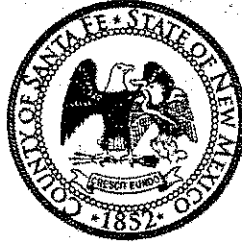


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District
4

Ed Moreno
Commissioner, District
5

Katherine Miller
County Manager

SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

**CASE # SLAP 18-5120; Appeal from Order of the
Santa Fe County Planning Commission in Case #
VAR 17-5190
Glorieta 2.0, Inc., Applicant for Seven (7) Variances**

ORDER

THIS MATTER came before the Santa Fe County (County) Board of County Commissioners (Board) for hearing on August 14, 2018, on the timely appeal of Mike Adney and Jeff Hanus (collectively, Appellants), pursuant to Section 4.5.4 of the County Sustainable Land Development Code (SLDC). Appellants appealed from a final decision of the County Planning Commission that granted, in part, and denied, in part, the application of Glorieta 2.0, Inc. (Applicant), a nonprofit New Mexico Corporation, for after-the-fact variances from seven Sections of the SLDC. Applicant requests the variances in connection with its application for a Site Development Plan (SDP Application) that is currently pending before the Land Use Administrator (Administrator). In the SDP Application, Applicant requests the Administrator to approve non-residential development of a small portion of the 2,227.44+ acre parcel (Property) formerly known as the Glorieta Baptist Conference Center. As currently proposed, the Administrator cannot approve the SDP Application unless the variances are granted.

The Board, having considered the Applicant's and the Appellants' submittals and testimony, the Appellants' submittals and testimony, the Staff Report [NBB-1¹] and Staff Presentation, the Hearing Officer's Recommended Decision and Order [NBB-405], the Planning Commission Order [NBB-486], and having conducted a public hearing on the Application in a *de novo* appeal, finds that the Variance Application should be GRANTED subject to the conditions set out below.

BACKGROUND

1. The Property was the site of the Glorieta Baptist Conference Center (Conference Center), established in 1950s, before being purchased by Applicant in September, 2013. The existing legal, non-conforming development on Property includes approximately 18 lodges/dorm facilities, approximately 100 small lots with most lots having dwellings on them, a dining hall, an auditorium, meeting rooms, and other structures which were utilized by the Conference Center. The Conference Center was utilized as a religious facility, retreat, lodging for attendees of camps and retreats, and other activities associated with the facility. [Staff Report, NBB-1; SDP Application, NBB-147]
2. The Property is located within three zoning districts: Public/Institutional (650+ acres); Rural (1,500 + acres); and Rural Fringe (78 + acres), and is located at 11 State Road 50 & 101 Oak, within T16N, R11E, Section 22, SDA-2. [Staff Report] Applicant is not seeking any change in zoning.
3. The Board takes administrative notice of the Glorieta Adventure Camp website found at glorieta.org, which describes Applicant's facilities and mission and thus provides context for the

¹ "NBB-#" refers to Staff's sequential numbering of the Staff Report and 27 exhibits attached thereto. Exhibit 28 to the Staff Report, the Environmental Impact Report (EIR), is on a DVD and not included in the NBB sequence of numbers.

proposed developments and requested variances.² The website headline reads, “Changing Lives through Outdoor Adventure.” Below the headline the website invites readers to “Choose an Adventure” from among three categories: Retreats, Camps, and Races.

a. In the “Camps” category, for example, the website lists “Group Camps” for middle and high school children and states that this camp is, “Ideal for” Churches, Schools and Organizations.” The website includes similar descriptions for “Family Camp,” “Summary Camps,” and “Day Camps.”

b. In the “Retreats” category, the website lists “Ministers Refresher,” “Educators Energizer,” “Couples Retreat” and “Snow Days Retreat” as weekend retreats. The website also offers “Custom Retreats,” including Group, Family, Student, and Wilderness Retreats.

c. Under “Races,” the website advertises several upcoming races, including the “Big Mountain Enduro,” “Glory Days,” and the “Tatonka 5K & 10K Runs.” The website goes on to boast that the Property is: “A Great Place for Your Race. Rugged Terrain. Endless Obstacles. Supreme Intense.”³

d. Peppered throughout the website are pictures depicting children and adults engaged in various outdoor activities and adventures in mountainous wooded terrain, including swimming in the onsite lake, which includes inflatable and wooden platforms; body painting; zip lining; hiking and running; mountain biking; field sports; rock climbing; slogging through the onsite mud pit; dancing; and outdoor concerts.

4. On August 7, 2017, JenkinsGavin, Inc. submitted the SDP Application on behalf of Applicant. Among other things, the SDP Application⁴ seeks approval of the following

² Applicant’s programs are also described in an undated “Letter of Intent for Santa Fe County.” [NBB 41]

³ Applicant has obtained a Special Use Permit and Temporary Use Permit for specific race events.

⁴ This Order only concerns the requested variances. The Board takes no position on the merits of the SDP Application, which is mentioned here only for context.

improvements on the Property (collectively, “Requested Improvements”) that do not meet SLDC standards and that, therefore, require variances:

- a. Roads, consisting of Zip Tour Road [#27], a new road, and Hagen Creek Road [#68], an existing road.⁵
- b. Zip Line Structures, including the Zip Tour Platforms [#56] and the Holcomb Flylines [#30].
- c. Tree Structures, including the Challenge Treehouse [#34], the Overnight Treehouse [#35], and the Tree Rappel Structure [#36].
- d. Biking, Hiking, and Parking Improvements, including Green Trail Bridge 1 [#38], Green Trail Bridge 2 [#39], Oklahoma Parking and Bike Terrain Park [#65], trails [#67], the Bike Terrain Area [#71].
- e. The Mudpit Platform [#37].
- f. The Reclamation Area [#51].

(This Order refers to the individual or categories of Requested Improvements using the underlined terms above.)

5. In violation of the SLDC, Applicant already constructed all of the forgoing improvements without first obtaining the necessary development permits. As a result, Applicant must now seek and obtain after-the-fact variances or be subject to criminal charges and/or civil enforcement of the SLDC seeking to require the Applicant to remove the illegally constructed improvements and reclaim disturbed areas. Applicant claims that it did not know the SLDC applied to the improvements at issue at the time of construction [NBB 134] and further claims that, upon learning of the applicable SLDC requirements through communications with Staff (including

⁵ Numbers correspond to Applicant’s Site Plan Map at NBB-266. The Requested Improvements are further described in the Staff Report (including Exhibits 1-28) and the “Glorieta 2.0 Appeal Response” provided by Applicant at the public hearing before the Board.

written notices of violation), it immediately ceased use of the Requested Improvements and applied for the required permits and variances.

