

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

July 19, 2018

I. This meeting of the Santa Fe County Planning Commission was called to order by Chair Charlie Gonzales on the above-cited date at approximately 4:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

II. & III. Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Members Present:

Charlie Gonzales, Chair
Frank Katz, Vice Chair
Filandro "Phil" Anaya
Leroy Lopez
Susan Martin
Steve Shepherd

Member(s) Absent:

Renae Gray

Staff Present:

Vicki Lucero, Building & Development Services Manager
Paul Kavanaugh, Building & Development Services Supervisor
John Lovato, Development Review Specialist
Rachel Brown, Deputy County Attorney
Miguel "Mike" Romero, Development Review Specialist
Remington Gillum, Fire Prevention Division
Dominic Otero, Fire Prevention Division

IV. Approval of Agenda

Vicki Lucero noted that there were no changes to the published agenda.

Member Katz moved approval and Member Martin seconded. The motion carried by unanimous [6-0] voice vote.

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V. Approval of Minutes: May 17, 2017

Page 9, fourth full line, add quotation marks to identify the Hearing Officer's comments.

Member Martin moved to approve the minutes as corrected. Member Katz seconded and the motion passed by unanimous voice vote. Member Anaya abstained.

VI. Old Business

- A. **CASE # V 17-5290 James Baker Variance.** James Baker, Applicant, Karl Sommer, Agent, requests a variance of Chapter 7, Section 7.6.3.1.1.2b, (Preservation of Existing Vegetation and Significant Trees), Chapter 7, Section 7.17.4.1, No-Build Areas (Disturbance of Rock Outcroppings), Chapter 7, Section 7.17.10.4.1, Roads and driveways over 25 percent, and a variance of Chapter 7, Section 7.17.4.3, No Build Areas (Disturbance of 30 percent Slope). The property is located at 38 Stacy Road within, Section 18, Township 18 North, Range 10 East, (Commission District 4) [*Exhibit 1: Plat Provided by Staff; Exhibit 2: Lot map, undisturbed plan, reclamation plan, section information, and driveway profile, provided by Applicant, Exhibit 3: Sediment retention information, supplied by Applicant*]

Motion to reconvene – Chair Gonzales requested a motion to reconvene the public hearing from the June 21, 2018 Planning Commission meeting for case #V17-5290, James Baker Variance.

Member Martin provided the motion and Member Katz seconded. That motion passed by unanimous voice vote.

JOHN LOVATO (Case Manager): On June 21, 2018, the Santa Fe County Planning Commission met on this case. The decision of the Planning Commission was to table the case so the Applicant could have the platted buildable area staked out with staff present and provide a new grading and drainage plan for the site. The Applicant had staked out the property and claimed the stakes had been removed and relocated.

The request by the Planning Commission was to also have new grading and drainage plans that are stamped by an engineer and provide more technical information on the plans, including what you have there that was just handed out to you, Mr. Chair and Commission members. [*Exhibit 2*] The Applicant has submitted the above information which you have. The Applicant has since staked the site and contacted staff to be present at that time. The Applicant has submitted documentation regarding the surveyor's findings about the buildable area. The surveyor found that the Applicant can place approximately 90 percent of the residence within the platted buildable area, without a new slope analysis and grading a drainage plan, which you just received, it was hard for staff to determine and have not reviewed those plans and could not give you any additional information but what you see before you.

Recommendation: Staff recommends denial of all variances, and recommends that the Applicant be required to revegetate all disturbed area and build within the platted

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buildable area. If the decision of the Planning Commission is to approve the variances requested, staff recommends the following conditions be imposed, and Mr. Chair, can I enter those into the record?

CHAIRMAN GONZALES: Yes, you may.

The conditions are as follows:

1. The Applicant shall submit a letter of credit for the revegetation of the disturbance on the lot for 125% of the cost of revegetation /Landscaping to be kept for a minimum of 1 year after planting to ensure all revegetation has taken.
2. The height for structures on the lot shall not exceed 18'
3. No further disturbance of vegetation, buildable area, or rock outcroppings shall occur on the lot.
4. Trees to be planted to revegetate the disturbed area that is not being built on as proposed by the Applicants shall be a minimum of 6' in height with a 1.5" caliper.

MR. LOVATO: Thank you and I stand for any questions you may have.

CHAIRMAN GONZALES: Does the Commission have any questions of staff? Yes, Mr. Katz.

COMMISSIONER KATZ: In the summary of the report it says, "there's an existing violation on the property and therefore this application must move forward through the process to resolve the violation" why? Why can't the County simply take enforcement action? There was grading that was unpermitted and would not be permitted and we are requiring remediation. Why do we have to do anything?

MS. LUCERO: Mr. Chair, Commission Member Katz, we actually have filed a court case regarding this application, regarding this property. That is in the process at this point. Concurrently, they are coming before you to request that you grant a variance so that they can build the residence that they have redesigned, basically redesigned.

COMMISSIONER KATZ: Thank you for clarifying that.

CHAIRMAN GONZALES: Any other questions of staff? Steve, go ahead.

COMMISSIONER SHEPHERD: I have a question as to whether or not a variance is required? The staff is recommending denial of all variances and recommend that they be required to revegetate. In the prior sessions of this particular case, I have heard it said that you need a variance in order to revegetate. Could I get a clarification as to whether or not a variance is required?

MS. LUCERO: Mr. Chair, Commission Member Shepherd, the variance request is to construct the home and the associated access to the home. The revegetation would not require a variance. That is to correct the unpermitted development that has already occurred.

COMMISSIONER SHEPHERD: Thank you.

CHAIRMAN GONZALES: Okay, Mr. Katz.

COMMISSIONER KATZ: Staff has recommended denials of the variances and the sense I get from the report is that's because things were not timely submitted. Does staff believe it would do any good for us to further postpone this case so that staff can review what was evidentially submitted today?

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MS. LUCERO: Mr. Chair, Commission Member Katz, that this point, as I mentioned, we have filed a court case regarding this application or regarding this property. Under that court case we are on a timeline so we would request that the Planning Commission make a decision.

COMMISSIONER KATZ: Okay.

CHAIRMAN GONZALES: Thank you, any other questions of staff?

COMMISSIONER ANAYA: Mr. Chair, I'm sorry. The decision you what us to make is based on the variance or based on the whole – I guess I don't understand what.

MS. LUCERO: Mr. Chair, Commission Member Anaya, can you repeat your question.

COMMISSIONER ANAYA: What is it you want us to approve or deny today based on the staff response of letting them go forward to vegetate or not to vegetate or just start from scratch? I don't quite understand.

MS. LUCERO: Mr. Chair, staff's recommendation is denial of the variances for disturbance of 25 percent slope for the roads and driveway, for disturbance of 30 percent slopes for the building pad and for disturbing rockout croppings and significant tree removal. So staff is recommending that the area be revegetated. The entire disturbed area be revegetated and the applicants come in with a new proposal to fit in within –

COMMISSIONER ANAYA: Be brought back to its original state and then start over.

MS. LUCERO: As closely as possible, yes.

COMMISSIONER ANAYA: That's what I thought but I was not sure. Thank you.

CHAIRMAN GONZALES: Okay, any other questions of staff? Mr. Sommer, are you going to present this case?

KARL SOMMER: Mr. Chairman, yes. My name is Karl Sommer, Post Office Box 2476, Santa Fe, New Mexico, 87504.

Members of the Commission, at our last meeting here we told you we would do several things. That we would convene a meeting with the neighbors to go over a revegetation plan that would work on this property and that was with the next door neighbor, Ms. Hillary Riggs, and we did that. Staff wasn't able to attend that meeting. It was very production about her information as to what will live on this site given her experience. We did that. The next thing we did was we convened a meeting with our surveyor and his crew and staff on the site so that the crew could stake the building that we had shown you at the last meeting. And in case you all didn't have, may I approach the Commission to hand out what I gave you all last time.

What I just handed the Commission is the surveyor that Mr. Vigil provided, moving the building that was designed for this house as soon as possible into the approved building envelope. We provided that to you last time. And the staking exercise that the Commission wanted us to do was to go out and put that – show that to staff in the field and staked. We did that. We photographed the stakes and as I represented to you that the building that that had designed for the site can be placed 85 percent within the approved square that's there. We had our engineer after that, after he got that data last week, we met last week with staff and we shipped it off to him. And Mr. Mario Madrid

redid and I'll hand you these – I don't know if you were handed these [*Exhibit 2*]. He redid from an engineering standpoint showing you all the house moved into the building envelope and the areas of 30 percent grade that would be disturbed. The site has already been disturbed but the original condition was areas of 30 percent grade are shown here. The variance that we're requesting now, which we told you we would do – may I get a closer to you all so you can see?

CHAIRMAN GONZALES: Sure.

MR. SOMMER: The dark black line, Mr. Madrid put the building envelope on his plans. This is a grading plan that shows in red and shows the house outlined around that building envelope as you can see right there, it fits about 85 percent of it within the approved. The areas that are outside of it are largely in areas that were not over 30 percent grade. They are less than 30 percent grade with one exception and that's this area right here in the north east corner outside the building envelope. Mr. Madrid also, you all wanted to see the – Chairman Gonzales, you wanted to see a cross-section of that plan and he redid that revegetation plan and showed you the cross-sections of that so you can see it. And what the revised revegetation plan addresses many of your critiques from a couple of meetings ago. He also shows you the cross sections that you wanted. He also gave you the slopes and grades of the driveway so that you can see the driveway as proposed meets the code requirement. It is less than 10 percent. He's also met with the Fire Marshal who approved this layout with the additional staging at the lower end of the driveway which he has shown on the plans. So the house can be built largely within the building envelope with one small area of 30 percent grade that was originally 30 percent grade that will have been disturbed before the house. The rest of the site will be revegetated in accordance with his plan. I disagree with staff. In order for us to revegetate these slopes, we're going to be in there disturbing 30 percent slopes. One of the variances is to allow us to do that.

In short, since we came back to you all, we have moved our house largely within the building envelope. We have staked it so that staff can have a look at it. The only area of 30 percent grades that were originally there that will be disturbed by this house are a very slight area outside the building envelope to the northwest of the building envelope. The driveway complies so that we can show that this house can be serviced from a fire standpoint for an emergency vehicle and the variances we are requesting allow for this property owner to use this property in a reasonable fashion. That's what we're here to do. That's what we're asking for. I think that the Commission has seen this case and the revegetation plan – I have for you all the kind of revegetation, I don't know if these were handed out to you [*Exhibit 3*]. What are there is they show you the kind of technology that is going to be used to hold this soil in place on that area that is pretty steep over there and has been graded. This is an environ grid cellular confinement system and what it does is it holds the soil in place and that grid is tacked down until all the vegetation can take and the like. So I think that the system is widely used and is effective and will, as nearly as possible, allow us to revegetate this site in accordance with I think your all desires and our desires.

We would stand for any questions that you might have about this. I think that over the course of the last three months we have been able to achieve a great deal. And since the last meeting we have kept our representations to you and our promises to you to get out there and do that with staff and to resubmit to you. Unfortunately, the 30-day

period for resubmission is not enough to get everybody together, get out there, get it staked, get that transmitted to the engineer and have him do the drawings. We did it as quickly as possible and I hope that the Commission does not think that we have been at all dilatory since our last meeting in getting things to you. We have tried to move this along as quickly as we can. Mr. and Mrs. Baker are here and they want to get this done so they can have an approved site for a home and get on with this and I'm sure the neighbors do as well. So with that we would stand for any questions that you might have. The idea that no variances be allowed particularly in this circumstance where the terrain was difficult to begin with, I think this is exactly why you have a variance criteria. The most unfortunate thing, as we all, is that this work was done without a permit and it was done improperly by an Albuquerque contractor who – or subcontractor who either did not know or simply just disregarded the requirements. It's created an unfortunate circumstance for all of us. Anyway, with that, I will stand for any questions that you might have and we would request that you follow the revised request and the support of the Hearing Officer, it's obvious that these variances have to be granted to do the revegetation and now that we revised the house you can see we are not asking for the moon. We are asking for a slight variance and we will do the reclamation. So I think that's where this case is now. I think that the remaining work from a technical standpoint really is up to Paul and to John Lovato to make sure that the plans conform to the requirements of the code. We can submit them so they can issue permits if your desire, if you see fit to allow us to build what we're talking about building.

CHAIRMAN GONZALES: Okay. Does the Commission have any questions of the applicant?

COMMISSIONER SHEPHERD: Mr. Chair.

CHAIRMAN GONZALES: Steve, go ahead.

COMMISSIONER SHEPHERD: I've been trying to just fill in the holes in the timeline and going through all of the information because you've been here a few times, and we got a couple of inches worth of info. The property was purchased in November of 2014?

MR. SOMMER: I don't know but the deed would show that. Is that approximately right? [question directed to Mr. Baker]

COMMISSIONER SHEPHERD: That was in the documentation. When was the prime contractor, when did you establish that you had a prime contractor?

MR. SOMMER: I'm not sure. I don't have the contract in front of us. But there is a contract, a written contract with him. Come on up, Jim.

[Duly sworn, James Baker, testified as follows]

JAMES BAKER: James Baker, 22 Vuelta Maria, Santa Fe, New Mexico.

MR. SOMMER: His question was when did you establish a relationship with your general contractor, roughly.

MR. BAKER: Yeah, that was roughly January of 2016. So the property just remained as it was from the time we purchased until the time the grading occurred.

COMMISSIONER SHEPHERD: And when did the subcontractor start the ground work?

MR. BAKER: It was around June of 2016.

COMMISSIONER SHEPHERD: June of 2016. And the violation occurred or you were notified of the violation a year later in June 2017?

MR. BAKER: No, we were notified of the violation –

MR. SOMMER: Right then and there.

MR. BAKER: Yeah, in June of 2016.

MR. SOMMER: Because the documentation says the violation occurred in June of 2017. So could I get a clarification as to what year the violation occurred?

MR. BAKER: Yeah, I think we mentioned that that correction needed to be made earlier. That it was 2016.

MS. LUCERO: Mr. Chair, Commission Member Shepherd, that is correct. It was 2016 that it was issued.

COMMISSIONER SHEPHERD: Thank you. That's all, thank you very much.

CHAIRMAN GONZALES: Any more questions?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN GONZALES: Mr. Anaya, go ahead.

COMMISSIONER ANAYA: Mr. Sommer, going back to a question along the lines in 2016 when you received the violation, you notified the contractor on the same date to cease?

MR. SOMMER: Actually, I believe the County red-tagged him in the field and stopped him and I think John Lovato is the person who did that.

COMMISSIONER ANAYA: So nothing happened after the fact?

MR. SOMMER: I don't believe anything happened after that.

COMMISSIONER ANAYA: Did you guys go after the bond or anything like that for not having the proper documents?

MR. SOMMER: This contractor doesn't have a bond up for this contract. He has a bond at CID but it doesn't cover this. His little \$5,000 bond doesn't cover this. We are going after the contractor on a suit for –

COMMISSIONER ANAYA: Civil?

MR. SOMMER: -- violation of the contract. And we're going after the subcontractor for negligence.

COMMISSIONER ANAYA: Who is the contractor?

MR. SOMMER: The subcontractor is the grading, the excavator who actually did this work without a permit, but he was working for a general contractor who did not have a permit.

COMMISSIONER ANAYA: So the general contractor is the one that is responsible for the whole thing.

MR. SOMMER: They are both liable.

COMMISSIONER ANAYA: Have you filed a civil yet?

MR. SOMMER: No we are in the process of beginning our action against both of them and it is in the first stages because we haven't known whether or not -- how far along are we going to get this. What are our actual damages. We have letter drafted but I am awaiting to know whether or not we get the variance. If we don't get the variance then we have a very different case against this person.

COMMISSIONER ANAYA: So it will be served tomorrow?

MR. SOMMER: No, it will not be served tomorrow. But if you all see fit to grant the variances then I will know the extent to which we will have, you know, what the extent of our claim is against him. If you say we can't have the variance then we've

got a very different problem with him.

COMMISSIONER ANAYA: Thank you, sir. Thank you, Mr. Chair.

CHAIRMAN GONZALES: Any other questions of the applicant? Karl, this Sedimax stuff here, do you know where it has been used before?

Ks: I don't know other than where it says in the material that says it is widely used in construction projects. But I don't know. It looks very familiar to some of the things that I have seen in the SWYP approved plans that I see with that fibrous soil holder. But I don't know that it's the exact same thing.

CHAIRMAN GONZALES: It kind of looks like that geo-grid. Paul, are you familiar with it?

PAUL KAVANAUGH (Code Enforcement): Mr. Chair, I have not reviewed this, the geo-grid. It appears to be – a lot of this appears to be waddles but there is a back page and I haven't even reviewed this. It came in too late.

CHAIRMAN GONZALES: Right, okay, thank you. This is a public hearing. Do we have anyone here who wants to speak for or against this project? No, okay.

Does the Commission have any discussion or motions? No.

COMMISSIONER SHEPHERD: Mr. Chair.

CHAIRMAN GONZALES: Steve, go ahead.

COMMISSIONER SHEPHERD: I move that we accept the staff recommendation to deny all variances and recommend that the applicant be required to revegetate all disturbed area and build within the platted buildable area.

COMMISSIONER ANAYA: Second.

COMMISSIONER MARTIN: Second.

CHAIRMAN GONZALES: All in favor. All opposed.

The motion passed by unanimous voice vote.

CHAIRMAN GONZALES: The variances failed. Thank you.

VII. New Business

- A. CASE #V18-5070: Angelo Ortega, Applicant, James W. Siebert & Assoc., Agent, request a variance to the requirements set forth in the Sustainable Land Development Code (SLDC) of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 (Utilities) to allow a separate liquid waste system for the accessory dwelling unit. The property is located at 120 North Paseo de Angel, within the La Cienega and La Cieneguilla Community District Overlay (LCLCCD) (RES-E), within Section 22, Township 16 North, Range 8 East (Commission District 3)**

MIKE ROMERO (Case Manager): Angelo Ortega, Applicant, James W. Siebert & Associates, agent, request a variance to the requirements set forth in the Sustainable Land Development Code of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 to allow a separate liquid waste system for the accessory dwelling unit. The property is

located at 120 North Paseo de Angel, within the La Cienega and La Cieneguilla Community District Overlay, within Section 22, Township 16 North, Range 8 East, Commission District 3.

I believe the handout that staff is handing out is for the case after this one.

On June 14, 2018, this Application was presented to the Hearing Officer. The Hearing Officer supported the application based on the evidence and testimony presented at the public hearing as well as the precedent of the Montoya Application. The Hearing Officer finds that the application is not contrary to the public interest and is in the spirit of the SLDC and that because there was no finding in the Montoya Application of extraordinary and exceptional situations or conditions of the property as required in order to grant a variance, that the same finding will be made here. Therefore, the Hearing Officer recommended approval of a variance of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 to allow a separate liquid waste system for the accessory dwelling unit. The Hearing Officer supported the Application as memorialized in the findings of fact and conclusions of law in a written order subject to the following conditions.

1. Applicant must request a partial plat vacation to modify the note that prohibits guesthouses and re-record the plat;
2. Applicant must install a meter on the well and submit proof at time of development application; and
3. Applicant will ensure that water use on Lot 10 does not exceed a total of 0.25 acre-feet per year for the dwelling and accessory dwelling combined.

The Applicant is the owner of the property as evidenced by warranty deed recorded in the records of the Santa Fe County Clerk on July 5, 2001, as recorded in Book 1935 page 547. The property consists of 2.5 acres within the Residential Estate Zoning District within the La Cienega/La Cieneguilla Community Overlay Zoning District. The Applicant is requesting a variance of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 to allow a separate liquid waste system for the accessory dwelling unit.

The Applicant wishes to place a 920 square foot accessory dwelling unit on his property, providing the Applicant's daughter a place of her own. The proposed accessory dwelling unit will be 920 square feet of heated area. The Applicant states, the heated area of the accessory dwelling is 50 percent of the 1,884 heated area of the principal residence. The Applicant further states, that the architectural design will be the same as the principal residence. The accessory dwelling height will not exceed the height of the current dwelling unit, which is approximately 13 feet in height.

After further review of the subdivision plat, it was determined that the subject lot was located within a major subdivision. A note on the Applicant's subdivision plat, states, guest homes are prohibited on this lot. Currently, there is a 2,300 square foot residence on the property that is served by a well and a conventional septic system. The Applicant is also requesting to install a separate septic system to accommodate the proposed 920 square foot accessory dwelling unit. The Applicant states that the existing septic tank is already the largest tank manufactured and very little to nothing can be done to the septic tank to accommodate the proposed accessory dwelling unit. Due to this

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exceptional situation, New Mexico Environment Department permitted a second system for the property. The second septic system has yet to be installed.

In 1994, an application for Vista de Sandia Subdivision was submitted, which is located within the La Cienega and La Cieneguilla Community District Overlay. The application for plat approval was granted by the Board of County Commissioners in 1996 under case number 94-2173. The approval was for a 16 lot subdivision and lot sizes ranged from 2.5 acres to 2.63 acres. The lots sizes were derived from a hydrologic study prepared by Geologist/Hydrologist Jack Frost. Water use on each lot within the subdivision was restricted to 0.25 acre-feet, water restriction based on the amount of water that the geo hydrologic report proved. At that time, a condition was imposed by the BCC that no guest homes were allowed within the Vista de Sandia Subdivision.

If the variances are granted by the Planning Commission, the Applicant will request a partial plat vacation to change the note on the plat to allow an accessory dwelling unit on Lot 10 for the Applicant's 2.5 acre parcel. This is a separate application process that requires a public hearing that will go before the BCC.

