Contract or in the Property without the consent of Seller, it shall be an event of default subject to the rights of Seller in Paragraph 5 herein.

CAUTION: If the Property is subject to any prior mortgage(s), Deed(s) of Trust or Real Estate Contract(s), then the provisions thereof should be examined carefully for any conflict with the above clause.

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8. **BINDING EFFECT:** This Contract shall extend to and be obligatory upon the heirs, executors, administrators, personal representatives, successors and assigns of the parties to this Contract.

9. **APPOINTMENT OF AND INSTRUCTIONS TO ESCROW AGENT:**

The parties hereby appoint as Escrow Agent:
Investor Escrow
1442 S. St. Francis Drive
Suite C
Santa Fe, NM 87505
(505)471-6100

The following papers are herewith placed in with Seller:

- 1. Signed Original recorded Contract.
- 2. Original Warranty Deed signed by Seller.
- 3. Original Special Warranty Deed signed by Purchaser.

Add following information, if applicable:

Name and address of mortgagee:

Name and address of Escrow Agent under any other contract on the Property:

N/A

(a) The fee(s) of the Escrow Agent shall be paid as follows: Buyer.
If such fee(s) is/are paid wholly or in part by Purchaser, such amount shall be in addition to the amounts due from Purchaser as provided in Paragraph 2, herein. The Escrow Agent is instructed to accept all monies paid in accordance with this Contract and remit the money received (less applicable escrow fees) as follows: Seller

(b) All payments shall be deemed provisionally accepted when tendered, subject to determination by the Escrow Agent of the correct amount and its timeliness.

(c) Upon full payment of all amounts due and owing to the Seller under this Contract by the Purchaser, the Escrow Agent is directed to release and deliver the escrow documents to the Purchaser.

(d) If the Seller or his agent delivers an Affidavit of Uncured Default and Election of Termination (as described in Paragraph 5 above) to the Escrow Agent, then the Escrow Agent shall release and deliver the escrow documents to the Seller. The Escrow Agent shall be entitled to rely on such Affidavit as conclusive proof of termination.

(e) The Seller is instructed that after each and every written demand is mailed to the Purchaser, pursuant to Paragraph 5 above, and a copy thereof is furnished to the Escrow Agent, not to accept less than the full amount of the sum stated as due in the written demand, plus the additional \$200.00, unless otherwise stated, for Seller's attorney's fees.

(f) The Escrow Agent is entitled to charge its standard fees current as of the date the service is rendered, but all changes shall become effective only after sixty (60) days written notice to the party or parties paying the fee of the Escrow Agent.

(g) Seller and Purchaser will each indemnify and save harmless the Escrow Agent against all costs, damages, attorney's fees, expenses and liabilities, which it may incur or sustain in connection with this Contract, including any interpleader or declaratory judgement action brought by Escrow Agent, but excepting failure of the Escrow Agent to comply with this Paragraph 9.

(h) The Escrow Agent shall have the right to resign as Escrow Agent under this Contract by giving the parties sixty (60) days written notice of intent to resign. The parties shall thereupon mutually select a successor Escrow Agent and give written notice to the Escrow Agent of such selection. If the parties fail, for any reason, to mutually select a successor Escrow Agent and give Escrow Agent written notice of such selection within sixty (60) days after mailing by the Escrow Agent of notice of intent to resign as aforesaid, then the Escrow Agent may select the successor Escrow Agent. Delivery by the Escrow Agent to the successor Escrow Agent of all documents and funds, after deducting therefrom its charges and expenses, shall relieve the Escrow Agent of all liability and responsibility for acts occurring after the date of the assignment in connection with this Contract.

10. **SEVERABILITY CLAUSE:** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of the remainder of this Contract.

The parties have signed and acknowledged this Contract effective as of the date stated at the beginning of this Contract.

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CAUTION: YOU SHOULD READ THIS ENTIRE CONTRACT BEFORE SIGNING. IF YOU DO NOT UNDERSTAND THIS CONTRACT, YOU SHOULD CONSULT YOUR ATTORNEY.

C-RECORDED 1701583 03/07/14 SMC

James W. Brown
(Seller) JK2, Inc. a New Mexico Corporation
By: James W. Brown, Director/President

Homerb Arras
(Purchaser) Homerb Arras

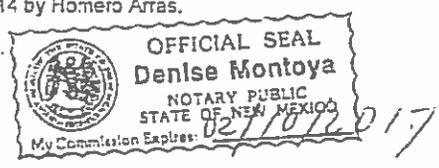
(Purchaser)

ACKNOWLEDGMENT

STATE OF New Mexico)
)ss
COUNTY OF Santa Fe)

This instrument was acknowledged before me on 7th day of March, 2014 by Homerb Arras.

My commission expires: April 17/14
Notary Public



STATE OF New Mexico)
COUNTY OF _____)ss

This instrument was acknowledged before me on _____ day of _____ by _____

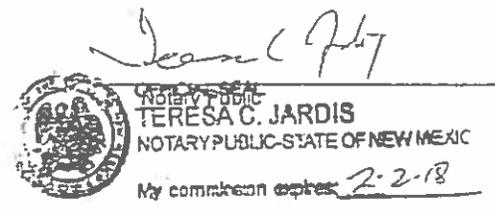
My commission expires: _____
Notary Public

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO)
)ss
COUNTY OF Santa Fe)

This instrument was acknowledged before me on 5th, day of March, 2014,
by James W. Brown Director/President, on behalf of JK2, Inc., a New Mexico Corporation
(NAME OF OFFICER) (TITLE OF OFFICER) (CORPORATION ACKNOWLEDGING)

My commission expires: _____



STATE OF NEW MEXICO)
)ss
COUNTY OF _____)

This instrument was acknowledged before me on _____ day of _____, 2013,
by _____ (NAME OF OFFICER) _____ (TITLE OF OFFICER) _____ (CORPORATION ACKNOWLEDGING)

a _____
My commission expires: _____
Notary Public

RECEIPT AND ACCEPTANCE BY ESCROW AGENT

The Escrow Agent hereby acknowledges receipt of the following documents in regard to the above-captioned Escrow Contract:

_____ (a) Escrow Set-Up fee in amount of \$ _____	_____ (d) Special Warranty Deed
_____ (b) Signed copy of this Contract	_____ (e) _____
_____ (c) Warranty Deed	_____ (f) _____
	_____ (g) _____
_____ Escrow Agent	_____
By: _____	Date: _____, 2013

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COUNTY OF SANTA FE }
STATE OF NEW MEXICO } ss

REAL ESTATE CONTRACT
PAGES: 6

I Hereby Certify That This Instrument Was Filed for
Record On The 7TH Day Of March, A.D., 2014 at 11:14:39 AM
And Was Duly Recorded as Instrument # 1731583
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

Deputy - PBARAJAS

e. Elevated so that the lowest floor including basement is a minimum of two (2) feet above the base flood elevation.

G. Utility and infrastructure in the floodplain shall be designed and demonstrate that:

- a. New and replacement water supply systems are designed to minimize or eliminate infiltration of flood waters into the system;
- b. New and replacement sanitary sewage systems are designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters;
- c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding;
- d. Placed in accordance with Article VII, Table 7.3 of the Land Use Code as amended.

SECTION 3.5 SPECIAL FLOOD HAZARD AREA PERMITTED USES

A. Development may occur in or adjacent to the SFHA only when it has been demonstrated through a detailed analysis prepared by a qualified professional engineer licensed in the State of New Mexico, that the provisions of Article 3, the standards of Article 4, and the submittals in Article 5, as well as compliance with the criteria for development in SFHA as required in FEMA 44 CFR §60.3 have been met.