6. On February 15, 2017, County Staff and the County Fire Marshal conducted a site visit at the Property and observed several unpermitted developments, including multiple new structures utilized for zip lines, lake slides and diving boards, multiple decks, a remodeled building utilized as a Coffee Shop/General Store, the new trails (grading) for extreme biking, and a skeet shooting range. Staff also documented a large area of land that was being utilized to dispose of solid waste material. On the same date, Staff issued Glorieta 2.0 a Notice of Violation (NOV) and Stop Work Order for non-compliance with Section 4.8 (unpermitted development) of the SLDC and Ordinance 1993-11 (Anti-Litter). [NBB 2-3, 46] On February 22, 2017, the Land Use Administrator issued a detailed NOV and ordered Applicant to cease all use of unpermitted structures. [NBB 86]

7. Since the Administrator issued her NOV, Applicant has endeavored to comply with the SLDC, including:

a. Applicant submitted several applications for Development Permits for interior renovations, exploratory wells, and new roofs following the issuance of the Order to Cease and Desist, which the Administrator approved due to concern for safety issues. [NBB 3, 90]

b. Applicant submitted a Solid Waste Abatement Plan and coordinated cleanup of the unpermitted dump on the Property with the County and the New Mexico Environmental Department (NMED), which also issued an NOV to Applicant. [NBB 91, 95, 96]. NMED and Staff have verified that the site has been cleared of solid waste and re-vegetated. [*Id.*, NBB 3]

c. Applicant stated that it ceased use of all unpermitted structures (NBB 98-105) and has submitted the SDP Application and related requests for variances.

d. Applicant applied for and, on May 25, 2018, received a Temporary Use Permit and Special Use permit allowing a 2-day BME Mountain Enduro race (extreme bike racing) on the non-conforming trails on the Glorieta 2.0 site. [NBB 3]

REQUESTED VARIANCES

8. The nature of the Property and the Requested Improvements preclude the Administrator from approving the Site Development Plan unless Applicant obtains seven variances, as follows:

- a. **Variance #1—SLDC Table 7-13.** This Table sets out the “Rural Road Classification and Design Standards” for SDA-2 and SDA-3. Applicant seeks variances from the width and grade requirements applicable to “Local” roads.

Requested Improvements requiring Variance #1:

Hagen Creek and Zip Tour Roads

- b. **Variance #2—SLDC § 7.17.9.2.3.** Pursuant to this Section, “No structure may be constructed on natural slopes of thirty percent (30%) or greater.”

Requested Improvements requiring Variance #2:

Hagen Creek and Zip Tour Roads
Zip Line Structures
Biking, Hiking, and Parking Improvements
Reclamation Area

- c. **Variance #3—SLDC § 7.17.10.4.1.** Pursuant to this Section, “Roads and driveways shall not be designed or constructed on slopes over twenty-five percent (25%).

Requested Improvements requiring Variance #3:

Roads

- d. **Variance #4—SLDC § 7.17.10.3.1.** Pursuant to this Section, which applies to development at or above 7,400 feet, “The disturbed area on any lot shall not

exceed twelve thousand (12,000) square feet,” not including the primary driveway.

Requested Improvements requiring Variance #4:

Roads
Zip Line Structures
Tree Structures
Biking, Hiking, and Parking Improvements (except #67—Trails)

- e. **Variance #5—SLDC § 7.17.9.2.7.** Pursuant to this Section, “no significant tree may be removed from slopes greater than thirty (30) percent.”

Requested Improvements requiring Variance #5:

Zip Line Structures

- f. **Variance #6—SLDC Table 8-17.** Pursuant to this Table, no structure may exceed 48 feet in the Public/Institutional Zoning District.

Requested Improvements requiring Variance #6:

Holcomb Flylines

- g. **Variance #7—SLDC Section 7.17.9.3.1.** Pursuant to this Section: “The height of any structure located on land that has a natural slope of fifteen percent (15%) or greater shall not exceed eighteen feet (18’). The distance between the highest point of the structure and the lowest point at the natural grade or finished cut shall not exceed thirty (30) feet, unless the portion of the slope over fifteen percent (15%) is incidental to the entire site.”

Requested Improvements requiring Variance #6:

Tree Structures

Individual variances will hereinafter be referred to by the applicable variance numbers identified above.

9. Variance Nos. 1 through 7 are also summarized on a one-page document provided by Applicant at the public hearing, titled "Variance Requests" and printed on green paper. The locations of the Requested Improvements requiring variances are shown on Applicant's Site Plan, Sheet A-34-C1, at NBB-266.

STANDARD OF REVIEW AND APPLICABLE LAW

10. The Board is a zoning authority under the Municipal Zoning Act (MZA), NMSA 1978, Sections 3-21-1 through 3-21-26.

11. The Board delegated to the County Planning Commission the authority to "hold public hearings and take final action and issue development orders regarding applications for variances" SLDC § 3.3.2.5.

12. On appeal, the Board reviews the decisions of the Planning Commission *de novo*. SLDC § 4.5.4. Variance hearings are quasi-judicial and conducted in accordance with Sections 4.3.2 and 4.7.2 of the SLDC, Ordinance No. 2010-12 (County Code of Conduct), and Resolution No. 2009-2 (Rules of Order).

13. The decision to grant a variance to the SLDC is left to the sound discretion of the Planning Commission and, on appeal, to the Board. *See Paule v. Santa Fe County Bd. of County Com'rs*, 2005-NMSC-021, ¶ 30. Under the MZA, the Board "by majority vote of all its members may ... authorize, in appropriate cases and subject to appropriate conditions and safeguards, variances ... from the terms of the" SLDC:

(a) *that are not contrary to the public interest;*

(b) *where, owing to special conditions, a literal enforcement of the [SLDC] will result in unnecessary hardship;*

(c) *so that the spirit of the zoning ordinance is observed and substantial justice done; and*

(d) so that the goals and policies of the comprehensive plan are implemented[.]

NMSA 1978 § 3-21-8 (1965, as amended through 2008) (emphasis added).

14. Under SLDC Section 4.9.7.3, if the review criteria described in Section 4.9.7.4 are met, the Board “may grant a zoning variance from any provision of the SLDC except that [it] shall not grant a variance that authorizes a use of land that is otherwise prohibited in the relevant zoning district.” *See also* SLDC § 4.9.7.1 (“The granting of an area variance shall allow a deviation from the dimensional requirements and standards of the [SLDC], but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.”).

15. Applicant does not seek a variance to engage in any use that would otherwise be prohibited in the relevant zoning districts, and nothing in this Order permits such use.

16. Under the SLDC, “a variance may be granted only by a majority vote of the members of the ... Board ... based on the following criteria:”

1. [The] request is not contrary to the public interest; [and]
2. [Because] of extraordinary and exceptional situations or conditions of the property, the strict application of the [SLDC] would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner; and
3. [The] spirit of the SLDC is observed and substantial justice is done.

SLDC § 4.9.7.4 (Review Criteria). In addition, consistent with Section 3-21-8, all applications “for discretionary approval shall be required to provide ... [d]emonstrated consistency with the [Sustainable Growth Management Plan (SGMP)], and applicable area, district and/or community plans.” SLDC § 1.4.2.28.