Previously in 2017, Under Ordinance 2016-9, the Applicant applied for a permit to allow a 920 square foot accessory dwelling unit. During the permit application review process, staff observed, guesthouses were prohibited within the subdivision. Staff notified and advised the Applicant that a permit would not be issued for the accessory dwelling unit on said property due to condition No. 12, as stated, on Vista de Sandia Subdivision plat. The Applicant then withdrew his application.

The Applicant's property is located within a major subdivision. Chapter 10, Section 10.4.2.1, states that platted major subdivisions shall only be permitted to have an accessory dwelling unit if their approval and reports and SRAs allowed and accounted for this. The subdivision water availability report concluded that 0.28 acre-feet per year was available per lot. Therefore, they did not prove water for two houses. None of the reports accounted for two homes.

The Applicant currently proposes a separate septic system for their lot. Chapter 10, Section 10.4.2.4 requires the principal dwelling to share a septic system. Within the current application, the Applicant has provided a signed letter from NMED stating that the lot size is adequate to install two systems.

Recommendation: The Applicant and Applicant's agent did provide responses to the variance criteria. Staff recommends denial of a variance from Ordinance No. 2016-9 the Sustainable Land Development Code of Chapter 10 Section 10.4.2.1 to allow an accessory dwelling unit within a major subdivision. The Vista de Sandia Subdivision Hydrogeological Review did not prove more than 0.28 acre-feet per lot. The subdivision plat states under Notes and Conditions No. 12 guesthouses are prohibited on these lots.

Staff recommends denial of a variance from Ordinance No. 2016-9 the Sustainable Land Development Code of Chapter 10, Section 10.4.2.4 to allow an accessory dwelling a separate liquid waste system. The Applicant has not provided any documentation from NMED that states the existing septic system is at capacity and that an additional septic system will be required. The SLDC does not allow separate septic systems, for accessory dwelling units.

If the decision of the Planning Commission is to approve the Applicants request, staff recommends imposition of the following conditions. May I enter these into the record?

CHAIRMAN GONZALES: Yes.

MR. ROMERO: Would you like for me to read them?

CHAIRMAN GONZALES: Yes, please.

MR. ROMERO: They are,

1. The Applicant must request a partial plat vacation from the BCC to modify the note that prohibits guesthouses and re-record the plat. [Changed below]
2. Applicant must install a meter on the well and submit proof at time of development permit application.
3. The Applicant will ensure that water use on Lot 10 does not exceed a total of 0.25 acre-feet per year for the dwelling and accessory dwelling combined, and shall provide annual water meter readings to the Land Use Administrator.

This matter went before the Hearing Officer for a hearing on June 14, 2018. The Hearing Officer recommended approval of a variance of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling unit within a major subdivision and Chapter 10, Section 10.4.2.4 to allow an accessory dwelling a separate liquid waste system, subject to conditions.

If the decision of the Planning Commission is to approve the application, you may consider adopting the Hearing Officer's findings of fact and conclusions of law in the written recommendation.

And just for clarification, Mr. Chair, Commission Members, we did add some language to our condition number three, which was the Hearing Officer's condition. So condition 3, the added language reads: and shall provide annual water meter readings to the Land Use Administrator. That's the additional language from the Hearing Officer's from staff recommendation. I stand for any questions.

CHAIRMAN GONZALES: Thank you, Miguel. Vicki?

MS. LUCERO: Mr. Chair, if I could just add a clarification on a recommended change to condition 1 also. It reads, "The Applicant must request a partial plat vacation" we would recommend that it be changed to "The Applicant must obtain a partial plat vacation..."

CHAIRMAN GONZALES: Thank you, Vicki. Okay, I have a question for staff. I am curious why they're trying to put a separate septic tank when I know you can buy 1,500 gallon septic tanks. I was reading the notes of the report and I saw something there where they said the maximum septic tank is 1,250 or something like that; can you address that? I mean, if that's the case, they that variance goes away or potential goes away right?

MR. ROMERO: Mr. Chair, to clarify your question, so you're questioning – can you state your question again please so I give you the correct answer.

CHAIRMAN GONZALES: And maybe I need to ask this of the applicant when he is up there but on the report I saw something on there that said the tank is the biggest tank you can get but I am currently installing a septic tank for the Bennie Chavez Center County in Chimayo and we're putting in a 1,500 gallon septic tank. So I am curious about the information that was given to us.

MR. ROMERO: Mr. Chair, committee members, that is correct. That is what the applicant did state that the existing septic tank that is on the property is at its maximum capacity and that NMED did state that the property could accommodate a second septic system. But I believe possibly maybe the applicant's agent could add some

more information to that question but that is the same information that was provided to staff as well.

CHAIRMAN GONZALES: Okay, I'll have him address that at that point. I have another question to staff. Does the County code still regulate the placement of septic tanks and leach fields on slopes less than 15 percent?

MS. LUCERO: Mr. Chair, I believe that is still a requirement in the current code.

CHAIRMAN GONZALES: So on that point, we have control of the placement of the septic tank and leach fields based on slopes; correct?

MS. LUCERO: I believe based on slopes, correct. And I believe that is a NMED requirement as well.

CHAIRMAN GONZALES: Okay. Has the applicant provided a copy of the NMED permit?

MR. ROMERO: Mr. Chair, committee members, I believe so. I believe it is in the file itself. It's not as an exhibit but it is in the file.

Just for clarification, Mr. Chair, committee members, the applicant did get approval to place the – permit approval from NMED for the applicant to place it but the applicant has not installed the septic system. He just got approval from NMED for the additional septic system, for clarification.

CHAIRMAN GONZALES: I'm just curious on the septic tank because I'd hate to see him disturbing area for a septic tank when it is not needed or possible not needed.

Okay, does other Commissioners have questions of the staff? Mr. Katz.

COMMISSIONER KATZ: My question is other than in major subdivisions are guesthouses forbidden in the County area?

MS. LUCERO: Mr. Chair, Commission Member Katz, I don't believe that they are prohibited but in certain areas in certain community districts they are conditional uses rather than permitted uses.

COMMISSIONER KATZ: We don't have anything to do with approvals of major subdivision, do we? Isn't that done by the Board of County Commissioners?

MS. LUCERO: That's correct, it goes straight to the BCC.

COMMISSIONER KATZ: And evidently reading the report a crucial factor in their consideration of whether a major subdivision would allow a guesthouse is the quantity of water available; is that correct?

MS. LUCERO: That's correct, yes.

COMMISSIONER KATZ: I think in the Montoya case there was discussion of the Planning Commission can approve the variance to allow it but they still have to go to the Board of County Commissioners in order to get the plat amended. I presume that what they would need to show to the Board of County Commissioners is again sufficient water, something that the Board of County Commissioners seems to deal with rather than we; is that correct?

MS. LUCERO: Mr. Chair, Commission Member Katz, at the point that they would be requesting a partial plat vacation we wouldn't require them to submit additional SRAs if the variance is granted by the Planning Commission. But it would be up to the County Commission whether or not they require any additional information to be submitted.

COMMISSIONER KATZ: But we've had not information on SRAs or anything. It just seems puzzling to me that the County Commission that had made that determination and decided what was allowed and what was not allowed would then dodge the bullet of saying, Oh, is there enough water now? We don't have any information on that so how could we approve the variance? It's not something we ever dealt with to begin with and it's nothing that seems to be in evidence here. Is that not correct, if the County Commission is going to approve a major subdivision and they seen the SRA and they know how much water they use, they decide can we have guesthouse or can't we. They have that information. They were provided that information not us. And I'm curious that we're being asked to essentially make that decision now.

MS. LUCERO: Mr. Chair, Commission Member Katz, the process under the SLDC variance is to go before the Hearing Officer for a recommendation and then the Planning Commission would have the final authority and it is not specific to types of variance. It's all variances that would go through that process.

COMMISSIONER KATZ: What I'm disturbed by is that we're being asked to grant or deny a variance that is really based on water availability because in most of the County you can do a guesthouse unless it's a specific area that makes it a conditional use and you might want them to have to prove out water. And yet we have not information about water; how are we supposed to decide whether this is an appropriate variance? Why isn't that the Board of County Commissioners responsibility since they approved the approved the major subdivision and limited guesthouses because presumably they had a reason to do that. We don't know, we weren't there.

MS. LUCERO: Mr. Chair, Commission Member Katz, one of the options that the Planning Commission would have is to deny the requested variances and the applicant would have the ability to appeal that decision on to the BCC.

COMMISSIONER KATZ: Since they are going there anyway. Thank you.

CHAIRMAN GONZALES: Any other questions of staff. Mr. Anaya.

COMMISSIONER ANAYA: A couple or three or four questions. First one is, this is on picture number NBA-17 that is a manufactured house, correct?

MR. ROMERO: Mr. Chair, Commissioner Anaya, that is correct.

COMMISSIONER ANAYA: Okay, and the second one is going to be same thing, manufactured housing?

MR. ROMERO: Mr. Chair, Member Anaya, that is correct.

COMMISSIONER ANAYA: And how in the world are they getting 9,200 square-foot heated?

MR. ROMERO: My understanding is, Mr. Chair, Member Anaya, my understanding is that the proposed accessory dwelling in total of, I guess, considering the roofed out heated area it's just going to be about square footage.

COMMISSIONER ANAYA: What's the bedroom capacity? Two, three, one? It's got to be at least two.

MR. ROMERO: Mr. Chair, Member Anaya, I believe I don't have – let me check the file to see if there was any kind of floor plan added.

COMMISSIONER ANAYA: I didn't see it.

MR. ROMERO: Mr. Chair, committee members, I do actually have the – if this helps and if it is relevant, I do actually do have the old permit application that was

submitted to Land Use back to 2017 that may have this information but again this isn't in the – this is in the file but this is a separate file for development permit.

COMMISSIONER ANAYA: Okay, and another thing, is it just for the daughter?

MR. ROMERO: Mr. Chair, Member Anaya, I think that it is two bedrooms.

COMMISSIONER ANAYA: Okay, so just the daughter is going to live it or does she have siblings or not siblings but children?

MR. ROMERO: Mr. Chair, Member Anaya, I don't know. Maybe the applicant's agent can clarify if she has children. It was made clear to me that it is going to house the applicant's daughter.

COMMISSIONER ANAYA: Okay, and another thing too, we were talking about septic tanks and the Environmental Department submitted a letter of clarification on Exhibit 6 stating that in, "2001 a three bedroom house permit number" yadee yadee yada, and another one for two bedroom was approved in April 12, 2017 and just for clarification to the Chair, in 2001 all the way up to almost 2010 septic systems were only up to 1,250. And this was put in in 2001 so I understand they are trying to add another one in there because it will change from the bedroom size of the existing mobile home which is probably a three, maybe a four bedroom and then adding an additional two would bring it to six so that's why they're talking about septic systems.

And the water; is a system, a County system or is it wells?

MR. ROMERO: Mr. Chair, Member Anaya, it is a well.

COMMISSIONER ANAYA: And we don't have any proof of what it produces? It's not in our records.

MS. LUCERO: Mr. Chair, while Miguel is looking up the information, I just wanted to mention that when the other case, the Dorothy Montoya case, went forward to the County Commission for the request for the partial plat vacation, the Commission did impose a condition that the property could not exceed .25 acre-feet per year. So that would be both houses combined couldn't exceed the .25 acre-foot water restriction.

COMMISSIONER ANAYA: So it is not per dwelling it is per lot.

MS. LUCERO: The condition that the BCC imposed on that specific case was for the lot, yes.

COMMISSIONER ANAYA: Is it close to this area?

MS. LUCERO: It's within the same subdivision.

COMMISSIONER ANAYA: Thank you.

MR. ROMERO: Mr. Chair, Member Anaya, I did just find – I don't actually have the well log, but I do have proof that the applicant did obtain a permit from the State Engineer's Office.

CHAIRMAN GONZALES: Okay, any other questions of staff? Okay, Wayne are you going to present this?

[Duly sworn, Wayne Dalton, testified as follows]

WAYNE DALTON: Wayne Dalton, 915 Mercer Street. I'm with Jim Siebert and Associates. Thank you, Mr. Chair, Commissioners.

Like Miguel said, we are requesting a variance to allow an accessory dwelling unit. This will be for the applicant's daughter. The applicant's daughter currently resides

with him in the existing home. Therefore, we feel that there's not going to be any impact to the community in regards to water, in regards to sewer or traffic. The daughter is already there. Her father just wants to give her her own place and her own affordable place to reside in Santa Fe. That's what this is about.

We are in agreement with staff conditions. The staff conditions are to meter both homes and we agree not to exceed .25 acre-foot which is what was proved up in the original hydro report.

Mr. Chair, I want to say a little bit about that subdivision when it was approved. Not only was it approved on water, it was approved on density as well. The density in the area was 2.5 acres. The developer comes in and says I wasn't as many lots as I can get at 2.5 acres. Staff tells him, All right, you have to prove. He comes back, proves out water, gets his 16 lots with .25 acre-foot water restriction. If you look at that plat, there's not a note there that says those lots cannot be further subdivided. So the applicant lost that mechanism to do that.

The applicant did come in to the County and was told to wait until the SLDC came into effect and you could have an accessory dwelling unit. As you know, small family transfers no longer exist and the accessory dwelling unit kind of replaced it as a mechanism for affordable housing, affordable places for children and elderly people. So he could have done a small lot. He could have had a house and a septic on each lot. The small family transfer allowed you to go to half the minimum lot size and so in this area it would have been 1.25 acres. So he was given some bad information and lost that mechanism. Now he comes in and once to provide an affordable house for his daughter and now he can't do it again. So, you know, we feel that it is in compliance with all of the requirements in regards to an accessory dwelling unit. It meets the square footage. And in regards to the septic system. I was unaware that there's a 1,500 gallon septic system. I was told by the applicant that he went to the Environment Department, told them what the issue was and Environment told him there's really nothing that you can do unless you do a permit for a second permit system. My personal feeling is that that language shouldn't even be in the SLDC. The County does not regulate septic tanks. That is done by the New Mexico Environment Department. So if the New Mexico Environment Department wants modifications, wants a bigger tank, wants a separate system, I think that that should be decided by the Environment Department until the County actually regulates septic systems.

Mr. Chair, that's really all I have to say. We are in agreement with staff conditions. There was a variance in the same exact subdivision, similar request was approved by Planning Commission and then ultimately approved by the Board of County Commissioners. So, therefore, we ask that you approve this variance tonight.

CHAIRMAN GONZALES: Mr. Katz.

COMMISSIONER KATZ: On the septic tank, will there be a separate drain field or just a separate tank that will go into the same drain field?

MR. DALTON: Mr. Chair, Mr. Katz, there will be a whole entire system so septic and leach field.

COMMISSIONER KATZ: Okay, one other question on that. What was the basis for needing a separate septic tank? There was nothing in the record that said you had to have one and the County prefers that there not be a separate one unless there's a need.

MR. DALTON: Right, Mr. Chair, Mr. Katz, the way the SLDC reads is the utility shall be in common with the principal dwelling unit. That's the way the SLDC reads. So when our applicant was told that he went to the Environment Department to obtain a permit because he was coming in to permit the accessory dwelling unit and was told, that's there's really nothing we can do to accommodate this extra bathroom and two bedrooms, you are better off installing a new system. So that's why the Environment Department issued him a permit for a second system.

COMMISSIONER KATZ: Thank you.

CHAIRMAN GONZALES: Mr. Anaya.

COMMISSIONER ANAYA: Mr. Chair, Mr. Dalton, good to see you on the other side. Good to see you. Just a clarification on the septic tanks. Like a mentioned a while ago, that is all based on the size of the dwellings and the number of bedrooms and bathrooms so that's why they required that you add another one to that system instead of just adding a tank and extending the leach field, which they could have done that too. But new systems was probably a lot cheaper to go in the first place. The other question that I have is – on man, I lost my train of thought. That's what it is like to be a grandpa, I guess. Thank you.

CHAIRMAN GONZALES: I'll come back to you. Any other questions of the applicant? I still have a couple of questions. Wayne, so you did receive a permit for another septic tank at 2017 but you have not put it in yet right?

MR. DALTON: Mr. Chair, that's correct.

CHAIRMAN GONZALES: So, I mean, if we just upgrade to a new septic tank then this variance goes away; correct?

MR. DALTON: Mr. Chair, there's really nothing – the existing system won't accommodate an extra bathroom and two bedrooms. It's not big enough.

CHAIRMAN GONZALES: No, I'm talking about if you upgrade a system to 1,500.

MR. DALTON: You could upgrade the system. Like I said, I didn't know there was a 1,500 gallon system. I don't really think that's very cost effective for our client to rip out his existing system and install a 1,500 tank with a leach field. That's just not cost effective.

CHAIRMAN GONZALES: I don't know. I think I disagree with you on that. You're going to pay more money to disturb a whole new area for a leach field, a whole new septic tank when you can just take out that one septic tank and replace it. It might be a little bit bigger and I do disagree with you as far as the County they do have jurisdiction as far as placement of septic tanks.

MR. DALTON: Placement, yes. But they don't do inspections on them. They don't issue permits on them.

CHAIRMAN GONZALES: Yeah, but with some of this information I was looking also at the site plan when we look at a site plan, I like to see the whole lot on the site plan not a partial site plan because I like to be able to see scale between the wells and the septic to see if they're in compliance as well. I know that's not this county's job as well but that's just something that is natural. But I do want you guys to consider that.

MR. DALTON: Mr. Chair, that's my fault. I went with the site plan that he submitted to the County for his permit. I just went with that site plan since they accepted that, I said, Why not, I'll just submit the same thing. But, yes, we usually do.

CHAIRMAN GONZALES: All right. Now my other question, what's the possibility of you doing away with that one variance and upgrade your septic tank? Is that a possibility?

MR. DALTON: I really don't have the authority to say that. The applicant really thinks it is in his benefit to install a new system. I don't think – if he has to modify it I don't think he'll have a problem with that either.

CHAIRMAN GONZALES: Okay, thank you. Any other questions.

COMMISSIONER ANAYA: Mr. Chair, I remember what the other question was.

CHAIRMAN GONZALES: Mr. Anaya, go ahead.

COMMISSIONER ANAYA: Is there a garage in there? It says car port but is that a garage or is that just a cover?

MR. DALTON: Mr. Chair, Commissioner Anaya, what are you referring to?

COMMISSIONER ANAYA: On the site plan that is submitted, it says CP, which means car port. And then there's a CP covered – oh, that's a porch.

MR. DALTON: Covered portal, that's CP.

COMMISSIONER ANAYA: Okay, so no garage?

MR. DALTON: Mr. Chair, Commissioner Anaya, no.

COMMISSIONER ANAYA: Okay, thank you.

CHAIRMAN GONZALES: Okay, any more questions of the applicant. Yes, go ahead.

MEMBER LOPEZ: On your septic system and your water well, what's the distance from your water well to your septic system?

MR. DALTON: Mr. Chair, Commissioner Lopez, I'm not too sure of the exact distance but he was issued a permit from Environment Department so you have to show all of those setbacks and meet those setbacks in order to get the permit. So I could tell you that it is probably 100 feet or more.

MEMBER LOPEZ: It's 100 feet minimum I believe.

MR. DALTON: That's correct.

CHAIRMAN GONZALES: Okay, let's start the public hearing. Does anyone want to speak in favor or against the requested variances? Nobody. Okay. With that said, does the Commission have any discussion or motions.

COMMISSIONER ANAYA: Mr. Chair, I'd like to make a motion please.

MS. LUCERO: Mr. Chair, I'm sorry, before a motion, we would request that you close the public hearing.

CHAIRMAN GONZALES: Oh, I'm sorry. Being there is no questions, I close the public hearing.

KATHRYN BECKER: Excuse the late entry, I'm here on behalf of the La Cienega Valley Association. We did submit a letter and I am just asking for confirmation that that did make it into the record.

CHAIRMAN GONZALES: I don't remember seeing it.

MS. BECKER: It was electronically transmitted to the project lead earlier in the week. And barring that, Mr. Chair and members of the Commission, I respectfully request the record stay open until that letter be submitted to you such that it was in opposition to the variance and I would like you to have that before you.

CHAIRMAN GONZALES: I think we probably need to swear her in. Oh, wait I think I need to reopen the public hearing. Can I have a motion to reopen the public hearing.

COMMISSIONER KATZ: So moved.

COMMISSIONER SHEPHERD: Second.

CHAIRMAN GONZALES: All in favor.

The motion to reopen the public hearing passed by unanimous voice vote.

CHAIRMAN GONZALES: Okay, please go ahead.

[Duly sworn, Kathryn Becker, testified as follows]

MS. BECKER: Kathryn Becker, address is 19 Calle Lisa, Santa Fe, New Mexico 87507. I'm a member of the board. It was circulated and submitted. I apologize that I don't have a copy in front of me I just wanted to make sure it was before you and you had an opportunity to review it.

So with that, I just ask that the time period be extended until such time as it can be transmitted.

CHAIRMAN GONZALES: When was it submitted?

MS. BECKER: I believe it was Monday and it was submitted to the project manager is the best of my recollection. I'm sorry I don't have that in front of me. I'm actually here on another matter but I heard this and I just wanted to make sure that it was in the record.

CHAIRMAN GONZALES: Because we did receive one from La Cienega on the Nunez property. I saw that one.

MS. BECKER: Yes, sir. I am here to speak to that. However, this was a separate one that later came to our attention. We did not have a CO meeting but the transmittal is from Carl Dickens on behalf of the LCVA, the La Cienega Valley Association.