B. The following uses can be permitted in the regulatory SFHA (Zone A, Zone AE, Zone AO, Zone D, Zone AH, Zone AR, Zone A1-30) provided that such uses are designed and constructed in compliance with Article 3, § 3.5, a Floodplain Development Permit is obtained as required in Article 3, §3.3 and a detailed technical analysis is performed by a licensed professional engineer pursuant to the criteria established in Article 5, submittals are compliant with the criteria established in tabular format in Article 6, and all local, state and federal criteria governing such facilities or structures are met:

- a. Restoration or enhancement of environmental areas;
- b. Repair and maintenance of existing uses and structures;
- c. Emergency action to mitigate a hazard and measures to remove nuisances or other violations of law;
- d. Planting and tilling of gardens, flower beds, shrubs, trees and other common uses and minor landscaping of land appurtenant to residences;
- e. Repairs, and minor modification of existing single family dwellings;
- f. Cutting of firewood for personal use;
- g. Natural water quality treatment or purification;
- h. Pedestrian, equestrian and bike trails provided signs are clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when flooding is eminent.



- i. Public and private campgrounds provided
 - i. The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when flooding is eminent
 - ii. All service facilities, including but not limited to refuse collection, electrical service, natural gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to two (2) feet above the base flood elevation.
- j. New stormwater pretreatment facilities provided no other feasible located is available;
- k. Cultivation of agricultural land including tilling, construction of minor open ditches and crop irrigation, agricultural production and management;
- l. Sand and gravel extraction operations, provided
 - i. stockpiles associated with these operations are sited outside the SFHA or protected from inundation or erosion by floodwaters
 - ii. crushers, shakers, scales, fuel storage and other equipment are sited outside the SFHA or protected from inundation, floatation, or erosion by floodwater
- m. Parks, golf course greens, bunkers, and driving ranges, soccer and baseball fields, tennis courts and other athletic facilities provided
 - i. signs are clearly posted at all pertinent entrances warning of the flood hazard and the procedures for evacuation when flooding is eminent
 - ii. Parking is provided outside the area subject to inundation and all weather access is available
- n. Corrals, fences, barns and other accessory structures provided
 - i. The structure shall not be used for human habitation.
 - ii. The structure shall be designed to have low flood damage potential
 - iii. The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters
 - iv. The structure shall be firmly anchored to prevent flotation which may result in damage to other structures
 - v. The structure's service facilities such as electrical and heating equipment shall be elevated or floodproofed to at least two (2) feet above the 100-year base flood elevation, per Article 3, §3.12
- o. Wildlife sanctuaries, nature preserves, forest preserves, fishing areas;
- p. Orchards, vineyards and plant nurseries;
- q. Passive open space areas;

- r. Roadways, bridges and other transportation facilities;
- s. Stormwater conveyance facilities;
- t. Functionally dependant uses such as boat launches and docks;
- u. Non-residential commercial and industrial facilities floodproofed in accordance with Article 3, § 3.12, and FEMA 44 CFR, §60.3;
- v. Utility infrastructure, including transmission and distribution systems for water, liquid waste, electricity, fiberoptics, and communication facilities, provided such infrastructure is protected from inundation by or infiltration of floodwaters pursuant to Article 3, §3.4.G of this Ordinance and FEMA 44 CFR §60.3(a)(4), (5), and (6);.
- w. Construction of new dwelling units or placement of manufactured homes on lots created before the effective date of this Ordinance and only when such structures meet the requirements for development in a SFHA outlined in Article 3 § 3.4, and in FEMA 44 CFR § 60.3(c), and when no buildable area outside the floodplain is available on the lot, tract or parcel.

SECTION 3.6 SPECIAL FLOOD HAZARD AREA PROHIBITED USES

A. The following are considered prohibited uses, and will not be permitted in the FEMA regulatory SFHA (Zone A, Zone AE, Zone AO, Zone AH, Zone AR, Zone A1-30, and Zone D) except as described in Article 3, §3.4.B:

- a. Construction or placement of single family residential dwellings, guest houses, factory built or manufactured homes, including basements;
- b. Storage or production of hazardous waste;
- c. Storage of materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
- d. Public or private charter schools, academies, high schools, middle schools, elementary or primary schools and private or public daycare centers;
- e. Critical structures including hospitals, medical centers, convalescent care facilities, police and fire stations unless all alternative locations in Zone X have been considered and rejected;
- f. Landfills, dumps, or transfer stations;
- g. Private liquid waste disposal structures;

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 of 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.