17. Consistent with Section 3-21-8, the Board has broad discretion to impose conditions on grants of variance as “necessary to accomplish the purposes and intent of the SLDC and the

SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.” SLDC § 4.9.7.5. In addition, all “variances run with the land, unless conditions of approval ... imposed by the Planning Commission specify otherwise.” *Id.* A variance “automatically expire[s] within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.” *Id.*

18. The burden is on applicants to demonstrate compliance with the variance Review Criteria. *See Paule*, 2005-NMSC-21, ¶ 34. If an applicant meets this *prima facie* burden, the Board may grant the requested variance, grant the variance with conditions, or deny the variance based on substantial evidence in the record that, in the Board’s opinion, rebuts an applicant’s *prima facie* case.

SUMMARY OF TESTIMONY AND EVIDENCE

19. The paragraphs above referring to documents or other materials in the record are incorporated by reference into this summary of testimony and evidence. No testimony or submittal by staff, any party, or the public was excluded from the record in this matter.

20. Although not binding on the Board, the Board considers the Recommended Decision of the Hearing Officer [NBB-405] and the Order of the Planning Commission [NBB-487], which comprise part of the record in this matter.

21. The Hearing Officer’s Recommended Decision is summarized as follows:

a. Paragraphs 1-5 describe Applicant’s submittals and compliance SLDC requirements regarding notice, presentation to the County Technical Advisory Committee (TAC), and public meeting.

b. Paragraphs 6-7 describe Applicant's land uses and notes that all were allowed within the relevant zoning districts.

c. Paragraph 8 describes the general process for obtaining development approval requiring variances:

The Applicant is requesting the variances described above to obtain approval of the Site Development Plan/Development Permit for the structures/roads/trails and the use of the structures/roads/trails. The approved Development Permit for the structures will then be subject to review by the New Mexico Construction Industries Division for structural soundness and compliance with the International Building Code.

d. Paragraph 9 summarizes the applicable provisions of the SLDC, and Paragraph 10 describes the unpermitted development, which "included multiple structures utilized for zip lines, a structure which includes lake slides and diving boards, multiple decks, tree removal, the construction of trails (grading) for extreme biking, construction of the Zip Tour Road, and modification of existing Hagen Creek Road and for trails providing access to recreational amenities."

e. On pages 4 to 13, the Hearing Officer summarized the testimony of Applicant and Staff as to the seven requested variances and the SLDC review criteria. The testimony was generally as follows:

1) Applicant: Applicant testified and presented evidence and argument in support of the requested variances, including: (a) Hagen Creek Road has existed since the 1930s in its current configuration, and both it and Zip Line Road are aligned tightly to natural grades to minimize surface disturbance; (b) the improvements widen the roads and lower existing grades; (c) the improvements are necessary to access and enjoy recreational amenities at the Property and were constructed to minimally disturb the surface; (d) some of the improvements enhance access to the National Forest; (e) the unpermitted dump has been reclaimed and stabilized; (f)

strict compliance with the SLDC would create substantially more surface disturbance, as would removal of existing improvements, and further degrade views; (g) Applicant cut the trees but did not remove the stumps, and therefore, the area is stabilized and no actual ground disturbance occurred; (h) Applicant is working with the Forest Service to create a sustainable forest environment; (i) the improvements are compatible with existing structures and forested mountainous terrain; (j) the road improvements were designed in collaboration with the County Fire Marshall, and both roads in their current configuration provide safe and emergency access; (k) the disturbance of 30% slopes is minimal; (l) the 12,000 sq. ft limitation is unreasonable for a 2,200-acre parcel that is mostly above 7,400 feet in elevation; (m) Applicant's development contributes to the County's economy and does not negatively impact sensitive lands or natural, archeological cultural, or historical resources on the Property; and (n) Applicant would have sought the same variances had it requested them before-the-fact⁶.

2) Staff: Staff presented testimony and evidence in opposition to the requested variances, including: (a) compliance with applicable SLDC road standards are necessary to assure public safety, and the requested variances could compromise public safety; (b) the improvements were constructed unlawfully, without the required development permits; (c) variances should have been requested and obtained before the improvements were constructed; (d) the unpermitted surface disturbance could cause slope instability and increase runoff to downstream properties; (e) the "extraordinary and exceptional situation on the Property" was self-inflicted; (f) the unpermitted improvements were not reviewed for code compliance and structural soundness; (g) complete remediation of disturbed sites will not cause further disturbance; (h) the loss of trees is irreversible; and (i) Applicant has not provided evidence that the Treehouse Structures are not harming the health of the trees.

⁶ Recommended Decision ¶ 13.

f. Paragraphs 11 and 12 summarize the public testimony for and against the requested variances.

g. Paragraph 15 presents the Hearing Officer's conclusion that substantial evidence supports granting the requested variances.

22. The detailed Order issued by the Planning Commission, now on appeal, is summarized as follows:

a. On pages 1-6, the Order summarizes the factual and procedural background of the Property and Application, the applicable sections of the SLDC, and the public hearing process.

b. On pages 7-16, the Order sets out various findings and conclusions that generally support the requested variances, including the following:

1) Glorieta 2.0 is primarily a youth service organization that provides services to various groups, including youth groups, veteran's groups, civic groups, government groups, men's groups, and church groups.

2) The Commission recognized the value of the camp and the joy that it brought to the kids that have gone there, and found that it is in public interest to have the facility for the kids.

3) The Applicant, based upon the recommendation of the Santa Fe County Fire Marshal, proposes to improve the Zip Tour Road and Hagan Creek Road to a 15' width with a maximum grade of 15% on some portions, and to a 20' width with a maximum grade of 18% on other portions. The 20' width will allow for a passing lane on portions of the road.

4) The terrain of Zip Tour Road and Hagen Creek Road is very mountainous and improvement of both roads to the standards of the SLDC would require significant

disturbance to the natural grades, vegetation, and wildlife with potential construction of a longer, wider road with numerous switchbacks scarring the mountain side.

5) The mountainous terrain creates practical difficulties for improving Hagen Creek Road and Zip Tour Road to meet SLDC dimensional standards roads and that improving the roads to meet standards would result in significantly more surface disturbance.

6) The Fire Marshal's recommendations for road improvements will balance the practical difficulties of improving the road and disturbance to the terrain with the need for emergency access and public safety.

7) The Zip Tour Road is used for daily inspections and maintenance of the zip lines and roads. Maintenance of the zip line will require truck and heavy equipment traffic daily during approximately eight months of the year. The roads will require maintenance approximately two times per year.

8) Regular maintenance of the road is required to ensure that fire truck and other emergency vehicles have access and that neighbors can access their properties through Hagen Creek Road.

9) It is necessary to allow access to Zip Tour Road for the daily inspection and maintenance of the zip lines.

10) The disturbance of 694 square feet by the Mudpit is minimal and that the terrain is stable to the extent that slope disturbance was evaluated by the EIR. However, the location and impact of the Mudpit and conditions imposing mitigation measures should be further evaluated through the process of obtaining a site development permit.