MS. LUCERO: Mr. Chair, we didn't receive a copy of that letter. So perhaps the speaker could reiterate or paraphrase what was in that letter.

CHAIRMAN GONZALES: I'm sorry what was that again?

MS. LUCERO: That perhaps she can reiterate what was part of that letter for the record.

CHAIRMAN GONZALES: Do you by chance have a copy of that letter?

MS. BECKER: If you'll allow me one minute, I'll try and pull it up on my email if that's acceptable.

COMMISSIONER SHEPHERD: Mr. Chair.

CHAIRMAN GONZALES: Steve.

COMMISSIONER SHEPHERD: When I look at what the Hearing Officer recommended, the Hearing Officer recommended that any decision concerning the current application be consistent with the precedent of the Montoya application. I have a problem with that. The Montoya application and all of the details aren't part of this package and really have, in my opinion, no bearing on the decision we need to come forth with because each application has to stand on its own merits. If the County Commissioners want to overrule or override or change what we recommend, that's

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certainly within their right but I don't think that should have any factor in the decision that we're about to make.

CHAIRMAN GONZALES: Isn't that the same topic that Frank was talking about earlier?

COMMISSIONER KATZ: It's the same issue but I wasn't talking about the other case.

CHAIRMAN GONZALES: Okay.

MS. BECKER: I was able to pull it up and I'm asking for permission to read the letter, the contents of the letter; may I do so?

CHAIRMAN GONZALES: Please do.

MS. BECKER: It was dated July 12th, it's addressed to Robert Griego, Planning Manager for the Growth Management Department.

"Dear Robert, at the open house on Jun 27th that you and your staff held in La Cienega I gave you a copy of the notice of public hearing for case number V18-5070, Angelo Ortega variance, submitted by James W. Siebert and Associates, Inc. The date of the public hearing before the Planning Commission is July 19th. The notice also indicated that the public hearing before the County Hearing Officer was held on June 14th which was before the notice was received by the LCVA. At the LCVA Board meeting on July 2nd the board discussed the proposed variance. The following are both the general and specific variance and concerns raised by the LCVA Board. No one on the board could remember this variance request coming before the LCVA for an established community organization as required by community code. Please inform the LCVA what review process was followed for this variance request and please include why the notice was received after the public hearing before the County Hearing Officer.

"The general concern we have is the information provided in the notice is incomplete and limited. It does not provide details needed for the board to make an informed decision on the request, the size of the lot, water rights, adherence to well meter requirements are some of the information not provided.

"This leads to a great concern about the variance review process and that is what community organizations are required to review – excuse me – and that is that community organizations are required to review variances but are required to do so without the County having conducted a site inspection to verify the variance petition as presented and the lack of understanding of the process with inadequate information and no County staff present to answer questions the board may have or may raise regarding compliance with the code and the plan. On several occasions this has placed the LCVA in the awkward position of listening to residents and attempting to make important community decisions without sufficient information. Literally placing board members in the position of guessing what the intent and parameters are of proposed variances are and whether the variances conform with the code and plan.

"It has also been brought into question as to whether there is any value in being a community organization. This is a discussion the LCVA Board will continue to have until we can gain more information and participation from the County. Finally, the LCVA Board wants to make it very clear that until there is an established and funded plan to bring the matter into our community we oppose any variance request that impact our limited water resources. Our community has stood by too long as uncontrolled and unplanned growth has steadily depleted our water sources and threatened the history and

traditions of our community. The LCVA Board opposes this variance for this reason and for the lack information and resources from the County. Sincerely, Carl E. Dickens, President on behalf of the La Cienega Valley Association.”

It as cc'd to Penny Ellis-Green, Director of the Growth Management Administration and County Commissioner Robert Anaya.

CHAIRMAN GONZALES: Thank you.

MS. BECKER: Thank you very much.

CHAIRMAN GONZALES: Okay.

MR. DALTON: Mr. Chair, I just want to state for the record that a community meeting was scheduled and held on April 12, 2018 at the La Cienega Community Center. We published that. We sent out to property owners within 500 feet of the subject property. I was there from 5:30 to 7:30 no one showed up except for me, the applicant and the applicant's wife. And I did mail Mr. Dickens a letter advising him both of the community meeting and he was also mailed a notice for the Hearing Officer meeting and this Planning Commission meeting. And we did meet County requirements for the mail out and posting in the *New Mexican* for these meetings.

MS. LUCERO: Mr. Chair, the information on the pre-application neighborhood meeting is in your packet in Exhibit 9 and it includes the mailing list.

COMMISSIONER SHEPHERD: Mr. Chair, I have a question of staff.

CHAIRMAN GONZALES: Mr. Shepherd, to ahead.

COMMISSIONER SHEPHERD: The current property is in the Vista de Sandia Subdivision; is that correct?

MR. ROMERO: Mr. Chair, committee member Shepherd, that is correct.

COMMISSIONER SHEPHERD: And it says that the subdivision plat states under notes and conditions number 12, guesthouses are prohibited in these lots. Is that correct? Has that changed any?

MR. ROMERO: Mr. Chair, Member Shepherd, nothing has changed within that subdivision under the notes.

COMMISSIONER SHEPHERD: And just for my own benefit as being the newest member up here, if I look at our Sustainable Land Development Code under variances 4.9.7.1, the last sentence in that paragraph, "...the granting of an area variance shall allow a deviation from dimensional requirements and standards of the code but in no way shall it authorize a use of a land that is otherwise prohibited in a relevant zoning district." Does that apply in this case?

MS. LUCERO: Mr. Chair, Commissioner Shepherd, yes, that is applicable in this case.

COMMISSIONER SHEPHERD: Thank you.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN GONZALES: Mr. Anaya.

COMMISSIONER ANAYA: I'd like to also make a request that that letter that she, the lady read to us, be submitted to Vicki or somebody so they can put that in the record also besides the reading.

MS. LUCERO: Mr. Chair, Commissioner Anaya, it sounds like it was sent to other members of staff so we'll obtain and make sure we get a copy of that letter in the record.

COMMISSIONER ANAYA: Then once you get the copy can you send it to us just so that we can view it and then we'll destroy it.

MS. LUCERO: We will do that.

COMMISSIONER ANAYA: Thank you.

CHAIRMAN GONZALES: Okay, anymore questions? Let's close the public hearing. Does the Commission have any discussion or motions?

COMMISSIONER SHEPHERD: Mr. Chair, I can make a motion.

CHAIRMAN GONZALES: Mr. Shepherd.

COMMISSIONER SHEPHERD: Based on the fact that this is part of the Vista de Sandia Subdivision and guesthouses are prohibited and based on the purpose of a variance is not to authorize a use of a land that is otherwise prohibited, I move that we deny the variance from Ordinance 2016-9 and I also recommend denying the variance on the septic based on the new information that came before the Board today.

CHAIRMAN GONZALES: Do I have a second.

COMMISSIONER ANAYA: Clarification. Mr. Chair, Mr. Shepherd, are you saying to deny the variance on the septic tank because it can be upgraded to a 15; is that what your intent is?

COMMISSIONER SHEPHERD: I deny the variance because the SLDC does not allow separate septic systems for accessory dwelling units and it doesn't appear that in this case there is a no choice. There is an alternative that was presented today that would make that situation moot.

COMMISSIONER ANAYA: Thank you, sir.

CHAIRMAN GONZALES: We have a motion on the table, do we have a second.

COMMISSIONER KATZ: I would second it.

CHAIRMAN GONZALES: Second by Mr. Katz. All in favor say aye.

The motion passed by unanimous voice vote.

CHAIRMAN GONZALES: Okay, the variances failed.

RACHEL BROWN (Deputy Attorney): Mr. Chair, for my clarification, can you tell me how many voted in favor of the motion?

COMMISSIONER ANAYA: Mine was a silent yes.

The vote was held again by a show of hands and passed by unanimous [6-0] vote.

B. Findings of Fact and Conclusions of Law - Deemed unnecessary

CHAIRMAN GONZALES: Thanks for coming, Wayne.

C. **Emilio E. Ortiz and Linda D. Ortiz-Chavez, Applicants, Eileen Ortiz Agent, request a variance to the requirements set forth in the Sustainable Land Development Code (SLDC) of Chapter 9, Table 9.16.5 (Dimensional Standards) to allow a 1.43 acre parcel to be divided into two equal lots; each lot consisting of 0.715 acres.**

The property is located at 39 Cañada Ancha, within the Chimayo Community District Overlay (ChCD) in the Traditional Community Zoning District (TC), within Section 1, Township 20 North, Range 9 East , Commission District 1 *Exhibit 4: Letter and site plan from Applicant; Exhibit 5: Support letter and materials from John Chavez*

MR. ROMERO: Just to refresh your memories, staff did hand out some handouts prior to the Angelo Ortega variance that are for this variance request. [Exhibits 4 – 6; Mr. Romero recited the case caption and provided his report as shown below]

On June 14, 2018, this Application was presented to the Hearing Officer. The Hearing Officer supported the application based on the evidence and testimony presented at the public hearing. The Hearing Officer finds that the request is not contrary to the public interest; that due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in exceptional and undue hardship on the owner; and that the spirit of the SLDC is observed and substantial justice is done by granting the variance.

Therefore, the Hearing Officer recommends approval of a variance of Chapter 9, Table 9.16.5 to allow the Applicants to divide their 1.43 acre parcel to be divided into two equal lots for the Applicants' daughters, each lot consisting of 0.715 acres. The Hearing Officer supported the Application as memorialized in the findings of fact and conclusions of law in a written order subject to the following conditions.

1. Accessory dwelling units will be prohibited on both lots.
2. There shall be no further division of the land.

The Applicants acquired the property as evidenced by warranty deed recorded in the records of the Santa Fe County Clerk on August 3, 2011, as Instrument No. 1641770. The property is recognized as a legal lot of record located in the Traditional Community Zoning District within the Chimayo Community District Overlay. The Applicants are requesting a variance to the requirements set forth in the Sustainable Land Development Code of Chapter 9, Table 9.16.5 to allow their property to be divided into two equal lots.

The Applicants have indicated in their letter of intent, a request to divide their 1.43 acre parcel into two equal lots; each lot consisting of 0.715 acres for each of his daughters. However, the recorded survey plat indicates that the parcel consists of 1.453 acres. If the Applicants were to divide their 1.453 acre parcel into two equal lots; each lot would consist of 0.7265 acres. The Applicants would be lacking approximately 0.047 of an acre in order to divide their property administratively. Currently, there is a single family residence located on the property, which was permitted in March. The property is accessed from Cañada Ancha, which is identified as County Road 94 and maintained by Santa Fe County.

Chapter 9, Table 9.16.5 in the Traditional Community Zoning District, within the Chimayo Community District Overlay does not allow lots to be smaller than 0.75 acres. Under the prior Land Development Code the Applicants would not have been able to divide their property administratively, as 0.75 acres was the minimum base density at that time, unless the property had the ability to connect to community water and sewer, in which case the lot size could have gone down to 0.33 acres per lot. The requirements for a small lot family transfer under the prior code would have allowed the lot to be half the minimum lot size but no smaller than 0.75 acre.

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Chapter 4, Section 4.9.7.6 of the SLDC allows deviations not to exceed five tenths of a percent of the gross acreage allowed in the zoning district, which would bring the Applicant's lot size to 1.4925 acres with each lot consisting of 0.746 acres.

If the Applicants were to request a minor deviation of Chapter 4, Section 4.9.7.6, the Applicants would be lacking approximately 0.0395 of an acre in order to divide their property administratively.

Recommendation: The Applicant did provide responses to the variance criteria. However, staff's position is that the responses did not adequately address the criteria. Staff recommends denial of a variance from Ordinance No. 2016-9 the Sustainable Land Development Code of Chapter 9, Table 9.16.5 Dimensional Standards of the Traditional Community of Chimayo to allow a 1.453 acre parcel to be divided into two lots; each lot consisting of 0.7265 acres.

This matter went before the Hearing Officer for a hearing on June 14, 2018. The Hearing Officer recommended approval of a variance of Chapter 9, Table 9.16.5 Dimensional Standards to allow a 1.453 acre parcel to be divided into two lots; each lot consisting of 0.7265 acres, subject to the following conditions. May I enter those into the record?

CHAIRMAN GONZALES: Okay.

MR. ROMERO: That would be

1. Accessory Dwelling units will be prohibited on both lots, due to substandard lot sizes.
2. No further division of land will be allowed.

If the decision of the Planning Commission is to approve the application, you may consider adopting the Hearing Officer's findings of fact and conclusions of law in the written recommendation. I stand for any questions.

CHAIRMAN GONZALES: Thank you, Miguel. Does the Commission have any questions of staff? I have one. I don't know, Vicki, maybe I'm a little bit confused on this. This is a proposed lot split so is there a copy of a proposed lot split survey and/or a site plan to scale indicating a proposed lot line, existing and proposed structures including utilities, septic tanks, shared well easement, access and topo or some kind of note indicating the slopes on the property? I'm used to seeing when a lot split is coming up, I'm used to see like a preliminary survey showing all of that stuff. I'm not sure of where the lines are that go north, south and east and west. I'm not sure what's in our packet here or did I miss something?

MS. LUCERO: I don't believe so. Miguel can point out something else out if I missed it as well. The plat is shown on Exhibit 3, the parcel boundaries and what they would be doing is subdividing the property and I believe a site visit was conducted and again Mr. Romero can clarify and the slopes out there are – it's a pretty flat site is my understanding.

MR. ROMERO: Mr. Chair, Vicki, that is correct. Myself and Paul Kavanaugh did conduct a site visit and the area out there is relatively pretty flat.

CHAIRMAN GONZALES: So, Miguel, which way are they going to split – where the proposed lot line on this?

MR. ROMERO: I'll go ahead and pass out – the applicant did provide a proposed plat [circulates for Commission viewing] and at the time of the application there were a couple of surveyors involved, if I am not mistaken. So there was I believe

some issues with the first surveyor and then they were in the process of getting another surveyor to provide this but the applicants can speak more on that. I will go ahead and pass this around so you can get a rough idea of what is proposed. My understanding is that they want to create two equal lots.

CHAIRMAN GONZALES: Okay, thank you. Meanwhile, do we have any other questions of staff from the Commission?

MR. ROMERO: Mr. Chair, Commission members, I do just want to clarify that during the time of the – in the letter of intent, again, that the applicant was requesting to divide the 1.43-acre parcel to get the equal lots of .715, but again with our configurations of what's noted on the plat there is actually a little bit more acreage to it but still they don't meet the minimum requirements. So just for clarification the recommendation would be, if you do approve the variance, we recommend what staff mentioned in the report to clarify that the – it would be 1.453 acre parcel which is in the recorded plat and that they would be requesting to subdivide that equally which would come out to two equal parcels of .7265 acres. So for clarification, the applicant is aware of this change. We did talk about this during the Hearing Officer for clarification purposes and that was also mentioned during the Hearing Officer's meeting as well.

CHAIRMAN GONZALES: Mr. Katz.

COMMISSIONER KATZ: Would the owner of that property be permitted to build two houses on it?

MR. ROMERO: Mr. Chair, Member Katz, if the variance is approved –

COMMISSIONER KATZ: No, if the variance is not approved and it's not divided.

MR. ROMERO: One house.

COMMISSIONER KATZ: Just one house on the 1.46 acres. Thank you.

MS. LUCERO: Mr. Chair. I'm sorry. Mr. Chair, Member Katz, I just want to clarify that that would be allowed an accessory dwelling unit that met the standards for accessory dwelling unit. It cannot exceed 50 percent of the main house and has to stay within a certain square footage.

COMMISSIONER KATZ: Thank you.

CHAIRMAN GONZALES: Okay, any more questions of staff? Will the applicant please step forward and give the presentation.

[Duly sworn Eileen Chavez, testified as follows]

EILEEN CHAVEZ: Eileen Ortiz. I live at 398 Camino Ancha, Chimayo, New Mexico.

Planning Commission, thank you for this opportunity. My name is Eileen Ortiz, agent for Emilio E. Ortiz and Linda Ortiz-Chavez variance. I am also the oldest daughter of Emilio E. Ortiz and sister to Linda Ortiz-Chavez. We are requesting a variance to allow 1.43 acre parcel to be divided into two equal lots. Each lot consisting of 0.715 acres. My father would like to give my sister and myself an equal portion of the above mentioned lot. My sister and I agree that it would be in our best interest not to own land together. It would affect us in many ways such as an increased level of responsibility, duty to compensate such as sharing the expense of owning property together, maintenance and repairs. Both Linda and I have been using the property to access the County Road from our residence since we were children in grade school. Currently, my

children and I use the south side of the property and Linda, her husband and their children use the north side of the property. Each side also has an existing driveway.

My family, meaning my dad, Emilio, Linda and myself included use the property for agriculture as well. Also, my daughter who is a single mother will be living in a single-wide mobile home on the south side of the property.

Linda and I do not share a driveway because we do not want to encumber each other. Both Linda and I have the need of use for this property. We feel that owning property separately will maintain the peace and more important keep our family safe. There was – also, we held a neighborhood meeting on March 3, 2018 which only one person attended. He did in request be in favor for my father to give his two daughter two equal lots.

I hope that all of you find it within you to allow this variance. Thank you for the opportunity to voice my opinion and share my story.

CHAIRMAN GONZALES: Thank you. Does the Commission have any questions of the applicant?

COMMISSIONER SHEPHERD: Mr. Chair.

CHAIRMAN GONZALES: Steven.

COMMISSIONER SHEPHERD: Just a question of clarification. How many dwellings, whether they be mobile homes or structures, will be people that will be living within on that property?

MS. ORTIZ: One mobile home and it will be my daughter.

COMMISSIONER SHEPHERD: So there's one mobile home and two structures?

MS. ORTIZ: No, there's only one structure.

COMMISSIONER SHEPHERD: After the division, after the subdivision, how many dwellings are planned to be on that property?

MS. ORTIZ: Just one because my sister wants to keep her side agriculture.

COMMISSIONER SHEPHERD: And you currently all live in one structure now?

MS. ORTIZ: No, just my daughter.

MR. ROMERO: Mr. Chair, committee members, the daughter and the applicants don't reside on the property. Currently, right now on the parcel of property, Ms. Eileen Ortiz, her daughter, there was a permit that was pulled for a mobile home. So there's one dwelling right now on the property that I believe her daughter resides in that was permitted by Santa Fe County. For clarification, again, if the density variance is approved her daughter will remain on the site and her other sister will obtain the other parcel which her sister does not plan on developing. She just wants to keep it as ag.

CHAIRMAN GONZALES: Miguel, I am looking at parcel A1 which is north and parcel A2 which is south and I'm comparing it with Exhibit 3 and Exhibit 3 shows a structure on the lot and then the new – the proposed lot split shows a mobile home. So it looks like there's going to be a structure on each lot; is that correct?

MR. ROMERO: Mr. Chair, committee members, for a quick clarification, is for Exhibit 3 and for the handout that you have, are you referring – are you comparing those two documents?

CHAIRMAN GONZALES: Correct.

MR. ROMERO: Okay, so the recorded survey plat that you see here does indicate that there's a structure on the property. [inaudible] it's a vacate parcel, there's nothing out there. There was no residence out there. It was all used for ag up until recently when one of the daughters obtained a permit to put a mobile home for her daughter. So that's the old plat. With the proposed plat that you see there what's on site is the mobile home. There's nothing else on site. Staff has verified that and we've gone out there, which was permitted, again, by our department. The proposed plat of course will get recorded and everything will be listed on the proposed which you will see the mobile home. That's what you see now.

CHAIRMAN GONZALES: Thank you, Miguel. Mr. Anaya, did you have a question on access?

COMMISSIONER ANAYA: No.

CHAIRMAN GONZALES: Mr. Katz.

COMMISSIONER KATZ: I'd like to hear from the applicant. Given what they have described they're going to be using the property for what the peculiar and exceptional practical difficulties or exceptional and undue hardship would be if they simply share the property like sisters are expected to do.

[Duly sworn, Linda Ortiz-Chavez, testified as follows]

LINDA ORTIZ-CHAVEZ: Linda Ortiz-Chavez. PO Box 378, Chimayo, 87522.

Santa Fe County Planning Commission, my name is Linda Ortiz-Chavez. I am the joint owner of the property located at 39A Cañada Ancha in Chimayo and I am the youngest daughter of Emilio Ortiz. My sister Eileen and I have equally been benefitting from 31A Cañada Ancha. Eileen and I both have the need and the use for the property. We do not share a driveway because we do not want to interfere with each other.

Eileen and I have an existing driveway on each side of the property. Both of us have been using the property to access the county road from our childhood home since we in grade school. There's a map on the second page. Before my father purchased the property it was abandoned with a vacant structure. Trespassers were storing property there. When my father, Emilio, purchased the land in 2011 the neighborhood became safer. We demolished the structure, built fences and rehabilitated the agricultural land. He bought the property for the safety of his family.

I believe sharing the property would not be in our best interest for Eileen, myself and our children. It would affect us in several ways such as sharing an increased level of liabilities, the burden of sharing expenses, such as the property taxes and the responsibly of sharing the maintenance and repairs.