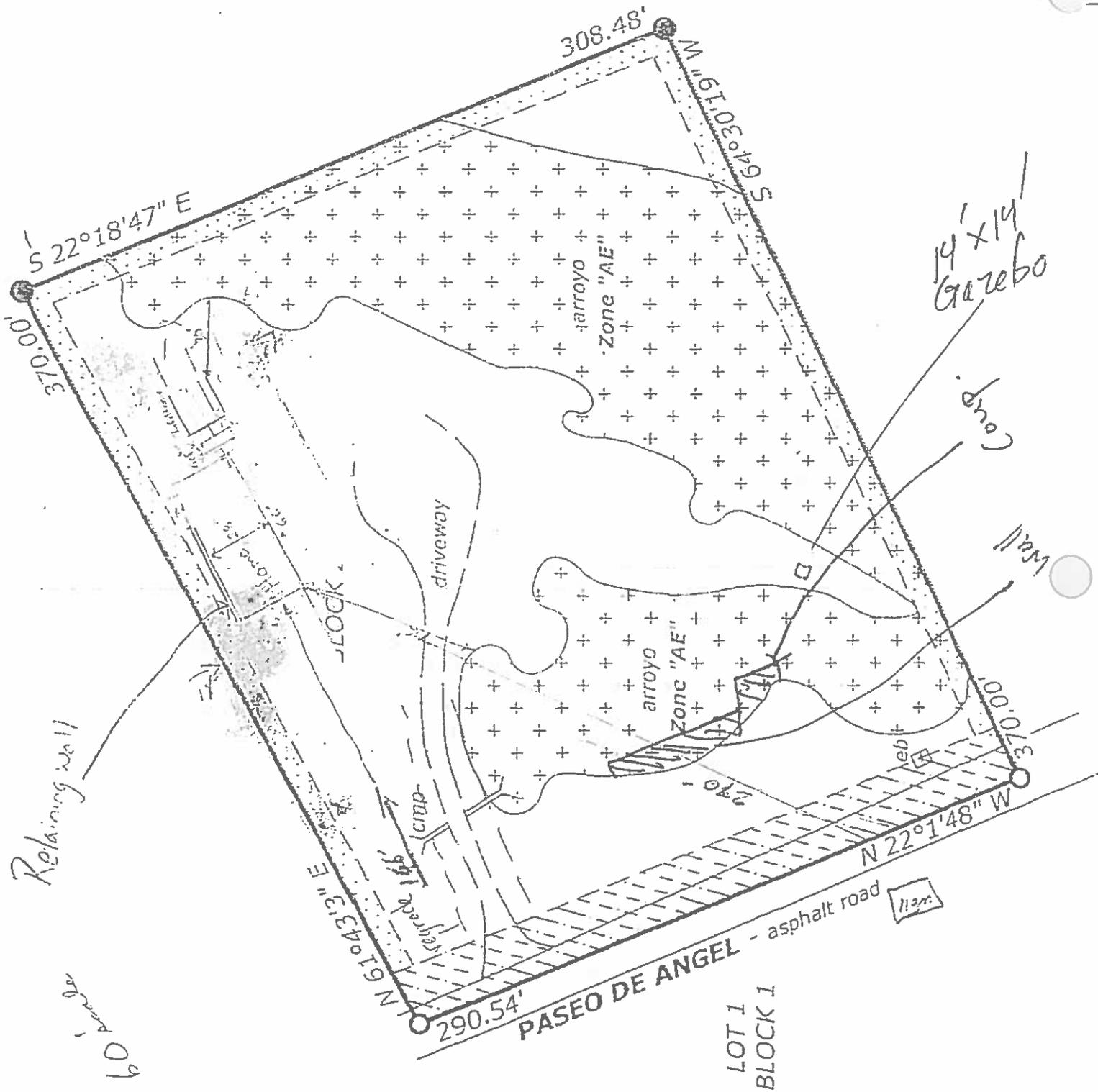
3.4 Height Variance in Airport Zones

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



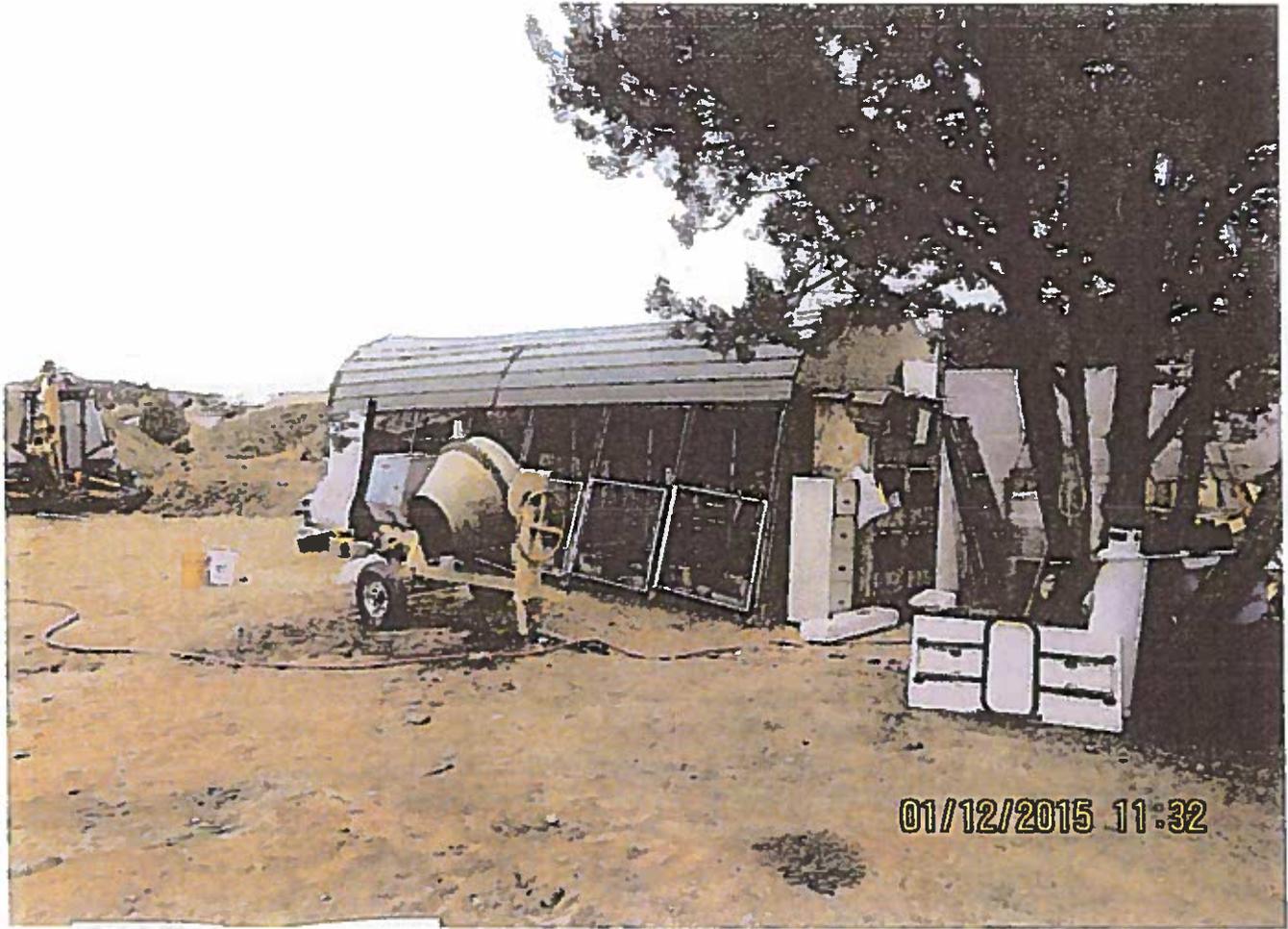
REVISED SITE PLAN

110M EYD

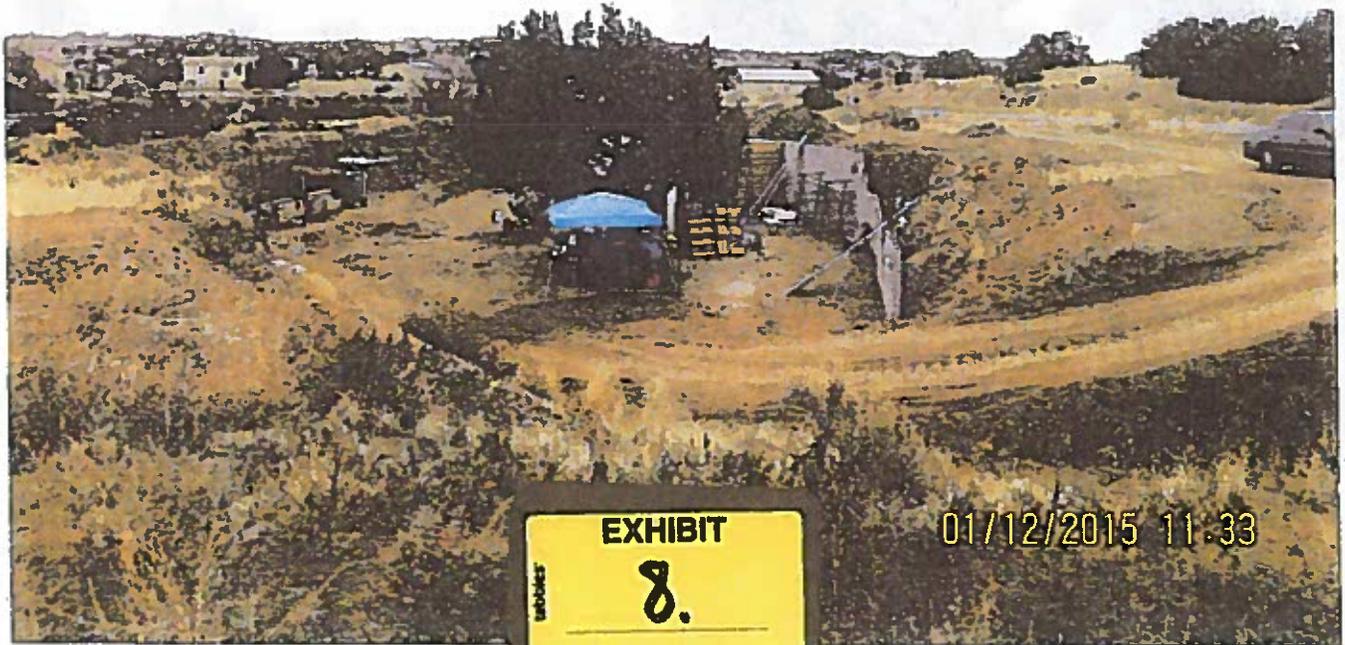


Site Plan

tabbles®
EXHIBIT
7.