11) Green Trail Foot Bridge 1 and Green Trail Foot Bridge 2 disturb 224 square feet and 249 square feet, respectively, and provide access to the existing trail network that connects to the Santa Fe National Forest. The foot bridges are located across drainage ways.

12) The disturbance of 30% slope by the Green Trail Foot Bridge 1 and Green Trail Foot Bridge 2 are minimal.

13) It is in the public interest to provide access to the existing trail network in lieu of construction of new trails and it would be a practical difficulty for the Applicant to locate either Foot Bridge in an area with less than 30% slope due to the location of existing trails and drainage ways.

14) The Reclamation Area (#51) has been reclaimed and stabilized with seeding and the disturbance of 30% slopes is the result of the reclamation process. Staff confirms that site has been cleared of solid waste and re-vegetated.

15) The Reclamation Area disturbed a total of 166 square feet of 30% slope.

16) The disturbance caused by the Reclamation Area is minimal and its reclamation is in the public's interest. The reclamation cannot be relocated.

17) The Zip Tour platforms (#56) were strategically located on areas of flatter terrain to allow for safe access and maintenance. In order to provide for the retreat's recreational activities, the structures were required to be placed within the mountain terrain. The Zip Tour platforms are not publically visible.

18) It would be a practical difficulty to locate zip lines on flatter terrain due to the nature of the activity and that the location provides safe access for maintenance. The Zip Tour platforms do not negatively impact the view shed.

19) The Applicant stated the new trail connects to an extensive network of existing trails and that abandonment of the trail and the clearing, grading and cutting of new trails would create more disturbances increase the potential for erosion. The trails disturb 16,632 square feet of 30% slope over 10.5 miles of trail.

20) The disturbance caused by the trails is not minimal. However, relocation of the trails will cause more harm to terrain and it is in the interest of the public to mitigate further impact.

21) The relocation of trails on slopes less than 30% that connect to existing trails would be difficult and an undue hardship due to the topography and location of pre-existing trails.

22) The Bike Terrain Park (#71) disturbed 1,891 square feet of 30% slope terrain. The Bike Terrain Park is adjacent to the extensive network of existing biking and hiking trails and abandoning the terrain park and relocating it to another area would create more disturbance.

23) Relocating the terrain park would cause further harm.

24) The total disturbed area of all structures and uses on the Property is 195,191 square feet, which exceeds the allowable 12,000 square feet of disturbance per lot at 7,400 feet. The subject property consists of over 2,200 acres. The majority of the disturbance is the Zip Tour Road and Hagen Creek Road (172,352 square feet).

25) The large size of the Property at 7,400 ft. is an exceptional circumstance and it would cause an undue hardship to limit development on such a large parcel to 12,000 square feet.

26) The Commission finds that the structures and use above 7,400 feet do not negatively impact the view shed.

27) With the construction of Zip Tour Structures, 101 significant trees were removed from 30% slopes where trees were in conflict with the zip line required clearances.

28) The Applicant requested variances to allow the height of the following structures to exceed 18 ft. on slopes of 15% or greater: #34 Challenge Treehouse (35'), #35 Overnight Treehouse (26'-2"), #36 Tree Rappel Structure (50'), and #56 Zip Tour Platforms (Platform 3 28'-11", Platform 4 29'-11", and Platform 5 29'-11").

i. The structures were constructed in concert with the existing densely wooded area, allowing the structures to blend with the natural surroundings for recreational use. In addition, the activities associated with the structures require steep terrain and elevation changes.

ii. The structures do not negatively impact the view shed. The activities require steep terrain and building them below 18' is a practical difficulty.

29) The Commission summarized the public testimony in support of the Application as follows:

i. The Applicant provides a resources for hiking, biking, and outdoor adventure;

ii. The public benefits from the activities offered at the site;

iii. The bike trails, zip lines and other outdoor amenities are integral to the programs offered by the Applicant; and

iv. The Applicant contributes to economic development in the region.

30) The letters and testimony in support from the public establish that the activities and resources associated with the structures and uses that are the subject of the application generally benefit the public.

31) With regard to concerns that the Applicant installed structures without development approvals, the Commission found that the Applicant's actions were inappropriate and recommended that the County take appropriate enforcement actions. However, it also found that these actions were not relevant to consideration of the variance criteria.

32) With regard to the damage done to the environment by construction and installation of the structures, the Commission found that while the structures may have negatively impacted the terrain, relocation of the structures may lead to further negative impacts on the terrain.

33) The Commission found that the additional concerns raised by opponents, including issues relating to water consumption and uses for which no variance was requested, could not appropriately be addressed in a variance proceeding.

c. The findings and conclusions of the Commission that tended to militate against granting some of the requested variances include following:

1) There is no fire or emergency access to the treehouses and accordingly, their continued use is unsafe.

2) The number of significant trees removed was not minimal and that the breadth of destruction of these trees was not in the public interest.

3) The significant trees should not have been removed.

4) The public concern for clear cutting of old growth trees supports denial of the Applicant's request for a variance from the Code provision prohibiting the removal of significant trees from slopes greater than 30%.

5) Holcomb Flylines negatively impact the viewshed of the public.

d. The Commission found that Applicant had satisfied the SLDC Review Criteria for Variance Nos. 1, 2 (*except* the Challenge Treehouse and the Overnight Treehouse) 3, 4, and 7.

e. The Commission found that Applicant failed to satisfy the Review Criteria as to Variance Nos. 2 (*but only* as to the Challenge Treehouse and the Overnight Treehouse), 5, and 6.

f. The Commission imposed the following conditions on the variances it granted:

Condition #1: The Applicant will use Hagen Creek Road and the Zip Tour Road only for emergency purposes and public safety vehicles; that work done on the roads can only bring them to the necessary standard for that emergency use; work to mitigate any erosion problems that the current situation or that the improvements would cause; daily inspection and maintenance of the zip lines; and twice yearly maintenance of the road.

Condition #2: That the development permits for the grading of roads that are the subject of the various applications shall be submitted to the Building & Development Services for approval. Prior to submitting a development permit the applicant shall consult with the County Fire Marshal and design the roads to meet the Fire Marshal's requirements. The design of these roads shall also include a plan and profile illustrating how the applicant will mitigate drainage and erosion control.

Condition #3: The development permit for grading of the trails, biking and hiking, that are subject to the variance application shall be submitted to the Building & Development Services for approval. Prior to submitting a development permit the applicant shall consult with the County Fire Marshal. The design of these trails shall also include a plan and profile illustrating how the applicant will mitigate drainage and erosion.

Condition #4: The development permit for grading of the trails, biking and hiking, that are subject to the variance application shall be submitted to the Building & Development Services for approval. Prior to submitting a development permit the applicant shall consult with the County Fire Marshal. The design of these trails shall also include a plan and profile illustrating how the applicant will mitigate drainage and erosion.

Condition #5: The Applicant shall not utilize any of the unpermitted structures, developments or improvements, roads and trails listed in the site development plan until such time as the development permits are approved by the Building & Development Services and structural permits are granted by the New Mexico Construction Industries Division.

Condition #6: Pursuant Chapter 4, Section 4.9.7.5, all approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.