The existing driveway on the north side of the property is a safe path for my children to access the bus stop at the county road. With minor improvements emergency vehicles and service vehicles would be able to access our residence easier through 39A Cañada Ancha parcel A1. On the other side of our property, do you see the road Entrada de Ortiz? On the other side of our property service vehicles and emergency vehicles struggle to access my father's residence and my residence because the road is too narrow. There are two old structures there that were built before there was any regulation. Also, we cannot receive packages as they become damaged or end up missing because we share an easement with other neighbors. My husband, our children and my father, Emilio, are currently using and have the need for the north side of the property located at 39A

Cañada Ancha for agriculture, open space and a safe access to the county road. Furthermore, I do not have plans to develop the north side of the property. My interest in the property is to have a safe path for my family and to continue the tradition of planting crops. In the event we were to consider to develop the property for a residence we will meet the state code, county ordinance and requirements. I would like for my children to have the opportunity to develop the property for a residence in the future in the event they have a need to do so. But I discourage it for them to pile up my children on the neighborhood but in the event that there's an emergency, I would like for them to have the opportunity.

Please allow the variance to be granted. An approval of the variance would keep the peace and eliminate future disputes within our family. Thank you.

CHAIRMAN GONZALES: Mr. Katz.

COMMISSIONER KATZ: I may be missing something but is someone threatening to close off the north access?

MS. ORTIZ-CHAVEZ: They have. The neighbor that lives in the front has made it hard. But there's two, like I said, there's two structures which make the road narrow and it's a tight fit.

COMMISSIONER KATZ: Help me out here. Who owns this parcel now that you want to divide?

MS. ORTIZ-CHAVEZ: My father and myself, we're joint owners.

COMMISSIONER KATZ: Okay. And you completely control both accesses, both the north one and the south one; right?

MS. ORTIZ-CHAVEZ: My sister is on the south and I'm on the north and we do not interfere with each other.

COMMISSIONER KATZ: And – so why does that have to change?

MS. ORTIZ-CHAVEZ: Ironically, I'm asking for my own tax bill. I don't want to share a property with her, like I mentioned, I don't – it's a liability to share land with anybody.

COMMISSIONER KATZ: It doesn't strike me that this is an exceptional thing to have people share property. I'm not seeing why you can't do it. What am I missing? I don't want to make your life difficult but I'm –

MS. ORTIZ-CHAVEZ: We don't want to interfere with each other. I don't want to be liable for her side. I don't want her to be liable for my side. It would keep the peace if we divided the property and had a legal lot.

COMMISSIONER KATZ: But the law doesn't allow that. Can't you simply cover the expenses on your side and she cover the expenses on her side. You're splitting the property down the middle, that's what you want, so just split the property tax. Why is that so hard? This does not sound peculiar or exception to me in the words of the code.

MS. ORTIZ-CHAVEZ: I – can you re – can you clarify what –

COMMISSIONER KATZ: Why can't you just split whatever expenses there are like property tax 50/50 and if you have some expense for doing work on your side, you pay for it. And if she has some expense for doing work on her side, she pays for it. You have separate roads so you maintain your road and she'll maintain her road. What's the problem? What am I missing?

MS. ORTIZ-CHAVEZ: We shouldn't have to share a piece of property. It's going to cause liabilities in the future.

COMMISSIONER KATZ: What liabilities are you talking about?

MS. ORTIZ-CHAVEZ: In the event that there's trespassers or certain people that we don't want on the property and the other person would want them on the property.

COMMISSIONER KATZ: Has that been a problem? Are you expecting that to be a problem?

MS. ORTIZ-CHAVEZ: It has been before.

COMMISSIONER KATZ: Between you and your sister?

MS. ORTIZ-CHAVEZ: Yes.

COMMISSIONER KATZ: Okay. Thank you, that helps.

MS. ORTIZ-CHAVEZ: Thank you.

CHAIRMAN GONZALES: Any other questions of the applicant? Sir, you want to speak? Are you part of the family? Okay.

[Duly sworn, John Chavez, testified as follows]

JOHN CHAVEZ: John Chavez, 5 Entrada de Ortiz, Chimayo, New Mexico 87522.

If I may address some of the questions from before. Number one, I don't believe the County itemizes the tax bill. So on Eileen's side is the trailer and that will be taxed, that will be included in the tax bill. Plus any development she does like portales or whatever. And so why should my wife, Linda, be burdened with paying her half of the tax bill 50/50 if half of that bill includes the trailer. My wife shouldn't be liable for her sister's property. And but when I stood back here and saw there was some confusion. When Linda was saying that there's two old buildings that didn't allow emergency vehicles, UPS trucks or butane trucks to get into that's on a separate piece of property that's contiguous with this property where our house is. So it's contiguous but it's separate. And through that side emergency vehicles like fire trucks, ambulances nothing can come down that road because there's two houses that are probably over 100 years old with a very narrow entrance probably 12 feet of so. So when she was addressing that emergency vehicles can't access our house, it's because that's the way we get into our house. And creating this split will allow emergency vehicles to come in.

Now I think I addressed the things that I saw that there was confusion on. But if I may, let me read my statement into the record.

COMMISSIONER KATZ: Can I ask you a question first on what you just said?

MR. CHAVEZ: Sure.

COMMISSIONER KATZ: I'm now more puzzled about the access. There's some difficulty with the road because of old houses that are nearby and all of that.

MR. CHAVEZ: Let me address that.

COMMISSIONER KATZ: But there's also the access that's on the plat here; why isn't that access being used now?

MR. CHAVEZ: That access needs to be a little bit more developed before it can be used in that fashion. So that property is accessed through 39A Cañada Ancha. So it's accessed through Cañada Ancha which is a street that runs north to south. Our

home is accessed through County Road 94D which is called Plaza del Cerro. And so Plaza de Cerro and Cañada Ancha meet like this. We cannot get emergency vehicles into our house through Cañada Ancha and through Plaza de Cerro.

COMMISSIONER KATZ: But don't your wife and her father own the property that you want to have access through now? And can't that be done now? Why does that have anything to do with a lot split or the need for a lot split?

MR. CHAVEZ: Well, maybe it doesn't but the fact is that it will be beneficial for that reason.

COMMISSIONER KATZ: But why does the lot split have anything to do with the access? I mean there are other reasons, I understand that. But you're saying that one of the reasons is access, why; why can't that be done now?

MR. CHAVEZ: I guess it could be done, sir.

COMMISSIONER KATZ: Thank you.

CHAIRMAN GONZALES: Does it have to do with the acequia that is there?

MR. CHAVEZ: Those acequias, there's a lot of stuff.

CHAIRMAN GONZALES: Okay.

MR. CHAVEZ: May I read my statement?

CHAIRMAN GONZALES: Go ahead, read your statement.

MR. CHAVEZ: Thank you. Chairman Gonzales and members of the Planning Commission, traditional people must be allowed to remain in the traditional community. Chimayo is one of several communities within the boundaries of the Santa Cruz de la Cañada Land Grant. In 1935 Emilio Ortiz was born at 4 Entrada de Ortiz in Chimayo, just about 100 yards away from the subject property. In fact, his family ancestors' names appear as some of the original grantees in the Spanish decree known as the de Vargas Decree that granted the Santa Cruz de la Cañada Land to 65 families in 1695.

His family's names appear in every subsequent census from 1750 until the present date. His family was living in the place of his birth during the Mexican-American War of 1846 and some of the direct beneficiaries of the international treaty ratified by the Congress of the United States known as the Treaty of Guadalupe Hidalgo. Articles VIII and IX ensured the safety of existing property rights of Mexican citizens living in the transferred territories.

The Santa Cruz de la Cañada Grant was recognized by the US Court of Private Land Claims in 1899 when the US Surveyor General's Office surveyed the grant in 1901 and the United States Congress enacted it and caused it to be patented. The patent read, The tract described above described, to have and to hold the same, together with all rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said grantees and to the heirs and assigns forever – there a copy of the plat within the documentation that I provided [*Exhibit 5*] so the document states forever not till the County was created or for when the County created an ordinance – for their use and benefit. President William H. Taft signed it into law in 1910. The constitution is applicable to the state through the 14th Amendment and its privileges and immunities and due process clauses. States may provide more protection to their citizens than that provided under the constitution, but they cannot infringe on the rights provided to their citizens under the Federal Constitution or its implementation, interpretation by the by the

federal courts. Article VI of the US Constitution holds that treaties are the supreme law of the land. Like the Constitution and the Bill of Rights treaties do not expire over time. Also, the State of New Mexico Constitution Article II, Section 4, page 4 and 5, Rights under the Treaty of Guadalupe Hidalgo preserved and this is what it says, The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty of Guadalupe Hidalgo shall be preserved inviolate.

Emilio Ortiz and his family are the living embodiment of traditional people living and farming in a traditional community. They have been cultivating the land for hundreds of years. In 2007, Martin Luther King, III along with his organization, Realizing the Dream, came to Chimayo to visit Emilio Ortiz to see if Emilio's method of subsistence farming could be modeled to work in other parts of the country as one way to feed the poor. There's a picture of Martin Luther King in the back of the packet I handed out with Emilio shaking his hand. Emilio's right here in the corner.

Now to the maternal side: Linda's maternal ancestor, Bernardo Abeyta, was the man who build el Santuario de Chimayo, which is now one of the most recognizable tourist destinations in the entire State of New Mexico.

I believe this hearing process was created due to the fact that not all circumstances fit neatly into the letter of the law or ordinance because there is also a human side. The purpose of this variance isn't for land speculation or profiteering but rather so that Emilio and his extended family can continue to live together on their ancestral lands with the traditions they've upheld from time immemorial. When it comes down to talking about affecting the lives of human beings their voices must be heard. Therefore I pray and beg that in your wisdom grant this variance request. And with that, I stand for any questions, Mr. Chairman.

CHAIRMAN GONZALES: Thank you. I do have a question. What is the septic tank system, what do you have out there?

MR. CHAVEZ: I'm sure of the capacity of gallons in the tank. So I'm a general contractor. I have a GB98 under the State of New Mexico. I install septic tanks all of the time. Septic systems are not based on the capacity of the tank. They are based on the length of the leach field. So when the state goes in to recognize a building depending on how many bedrooms it has, they require the leach field to be either 100 feet, 120 feet, 150 feet long. It is not based on the capacity of the tank. It's based on the amount of bedrooms determines the length of the leach field.

CHAIRMAN GONZALES: But it is also based on the size of the property. You can't get a septic permit unless you have at 3/4 of an acre; did you know that?

MR. CHAVEZ: That's not true because the neighbors right next door got a septic permit from the State of New Mexico and what it was was an enhanced septic system.

CHAIRMAN GONZALES: I'm talking about a conventional system. But there are enhanced ones and I don't know how those are permitted. So that is another issue I have as far as the septic.

MR. CHAVEZ: And so, Mr. Chairman, if we go for a permit for Linda's half the State would no doubt require us to install an enhanced septic system.

CHAIRMAN GONZALES: I would hate creating two lots and you wouldn't be able to get a permit because they require at least 3/4 of an acre. What do you think, Vicki?

MS. LUCERO: Mr. Chair, my understanding is that I think you're correct or on the right track. They wouldn't allow a conventional septic system on less than 3/4s but I believe an advanced system would be allowed which I think more costly. But that is still an option.

CHAIRMAN GONZALES: So you guys are willing to go that route?

MR. CHAVEZ: Yes, we agree with the requirement of a building an advanced, enhanced septic system if the need every arose.

CHAIRMAN GONZALES: Okay, does the Commission have any more questions of the applicant?

MR. CHAVEZ: May I make one more statement?

CHAIRMAN GONZALES: How long is it?

MR. CHAVEZ: It's short, short.

CHAIRMAN GONZALES: Okay, go ahead.

MR. CHAVEZ: In 2004 the State of New Mexico recognized land grants as quasi-municipal entities. Within that legislation which is chapter 49 of the Annotated New Mexico State Statutes, they're allowed for land grant-mercedes to undertake their own planning and zoning authority. The Santa Cruz de la Cañada Land Grant hasn't built up the capacity to take that on as an endeavor but it is state law. And so the patent gave all, not just the Santa Cruz de la Cañada Land Grant patent but the Truchas land grant patent, all the patents gave these people the right to this property forever. Not until the County was created. Their right to the land supersedes the County's enabling – the County's existing – in fact, it precedes the State of New Mexico. And I pray that within your wisdom you will allow this variance to pass. Thank you.

CHAIRMAN GONZALES: Thank you.

COMMISSIONER ANAYA: Mr. Chair, I have one question.

CHAIRMAN GONZALES: Mr. Anaya.

COMMISSIONER ANAYA: Sir, do you guys have any intent on selling this property?

MR. CHAVEZ: No, sir.

COMMISSIONER ANAYA: You know that in land grants you can't sell property, right?

MR. CHAVEZ: It's a complicated situation. And so, just let me give you an example. When the Spanish came they recognized [inaudible] and a horta. The horta was part of the common land but the salad became the private property over years. So when you're talking about a community land grant you're talking about two different types of land. The first type being the private and the second type being the commons. So for example, I am originally from Truchas –

COMMISSIONER ANAYA: Hold on one second. You said the common, the common requires that both are equal. What concerns me with what you just stated and made that comment right there and why I'm asking the question as to if you intend to trying to sell is because of the acequia, the other half is going to be dry because there is not acequia on it according to the drawings that we have. So I'm trying to figure out, if you guys are trying to be fair and equitable what happened to the acequia

and how come it got cut off? So where's the fair and equitable? Why can't you use the same road as Mr. Katz alluded to earlier? I'm really lost.

MR. CHAVEZ: The drawing simply doesn't show the acequia that goes to the other side. But there is one there and it does –

COMMISSIONER ANAYA: Then why are you submitting drawings that are not true and exact? You want us to make a decision based on common sense, well in common sense the only way we can do that is if we have the right documents to look at and try to make that. And what I'm looking at is the acequia and the drawings that you guys put into here, it's not there. That's Exhibit 3, that was submitted by I'm assuming you guys.

MR. CHAVEZ: I'm not sure which Exhibit 3 is. May I see it? What's the date on that?

COMMISSIONER ANAYA: But it was submitted.

MR. CHAVEZ: That's the surveyor at the time when Emilio bought the property.

COMMISSIONER ANAYA: So you guys added an additional acequia?

MR. CHAVEZ: I'm not sure why that survey had what it has on it. I cannot speak to that. He bought the property in 2011.

COMMISSIONER ANAYA: In 2011 was there two acequias? One on the north and one on the south?

MR. CHAVEZ: I think that this is where the confusion lies. The acequia on the south is the acequia of Los Ranchos and that's what you're seeing there, la Acequia de los Ranchos. And what you're seeing in the north is an irrigata, not an acequia. It's an irrigata off of a different ditch.

COMMISSIONER ANAYA: It doesn't show it on any of these. So that's – this is why we're – I'm trying to base my decision –

MR. CHAVEZ: The Acequia de los Ranchos doesn't irrigate this property. It passes through it. But the ditch that irrigates this property is called Martinez Arriba, la Acequia de Martinez Arriba.

COMMISSIONER ANAYA: Okay, and where is that located?

MR. CHAVEZ: It comes from like behind the Rancho de Chimayo and it comes all the way down on the north side of these properties.

COMMISSIONER ANAYA: So it's up higher than?

MR. CHAVEZ: Yeah, it is not represented in the map because from the access point from where this land gets irrigated is an irrigata not an acequia. That's where the confusion is.

COMMISSIONER ANAYA: It doesn't even show in the aerial. Okay, thank you, sir.

CHAIRMAN GONZALES: Please, go ahead. Please state your name for the record.

[Duly sworn, Lene Dialetto testified as follows:]

LENE DIALETTO: My name, Lene Dialetto. I reside at 39-A Cañada Ancha, Chimayo, New Mexico, 87522. Good afternoon. My name is Lene, and I am the granddaughter of Emilio Ortiz. I am the daughter of Irene Ortiz and it is my mobile home that is on the other side, already there. I am in strong favor of the variance, the reason

being is this is going to be my home for the rest of my life and I think it's in all of our best interests that the variance does go though. Do you have any questions for me?

CHAIRMAN GONZALES: Any questions? Mr. Katz.

COMMISSIONER KATZ: Maybe you can help me understand what the variance has to do with somehow this being able to make it your home for the rest of your life. Why wouldn't it be that way now?

MS. DIALETTO: Well, if we didn't do the variance, as you heard, my mother, my aunt and my uncle, there could be future issues and I just don't want those issues to be there.

COMMISSIONER KATZ: Are there those issues now?

MS. DIALETTO: No, but I just want to be pro-active and think ahead and I just want to have a good, peaceful dwelling there. I don't want any issues in the future is what we're trying to keep from happening.

COMMISSIONER KATZ: Thank you. I appreciate it.

CHAIRMAN GONZALES: Thank you. Any other questions of the applicant? Okay. This is a public hearing so now we can start it. Is there anyone out there that wants to talk on behalf or against this variance? Please come forward, Mr. Ortiz.

[Duly sworn, Emilio Ortiz testified as follows:]

EMILIO ORTIZ: I bought that land with the intentions of dividing it among my daughters. And I never knew we were going to come to this kind of a problem you created. I think we are losing freedom here in the United States because I own that land and now this is different. Now, you people are trying to take over somehow and the things that are going on – oh, the freedom [inaudible]. Mind you, I have an Indian plat too and when they came from there, from Europe, they took away the land from the Indians, and now when they started coming here making it the United States they took a lot of land from the people here that we already had – we've been here before the people from Europe came. Now you are taking away our freedom. In other words, where is the freedom? I can't even divide the land because on account of things you are negotiating. I don't know what's going on. We never had this kind of problems before. That's all I've got to say.

CHAIRMAN GONZALES: Thank you, Mr. Ortiz. There's other traditional communities all around Santa Fe County. I live in one, Agua Fria Village, and we've had to go through the same situation, the same stuff. It's just the way the County code is. Anything else? Okay. I'm going to close the public hearing. Does the Commission have any discussion or motions on table? Or what to propose any?

COMMISSIONER SHEPHERD: Mr. Chair.

CHAIRMAN GONZALES: Mr. Shepherd.

COMMISSIONER SHEPHERD: I just have a comment. I agree with the father that the freedoms aren't as they were. I think coming before here and asking for a variance takes some of your freedom away, where you have some other options of being able to just quietly come to an agreement between your daughters, or legally come to an agreement between your daughters that doesn't involve the County, that doesn't involve changing the land from under the current ownership, that allows you to not have to be involved with this Planning Commission. Perhaps there are other options, because the variance and the criteria we have to use doesn't necessarily meet the needs that you have,

and perhaps there are other ways that you can keep feeling better about your land and controlling your land without getting us involved. Just an opinion that I have about that.

CHAIRMAN GONZALES: Good advice, Mr. Shepherd. What else? Does anyone want to make any motion?

COMMISSIONER LOPEZ: Mr. Chair.

CHAIRMAN GONZALES: Leroy.

COMMISSIONER LOPEZ: Mr. Chair, at this time I would like to move to approve this variance, Case V 18-5060, Emilio E. Ortiz and Linda D. Ortiz Chavez, for the simple reason that on June 14, 2018 the Hearing Officer supported the application and evidence and testimony presented at the public hearing. I am strongly going with the recommendation of the Hearing Officer subject to the following condition: Accessory dwelling units will be prohibited on both lots. There shall be no further division of the land. With this, Mr. Chair, I so move for approval.

CHAIRMAN GONZALES: Do I have a second?

COMMISSIONER ANAYA: I'll second.

CHAIRMAN GONZALES: Seconded by Mr. Anaya.

The motion failed by majority [2-3] voice vote with Commissioners Anaya and Lopez voting for and Commissioners Katz, Martin and Shepherd voting against.

CHAIRMAN GONZALES: The motion to approve fails. Sorry. You can appeal this decision to the Board of County Commissioners.

D. Findings of fact and Conclusions of law – Unnecessary

E. **CASE # SVAR 18-5080 Sergio Nuñez Variance.** Sergio Nunez, Applicant, Mike Montiel, Agent, request a variance of Chapter 9, Section 9.8.3.6.5.c.ii, Setbacks, of the La Cienega and La Cieneguilla Overlay District to allow an existing unpermitted accessory dwelling and existing accessory structure to be nine feet from the property boundary, and a variance of Chapter 10.4.2.4, (Utilities), to allow a second septic system to be utilized for the accessory dwelling. The property is within the Residential Estate Zoning District within the La Cienega/ La Cieneguilla Overlay District and located at 20 Calle de Juan within, Section 20, Township 16 North, Range 8 East, (Commission District 3) [*Exhibit 6: Agenda of La Cienega Valley Association Board meeting*]

MR. LOVATO: Thank you, Mr. Chair and Commissioners. On June 14, 2018, this application was presented to the Hearing Officer for consideration. The Hearing Officer supported the application as memorialized in the findings of fact and conclusions of law written order subject to the following conditions.

1. The applicant shall obtain an after the fact permit for the garage and accessory dwelling.
2. Any further development shall comply with design standards of the SLDC.

At the June 14, 2018, hearing, several members spoke in opposition of the requested variance and the main concern from the public was the setback required by the private covenants and lack of permitting.

While the Hearing Officer did not condone the circumvention of obtaining the proper permits under the SLDC prior to development, as occurred here, the applicant has now submitted the appropriate applications and is addressing the unpermitted development. The Hearing Officer found to require the applicant to demolish the structures by denial of the setback variance would result in exceptional and undue hardship to the owner.

Furthermore, the Hearing Officer finds the second septic system was approved by NMED and staff recommended approval of both variances. Based on the application, the evidence and testimony presented to the public hearing, the Hearing Officer finds that the application is not contrary to the public interest; is in the spirit of the SLDC; and there has been a showing of extraordinary and exceptional practical difficulties or exceptional and undue hardship on the owner.