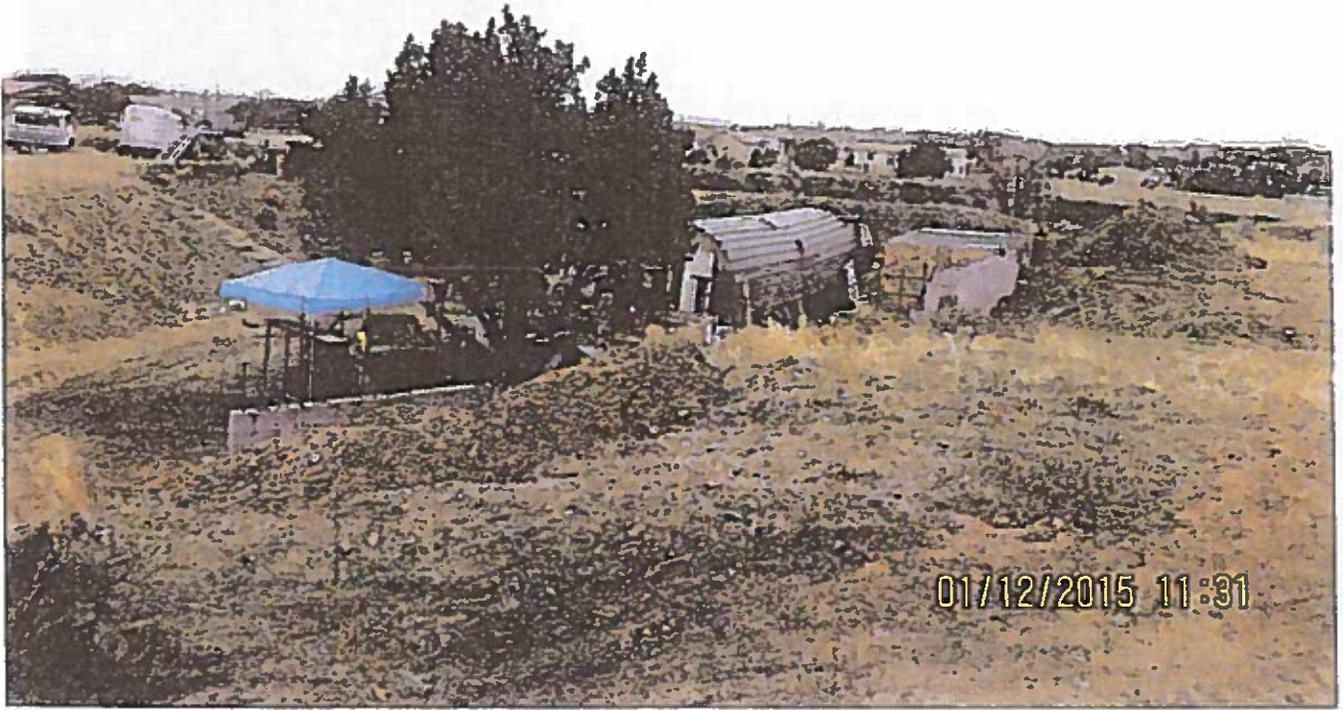
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EXHIBIT

8.

01/12/2015 11:33





- Legend**
- ROADS
 - DRIVEWAYS
 - 0.2 % Annual Chance Flood Hazard
 - 2011 Zone A (No BFE's Determined)
 - 2011 Zone AE
 - 2011 Floodways
 - 2011 Zone AD
 - 2011 Zone D
 - PARCELS

EXHIBIT
9.

1:781
1 inch represents 65,097863 feet

0 15 30 60 90 120
Feet



2014 Imagery
2 FOOT CONTOURS

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.



September 9, 2015

La Cienega Valley Association
PO Box 23554
Santa Fe, New Mexico 87502
Preserving Our Rural Way of Life

July 2, 2015

Penny Ellis-Green, Director
Growth Management Department
Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87501

Re: **Family Transfers**

Mark Silva
5 Pasco de Angel South
Permit – 15-3034

Paul and Esther Arellanes
66 Luna Road
Permit – 15-3036

Variance Request

Homero Arras
12 N Pasco de Angel
Illegal retaining wall, gazebo and
chicken coup in a flood plain.

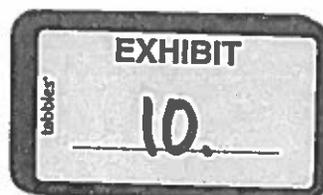
Dear Ms. Ellis-Green,

The La Cienega Valley Association (LCVA) protests the two proposed small lot family transfers, Permit #15-3034 and Permit #15-3036 based on limited water availability and the continuance of creating a subdivision of over 400 homes via lot splits and family transfers. The LCVA respects the rightful and honest use of family transfers but unfortunately all too often family transfers are not used for their intended purpose and instead are created as a source of rental revenue.

La Cienega and La Cieneguilla residents, with the support of the Santa Fe Growth Management Department, need to fully understand that family transfers in an area, with unique and sensitive geological aquifer features, cannot continue. The LCVA will continue our efforts to educate residents on these facts and will continue to work with Santa Fe Public Works Department to implement the La Cienega Watershed conditions.

In regard to these family transfers the LCVA wants to ensure the following:

1. Both property owners meet the 5-year residency requirement
2. Each transfer includes the La Cienega Watershed Conditions
3. The new homes be required to share an existing well
4. That wells for these homes be metered and monitored for usage



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: October 27, 2015

TO: Board of County Commissioners

FROM: John M. Salazar, Development Review Specialist Sr. *JMS*

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

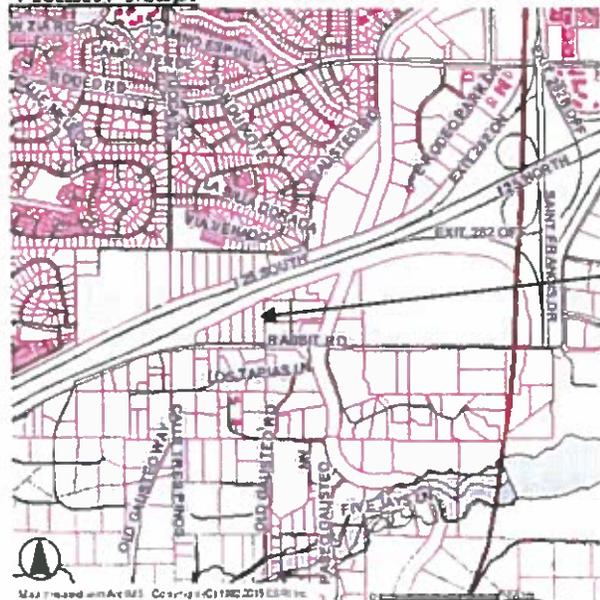
FILE REF.: CDRC CASE # V 15-5140 Vernon DeAguero Variance

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:



Site Location

SUMMARY:

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 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.

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 7)

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.

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.