23. County Staff recommends that the Board deny all requested variances except Variance #7.⁷ The basis of Staff's recommendation is set out in the Staff Report [NBB 1 – 34j], which is summarized in relation to the Review Criteria as follows:

a. Whether the requested variances are contrary to public Interest: Staff believes that all of the requested variances are contrary to public interest, primarily because they involve unpermitted and thus unreviewed development for which variances are now being requested after-the-fact:

Variance #1: Staff states that granting a variance to the width and grade road standards is not in the public interest, because these “are a matter of public safety for users of the roads and for emergency accesses” and because the roads serve unpermitted structures.

Variance #2: “The SLDC promotes the health, safety, and welfare of the County, its residents, and its environment by regulating development activities to assure that development does not create land use and public nuisance impacts or effects upon surrounding property, the County and the region. The disturbance of 30% slopes (no build area) for the purpose of constructing structures, roads and trails is contrary to the public interest because it is unknown if the disturbance may cause instability to the slopes and may also cause additional erosion and drainage which could affect properties downstream of this site. The EIR submitted by Glorieta 2.0 states that the Mudpit Platform will have significant environmental effects to the Glorieta Creek by degrading water quality. Mitigation under the Clean Water Act is recommended or relocation of the Mudpit Platform. Consultation with staff prior to disturbance would have determined buildable area.”

⁷ In its Report, Staff appears to argue that none of the requested variances meet the review criteria, including Variance #7. However, the Staff Report also recommends that the Board deny “all variances ... *excluding* variance #7 ... , which staff supports due to the non-visibility to the public” (emphasis added); *see also* Transcript at 47 (“Staff supports the request for variance of Section 7.17.9.3.1.”).

Variance #3: “The SLDC shall restrict development within lands containing environmental, ecological, archaeological, historical or cultural sensitivity [.] Glorieta 2.0 makes mention of improving the “existing” roads. The proposed improvements will not bring these roads into compliance with the road standards set forth within the SLDC, therefore contrary to the public interest. Glorieta 2.0 constructed the Zip Tour Road to access unpermitted Zip Lines. Disturbance of steep slopes can create erosion, slope instability and drainage issues.”

Variance #4: “The SLDC shall restrict development within lands containing environmental, ecological, archaeological, historical or cultural sensitivity[.] Glorieta 2.0 failed to consult County Staff on their intentions and failed to apply for the proper permits for this type of development. The disturbance caused by illegally constructing structures, trails, and roads is contrary to the public interest because of non-compliance with the SLDC.”

Variance #5: “The purpose and intent of the SLDC is to ensure that building projects are planned, designed, constructed, and managed: to minimize adverse environmental impacts; to conserve natural resources; to promote sustainable development; and to enhance the quality of life in Santa Fe County. The SLDC definition of a significant tree is an existing native trunk-type tree in good health and form which is eight inches or more in diameter as measured 4½ feet above natural grade; any existing native bush-form or character tree (e.g., piñon) which is eight feet high and has a spread of eight feet. 101 significant trees were removed from 30%+ slopes where trees were in conflict with the construction of the zip line. Thinning of trees for fire prevention is done in the interest to the public. These trees were cut down for recreational purposes for a private facility to make room for a use and structures that were unpermitted. These significant trees cannot be replaced and the destruction done by the applicant is irreversible and ultimately contrary to the public interest.”

Variance #6: “The purpose of the Public/Institutional (PI) district is to accommodate governmental, educational, and non-profit or institutional uses, including public or community parks and recreation facilities, and public, non-profit, and institutional residential uses, but excluding any such uses of an extensive heavy industrial character. The Holcomb Flylines sits on top of an existing non-conforming structure. The Flyline was constructed without the proper permits and review of structural soundness. In the public’s interest both structures should have been designed and engineered to assure the safety of the users of this facility.”

Variance #7: “The purpose and intent of the SLDC is to ensure that building projects are planned, designed, constructed, and managed: to minimize adverse environmental impacts; to conserve natural resources; to promote sustainable development; and to enhance the quality of life in Santa Fe County. Glorieta 2.0 has not provided evidence that the structures built on mature significant trees are affecting the health of the tree. The Zip Tour Platforms were constructed without County approvals. These structures are not visible from the Highway or adjoining properties. The safety of these structures is in question and therefore contrary to the public interest.”

b. Whether extraordinary and exceptional situations or conditions of the property would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner if the SLDC were strictly applied. In Staff’s view, any hardship or difficulty is the result of Applicant’s construction of unpermitted improvements. Staff believes that such self-inflicted hardship cannot be used to meet this criterion.⁸

c. Whether the spirit of the SLDC would be observed and substantial justice done if the variances are granted. Although Staff does not use the terms “spirit” or “substantial justice”

⁸ Section 3.1 of the repealed County Land Use Code, Ordinance No. 1996-10, expressly required “extraordinary hardship” to be due to “non-self-inflicted conditions.” The SLDC, which repealed the Land Use Code, does not include a similar express prohibition.

in its Report, in Staff's view unpermitted development cannot be used to satisfy this criterion. Its response to Variance #1 is representative:

The SLDC, including all amendments to the SLDC, are intended to implement and be consistent with the goals, objectives, policies, and strategies of the Sustainable Growth Management Plan (SGMP) through comprehensive, concurrent, consistent, integrated, effective, time limited and concise land development approvals. Ministerial development approval, often referred to as 'administrative approval,' involves the application of the standards of the SLDC to an application by the Administrator. Any person who participates in, assists, directs, creates or maintains any building, structure or use that is contrary to the requirements of the SLDC, who fails to obtain a permit required by the SLDC... shall have committed a violation of the SLDC...[] Glorieta 2.0 refers to the structures as "existing". These "existing improvements" were constructed without approval by Santa Fe County. The trail and roads were not reviewed by staff for grade, proper drainage and erosion control management. The structures were not reviewed for code compliance and structural soundness. Complete remediation of all disturbed sites will not cause further disturbance to the site and will reclaim the site to its original state. Glorieta 2.0 did not seek development approvals and therefore the integrity of the SLDC was compromised.