On February 1, 2018, the applicant was issued a notice of violation for an unpermitted 900 square foot accessory dwelling, and a 432 square foot unpermitted garage. The violation came in as a complaint for illegal construction. The applicant constructed a garage without a permit and then converted the garage into an accessory dwelling. The applicant also constructed the 432 square foot accessory structure – garage – without a permit.

The applicant was informed that the unpermitted accessory dwelling and accessory structure did not meet a 50' setback from the west side of the property boundary, and the accessory dwelling was required to share a septic system.

The property consists of 2.5 acres and is within the Residential Estate Zoning District within the La Cienega and La Cieneguilla Community District Overlay. Chapter 9, Section 9.8.3.6.5.c.ii, Setbacks, of the SLDC in that community district overlay states that the rear and sides of the building must be setback a minimum of 50' from the property line. Table 9-8-7, Under Section c. setbacks iii, states in cases where setback requirements would prohibit development of a lot, the Administrator may approve setback requirements in accordance with Section 7.3, table 7-A of the SLDC and is a minimum of 25' from all back and side boundaries and a minimum of 10 feet from the front. The applicant had plenty of room on the property to meet these setback requirements.

The property is a rectangle shape lot, and the accessory dwelling and accessory structure are both approximately 9' away from the property boundary and the accessory dwelling is connected to its own septic system. Therefore, the applicants are requesting variances.

The agent states, the applicant constructed the 900 square foot structure in 2006, as garage and storage. He later converted it in 2007, to a two-bedroom one-bathroom apartment for his daughter and grandchild to reside in. The agent further states the applicant also constructed the 432 square foot, smaller garage during that time.

The applicants have addressed the setback variance and utilities variance criteria as contained in the report and staff has responded as to whether those meet or do not meet the requirements.

Recommendation. On June 14, 2018, this application was presented to the Hearing Officer for consideration. The Hearing Officer supported the application as memorialized in the findings of fact and conclusions of law written order subject to the following conditions.

1. The Applicant shall obtain an after the fact permit for the garage and accessory dwelling.
2. Any further development shall comply with design standards of the SLDC.

Setback Variance: The application is not in strict compliance with the SLDC. The applicant never obtained a permit to construct the two garages in 2006, or convert the 900 square foot accessory structure into an accessory dwelling. However, in 2006 there was no required setback from property boundaries. Therefore, staff recommends approval of the requested variance.

Utilities Variance: Staff recommends approval of the requested variance. Chapter 10.4.2.4, which states liquid waste shall be in common with the principal residence; however, if the principal residence is on a septic system, then any modifications to the system to accommodate the accessory dwelling unit shall be approved by NMED.

If the decision of the Planning Commission is to approve the requested variances, staff recommends the imposition of the following conditions. Mr. Chair, may I enter those into the record?

CHAIRMAN GONZALES: Yes, you may.

The conditions are as follows:

1. The Applicant shall obtain an after the fact permit for the garage and accessory dwelling.
2. Any further development shall comply with design standards of the SLDC.

MR. LOVATO: Thank you very much and I stand for any questions you may have.

CHAIRMAN GONZALES: Does the Commission have any questions of staff? Mr. Katz.

COMMISSIONER KATZ: The two structures are too close to the boundary with another person. Is that correct?

MR. LOVATO: Mr. Chair, Commissioner Katz, the property boundary is the question here. There is no other structure that is in close proximity to this actual – to other structures. So they do not meet the setback to the property boundary.

COMMISSIONER KATZ: Right. And there's somebody who owns the property on the other side of that boundary, right?

MR. LOVATO: Mr. Chair, Commissioner Katz, that is correct?

COMMISSIONER KATZ: What do they think about this?

MR. LOVATO: Mr. Chair, Commissioner Katz, I haven't heard anything from the property owner that I can recollect.

COMMISSIONER KATZ: Did you contact them and ask them?

MR. LOVATO: Mr. Chair, Commissioner Katz, County staff will not do that. They are notified with mail-outs and they did have a community meeting, so I'm sure they were notified in some sense or another of those two.

COMMISSIONER KATZ: Is there some reason why County staff – I gather that as a policy they won't contact the abutting neighbor as a violation of their rights. Is that correct?

MR. LOVATO: Mr. Chair, Commissioner Katz, that is correct. We do not get involved in that situation.

COMMISSIONER KATZ: It's obviously not something that you get to decide. I understand. What's the story on that?

MS. LUCERO: Commission Member Katz, the County doesn't necessarily have a policy that we don't do that; it's just not something that's required by code and we don't necessarily go out and reach out to adjacent property owners on every specific case.

COMMISSIONER KATZ: this has come up before and it just strikes me as the obvious question is it's too close to somebody's boundary – do they care? They may not care. My understanding is that their house is quite far away. 140 feet I think. Maybe it's just fine with them, but maybe it's not, and the setback rules are generally for the benefit of the person who is abutting on the other side of that property line. It would seem to me that it would be really helpful to the Planning Commission to have someone reach out and say, is this okay?

I know we notify, but maybe it got lost in the mail. We don't always get things that are sent to us or understand them.

CHAIRMAN GONZALES: Any other questions of staff? Susan.

COMMISSIONER MARTIN: I have a question, and it's after looking at the March 29, 2018 letter from the La Cienega Valley Association, and they made the point that said there was no formal communication from the County advising LCVA what was being sought by Mr. Nuñez. And I think this goes to one of the issues that we're talking about, especially with respect to community organizations and notification. This is a question that I have. Is this something that might be considered in terms of – if not notifying the adjacent neighbor at least notifying the requisite community planning organization.

CHAIRMAN GONZALES: On that note, I did receive an email from Carl Dickens today and he basically wrote me and asked me why this application had not gone through the CO process for La Cienega. Can you explain that, Vicki?

MS. LUCERO: Mr. Chair, there is a letter from the La Cienega Valley Association in Exhibit 8 of the packet. The applicants were required to conduct a pre-application neighborhood meeting, and notify the CO, any COs or community organizations or registered organizations within the area and all property owners within 500 feet to explain to them what they're proposing prior to them even being able to submit an application to the County. And there is documentation that shows that they did conduct a neighborhood meeting.

CHAIRMAN GONZALES: Okay.

MR. LOVATO: Mr. Chair, if I may approach I will present to you the actual agenda that was posted with them.

CHAIRMAN GONZALES: Okay. Mr. Katz, go ahead.

COMMISSIONER KATZ: In your report it says that at the June 14, 2018 hearing several members spoke in opposition of the requested variance and the main

concern from the public was the setback required by private covenants. Are there private covenants that are involved in this?

MR. LOVATO: Mr. Chair, Commissioner Katz, I was handed a – they do have private covenants, and yes, their requirement is 25 feet, I believe. However, County staff does not regulate –

COMMISSIONER KATZ: Yes, I understand that. This is a special district, right? The La Cienega, La Cieneguilla District?

MS. LUCERO: Mr. Chair, Commission Member Katz, it is within the overlay district. Yes.

COMMISSIONER KATZ: And so that has sort of – how do the rules for that district get established, as different from the general rules? Is there like community meetings and discussions and everything?

MS. LUCERO: There was a community planning committee that basically gathered and put together the rules and regulations for that specific district overlay.

COMMISSIONER KATZ: And they came up with the 50, 25-foot setback rules?

MS. LUCERO: Mr. Chair, Commission Member Katz, there were certain things in the code, and let me look at the La Cienega Overlay District, but there are setback requirements in the general code, and I think typically for a traditional community it's five feet, but they were basically allowed to develop their own regulations regarding that and could be more stringent than what the general sections of the code allow.

COMMISSIONER KATZ: So they made a conscious decision to make it substantially greater than it would normally be in a traditional community?

MS. LUCERO: That's correct.

COMMISSIONER KATZ: And this variance is asking us to ignore that conscious decision of the local community. Is that correct?

MS. LUCERO: Mr. Chair, Commission Member Katz, the variance request is to decrease the setback based on what was approved from the La Cienega Planning Committee.

COMMISSIONER KATZ: One other question is that it says something about when this was built in 2006 – is that when it was built? That there was no setback rule then?

MR. LOVATO: Mr. Chair, Commissioner Katz, that is correct. They recommended a five-foot setback. So at that point they could have built up to the property boundary.

COMMISSIONER KATZ: Were the private covenants in effect at that time?

MR. LOVATO: Mr. Chair, Commissioner Katz, the private covenants were documented and revised. The first set was done in 1971 as it appears here before me, and it states no buildings shall be erected on any lot nearer than 40 feet from the front of the line or 25 feet from each side lot line, or 15 feet from the rear lot line.

COMMISSIONER KATZ: Are we talking side lot line here?

MR. LOVATO: Right.

COMMISSIONER KATZ: Okay. So in fact when it was built it was violating the covenant at that point. It wasn't like there were no rules and I built it and I

should get a free pass because when I did it I should have had a permit but at least the rules were – but that's not the case. The rule – private covenant – provided that they should have had a 25-foot set back.

MR. LOVATO: Mr. Chair, that is correct. The private covenant did state that you should have a setback.

COMMISSIONER KATZ: Thank you. And I understand we don't enforce private covenants. But we do enforce the County code.

CHAIRMAN GONZALES: Okay, any more questions of staff? I have a couple. Did staff go out to the site to look for existing violations or anything like that?

MR. LOVATO: Mr. Chair, Commissioners, we did have a complaint that came in. Staff did go out, code enforcement went out and issued the Notice of Violation for unpermitted development. I myself went out, found no other violations other than that, walked the property and did not see any other violations.

CHAIRMAN GONZALES: So I'm looking at the south side. Are those piles of dirt or is that just an arroyo or a flow-line? What is that? It looks like some kind of activity happened there in the past, or might have happened, or are those just natural features?

MR. LOVATO: Mr. Chair, that is a drainage location.

CHAIRMAN GONZALES: It hasn't been disturbed?

MR. LOVATO: Mr. Chair, I honestly did not go past that point of the structures and where the topography starts to drop off there. I think within this location they did a lot of berming and, within Tercero Loop and what not, so that's the best I can describe it.

CHAIRMAN GONZALES: If you look at Exhibit NBE-10 and NBE-30, I am wondering if anybody from staff went out there to confirm the nine feet, or a surveyor or something, or if even the property line was staked. Because if you look at both those maps it looks – the setback looks different. If you look at NBE-10, the guest apartment looks to be closer to the property line than the small garage. And then if you look at NBE-30, they both look like kind of the same.

MR. LOVATO: Mr. Chair, Commissioners, code enforcement did do the measurement, but I believe they took it from the fence line which probably could be not exact. As to the site plan, I will let the applicant address that but to me it appears that it's not correct. The layout is not even correct.

CHAIRMAN GONZALES: So you're probably saying that the aerial photograph is more correct? It looks like it.

MR. LOVATO: Mr. Chair, that is correct.

CHAIRMAN GONZALES: Thank you. Any more questions of staff? Is the applicant here? Would you like to speak or do a presentation on behalf of them? You're going to need to get sworn in first.

[Duly sworn, Mike Montiel testified as follows:]

MIKE MONTIEL: My name is Mike Montiel. My home address is 117 Las Estrellas Road in Santa Fe. I work for Sergio. I'm an estimator for his company and one thing, when he bought that property there was already an existing slab in that spot where he built the garage. So the previous owner had poured a slab right where it is, that close to the property line. So Sergio went ahead and built a garage for storage for his company on that slab that was already existing.

I don't know if the original property owner had applied for a permit for that slab or not, but that was already there when Sergio bought that property.

CHAIRMAN GONZALES: And why didn't Sergio apply for a permit to build the structures?

MR. MONTIEL: I don't know why he didn't do that. He should have done that and that's what we're trying to get reconciled right now. The other thing, the property line on that side I believe, to the northwest, there's no homes or anything on that side of the property line. So I don't know if anyone owns that land or not, but there's nothing there right now.

CHAIRMAN GONZALES: Yes. It looks vacant. Do you have anything else to tell us?

MR. MONTIEL: No. That's it.

COMMISSIONER ANAYA: I have a question.

CHAIRMAN GONZALES: Okay.

COMMISSIONER ANAYA: What does Sergio do? What kind of business?

MR. MONTIEL: He's a building contractor. He owns a company called Green Image Construction.

COMMISSIONER ANAYA: Thank you.

CHAIRMAN GONZALES: Okay. This is a public hearing. Does anybody want to speak on behalf or against this project? Sir, please step forward.

[Duly sworn, Sam Page testified as follows:]

SAM PAGE: My name is Sam Page. I'm the president of the Vista Land Homeowners Association, of which this property is a part of it in there. We're the ones that set the objection based on our covenants, that our covenants do require a setback of 25 feet from the side property line. And I know it's not up to the Planning Commission to enforce that covenant but if the Planning Commission approves the variance that leaves us no recourse. We'll have to file suit in court so it'd be a moot point that they're still going to have to come into compliance with the setback. So that's why we oppose it because basically it's against the covenants which have been enforced since the 1970s.

CHAIRMAN GONZALES: Thank you.

[Duly sworn, Mary Page testified as follows:]

MARY PAGE: My name is Mary Page and I'd just like to say that Mr. Nuñez, or Sergio, over time has continued to violate County and covenants within our subdivision. We do not have the right to go on to the property to ensure that he is within – not violating a covenant but we have called the County on various times where he has been building continually and he has not had the proper permits. Most recently we discovered that he must have some kind of business with jerky??? In the back it says 20 Calle de Juanes. So obviously he is running some kind of business out of that property. Thank you.

COMMISSIONER ANAYA: I have a question, please, Mr. Chair. Do you guys know who owns the property adjacent to them?

MS. PAGE: It's a Mr. Kitson, I think.

COMMISSIONER ANAYA: Is he from around here?

MS. PAGE: The property was currently up for sale and they were trying to divide it into 2 ½ -acre lots. I think it's a five-acre lot and they were trying to divide the

lot. It does have a home on it and to the back there's additional building land and because I'm not sure if they couldn't sell it for the amount of money that they were asking for it so they wanted to subdivide it and sell half of it as a vacant lot.

MR. PAGE: Let me clarify that. What it was is the owner, I think Mr. Kitson, owned two 2 ½-acre lots and what he did is he combined them and then re-split it, both 2 ½-acre lots and then split it diagonally down along an arroyo. So both lots are 2 ½ acres. The one that's adjacent to this property is vacant, vacant land and the other one in there that he split is the one that has the house on it. But the one that's adjacent to this is a 2 ½-acre lot that's vacant land.

COMMISSIONER ANAYA: So he just did lot line adjustments dividing it.

MR. PAGE: Yes. By combining the two and then redividing it, because basically, before, they had an arroyo that went through both lots and so he combined them and then split them down along the arroyo.

COMMISSIONER ANAYA: Thank you, sir.

CHAIRMAN GONZALES: Thank you. Next.

[Previously sworn, Kathryn Becker testified as follows]

MS. BECKER: Thank you for your time. I realize this has gone on quite a bit and again, my name is Kathryn Becker. I'm a resident of La Cieneguilla. I'm a member of the board, one of two La Cieneguilla representatives on the La Cienega Valley Association Board, and I'm also an adjacent property owner to the Nuñez property. As a result of living in this community I'm also a member of the Vista Subdivision Land Association, to which Mr. and Mrs. Page just spoke.

So I have a few comments. The first begins with ensuring that this body did receive the letter from the La Cienega Valley Association that was submitted on March 29th and I believe, Commissioner Martin, that was what you were speaking to. Fantastic. Secondly, the motto in our community and on our letterhead is Keep it rural. And we do that because we are trying to preserve quality of life issues and as a traditional community, I believe there are 12 or 14 of us in the county and we're just desperately trying to keep it rural. And I think I overheard some prior comments on a different matter and the way I think of it and we talk about it amongst ourselves is keeping it rural keeps it legal. Because really, what you try to keep things rural what you're trying to do is preserve your water use, your traffic flow patterns, your land management. It's the natural laws that you don't want to defecate too close to yourself. You want to make sure you're disposing properly. You want to make sure your water doesn't get combined with nitrates from other use.

So it's really keeping it natural and keeping with natural law, thereby allows us to keep within the code, the plan, our ordinance and the covenants. So there's really four layers here and we're trying to be mindful of each of those with the code predominant, the plan secondary, as I understand it, the ordinances that are contained within and the covenants that we as a community need to enforce.

The biggest issue that arises with this quest for a variance is that it is the applicant that is seeking to propose what warrants a variance. And only that which the applicant puts forward comes to the attention of the County. So in this case the applicant through a complaint was identified as being not in accordance with the code and seeks to make it right. But in doing so he only identifies the potential for two variances, where really we

have reason to believe there's multiple issues here. And the applicant did properly come before the LCVA as a community organization. We have registered as such so we do get the notice. They did come before us, both Mr. Nuñez and Mr. Montiel who just spoke and identified that, yes, in essence he had been caught and he was trying to do right.

The concern is that he only put forward these two when, as our letter states, we have reason to believe there's a lot more at issue here. So I trust that you have an aerial photograph in front of you. This was what was presented to the LCVA. It's dated November 14, 2017 and it's on County – it's a County-produced document. The residence that's at issue here – this is a 2.5-acre lot and the residence was built, I believe, in 1986 and it had a garage immediately within the residence. And that's all good. That was a home, single residential home. This is a residential area – all good.

In 2006/2007, that's when the County Assessor's Office started picking up on this adjacent garage which I'm now going to refer, as Mr. Nuñez does, to it as a luxury apartment. The occupied structure. So in 2006/2007 – 2007 is the first time I saw it in the County Assessment records, that that building was identified and the room immediately behind it. And then in addition, there's now a third one that's behind the – what's purportedly a garage. So there's actually multiple garages here. And so what I'm trying to do is paint the picture that even through the applicant identified two non-conforming uses, there's multiple non-conforming uses here.

There's the three structures on the property line. The applicant has now converted his existing garage that was adjacent to the home into a kitchen, and is building on yet another garage. So we're talking about one, two, three, four, five garages. At one point were identified as garages. And now they are – one's a kitchen. Ones purportedly going to be a garage. One's a luxury apartment. One is again, named as a garage but really it's being occupied and even in the images of November 17th you can see two cars parked next to it and one behind it. If you were to look at it it has got security bars. It is supplied by a propane tank. It has plumbing cleanouts, as documented in the New Mexico Environment Department's inspection for the liquid waste system, and as the property owner who lives immediately south of this property where there's a single tree, a single shrub at the bottom of the property, that is my property, I can tell you that I have seen that purported garage occupied on a regular basis. Not currently. On a regular basis.

Similarly, the building behind that is what Mr. Nuñez identified as where he prepared jerky as a kitchen structure and yet I inquired under the public records inspection at the New Mexico Environment Department who does food-based permit and they do not have a permit for food production. So I see a lot of cars there. I didn't know that it was being used for food production. I thought it was being used as yet another residence. But according to the presentation Mr. Nuñez says that historically he's done that as a jerky operation but not currently. And I can confirm that currently this place is under construction and there doesn't appear to be anybody living there.

I think if you were to go out to the site today, even this map is not representative of the property and this is relevant to what's before you because they've put in a six-foot high fence around the three sides of the property; not the southern side where the arroyo is. A gorgeous fence with gates that you can no longer see into the property, and there are, the posting of the sign, I called to say I couldn't even read the public notice. So it appears that he was seeking to properly permit some activity on the property but I can't

read it even from standing on the road immediately in front of his house because he put it on the roof. And so it's completely illegible.

So I'm not certain if that was for – I'm presuming that's for the use of the – changing out his existing garage into a kitchen and building another garage. I think that's what's happening because, again, I do believe he's trying to do the right thing now that he's become aware of the code.

So my comments to the Commission are here's a proponent saying I just need two variances when in actuality he has multiple structures, none that I'm aware of are permitted, other than the original residence and garage. There are occupied structures. There are plumbed structures. There's evidence of propane and use and it's not clear that we're looking at this property in the totality of how it's being used. And the goal again is to keep this as a residential area with conformity of uses so that we don't tap out our water. This area – there are no water or sewer lines. So everybody is on septic and well.

And as it speaks to the immediate property owner, to the west of this property as it's exhibited on the map in front of you, yes, that property is Daniel Kitson. He recently did, as Mr. Page described, reconfigure his properties for the purpose of sale. He did in, I believe May of this year sell his property and he has moved out of state. He contacted me as a representative of the association to ask questions about what could or could not be done. He was very concerned about the property line. He had his land surveyed as a feature of his – I'm not sure what the proper word is – if it was a line split or a re-organization or re-subdivision. I'm not certain what that's called but he did have to have a survey. He did so. That survey was pulled up by Mr. Nuñez or arranged to be pulled up by him and his fence line, Mr. Kitson's fence line was actually removed. The survey line was removed and Mr. Nuñez put in his fence. I'm aware of all of this and again, it's a beautiful fence.

I'm not able to say what if any transgression there is about the accuracy of the survey, but I can tell you that there is concern about that. The property owner, I encouraged him to reach out to the County. I gave him the – I believe it was the project lead's name, encouraged him to contact and I don't know if he did. But he was very upset about the property line. He actively has a sale sign for that property and he is seeking to sell it. He's concerned that – and I know from my own personal knowledge having talked with him, I'm trying not to incur a hearsay objection but I know that he was very concerned about his ability to sell due to the proximity of that line.

So let me just review my notes here. I think that in looking at the property as a – when an applicant comes to the County to seek to do right and make right, I understand, and certainly family transfers had been an option. That was something that was available in the code and I recognize that Mr. Nuñez is seeking to convert a garage for a living space for a family member. And so we are trying as a community to rectify what used to be available in a small lot family transfer, and this will just be a family transfer if that's what he was seeking to do. But he's not seeking to do that. He's just – the code has changed. Had he sought to do that prior to the change that might have been an option if he'd subdivided the land because it's a 2.5 and that would have been an option.