NBA-5

KX HIBII

ONE

NEW MEXICO REAL ESTATE COMMISSION

ALBERTO ALCOCER

is duly licensed to act as a
Real Estate Qualifying Broker

CLEARREALTY, 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

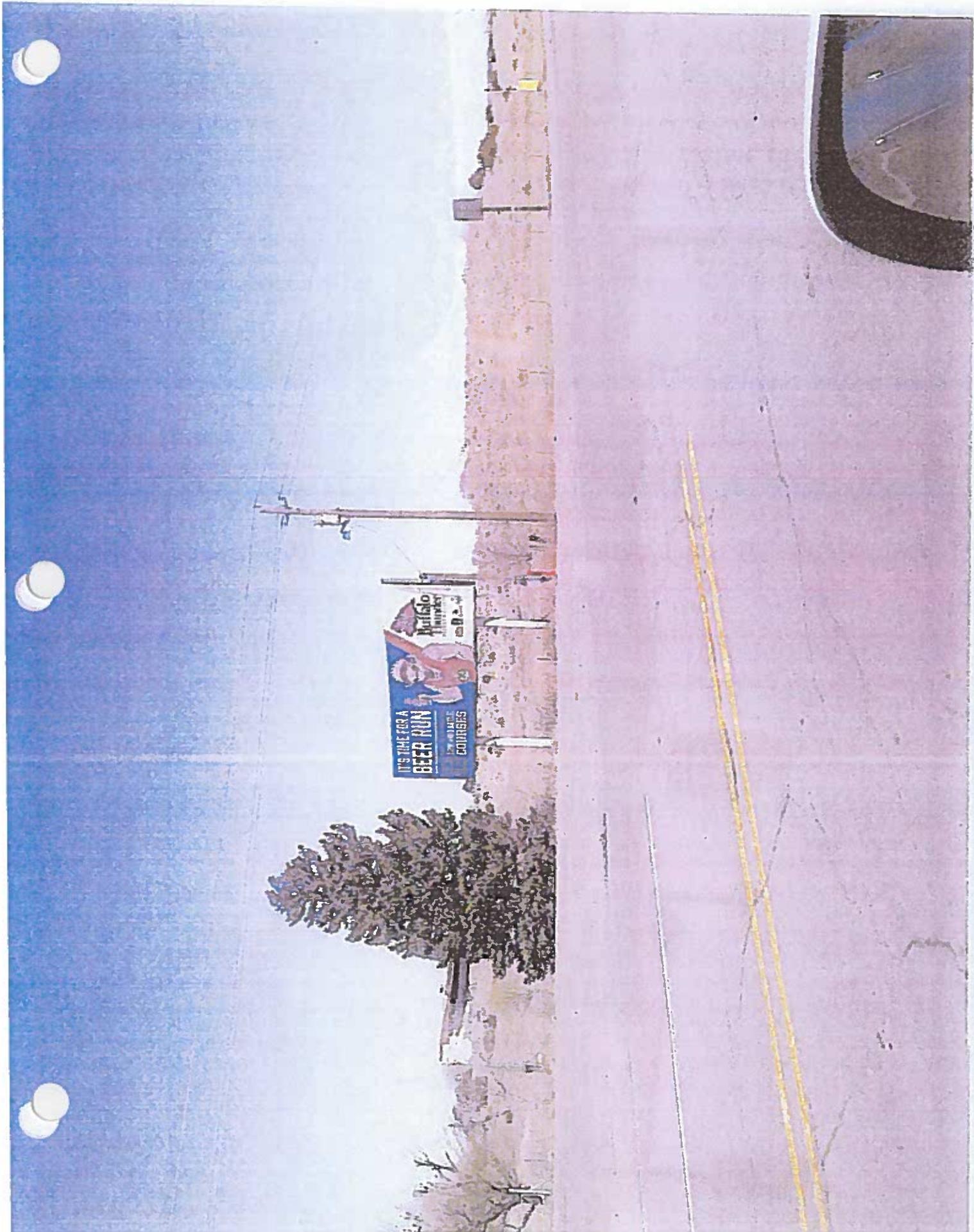
Expires: 12/31/2015

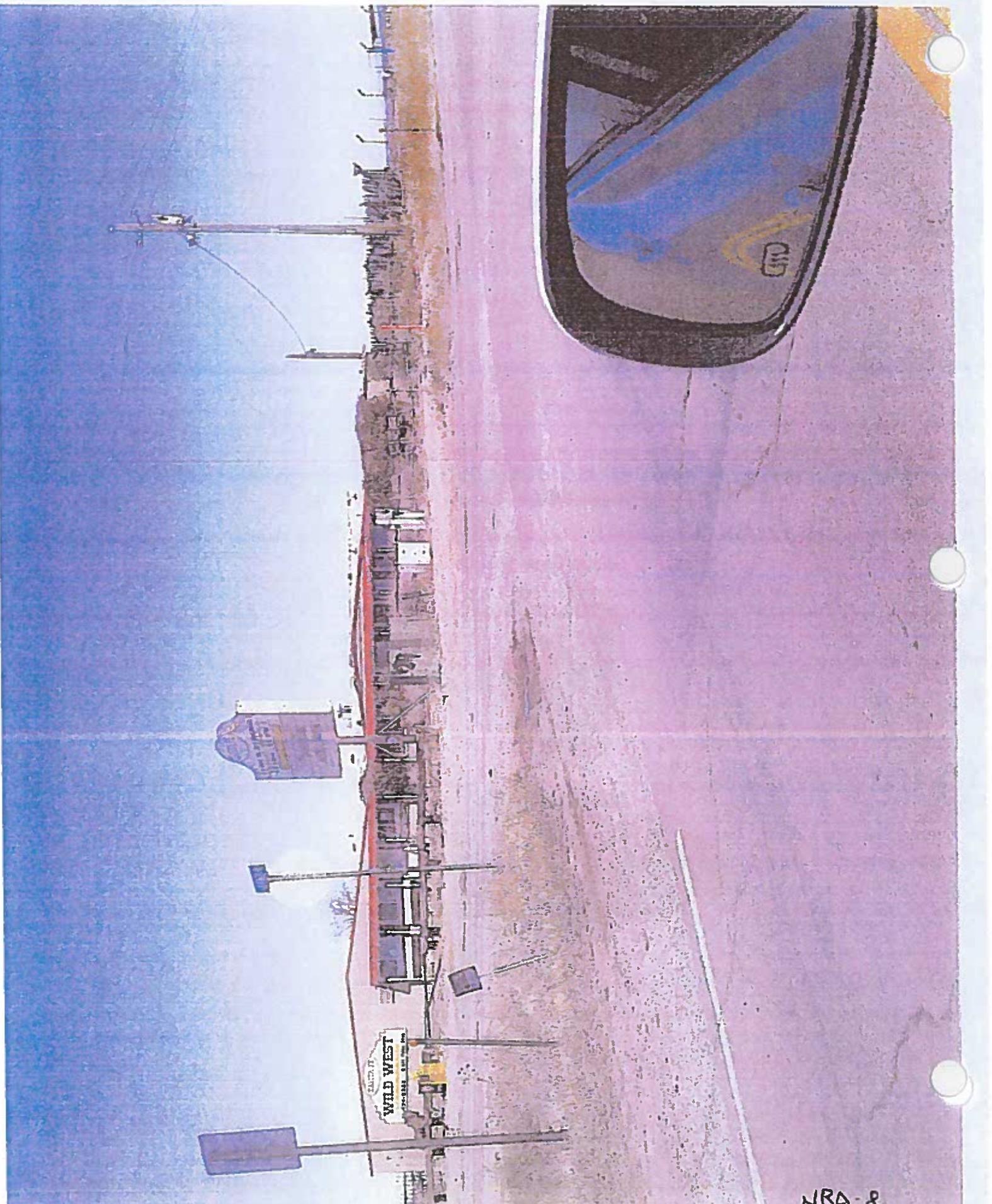
THE STATE OF NEW MEXICO

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

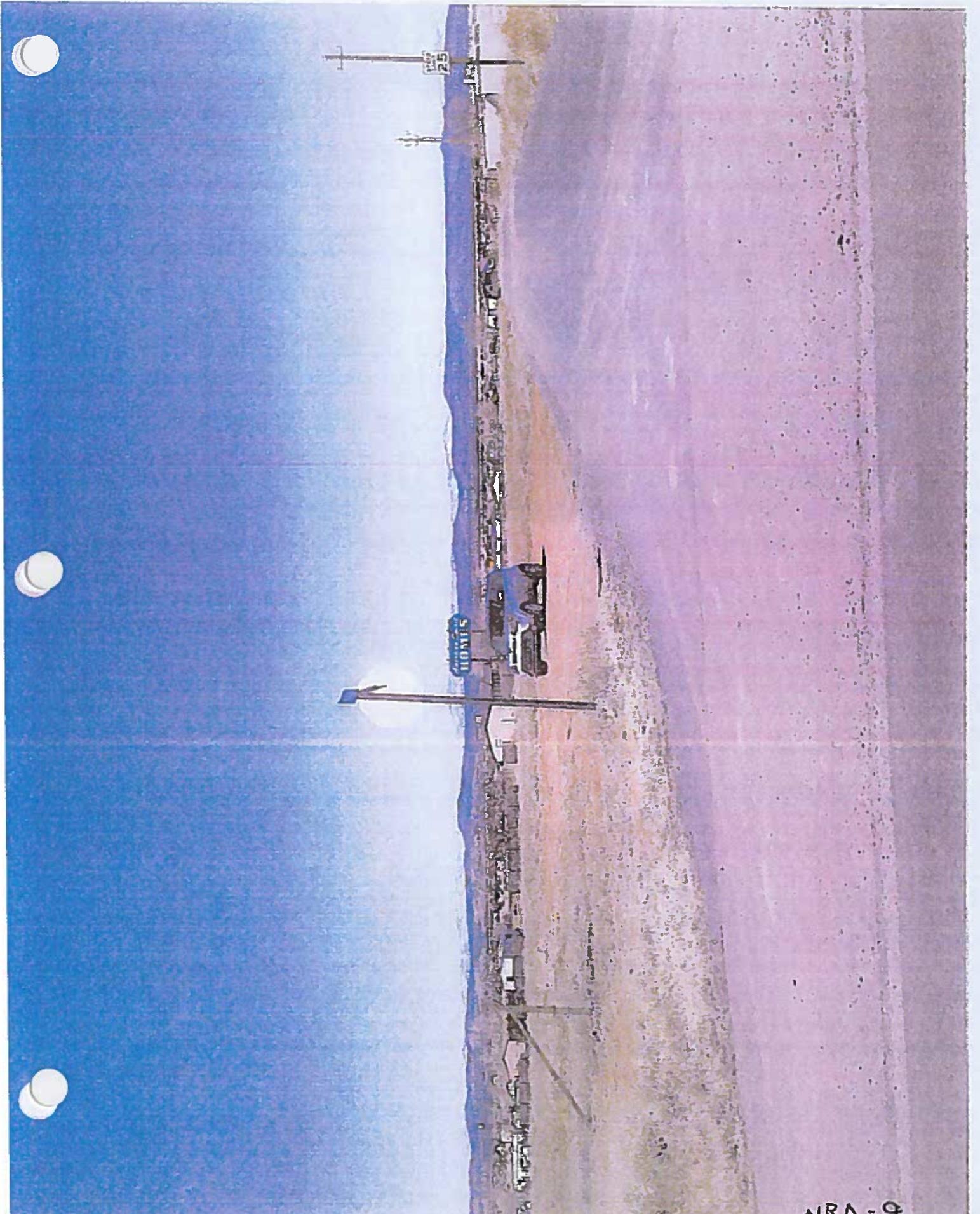
Kurstin S. Johnson,
Commission President