24. Appended to Staff Report are Exhibit Nos. 1a – 28:

a. Exhibit 1a [NB 1] is a letter from Appellants to County Staff and the Board, dated May 12, 2018. Appellants commend County Staff and request the Board to deny all seven requested variances. Appellants fault the Applicant for constructing the improvements without the required permits and request the Board to fine the Applicant. They are concerned that the improvements were not designed or approved by qualified engineers; that improvements never had proper review; that the improvements are unsafe and dangerous (particularly for children); that the improvement increase erosion, drainage, and sheet flow; that they destabilize steep slopes; and that they have destroyed or damaged the natural terrain, trees, and other vegetation. Appended to Appellants letter are the first page of the August 7, 2017, letter from JenkinsGavin; a March 5, 2018, letter from Glorieta Concerned Citizens to Martin Romero; the Planning

Commissioner Order; the January 4, 2018, transcript of the public meeting before the Hearing Officer; and the February 22, 2017, NOV from the Administrator to Glorieta.

b. Exhibit 1 is a December 14, 2017, printout of the County permits for the Property as of the date of the printout.

c. Exhibit 2 is a compilation of pictures of the Property.

d. Exhibit 3 is Applicant's approved County Business Registration Application.

e. Exhibit 4 is Applicant's February 10, 2017, County Development Permit, including "Letter of Intent for Santa Fe County."

f. Exhibit 5 is a February 15, 2017 NOV issued by a County Code Enforcement Officer, including several pictures.

g. Exhibit 6 is the Administrator's February 22, 2017, NOV.

h. Exhibit 7 is a list of County permits issued to Applicant after the Administrator's NOV.

i. Exhibit 8 is Applicant's Solid Waste Abatement Plan, including the NMED's March 28, 2017, approval of the Plan and NMED's February 3, 2017, letter to Applicant indicating that the violations of state law cited in an NOV issued by NMED to Applicant concerning the unlawful landfill on the Property had been resolved to NMED's satisfaction.

j. Exhibit 9 is the Affidavit of Jeff Ward, including several pictures, averring that Applicant will not allow use of unpermitted improvements.

k. Exhibit 10 is the August 7, 2017, Application for Variance submitted by JenkinsGavin, described in greater detail below.

l. Exhibit 11 is the County Land Use Facilitation Program Project Meeting Report.

m. Exhibit 12 is the SDP Application.

- n. Exhibit 13 is excerpts of the SLDC provisions from which the seven variances are sought.
- o. Exhibit 14 is a copy of Applicant's deed to the Property.
- p. Exhibit 15 is the March 23, 2017, TAC Letter.
- q. Exhibit 16 is the June 19, 2017, transmittal letter and Neighborhood Meeting Report.
- r. Exhibit 17 is Applicant's plan sets in support of its variance requests.
- s. Exhibit 18 is a compilation of letters and email from the public opposing the variance requests and SDP Application.
- t. Exhibit 19 is materials compliance with public notice requirements regarding the appeal from the Order of the Planning Commission.
- u. Exhibit 20 sets out the County Fire Marshall requirements as to Hagen Creek and Zip Line Roads.
- v. Exhibit 21 is a compilation of letters and email in support of the variances and SDP Application.
- w. Exhibit 22 is the Hearing Officer's Recommended Decision and Order.
- x. Exhibit 23 is the minutes of the hearing before the Hearing Officer.
- y. Exhibit 24 is Planning Commission Order.
- z. Exhibit 25 is the minutes of the hearing before the Planning Commission.
- aa. Exhibit 26 is Applicant's request to the Planning Commission to reconsider its conditions.
- bb. Exhibit 27 is letters and email in support of the variance requests.
- cc. Exhibit 28 is the Environmental Impact Report (EIR), provided in DVD format.

25. At the hearing before the Board, Applicant provided a bound and tabbed compilation of documents titled, "Glorieta 2.0 Appeal Response." This compilation includes⁹:

- a. An aerial photo of the developed portion of the Property.
- b. An aerial photo showing the entire Property and the Property boundaries, the developed portion of the Property, and the applicable zoning.
- c. The Applicant's Open Space Plan.
- d. Materials in support of **Variance #1**, including:
 - 1) Applicant's proposal to improve Hagen Creek and Zip Tour Roads to a 15' width with a maximum grade of 15% or 20' width with a maximum grade of 18% and to otherwise comply with conditional approval of the County Fire Marshal.
 - 2) Statements that (i) the mountainous terrain creates peculiar and exceptional difficulty if strict compliance with Table 7-13 is required; (ii) the roads create defensible zones and fire breaks, and therefore, are not contrary to public interest; (iii) the conditions of the Planning Commission, limiting use of roads to emergency and maintenance purposes, effectively "restricts the zip line improvements from use by Camp participants"; and (iv) the zip line improvements are separated by a "900 vertical elevation change in 2 miles."
 - 3) A plan set showing the course and location of improvements to Hagen Creek and Zip Tour Roads.
 - 4) A February 2, 2018, letter from Southwest Forestry Services stating that it has "completed 110 acres of forest health improvements encircling Glorieta Camps," including creating "a defensible space around their structures" and thinning "85 acres along the road that is in question." Southwest Forestry states that Zip Tour Road should be permitted "all thinning

⁹ Duplicates included in this compilation of documents, such as the Planning Commission Order, that are described elsewhere in this Order are not included in this summary.

operations have been determined off this road system and it is “being used as a firebreak and [for] getting crews and fire equipment into place to protect the local community.” Finally, it recommends “leaving [the] road system in place, as all forest treatments have been designed around the continued improvement of these road systems for use by emergency services.”

5) A July 10, 2018, Fire Inspection Report stating “Violations remedied.”

6) Pictures of the Roads.

e. Materials in support of **Variance #2**, including:

1) Statements that (i) avoiding 30% slopes would require the roads to be “extended significantly,” that “large sections of the road would potentially have to be abandoned, leaving significant disturbed areas to be reclaimed,” and that this “significant disturbance to the natural terrain, landscape, and wildlife” would “be publically visible”; (ii) the mountainous and steep terrain of the Property poses peculiar and exceptional practical difficulty in relocating the improvements; and (iii) that Variance #2 is consistent with the spirit of the SLDC in regards to terrain management, citing SLDC Section 7.17.

2) A “square footage breakdown” of the disturbance of slopes of 30% or greater, showing that the total amounts to only 0.16% of the Property.

f. Materials in support of **Variance #3**, including:

1) Statements that: (i) 98.65% of the Property is above 7,400 feet in elevation; and that (ii) repeat prior statements regarding the spirit of the SLDC, the practical difficulty caused by the mountainous terrain, and the public interest in defensible zones and fire breaks.

2) Maps showing: (i) the small percentage of areas in the County above 7,400 feet; (ii) the small “buildable area” on the Property; and (iii) the areas where the roads are above 7,400 feet on slopes of 25% or greater.

g. Materials in support of **Variance #4**, including:

1) Statements that: (i) the total improvements on the Property occupy 4.12 acres, which is only 0.18% of the Property; and (ii) that peculiar and exceptional difficulty arises because “the majority of the Property is located at 7,400 foot elevation or greater.”

2) Maps showing: (i) the small percentage of areas in the County above 7,400 feet; (ii) the small “buildable area” on the Property; and (iii) the additional disturbed areas.

h. Materials in support of **Variance #5**, including:

1) Statements that: (i) 101 trees were removed on slopes exceeding 30% beneath the zip lines; (ii) the ground surface was not disturbed and tree stumps left in place maintain slope stability; (iii) the densely wooded, mountainous area constitutes a peculiar and exceptional difficulty in properly locating zip lines; (iv) the wooded slopes shield the improvements from public view; and (v) the tree removal areas are not visible from I-25.

2) Maps showing the areas of significant tree removal on slopes exceeding 30%.