So at this point he's just seeking a variance and the reason that the association couldn't support it is because it is the totaling of what's a non-conforming use here. So if I ask the consequences, what happens to non-conforming uses? What do you do when you are encountered with that and I understand that the body before you, the hearing

officer, was challenged by the thought of destroying or causing the removal of a very nice dwelling and I don't envy the position you're in. Having said that I do think there are multiple structures here and even if the County were to allow the existing structure and dealt with the set back separately, it behooves this body to look at the whole property, understand there are multiple non-conforming uses, and I would ask that those other non-conforming uses, should this be allowed, be required to be removed, because to the best of my knowledge they are not permitted. They are not being used as the purposes they are identified as the applicant as garages, at least some of the time in terms of propane use, the occupancy, the plumbed lines. I haven't been in them; I'm just aware that they have plumbing cleanouts. And it's very, very concerning the amount of density at this lot and the amount of people that are there.

So I think I have spoken to the concern about trying to keep it simple, keep it real, keep it legal, keep it rural. That's really just our general interest. I'm available for any questions.

CHAIRMAN GONZALES: Thank you. Does the Commission have any questions of Katherine? Okay. The information you just provided, I have a couple of questions of staff. The unpermitted structures that are there, did they come back for after-the-fact permits at all? Or what was it designated as? ATFs, or what's going on there?

MR. LOVATO: Mr. Chair, Commission members, I think the condition is they get all structures permitted after the fact permits. That's the way to do it. There's an extra fee attached onto that type of application.

CHAIRMAN GONZALES: So that would mean they'd go into CID as well.

MR. LOVATO: Right. The two garages that you see that are legal right now, that's what they're bringing in front of you. The garage behind it, I did find a permit for that. It was permitted as a shed in 2016, I believe. So that does have a permit. The very small one in the back.

CHAIRMAN GONZALES: And how many accessory structures are allowed on a piece of property by code? Is there a limit?

MR. LOVATO: Mr. Chair, there is no limit but there is lot coverage requirements. I can't answer that right off hand. Perhaps Vicki can.

CHAIRMAN GONZALES: That's fine. Okay, another thing is have you checked into – it just came up now, but do we need to check in to see if he has a business license?

MS. LUCERO: Mr. Chair, we do. We were not aware of that so we will look into that.

CHAIRMAN GONZALES: Okay. And the last thing I have is it makes me – seeing all this stuff out there and the stuff that this gentleman has done out there kind of makes me curious about the status of the septic system out there. I don't see any wells on the site plan or wells or septic and I can't really tell. But I'm kind of curious now what kind of setup they have out there with septic and wells and separations. Do you have any idea about the situation?

MR. LOVATO: Mr. Chair, Commissioners, they were granted permits for the second septic system. I got a letter from NMED stating that the current for the residence does not fit the capacity for both, therefore they recommended a secondary septic system. Thus that's why County staff went with the recommendation of approval.

That is a 2.5-acre parcel. In order to do that they would have to have met the requirements per NMED requirements. So I'm assuming, based off that fact that they did meet those requirements.

CHAIRMAN GONZALES: Thank you. Does anybody else have any questions? Mr. Katz.

COMMISSIONER KATZ: What is the recommendation of staff on this?

MR. LOVATO: Mr. Chair, Commissioner Katz, the recommendation is approval for both variances.

COMMISSIONER KATZ: On the basis of what?

MR. LOVATO: Mr. Chair, Commissioner Katz, based on the fact that they did get approvals from NMED for a secondary septic system and based on the approvals of the fact that prior to the SLDC these did not require a setback, so if they would have come forward in 2006 for a permit they would have not been required to do that setback.

COMMISSIONER KATZ: Thank you.

CHAIRMAN GONZALES: Any other questions of staff? Mr. Anaya.

COMMISSIONER ANAYA: John, do they have – on Exhibit 3, which is this little garage, does it have power in it already? Electricity?

MR. LOVATO: Mr. Chair, Commissioner Anaya, you're talking about the – I do not know that. Perhaps the applicant can address that. I did not see anything when I went out there. That's not to say that it's underground and inside or what not.

COMMISSIONER ANAYA: That's what I was wondering. If they're tying into the main house breaker system to do all of these.

MR. LOVATO: Mr. Chair, Commissioner Anaya, it is hard to tell without the permission of the property owner to enter the building. There is no way we can do so other than obtaining a warrant and getting into the actual structure.

COMMISSIONER ANAYA: So you haven't seen the inside of any of these buildings, then. We don't really know if they are being used for living quarters or doing barbecue. Jerky.

MR. LOVATO: Mr. Chair, Commissioner Anaya, I did speak with the code enforcement officer for the area and he – and I did bring up these, based off the last public hearing and he asserted there was no other livable construction or any type of business going on. And that's just based off the fact that I believe he walked through the structures. But I cannot give you a definite answer on that.

COMMISSIONER ANAYA: Thank you.

MS. LUCERO: Mr. Chair, I believe that you haven't closed the public hearing at this time.

CHAIRMAN GONZALES: I was just thinking about that myself. Okay, I close the public hearing. Does the Commission have any discussions or motions? Mr. Katz.

COMMISSIONER KATZ: Yes. In case SVAR 18-5080, the Sergio Nuñez Variance. I would move to deny both variances as not in compliance with the code. Mr. Nuñez is a contractor. He knows about getting permits. He didn't get a permit and I think until the County starts enforcing its rules people are going to continue to violate its rules.

COMMISSIONER ANAYA: Second.

The motion passed by unanimous [6-0] voice vote.

COMMISSIONER SHEPHERD: Mr. Chair.

CHAIRMAN GONZALES: Mr. Shepherd.

COMMISSIONER SHEPHERD: In the package that staff gave out there was a section called NBD-1 through NBD-3 in my package. And I really think that should be removed from the whole package because it is an order that Ortiz variance was approved by the Planning Commission that met today.

CHAIRMAN GONZALES: I believe that's in there just in case, right?

COMMISSIONER KATZ: In case we approve. And we didn't.

MS. LUCERO: Mr. Chair, Commission members, we will bring revised final orders back to the Planning Commission for action at a future meeting.

COMMISSIONER SHEPHERD: Because that's the only one that I see in here. Why is that the only one that has the order? Am I missing something?

MS. LUCERO: Mr. Chair, Commission Member Shepherd, there is, under item B, that was also a final order that was included in the packet. So the final orders are based on the Hearing Officer's recommendation, and if the Planning Commission then we can approve it at the time. If not, we'll bring one back.

COMMISSIONER SHEPHERD: Thank you.

F. Petitions from the Floor

None were offered.

G. Communications from the Committee

Commissioner Martin said she would not be in attendance at the August meeting.

Chair Gonzales brought an agenda numbering error to staff's attention. Ms. Lucero said she would fix it.

Commissioner Katz commented that the new format which has the Hearing Officer's report before the applicant's request and facts is out of sequence and confusing. Chair Gonzales concurred with Mr. Katz.

Ms. Lucero said Nancy Long's contract as Hearing Officer ended in June and Richard L.C. Virtue is serving as Hearing Officer for the County.

Those present congratulated Commissioner Anaya on his new title of "grandpa."

H. Communications from the Attorney

None were presented.

I. Matters from Land Use Staff

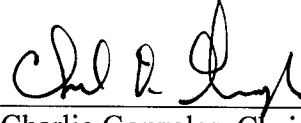
None were presented

J. Next Planning Commission Meeting: August 16, 2018

K. Adjournment

Upon motion by Member Anaya and second by Member Katz, and with no further business to come before this Committee, Chair Gonzales declared this meeting adjourned at approximately 7:00 p.m.

Approved by:



Charlie Gonzales, Chair
Planning Commission


ATTEST TO:



GERALDINE SALAZAR
SANTA FE COUNTY CLERK



Submitted by:

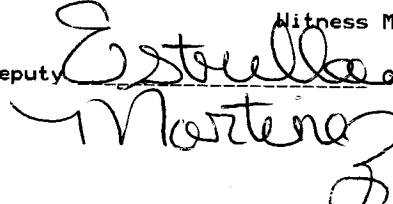


Karen Farrell, Wordswork

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

PLANNING COMMISSION MI
PAGES: 70

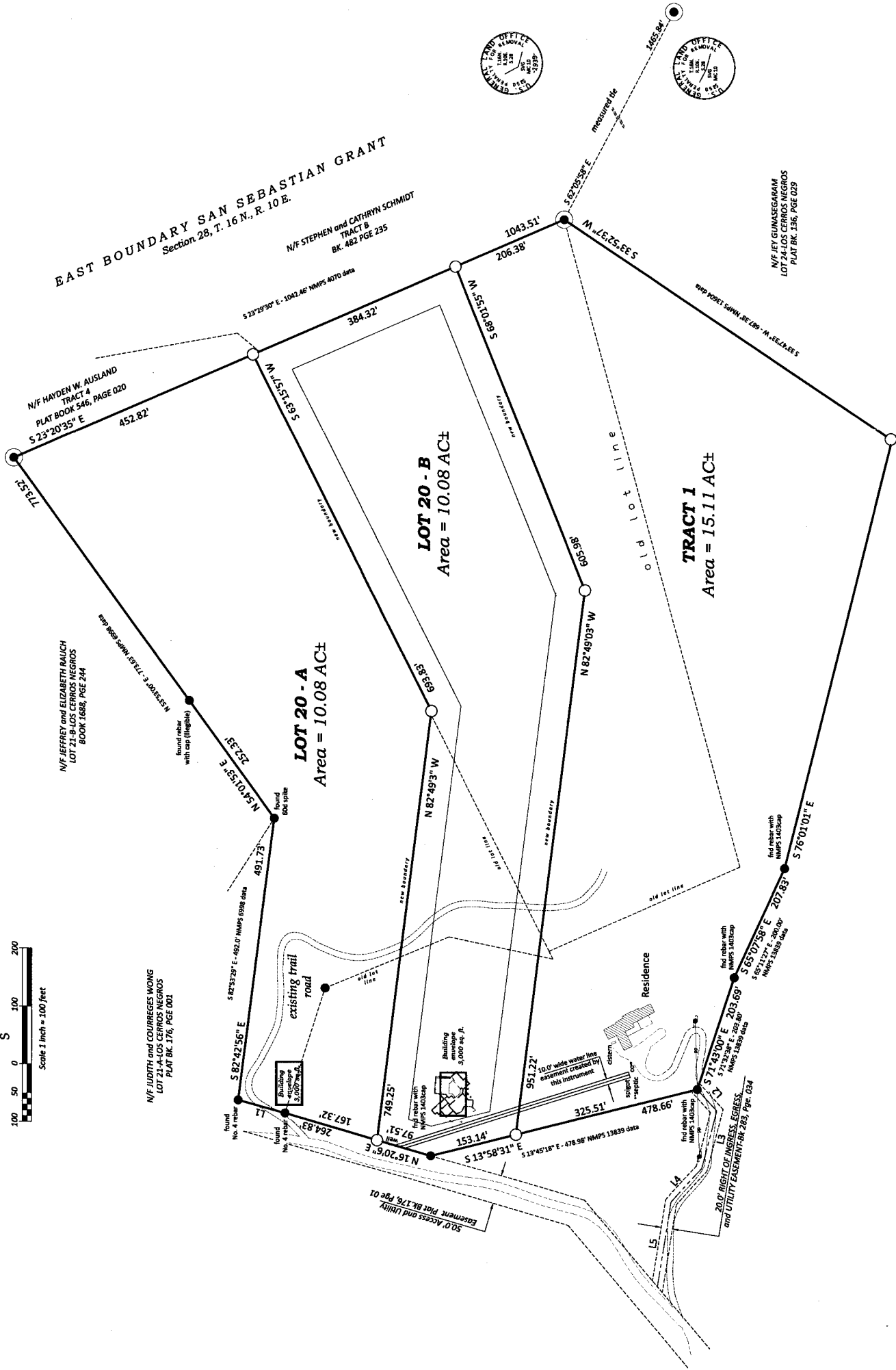
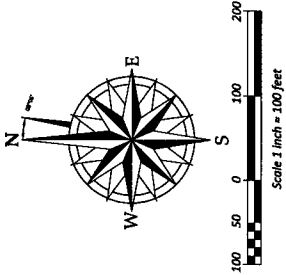
I Hereby Certify That This Instrument Was Filed for
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And Was Duly Recorded as Instrument # 1865673
Of The Records Of Santa Fe County

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



SLOPE ANALYSIS
PREPARED FOR
LOTS 20-A, 20-B, and TRACT 1 OF LOS CERROS NEGROS
LYING AND BEING SITUATE IN LOT 20-A, LOT 20-B, AND TRACT 1, OF THE LOS CERROS NEGROS SUBDIVISION, WITHIN SECTION 28,
T.16N., R.10E., N.M.P.M., WITHIN THE SEBASTIAN DE VARGAS GRANT, COUNTY OF SANTA FE, STATE OF NEW MEXICO.

TOTAL AREA = 35.27 ACRES ±



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SURVEYORS CERTIFICATE

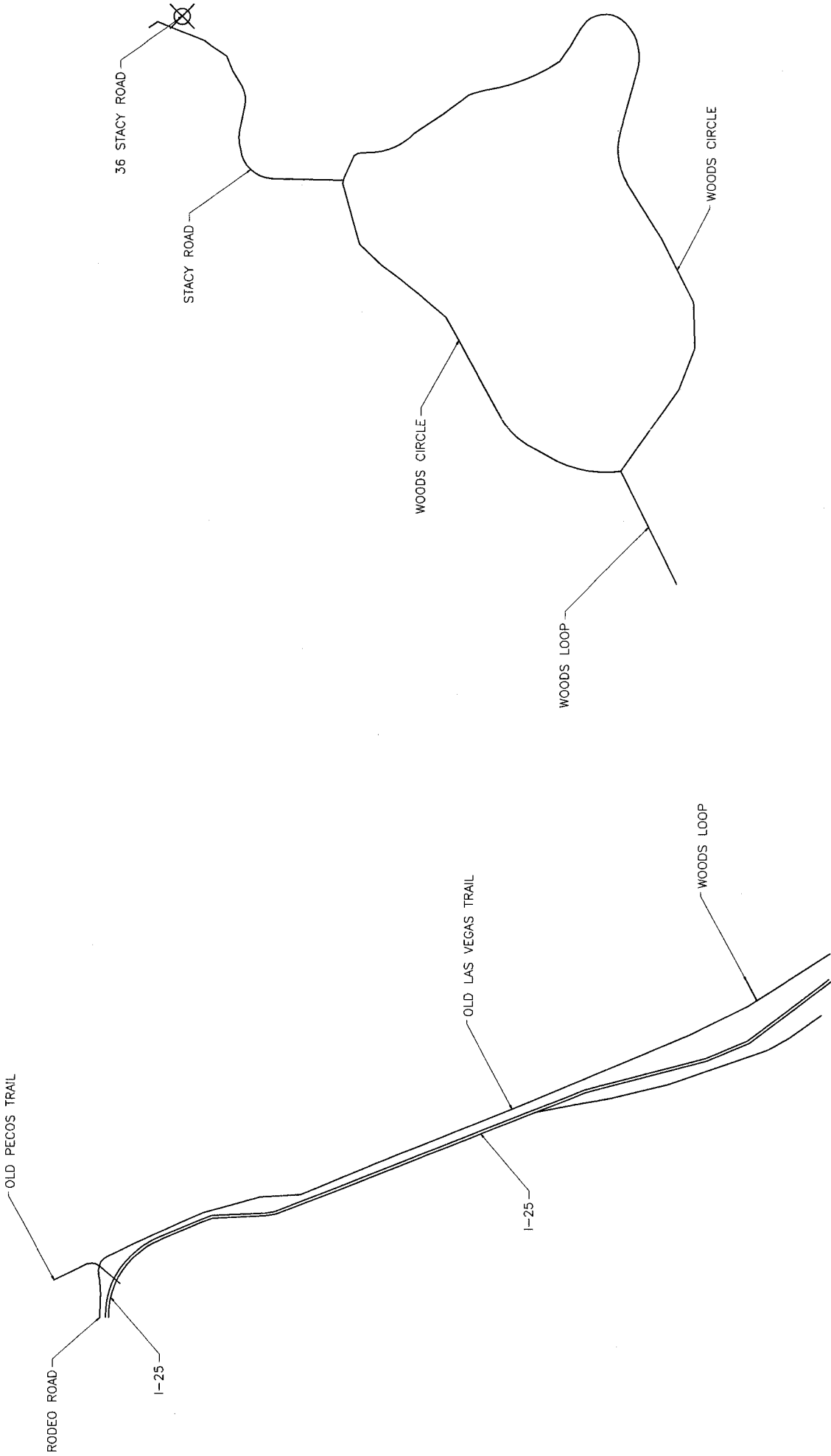
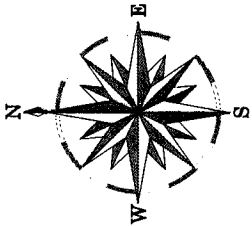
I, SALVADOR I. VIGIL, A NEW MEXICO REGISTERED PROFESSIONAL SURVEYOR, HEREBY CERTIFY THAT THE SLOPE ANALYSIS DEPICTED ON THE PLAT HEREON WAS PREPARED FROM COUNTY OF SANTA FE GIS DATA, CONTOURS ON THIS PLAT WERE NOT FIELD SURVEYED. THIS DATA IS FOR THE PURPOSE OF VIEWING EXISTING LOT CONDITIONS AND TO SHOW SLOPES FROM 0% TO 30%. THIS IS NOT A TOPOGRAPHIC SURVEY.

PRELIMINARY FOR REVIEW SEPTEMBER 15, 2010
SALVADOR I. VIGIL N.M.P.S. No. 10988 DATE



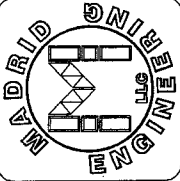
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LAND SURVEYING COMPANY, L.L.C. SALVADOR I. VIGIL, NMPS 10988 P.O. BOX 4384 SANTA FE, NEW MEXICO 87506 505-475-0003 FAX 505-475-9050			
PREPARED BY	S.I. VIGIL, NMPS	SANTA FE COUNTY CLERK'S INDEX INFORMATION	
DATE	AUGUST 31, 2010	LOTS 20-A, 20-B, and TRACT 1	
PROJECT No.	L-2338 / PLAT	LOS CERROS NEGROS	
CHECKED	S.I. Vigil, PM	SECTION 28, T.16N., R.10 E., N.M.P.M.	
SHEET No.	THREE	COUNTY OF SANTA FE, STATE OF NEW MEXICO	



DIRECTIONS

1. HEAD SOUTH ON OLD LAS VEGAS HIGHWAY FOR APPROXIMATELY 4.6 MILES.
2. TURN LEFT (EAST) ONTO WOODS LOOP.
3. TURN LEFT (NORTHEAST) ONTO WOODS CIRCLE.
4. TURN LEFT (NORTH) ONTO STACY ROAD FOR APPROXIMATELY 0.33 MILES.