NBA-6





NRA-8

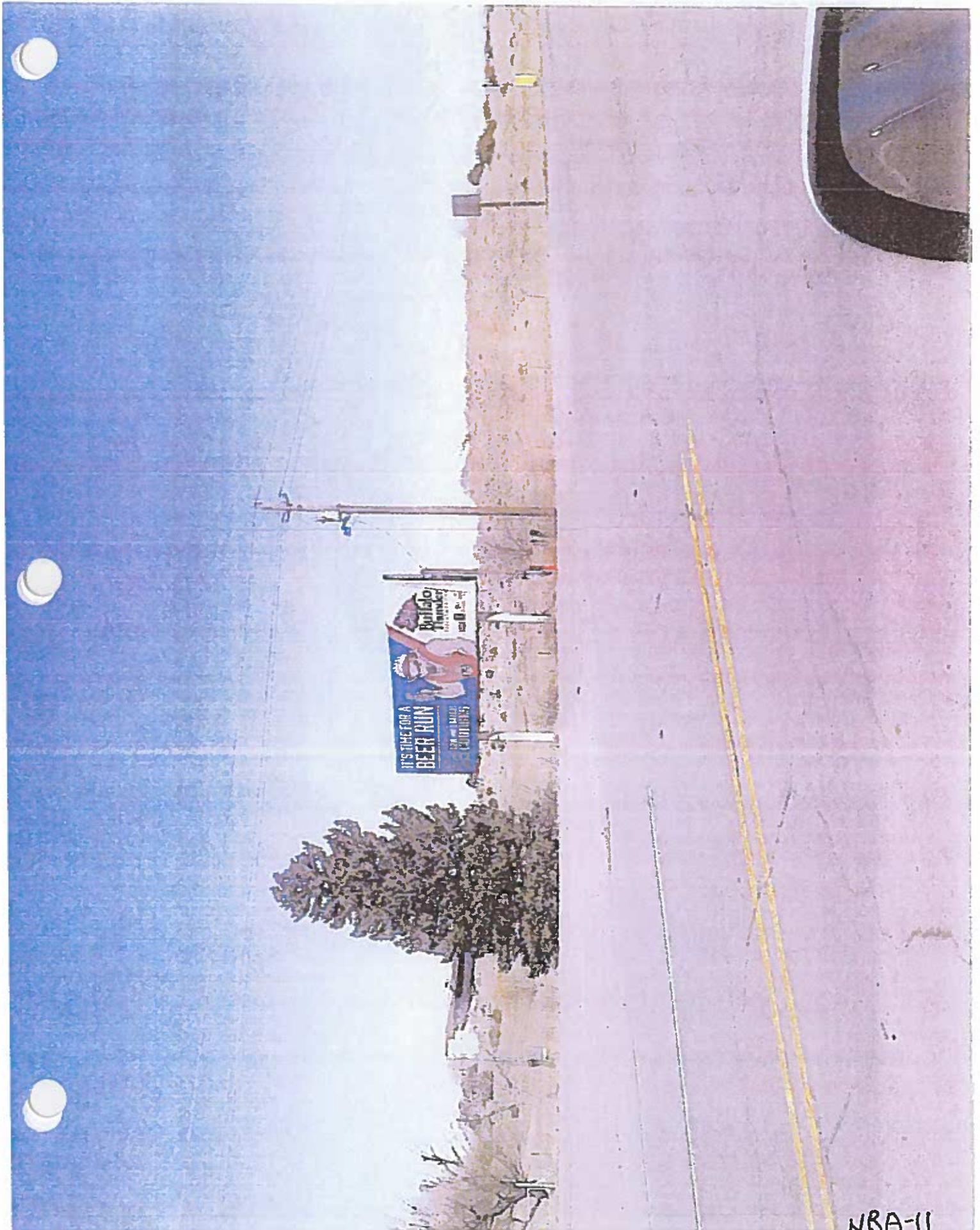


NRA-9

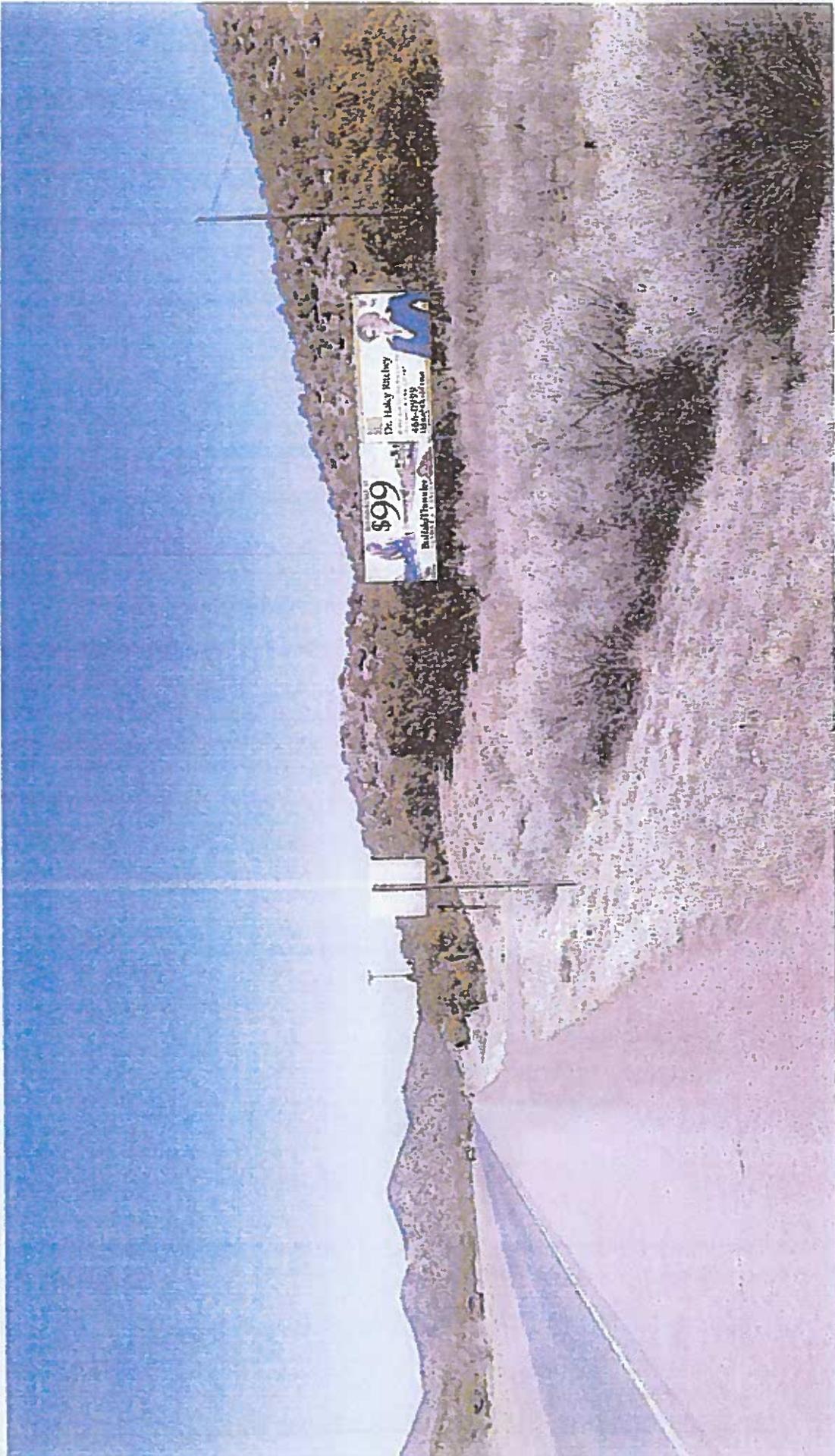
EXIT 282 • TAKE ST. FRANCIS EXIT
TO CERRILLOS RD. FOLLOW THE SIGNS.

SAGE INN

STAY DOWNTOWN FOR LESS
866.433.0331



NBA-11



NBA-12

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:
- 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.
 - 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 subsection 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**

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

- No temporary sign shall exceed four feet in any one of its dimensions, or sixteen (16) square feet.
- No temporary sign shall extend over or into any street, alley, sidewalk, right-of-way, visibility triangle, or other public thoroughfare.
- 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:
- No permit is required;
 - No sign shall exceed thirty-two (32) square feet;
 - 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