3) Pictures of areas where trees were cut to allow safe zip lining.

i. Materials in support of **Variance #6**, including:

1) Statements that: (i) the existing Holcomb roof and steeple substantially exceed the 48 foot height limit in the PI zoning district; (ii) the Planning Commission found that the structures were constructed in concert with the existing densely wooded area, blend in well

with surroundings for recreational use, and do not negatively impact the view shed; and (iii) the Planning Commission intended Applicant to “have their zip lines”

2) Maps showing the Holcomb Flylines from various perspectives and demonstrating lack of visibility from the I-25 frontage road.

j. Materials in support of **Variance #7**, including:

1) Statements that: (i) the improvements are in densely wooded areas and not visible from public roads; (ii) the improvements are integral to an activity that requires gravity, steep terrain and elevation changes; and that (iii) repeat statement of Planning Commission about blending with natural environment.

2) Pictures showing improvements.

k. Excerpts from the SGMP with which the improvements are consistent, include SGMP § 1.2.1.1 (regarding enhancing economic opportunity and community well-being well preserving and restoring natural environment); § 1.3.1(c) (regarding “centeredness”); § 13.3 (regarding employment opportunities, including “ecotourism”); Chapter 6 (generally regarding outdoor recreational opportunities, open space, trails, ecotourism, attracting new businesses, and quality of life).

l. Maps and pictures demonstrating that the improvements are not visible from the I-25 frontage road.

m. A July 31, 2018, letter from the Mayor of the Village of Pecos expressing support for the Applicant.

n. A January 2, 2017, letter from the Mayor of the Village of Pecos expressing support for the Applicant and stating: (i) annual revenue generated by Applicant’s programs is \$6.5 million; (ii) annual payroll to local full time staff is \$2.2 million; (iii) annual payroll to

summer staff is \$600,000; (iv) staff and visitors to the Property purchase significant local goods and services; (v) the Village and Applicant are development partnerships to “strengthen our community.”

o. Numerous letters and email providing testimonials about and otherwise expressing strong support for Applicant’s youth, religious, and adventure programs.

26. Applicant presented an August 14, 2018, letter from Brent Bonwell, President of the Santa Fe Fat Tire Society stating, “Because Glorieta 2.0 has provided an excellent event venue and trail system mountain bikers can ride great trails year round in Santa Fe County. We urge you to approve the variances and rule in favor of Glorieta 2.0.”

27. The transcript of the August 14, 2018, public hearing before the Board (Transcript) includes the following testimony¹⁰:

a. A presentation by Mr. Jose Larranaga, a Development Review Team Leader in the County Growth Management Department, providing background; summarizing the positions and submittals of the Appellants, Applicant, and the public; describing the seven variances and corresponding improvements; summarizing the Hearing Officer’s Recommended Decision and the Planning Commission Order; and recommending that the Board deny all requested variances except Variance #7. [Transcript at 38-49, 78] Mr. Larranaga also answered the following question from Chair Hansen:

CHAIR HANSEN: Okay. So I also want to know, when were the unpermitted improvements constructed? Jose, did you have an answer to a question?

MR. LARRANAGA: Madam Chair, yes. I'd like to just clarify. It was read in the report under history, NBB-2, second paragraph, where staff, when the lake was drained staff met with Glorieta 2.0 staff and staff informed them that any development needed a permit and any expansion or intensification

¹⁰ The public hearing begins on page 38 of the Transcript. Prior pages are related to other matters that came before the Board on August 14.

of the use on there would need, under the old code, a master plan. So that was read into the report for the record. It's in your staff report.

Mr. Larranaga's presentation was consistent with the Staff Report.

b. Sworn testimony of Appellant Mike Adney against the Application [Transcript at 49, 72-73, 82], and which is summarized as follows:

1) Mr. Adney worked at Glorieta Camps 2015-2017.

2) Mr. Adney met with a member of Applicant's board of directors, who stated "we [Applicant] will adhere to the strictest adherence and interpretation of all ordinance and laws on all bodies that come to bear from your whistleblower work to this time. He also indicated that by the end of this process they will have the 'safest camp in America.'" Mr. Adney further testified, "This is the standard that the board of this company kept and I think we should be casting a large shadow and we should be working together to help them keep their own promises."

3) As to Zip Tour Road and Variance #1:

Specific to the zip tour, variance number one, for five years I build serpentine, hairpin, very complex roads for this nation's largest road builder for AT&T cell towers, Crown Castle. I'm telling you this road is a front page news heading waiting to happen. It is completely and totally illegal. She gave you a very tiny snapshot of just one piece of it that looks sexy. There's not a single retaining wall. It's not eroding annually, it's eroding weekly. There is no engineered soils stabilization. There are no retaining walls. As I told Anthony last summer, and I told the board- remember when I got to talk to them? There's at least two other very safe possibilities to build that road. They've dumped \$30 million in. They're not going to have a problem dumping another couple. You need to take variance #1 off the radar screen.

4) As to trails and variances generally:

Notice that every single time anybody said the word trail, did anybody say bike trail versus a hike trail? We're talking about biking trails that have totally torn up this mountainside. So what they do is they gather together all these terms into a variance. A variance isn't supposed to be some large catch-all, and if I get this then I get everything else. I did this for 20 years, you guys.

This needed to be fractionalized and broken down at least to ten or eleven more levels.

5) As to safety and need for the Zip Line Structures that Mr. Adney characterized as "amusement":

This particular mission [without amusements] may work very well in Texas. Geographically or for some other issue, exit strategy or whatever you want to call it, it's not working here. They are surviving with what they got and they can continue to survive with what they've got, and what they want in the form of amusement must be absolutely dead-on safe, without any exceptions whatsoever.

6) As to the lack of engineered plans:

Listen, I spent five hours as the whistleblower with the highest ranking building official in the State of New Mexico, for CID, Jude Reason. We came to an absolute conclusion that only structural engineering was done and it was done late. Don't you understand that you have to have geotechnical and soils engineering. We could just as easily be saying tear down the zip line because we don't know what it's footed into. We don't know what the soils are. Just like we're saying tear down the huge tower in the middle of the lake. It just can't happen. I said to the Planning Commission; I'll say it here now. Someone go to that table and show me a geotechnical report dated before 2015. You're not going to get it. No one's going to stand up.

7) As to whether Applicant constructed unpermitted improvements in bad faith:

In 2013 they came into this building, downstairs one floor and got a permit. And they proudly displayed it right next to the lake. And Anthony is quoted in an Albuquerque Journal North article saying I've got 56 projects to do before next April. Those are his own words. They knew they would need permits. They came and got the first permits, and then they stopped. They intentionally stopped. When you buy a \$70 million property for a dollar, you roll the dice if you're a Texas billionaire. You just say, if someone catches me I'll do it later.

c. Sworn testimony of Appellant Jeffrey Hanus against the Application [Transcript at 49-51, 73-74], which is summarized as follows:

1) Mr. Hanus' property abuts the Property.