Work	By	Date	Rwd	Appr
Rd	MRM	08/29/17		
Rb	MRM	07/19/16		
Initial submital for variances application				
Description				

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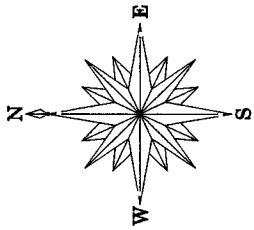
SHEET NO.
C-101
OF

SEQUENCE NO.
1 OF 6

LOCATION MAP VIEW 1

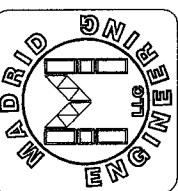
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Legend

- Existing Boundary
- Existing Features
- 50' Setback
- Proposed Features
- Slopes < 30%
- Slopes > 30%



Mark	Description	By	Date	Row	Appr
Rc	Submit for TAC meeting	MM	07/19/16		
Rb	Submit for TAC meeting	MM	04/05/17		
Rd	Initial submittal for recclamation plan	MM	02/13/17		

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OF

SEQUENCE NO.
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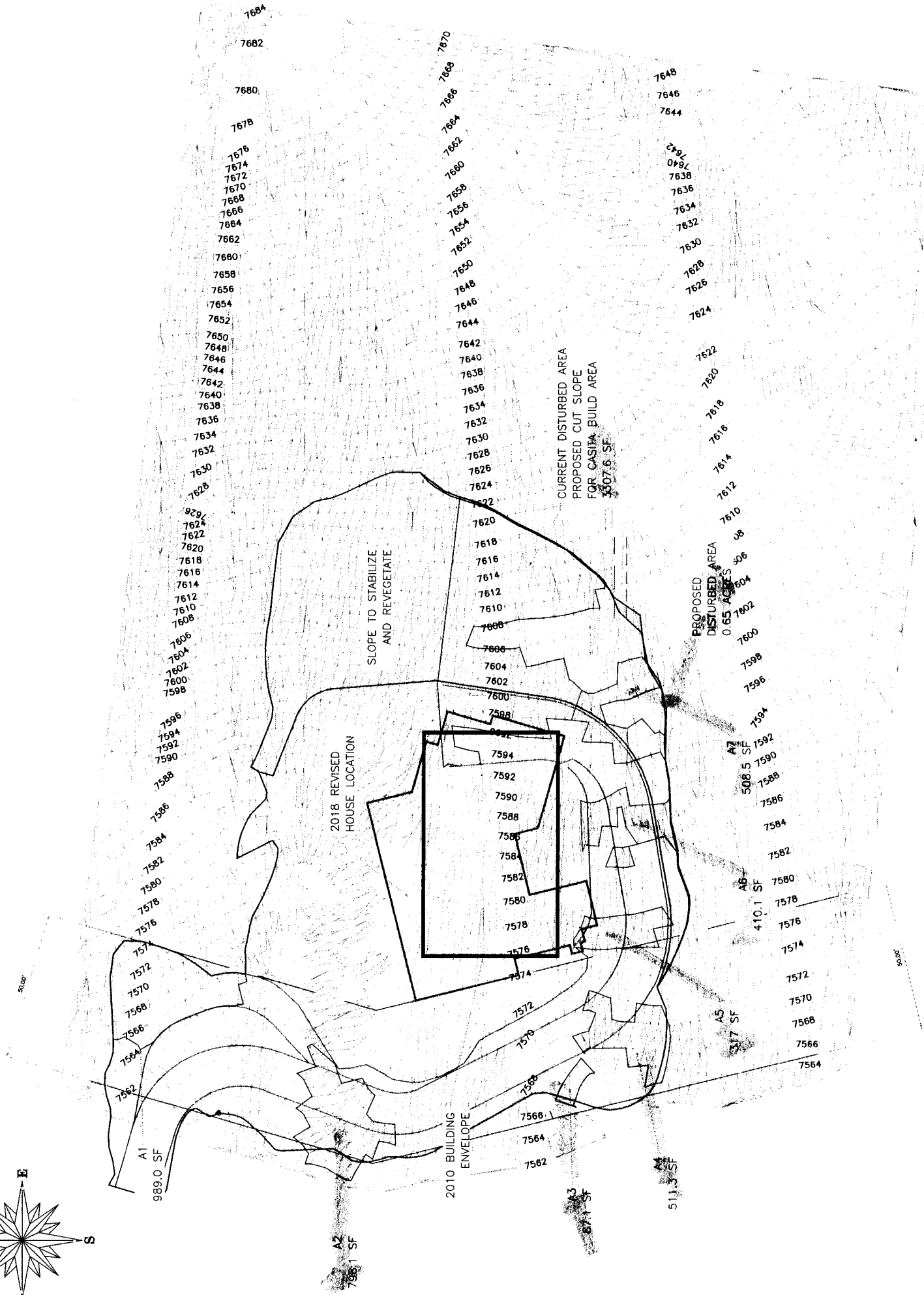
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UNDISTURBED PLAN

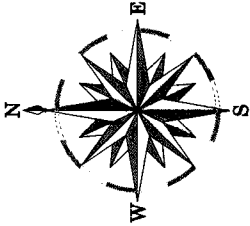


PROPRIETARY NOTES

- THE ENGINEER RETAINS ALL RIGHTS TO ANY SHEETS BEARING THE MADRID ENGINEERING LOGO.
- PERMISSION TO COPY MUST BE OBTAINED FROM THE ENGINEER. THE ENGINEER WILL SEEK PERMISSION FROM THE OWNER/CLIENT.
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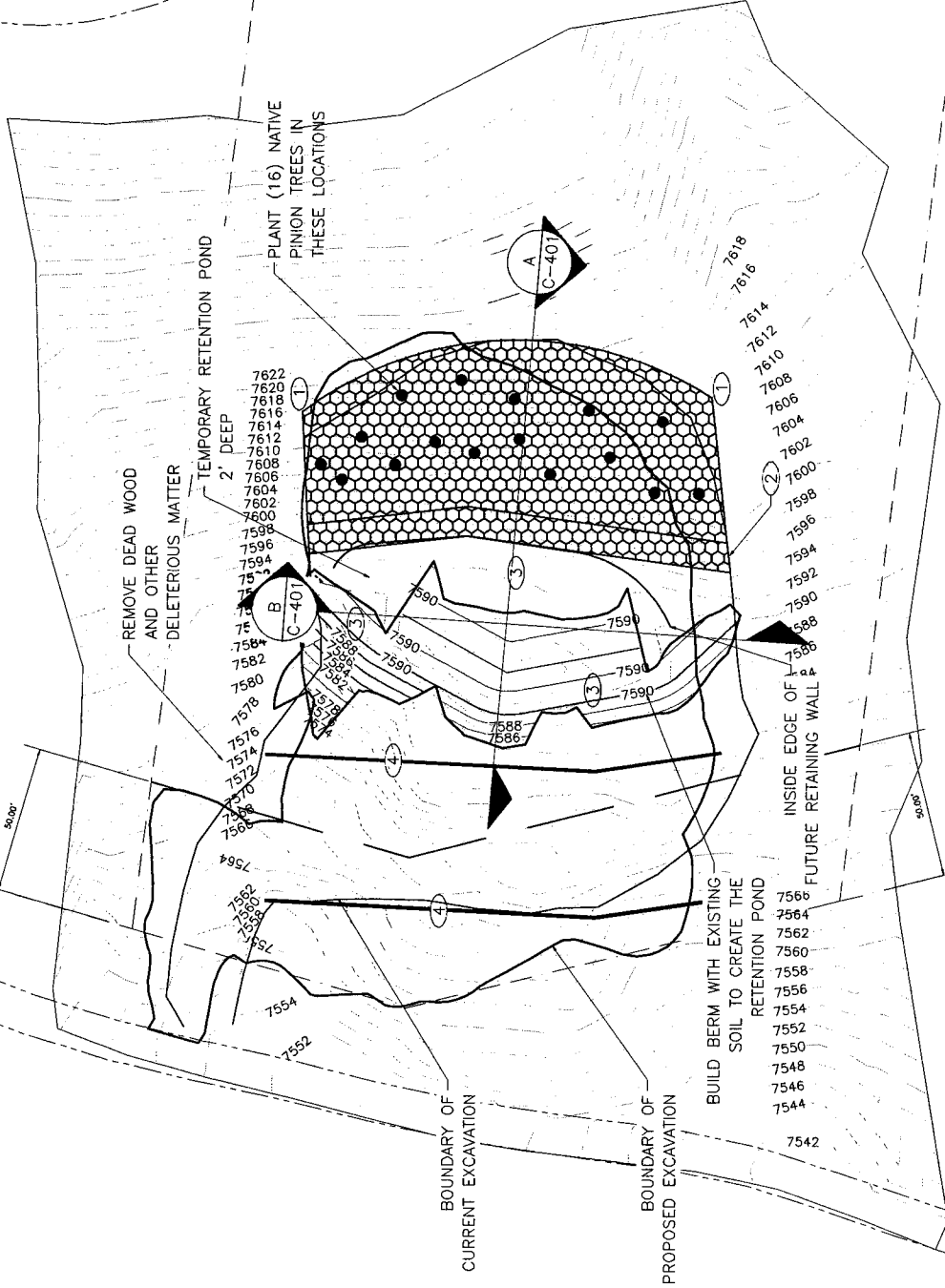
DRIVEWAY AREAS > 30% SLOPE	
A1	989.0 SF
A2	798.1 SF
A3	87.1 SF
A4	511.3 SF
A5	317 SF
A6	410.1 SF
A7	508.5 SF
ACCUMULATED	
	1787.1 SF
	1874.2 SF
	2385.5 SF
	2702.5 SF
	3112.6 SF
	3621.1 SF



Legend

- Existing Boundary
- Existing Features
- 50' Setback
- Proposed Features
- Existing Major Contours
- Existing Minor Contours

TRACT 20-A
38 STACY ROAD



RECLAMATION PLAN



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KEYED NOTES:

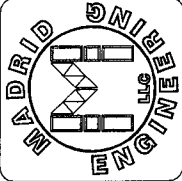
- INSTALL A HONEYCOMB CELL GEOTEXTILE SIMILAR TO STRATAWEB 356, SECURE ACCORDING TO THE MANUFACTURER'S RECOMMENDATIONS, FILL WITH NATIVE SOIL, AND SEED WITH NATIVE GRASSES. MATCH TO PRELIMINARY GRADING SLOPE AND ELEVATIONS.
- INSTALL SEPARATE WIDTH OF HONEYCOMB CELL GEOTEXTILE TO BE REMOVED AND REPLACED DURING FINAL GRADING.
- BERM RESULTS IN 196 CY OF CUT MATERIAL. PLACE IN THESE DESIGNATED AREAS, AND/OR CONTACT THE ENGINEER FOR PLACEMENT.
- PLACE 2 LINES OF FILTRATION ROLLS SIMILAR TO NILEX SEDIMAX SW-9.

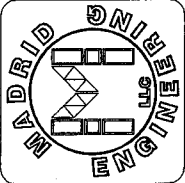
TRACT 20-B
36 STACY ROAD

GENERAL NOTES:

- THERE WERE NO SIGNIFICANT PINE TREES REMOVED FROM THE EXCAVATION.
- THE OWNER WILL REPLACE THE SIGNIFICANT PINON TREES THAT WERE REMOVED AS PART OF THE EXCAVATION WHEN THE HOME IS BUILT BECAUSE THE TREES WILL HAVE TO BE WATERED REGULARLY.
- ONSITE SOIL WILL BE AMENDED WITH ANY NUTRIENTS REQUIRED TO BE USED AS TOP SOIL FOR FILLING THE GEO-CELLS.
- THE ROCK OUT-CROPPINGS THAT WERE REMOVED EXPOSED MORE ROCK THAT IS NOW SCARIFIED FROM THE EXCAVATION PROCESS.

Work	Revised	By	Date	Appr.
Initial submittal for reclamation plan		MRM	08/16/17	
Submit for hearing		MRM	07/19/18	





Mark	Description	By	Date	Rev'd	Appr.
R0	Initial submital for variances application	MRM	07/19/18		

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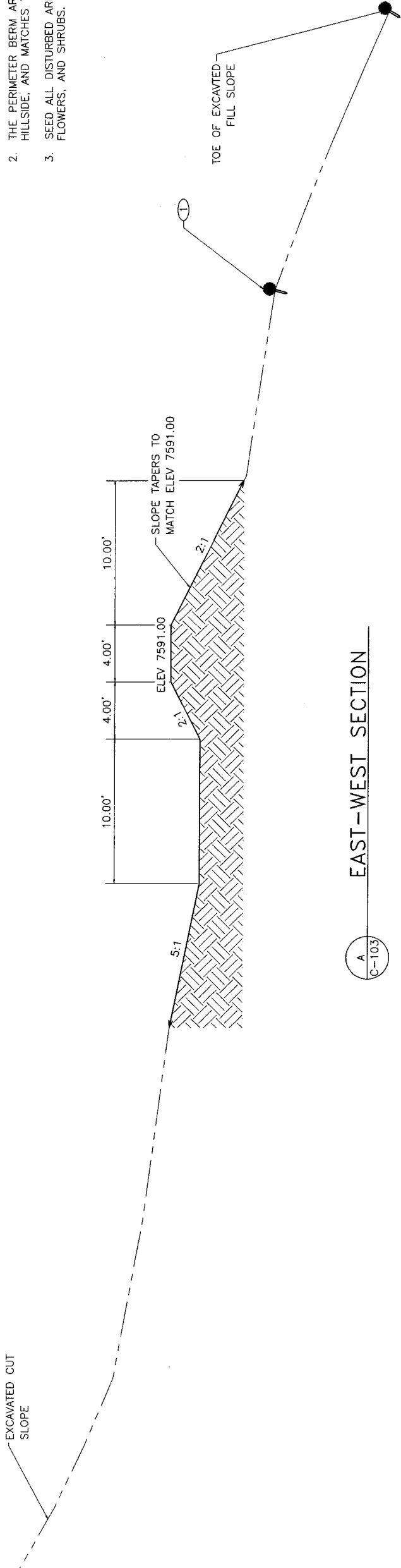
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SHEET NO.
C-402
OF

SEQUENCE NO.
6 OF 6

GENERAL NOTES:

1. RETENTION BASIN HOLDS 1,316 CF OF STORM RUNOFF. THE INTENT IS LIMIT THE AMOUNT OF PRECONSTRUCTION SEDIMENT THAT WILL LEAVE THE LOT, AND TO HELP SETTLE AND COMPACT THE FILL MATERIAL.
2. THE PERIMETER BERM ARCS BACK INTO THE HILLSIDE, AND MATCHES THE ELEVATION 7591.00.
3. SEED ALL DISTURBED AREAS WITH NATIVE GRASS, FLOWERS, AND SHRUBS.

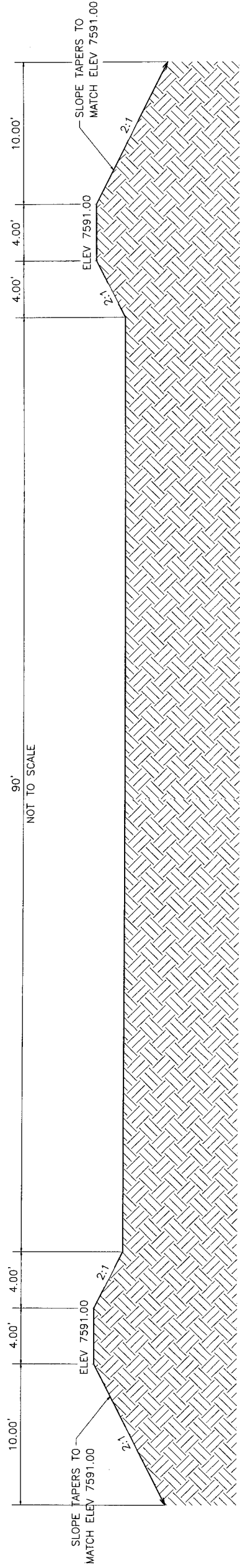


EAST-WEST SECTION

A
C-103

KEYED NOTES:

- ① PLACE LINE OF FILTRATION ROLLS SIMILAR TO NILEX SEDIMAX SW-9.

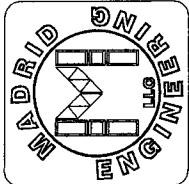


NORTH-SOUTH SECTION

B
C-103

SEC CLERK RECORDED 08/22/2018





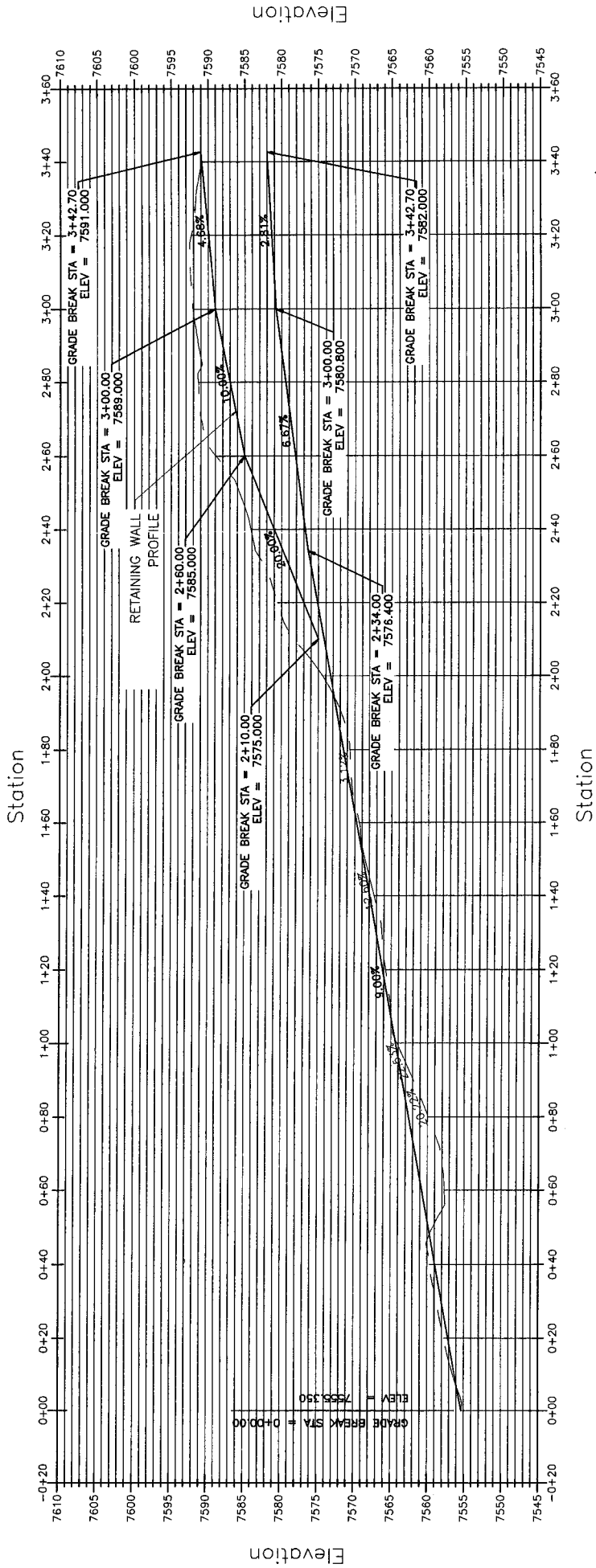
Legend

Existing Profile
Proposed Profile

GENERAL NOTES

1. DRIVEWAY WAS REVIEWED AND APPROVED BY THE SANTA FE COUNTY FIRE MARSHALL JAOME BLAY IN 2017. HIS REQUEST WAS TO PROVIDE A WIDENED AREA IN THE DRIVEWAY FOR STAGING AS SHOWN IN THE PLAN VIEW.

DRIVEWAY PROFILE



PROPRIETARY NOTES

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SHEET NO.
C-401
OF

SEQUENCE NO.
5 OF 6

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Mark	Description	By	Date	Rev'd	Appr.
Rd	Submittal for hearing	MRM	07/19/16		
Rc	Submittal for variances	MRM	08/16/17		
Rb	Submittal for TAC meeting	MRM	04/06/17		
Rd	Initial submittal for variances	MRM	03/21/17		



SediMax™ Sediment Retention Systems Offer Cost Effective Temporary Sediment Control Solutions

Keeping sediment where it belongs on active construction sites, bioengineering projects, steep slopes and wet areas can be a tough challenge. Tensar's SediMax™ Systems sediment retention fiber rolls (SRFRs) protect construction perimeters, slow stormwater runoff and prevent sediment migration. These 100% natural fiber filled products can dramatically reduce surface sheet erosion and offer superior filtration capacity.

Used as a Best Management Practice (BMP) for capturing and retaining sediment, SediMax Systems trap soil particles while filtering runoff water to protect waterways, sidewalks and roads from sediment accumulation. While the EPA strongly advises against the traditional use of straw or hay bales on construction sites, SediMax Systems can be used for a wide range of applications.

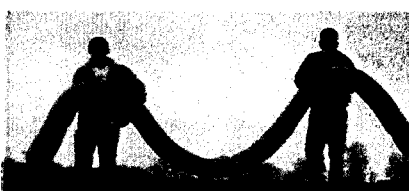
The advantages of Tensar SediMax Systems include:

- ▶ Quicker to install than straw bales and silt fence resulting in lower project costs
- ▶ When compared to straw bales and silt fence, its lower profile facilitates effective filtration without an undesirable damming effect that can result in erosion on the sides and downstream of a structure
- ▶ Fewer seams than straw bales, reducing risk of sediment discharge and potential for NPDES violations
- ▶ American made, SediMax Systems can help earn points towards Leadership in Energy and Environmental Design (LEED®) project certification goals .



SEDIMAX-FR™ (FILTRATION ROLLS)

Formerly known as SedimentSTOP, SediMax-FR™ (filtration rolls) consist of a 70% straw and 30% coconut-fiber matrix reinforced with 100% biodegradable jute netting. When SediMax-FR is rolled edge to edge, it creates a highly-effective, temporary, three-dimensional, sediment-filtration structure that has been tested up to 98.5% efficient. Containing 50 linear feet, SediMax-FR rolls are convenient for transport to remote sites, such as many fire restoration areas. And, with 100% biodegradable construction, there's no need to remove the filtration roll from the jobsite once the project is complete, saving you time and money.



SEDIMAX-SW™ (STRAW WATTLES)

SediMax-SW™ (straw wattles) are an economical sediment and stormwater control alternative to silt fence and straw bales. These cylinders of reclaimed, compressed, agricultural straw are wrapped in UV-stabilized black synthetic or biodegradable jute netting. SediMax-SW is ideal for reducing the effective length of long slopes, protecting storm drain inlets from sediment flow, and perimeter control on active construction sites.

NO ASSEMBLY REQUIRED

SediMax™ Systems are simple to install, thanks to their portability, flexibility, minimal trenching and staking, and no special equipment requirements. Plus, Tensar installation guides are based on extensive research and field-proven techniques to ensure your project's success.

FIND YOUR MATCH

Tensar knows one size does not fit all, so we offer SRFs in different sizes and lengths for various site characteristics and requirements. Our certified Tensar Erosion Control Solutions Specialists can help you choose the product that is right for you and complies with EPA NPDES and other industry regulations. Use the Product Selection Chart below to choose the SediMax solution that is right for your next erosion control project.

THE TENSAR ADVANTAGE

Tensar is the world's leading provider of comprehensive erosion and sediment control and turf reinforcement solutions as well as internal soil reinforcement solutions for site development challenges. We have developed integrated systems and products with the sole objective to ensure absolute customer satisfaction. Our products are backed by the most thorough quality assurance practices in the industry. And, we provide comprehensive design assistance for every Tensar System.

We can handle any erosion issues, whether your site needs short-term protection or permanent reinforcement. As with all Tensar specialty construction products and engineering services, we continually invest in erosion control innovation to ensure cost-effective solutions and exceptional results.