 - 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

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 masonry 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 readability 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.

- 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.

- 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 permissible 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 device; 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.

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 of 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



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

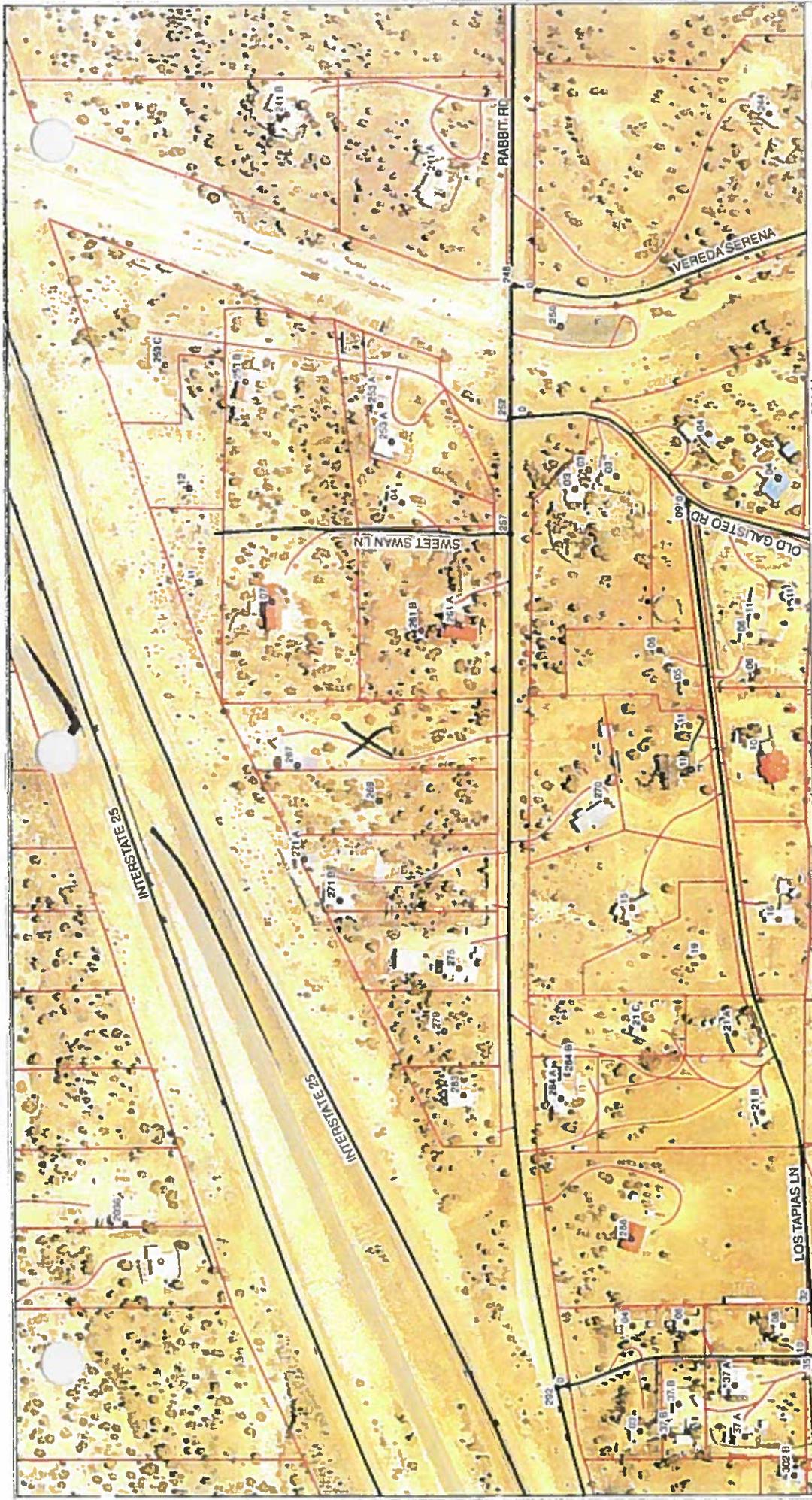
All other requirements of the Code including, but not limited to, building height, setback, use, design standards, environmental provisions, water restrictions, development, building and utility permits, and certificates of occupancy, as applicable, shall be met.

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.



2014 Imagery
2 FOOT CONTOURS

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



August 12, 2015



- Legend**
- ROADS
 - DRIVEWAYS

NBA-20

WARRANTY DEED

REC'D CLERK RECORDED 05/24/2007

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 1/2" 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 22 day of May 2007.



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
WARRANTY DEED
PAGES: 1

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

Jeanne Eggenhofer (Seal)
JEANNE EGGENHOFER

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

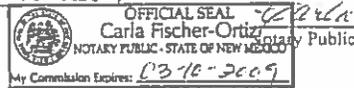
Suzanne Umland (Seal)
SUZANNE UMLAND

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO
COUNTY OF NEW MEXICO

This instrument was acknowledged before me on May 22 2007, by JEANNE EGGENHOFER.

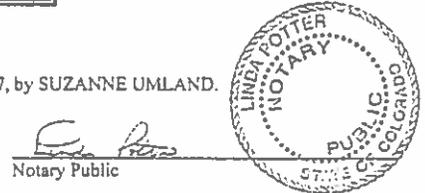
My Commission Expires: 03 10 2009



STATE OF COLORADO
COUNTY OF El Paso

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

My Commission Expires COMMISSION EXPIRES 10/15/07



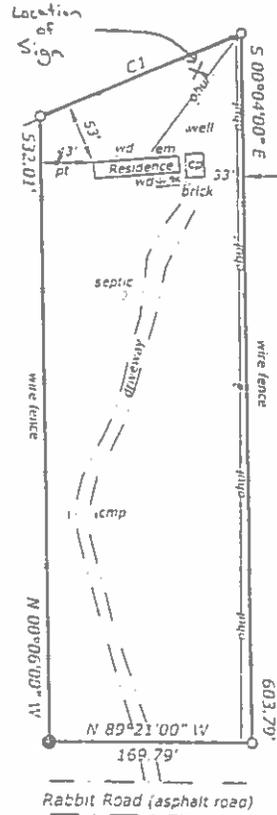
NBA-21

IMPROVEMENT LOCATION REPORT

EXHIBIT "A"

SITUATE AT 267 RABBIT ROAD, NW $\frac{1}{4}$, SE $\frac{1}{4}$ 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

[Signature]

Reviewed/Acknowledged
Foregoing ILR/Survey

[Signature]

LEGEND

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



CURVE TABLE			
CURVE	DELTA	LENGTH	RADIUS
C1	1°24'17"	163.64	7489.44

PROGRESSIVE TITLE SERVICES

FILE No. 07030084



LAND SURVEYING COMPANY

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

PROJECT NO. 1609 / ILR

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



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 DeAguiro, Applicant, for 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



0971 0959 1000 025T 510L

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Domestic Mail Only

For delivery information, visit our website at www.usps.com

SANTA FE, NM 87508

OFFICIAL USE

Certified Mail Fee \$3.45

Extra Services & Fees (check box, add fee to postage)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.49

Total Postage and Fees \$6.74

Sent To **MR. LAURO PACHECO**
Street and Apt. No. of 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

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<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.49

Total Postage and Fees \$6.74

Sent To **ROBIN WILLIAMS**
Street and Apt. No. of 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

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<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.49

Total Postage and Fees \$6.74

Sent To **MR. RANDALL NIEMAN**
Street and Apt. No. of 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

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<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.49

Total Postage and Fees \$6.74

Sent To **MR. RANDALL NIEMAN**
Street and Apt. No. of 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

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<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.49

Total Postage and Fees \$6.74

Sent To **MR. FRANK MARIN**
Street and Apt. No. of 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

0971 0959 1000 025T 510L

U.S. Postal Service
CERTIFIED MAIL RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

SANTA FE, NM 87508

OFFICIAL USE

Certified Mail Fee \$3.45

Extra Services & Fees (check box, add fee to postage)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.49

Total Postage and Fees \$6.74

Sent To **MR. JOSE RODRIGUEZ**
Street and Apt. No. of 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;



- (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

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.

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;

- 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;

(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-vision 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:

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

(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]

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:

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

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.

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

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

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

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]

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.

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.
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Sec.

- 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.
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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 1966, 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;



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 1955, ch. 65, § 2; 1971, ch. 103, § 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 1955, 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.

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 1966, ch. 65, § 4; 1967, ch. 140, § 1; 1971, ch. 108, § 2; 1975, ch. 174, § 1; 1975, ch. 193, § 2.

Effective date. — Laws 1966, 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 § 268.
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 permit 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 1966, ch. 65, § 5; 1967, ch. 140, § 2; 1971, ch. 103, § 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;

(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 outdoor 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 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.

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

Federal Highway Beautification Act — The Federal Highway Beautification Act of 1955, referred to in Subsection D of this section, is compiled as 23 U.S.C. §§ 151, 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 1966, 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 visible 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 ter

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 1955, ch. 65, § 8; 1971, ch. 108, § 3.

Effective date. — Laws 1956, 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.

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 compensation.

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.

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 1955, ch. 65, § 9; 1957, ch. 140, § 4; 1971, ch. 103, § 6.
Effective date. — Laws 1955, ch. 65, contains no effective date provision, but was enacted at a session

which adjourned on February 16, 1955. See N.M. Const., art. IV, § 23.
Federal Highway Beautification Act. — See 67-12-6 NMSA 1978 and notes therein.

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 1955, ch. 65, § 10; 1971, ch. 103, § 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 1955, 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 1955, ch. 65, § 12; 1971, ch. 103, § 8.
Emergency clause. — Laws 1971, ch. 103, § 11, makes the act effective immediately. Approved March 15, 1971.

Separability clause. — Laws 1971, ch. 103, § 10, provides for the severability of the act if any part or application thereof is held invalid.
Repealing clause. — Laws 1971, ch. 103, § 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 NMSA 1978].

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 1966, 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, 163.

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.

Sec.

- 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, 168.

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;

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



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 DeAgüero, the property in question and is also a close friend. There had been a sand and gravel sign on the property and Mr. DeAgüero 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 DeAgüero 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

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.

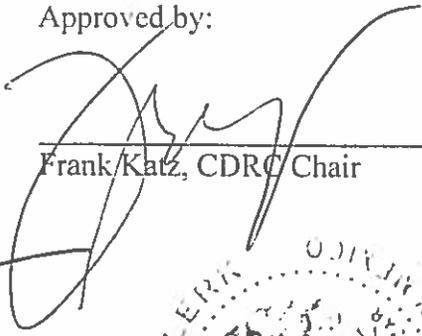
F. NEXT MEETING

The next meeting was scheduled for September 17, 2015.

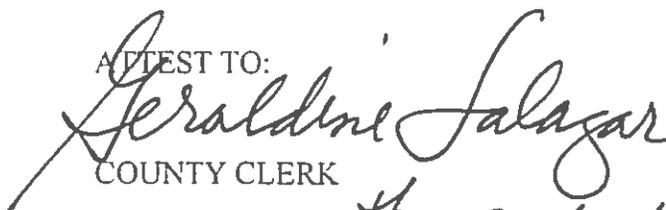
G. ADJOURNMENT

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

Approved by:


Frank Katz, CDRC Chair

ATTEST TO:

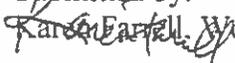

COUNTY CLERK

Before me, this 17th day of September 2015.

My Commission Expires:

Notary Public

Submitted by:


Karen Farrell, Wordswork