For more information on SediMax Sediment Retention Systems call 800-TENSAR-1, visit www.tensarcorp.com or email us at info@tensarcorp.com. We are happy to assist you in developing solutions for all of your erosion and sediment control and turf reinforcement projects.

SediMax™ Systems Product Selection Chart						
	Product	Product Description	Size	Key Features	Typical Applications	
Filtration Rolls	SediMax-FR	Straw/coconut fiber matrix with 100% biodegradable jute netting	Finished roll diameter of 9 inches (23 cm)	Multiple configurations	Wetlands	
			Length: 50 ft (15.25 m)	Splash apron	Riparian areas	
			Weight: 65 lbs (29.5 kg)	Multiple netting layers	Slope breaks	
				100% biodegradable	Bioengineering	
Straw Wattles	SediMax-SW12	Straw fiber matrix with tubular poly netting	Diameter: 12 inches (30.5 cm)	UV stabilized netting	Channel checks	
			Length: 10 ft (3.05 m)	Increased sediment retention capacity	Wave breaks	
			Weight: 37.5 lbs (17.1 kg)			
	SediMax-SW9	Straw fiber matrix with tubular poly netting	Diameter: 9 inches (23 cm)	UV stabilized netting	Highway and construction sites	
Length: 25 ft (7.62 m)			Economical option	Perimeter control		
		Weight: 60 lbs (27.22 kg)		Inlet capture		
				Slope breaks		
	SediMax-SWB9	Straw fiber matrix with tubular 100% biodegradable jute netting	Diameter: 9 inches (23 cm)	100% biodegradable	Forest fire rehabilitation	
Length: 25 ft (7.62 m)			No removal required	Stream banks and bioengineering		
			Weight: 60 lbs (27.22 kg)	Increased flexibility		

Tensar, NORTH AMERICAN GREEN™

Tensar International Corporation
2500 Northwinds Parkway
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Alpharetta, GA 30009

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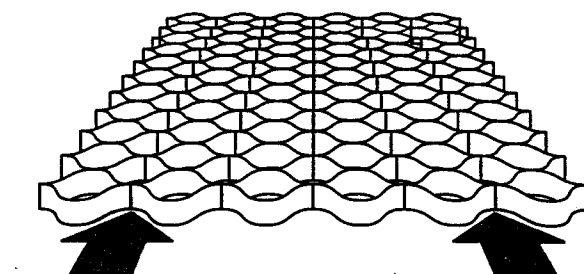
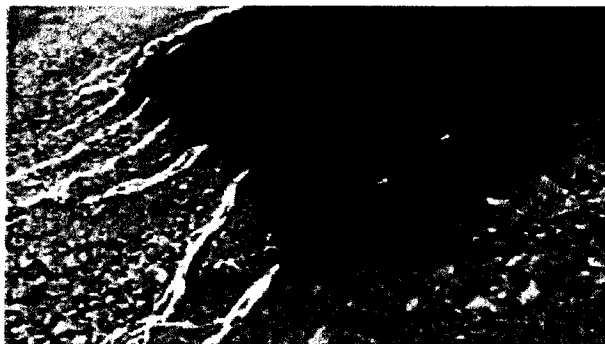
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EnviroGrid Cellular Confinement System (geocell)



EnviroGrid is a cellular confinement system that uses native fill to stabilize soils for construction, erosion control, landscape applications and to improve traffic mobility over poor soil. EnviroGrid panels have three dimensions: panels that contain, confine and reinforce a variety of fill material. Panels store and are shipped to site in their flattened state, making them easy to transport, handle and install. EnviroGrid is made from high density polyethylene (HDPE) sheets, giving it excellent resistance to all common elements found in soils and protection against ultraviolet degradation.



EnviroGrid Cellular Confinement System. The system is designed to contain, confine and reinforce a variety of fill material. Panels store and are shipped to site in their flattened state, making them easy to transport, handle and install.

Installation

- Prepare subgrade and install erosion control geotextile for separation (if needed).
- Secure EnviroGrid panels and stretch them to subgrade (if rocks, boulders, etc. are on ground, prior to stretching the panels, of dimension). Additional rocks or boulders will be placed at regular intervals to ensure the panel retains its shape and full area size.
- Staked panels should be filled using a tractor and loader sorting topsoil into the cells. Fill & finish with sand/dikes.



July 19, 2018

Santa Fe County Planning Commission,

Santa Fe County Land Use Administration,

P.O. Box 276

Santa Fe, New Mexico 87504-0276

Case # V 18-5060 Emilio Ortiz and Linda Ortiz-Chavez Variance

My name is Linda Ortiz-Chavez. I am the joint owner of the property located at 39A Cañada Ancha in Chimayo and I am the youngest daughter of Emilio Ortiz. My sister Eileen and I have equally been benefiting from 39A Cañada Ancha. Eileen and I both have the need and the use for the property. We do not share a driveway because we do not want to interfere with each other. Eileen and I each have an existing driveway on each side of the property. Both of us have been using the property to access the county road from our childhood home since we were in grade school. Before my Father purchased the property, it was abandoned with a vacant structure. Trespassers were storing stolen property there. When my father Emilio purchased the land in 2011 the neighborhood became safer. We demolished the structure, built fences, and rehabilitated the agricultural land. He bought the property for the safety of his family.

I believe sharing the property would not be in our best interest for Eileen, myself, and our children. It would affect us in several ways such as sharing an increased level of liabilities, the burden of sharing expenses such as the property taxes, and the responsibility of sharing the maintenance and repairs. The existing driveway on the north side of the property is a safe path for my children to access the bus stop at the County Road. With minor improvements, emergency vehicles and service vehicles would be able to access our residents easier through 39 A Canada Ancha (Parcel A-1). On the other side of our property, service vehicles and emergency vehicles struggle to access my Father's residence and my residence because the road is too narrow. Also, we cannot receive packages; as they become damaged or they end up missing because we share an easement with other neighbors.

My husband, our children and my father Emilio are currently using and have the need for the north side of the property located at 39A Cañada Ancha for agriculture, open space, and a safe access to the county road. Furthermore, I do not have plans to develop the north side of the property. My interest in the property is to have a safe path for my family and to continue the tradition of planting crops. In the event we were to consider to develop the property for a residence, we will meet the State Code, County Ordinance and requirements. I would like for my children to have the opportunity to develop the property for a residence in the future in the event they have a need to do so. Please allow the variance to be granted. An approval of the variance would keep the peace and eliminate future disputes within our family.

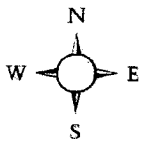
Thank you,

Linda Ortiz-Chavez

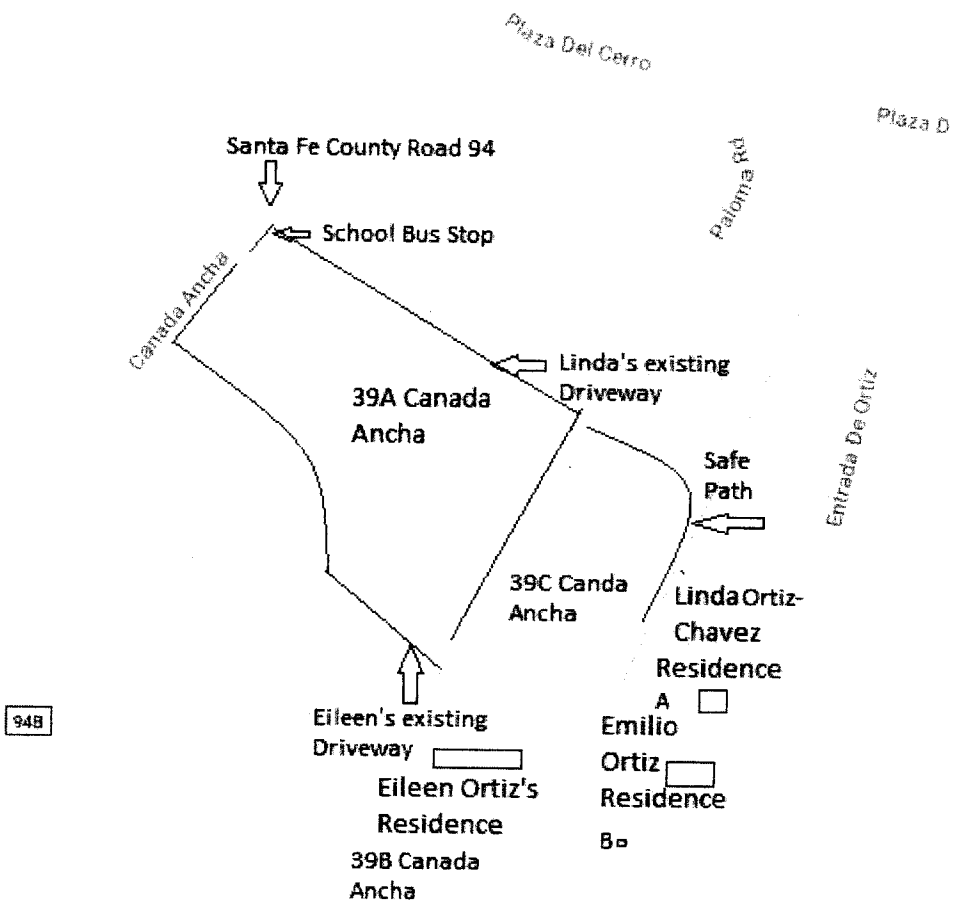
P.O. Box 378

Chimayo, N.M. 87522

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Case # V 18-5060 Emilio E. Ortiz and Linda D. Ortiz- Chavez Neighborhood Map



SFC CLERK RECORDED 08/22/2018



July 19, 2018

Santa Fe County Planning Commission

P.O. Box 276

Santa Fe, New Mexico 87504-0276

Case # V 18-5060 Emilio E. Ortiz and Linda D. Ortiz- Chavez Variance

Planning Commission, Traditional people must be allowed to remain in their Traditional Community. Chimayo is one of several communities within the boundaries of the Santa Cruz De La Canada Land Grant. In 1935, Emilio Ortiz was born at 4 Entrada de Ortiz in Chimayo; just about 100 yards from the subject property. In fact his family ancestors names appear as some of the original grantees in the Spanish decree (known as The De Vargas Decree) that granted the Santa Cruz de LA Canada Land Grant to 65 families in 1695. His family's names appears in every subsequent census taken from 1750 until the present date. His family was living in the place of his birth during the Mexican-American War of 1846 and are some of the direct beneficiaries of an international treaty ratified by the Congress of the United States known as the Treaty of Guadalupe Hidalgo. Articles VIII and IX ensured safety of existing property rights of Mexican citizens living in the transferred territories. The Santa Cruz De La Canada land grant was recognized by the US court of private land claims in 1899. The US surveyor General's office surveyed the grant in 1901 and the United States Congress enacted it and caused it to be patented. The patent read "The tract above described; To Have and To Hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said grantees, and to their Heirs and assigns, forever, for their use and benefit;" President William H. Taft signed it into law in 1910. The Constitution is applicable to the States through the 14th Amendment and its privileges and immunities and due process clauses. States may

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provide more protection to their citizens than that provided under the Constitution, but they cannot infringe on the rights provided to their citizens under the Federal Constitution or its interpretation by the Federal Courts. Article VI of the United States Constitution holds that treaties are the supreme law of the land. Like the Constitution and Bill of Rights treaties do not expire over time. Also the State of New Mexico Constitution Article II Sec. 5 page 4 and 5 Rights under the Treaty of Guadalupe Hidalgo preserved. The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty of Guadalupe Hidalgo shall be preserved inviolate. Emilio Ortiz and his family are the living embodiment of traditional people living and farming in a Traditional Community. They have been cultivating the land for hundreds of years. In 2007, Martin Luther King III along with his organization "Realizing the Dream," came to Chimayo to visit Emilio Ortiz to see if Emilio's method of subsistence farming could be modeled to work in other parts of the country as one way to feed the poor. Now to the maternal side; Linda's maternal ancestor, Bernardo Abeyta, was the man who built El Santuario de Chimayo, which is now one of the most recognizable tourist destinations in the entire state of New Mexico. I believe this hearing process was created due to the fact not all circumstances fit neatly into the letter of the law or ordinance because there is also a human side. The purpose of this variance request isn't for land speculation or profiteering but rather so that Emilio and his extended family can continue to live together on their ancestral lands with the traditions they've upheld from time immemorial. When it comes down to talking about affecting the lives of Human beings, their voices must be heard. Therefore, I pray and beg that in your wisdom you will grant this variance request.

Sincerely John Chavez
P.O. Box 242
Chimayo, N.M. 87522
505-929-3910

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The United States of America,

To all to whom these presents shall come, Greeting:

P. L. C.

Docket No. 193, New Mexico.

WHEREAS, There has been deposited in the General Land Office of the United States evidence whereby it appears that in accordance with the provisions of the Act of Congress approved March 3, 1891, entitled "An Act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," the private land claim known as the Santa Cruz Grant has been duly confirmed to Frank Becker, P. H. Leese, Guadalupe Garcia, Juan Ponciano Lujan, Matias Borrego, Eligio Madrid, Francisco Lopez, G. C. Robert, Jose Andres Atencio, Kate Andrews, Andres Garcia, and Augustine Bustos, for themselves and in trust for all other persons residing upon, holding, or owning any portion of the said tract of land, embraced in said grant, as hereinafter described and particularly for the use and benefit of each and every individual owning and holding any specific parcel or portion of said tract of land, claiming the same as his own and residing upon and cultivating any portion thereof, or causing the same to be done, and to their heirs and assigns; and

WHEREAS, Said Claim has been surveyed and designated as in Sections thirty-five and thirty-six in Township twenty-one north and Sections one and twelve in Township twenty north all in Range eight east and Sections thirty-one, thirty-three, thirty-four, thirty-five, and thirty-six in Township twenty-one north and Sections one, two, three, four, five, six, seven, eight, and nine in Township twenty north all in Range nine east of the New Mexico Meridian, in the Counties of Santa Fe and Rio Arriba, New Mexico, containing four thousand five hundred sixty-seven and sixty hundredths acres, according to the plat and survey of the said grant approved by the order of the Court of Private Land Claims, August 7, 1902; copies of which are on file in the office of the Surveyor General for the Territory of New Mexico and in the General Land Office:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Frank Becker, P. H. Leese, Guadalupe Garcia, Juan Ponciano Lujan, Matias Borrego, Eligio Madrid, Francisco Lopez, G. C. Robert, Jose Andres Atencio, Kate Andrews, Andres Garcia, and Augustine Bustos, for themselves and in trust for all other persons residing upon, holding, or owning any portion of the said tract of land, embraced in said grant, and particularly for the use and benefit of each and every individual owning and holding any specific parcel or portion of said tract of land, claiming the same as his own and residing upon

and cultivating any portion thereof, or causing the same to be done, and to their heirs and assigns, the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said grantees, and to their heirs and assigns, forever, for their use and benefit; and in trust for the use and benefit of all the persons residing upon, holding or owning any portion of the said tract of land, and particularly for the use and benefit of each and every individual owning and holding any specific parcel or portion of said tract of land, claiming the same as his own and residing upon and cultivating any portion thereof, or causing the same to be done, in accordance with the terms of the decree of said Court; but subject to the proviso that this grant shall not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same, but all such mines and mineral shall remain the property of the United States, with the right of working the same; and that the said grant is made subject to all the limitations and terms of the said Act of Congress of March 3, 1891, and all the restrictions and limitations of the decree of said court.

IN TESTIMONY WHEREOF, I, William H. Taft President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the SEVENTH day of JULY, in the year of our Lord one thousand nine hundred and TEN and of the Independence of the United States the one hundred and THIRTY-FIFTH.

By the President: Wm. H. Taft

By W. P. L. Ransom

Secretary

Recorder of the General Land Office

30-12627-3
107444-3

D-2

(2)

In the Court of Private Land Claims, Adjourned August Term,
1899, Santa Fe, New Mexico.

Frank Becker et al.,

vs. No. 194

Santa Cruz Grant.

United States.

Opinion of the Court delivered September 5th, 1899, by
Bluss, A. J.:

In the case of Frank Beck et al., vs. the United States for
the confirmation of the Santa Cruz grant we have had a great deal of
trouble in arriving at a conclusion, but have concluded to announce a
conclusion which is, that the grant documents taken in connection with
the evidence of the case fairly show that the community was given the
land up to the ^{place of} ~~Chimayo~~ in the Santa Cruz valley; that they were given
that portion of the valley land in the Rio Grande lying between the
southern limit of the San Juan Pueblo and the north line of the Mesa
de San Ildefonso; that portion of these valley lands contained
within the limits of the Santa Clara League. I do not deem it essential
to give the reasons for arriving at that conclusion because they are
not very ~~different~~ ^{different} from the difficulty that we experienced that there is not
evidence ~~enough~~ ^{enough} to enable us to delineate the lands which we desire
to confirm. The gentlemen representing the claimants and the govern-
ment have given a delineation of these lands, we ~~with~~ ^{with} ~~the~~ ^{the} ~~claimants~~ ^{claimants} ~~and~~ ^{and} ~~the~~ ^{the} ~~government~~ ^{government} ~~have~~ ^{have} ~~agreed~~ ^{agreed} ~~to~~ ^{to} ~~accept~~ ^{accept} it and enter ~~it~~ ^{it} in the decree. The
land that we desire to incorporate in the decree is, that what is
known as the agricultural lands, the valley lands, as we discover
them in these two valleys, shall be confirmed, but that what is ordina-
rily known as pasture lands and commons will not be included in the
decree. The main contention has been as to the boundary which we find
to be at the place of ^{east} ~~Chimayo~~. As to the other feature of the decree,

the confirmation will go in the name of some one of the original
the
settlers under De Vargas decree, in trust, for all persons holding un-
der ~~that decree as well as other~~ valid Spanish or Mexican grants, their descendants and successors
in interest. If counsel cannot agree upon a delineation of these lands,
why, we will be under the necessity of appointing a commissioner to go
up there and make a survey of the tract as soon as it can be done.

Henry B. Shaw

Associate Justice.

ARTICLE V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all exec-

utive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the independence of the United States of America the twelfth.

In witness whereof We have hereunto subscribed our Names,

G. Washington—Presidt. and deputy from Virginia

New Hampshire: John Langdon, Nicholas Gilman

Massachusetts: Nathaniel Gorham, Rufus King

Connecticut: Wm. Saml. Johnson, Roger Sherman

New York: Alexander Hamilton

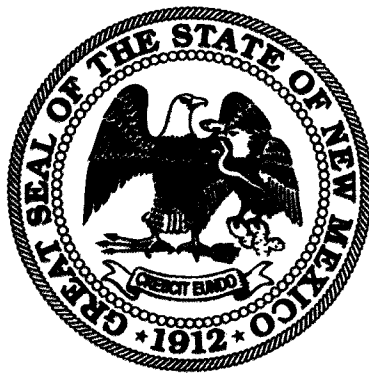
New Jersey: Wil: Livingston, David Brearley, Wm. Paterson, Jona: Dayton

Pennsylvania: B. Franklin, Thomas Mifflin, Robt. Morris, Geo. Clymer, Thos. FitzSimons, Jared Ingersoll, James Wilson, Gouv Morris

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CONSTITUTION

AS ADOPTED JANUARY 21, 1911,
AND AS SUBSEQUENTLY AMENDED
BY THE PEOPLE IN GENERAL AND
SPECIAL ELECTIONS
1911 THROUGH 2017



MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

NEW MEXICO COMPILATION COMMISSION

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Article II – Bill of Rights

Sec. 2. [Popular sovereignty.]

All political power is vested in and derived from the people: all government of right originates with the people, is founded upon their will and is instituted solely for their good.

Sec. 3. [Right of self-government.]

The people of the state have the sole and exclusive right to govern themselves as a free, sovereign and independent state.

Sec. 4. [Inherent rights.]

All persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness.

Sec. 5. [Rights under Treaty of Guadalupe Hidalgo preserved.]

The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty

Article II – Bill of Rights

of Guadalupe Hidalgo shall be preserved inviolate.

Sec. 6. [Right to bear arms.]

No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms. (As amended November 2, 1971 and November 2, 1986.)

Sec. 7. [Habeas corpus.]

The privilege of the writ of habeas corpus shall never be suspended, unless, in case of rebellion or invasion, the public safety requires it.

Sec. 8. [Freedom of elections.]

All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.



Jane Phillips/The New Mexican

Martin Luther King III thanks Emiliz Ortiz for a tour of his farm in Chimayó. King's tour of land grant communities started at the santuario and ended with a town hall meeting in Truchas.

Get "Minutes" of this meeting!

Carl Dickens

La Cienega Valley Association

577-3708

cedickens2@yahoo.com

Board Meeting

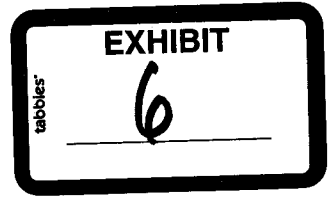
March 5, 2018– 7:00 p.m.

Preserving Our Rural Way of Life

AGENDA

Call to Order:

1. Approval of Agenda
2. Approval of Minutes
3. Matters from the Public
4. Nunez Variance Request – 20 Calle de Juan
5. **Special Presentation:** Santa Fe Business Incubator – Rural Community Connections,
Marie Longserre, President & CEO
6. President's Report:
 - a. Funding Water Monitoring Program
 - b. BLM Camel Track Working Group
 - c. Community Center Board
 - d. Library Schedule
7. Treasurer's Report
8. Committee Reports
9. Newsletter Articles
10. Matters from the Board – Action items
11. Adjournment



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