2) Applicant paid only \$1 for the Property and decided: "we don't need any permits. We're going to go ahead and do what we want because obviously, New Mexico law does not apply to Texans. So they built dozens and dozens of illegal, unpermitted structures. They cut miles and miles of bike trails and roads and zip lines."

3) Applicant is violating the Administrator's Cease and Desist Order, has cut down 100s of trees, maintained an illegal landfill (now cleaned up), and now seeks variances because "it would be difficult to correct the damages that we've already done."

4) A personal injury case currently pending in Santa Fe arose from "a very serious personal injury [at the Property] that may have left a young girl affected for life."

5) Several of Applicants improvements and activities at the Property are illegal, in addition to those that are subject to the pending applications.

6) The public is mountain biking on the unpermitted trails.

7) Outdoor cooking and bonfires present a fire hazard in the National Forest.

8) The Board should "suspend or revoke their business license until this facility is 100 percent reviewed to the very end of this site development plan process, and 100 percent compliant on the ground."

9) Applicant has over 58 violations and ignored the permitting process; the lake in which children swim has not been tested for contaminants; used pressure-treated lumber that could be a source of water contamination; zip lines and treehouses, used by children, have not been inspected and approved by certified New Mexico engineer; they polluted Glorieta Creek when they drained the lake and killed 1000s of fish; they built a "huge illegal landfill" that may contain hazardous waste, although it has been cleaned up; Board should follow Staff's recommendation and deny all variances except Variance #7; they are not truly religious; little

money goes to the local economy; converted the old Glorieta Fire Station into a coffee shop, creating a fire hazard; and, in closing:

I'd just like to say please do not allow a terrible example to be set by condoning illegal, ruthless activities and allowing these variances to be appealed. We love wilderness. We love children. We love bicycling. We love camps. But the way that they got to this point should not be condoned.

d. The sworn testimony of Jeff Ward [Transcript at 51-53, 77-82] on behalf of Applicant, summarized as follows:

1) He is the CFO of Glorieta Camps.

2) He presented a brief history of the Property and description of Applicant's programs, including a video, and stated that there was between \$10 million to \$20 million in deferred maintenance with Applicant acquired the Property in 2013.

3) He stated, "Our organization is a Christian outdoor adventure camp. We're a 501(c)(3). We're non-profit. We're primarily a youth service organization. Our mission is to inspire Christ-like change through outdoor adventure, authentic relationships and biblical truth, and ultimately, we're providing education and primarily religious education." Further:

Zip lines are an example of activities that we provide. Our staff debrief these activities. When participants are done they discuss the feelings of fear, of dependency in having to rely on cables and tethers as they step off the platform in freefall until they engage on the line. Our staff use that as a metaphor for the biblical message of how stepping off the platform is similar to making a leap of faith and entering into a trusting relationship with god.

Repeatedly, this type of debriefing is a moment when the light comes on and the campers finally get what the speaker's been saying. To some people these things appear as mere amusement devices but we use them as teaching opportunities. The County Tax Assessor recognized that all of these facilities are integral to our educational mission when they granted us a tax exempt status for the entire property. Without the activities that we're requesting variances for we'll be faced with a peculiar and practical difficulty and you can't run an outdoor adventure camp without outdoor adventure facilities.

... Without these activities in 2017 we declined by over 5,000 guests. We declined over 15 percent.

... Over these 18 months since we got Notice of Violation from the County we've been going through the process. We've had hundreds of inspections of our property by County staff, by the Fire Marshal, by CID, by OSHA, by the 22 agencies that Mr. Adney referred to that he called. And we have adhered to their requirements. We are adhering to the law. But we've not had these activities that have been a big part of revitalizing our property and attracting the guests that stopped coming under the previous owners. Some might say, well, you made it two summers without these things; you can live without them. And it's true. We made it two summers without these activities. However, it's only been possible because we had some donors contribute generously to help us through this time and hope that we'll get the activities back and move towards a sustainable financial model.

... I'd also like you to consider the way we have positive effects for the general public. We employ over 65 full-time staff and over 200 summer staff. We pay over \$2.8 million in wages a year. We spend over \$4 million with local vendors. We support local businesses, some of which you may hear from today. We invite people to come to Santa Fe and encourage them to patronize local businesses. Many of our groups will take a day of programming and come and visit Santa Fe, and we partner with local schools and churches, governmental agencies, civic groups, veteran groups and other organizations for retreats and community events.

4) Regarding Applicant's construction of unpermitted improvements, Mr.

Ward testified:

Madam Chair, if I may I'll just try to answer that briefly, is that we weren't aware of the SLDC. Current SLDC wasn't in place at the time. We weren't aware of the code. A lot of our staff came from jurisdictions where there isn't a requirement to get a permit for these recreational amenities and the staff of the former owner had told us it wasn't required based on their communication with staff historically here. And so it wasn't in bad faith that we tried to pull one over on Santa Fe County. We literally didn't know, and when we first got notice of violation we contacted a construction law firm out of Albuquerque that now, at that time told us they weren't sure it was required for a permit.

Two miles over in San Miguel County it's not required. We just were ignorant. And when we got notice from the County we have tried to do every single thing they've asked. Some of it has seemed, some of it has been very difficult to try to navigate and figure out what the code is and even has staff ... navigating to figure out the code, because it's a new code. And so as you've heard, we've tried our level best to comply strictly with the code as we've

understood it. We hired Jenkins and Gavin and they've been a great help to us in understanding, and since that time we don't do anything without asking. We call Jose to say, can we change out our sign? Because we weren't sure from the code if it was allowed or not.

Further, regarding a question from Commissioner Moreno:

COMMISSIONER MORENO: Okay. You worked with people who are engineers, planners and smart people. Did nobody along that path, did anybody say to you, should we call the County? Explain that to me.

MR. WARD: Commissioner Moreno, Jose had shared-he told someone - don't know who he told that we needed to have permits for everything. I wasn't aware until summer of 2016. He called us into his office and we said what do we need to do, and he said you need to get engineer drawings to me. And so we proceeded looking for an engineer. The fact is it's very difficult if not impossible to find an engineer in the entire state of New Mexico who will design these type[s] of things. They don't carry this type of insurance. The engineers and the designers that we worked with in constructing these, it's very common in other jurisdictions to not require a permit for a zip line. Most of the camps I know in other jurisdictions, permits are not required for zip lines.

And so I know you all think we're crazy to say we just didn't know, but when we tell leaders of other camps that we're going through this permitting process for zip lines, they think we're crazy. Because it's just not required in most jurisdictions in the United States.

... And we will going forward adhere to them to the letter of the law. And we've been trying to demonstrate that since we got our notice in 2017.

... Forgive me for saying it here, but had we known that we needed permits and had we - before construction, we would have still been here asking you for variances because of the unusual particular difficulties the code puts upon us with our property - the size of our property, the location of the property - we would still be asking for variances.

5) Regarding the use of Zip Tour Road, Mr. Ward testified that "at the extreme maximum we would need 12 [round] trips in a day," and that the Zip Line Structures have not been in use since 2017.

6) As to Hagen Creek Road, he testified that it goes through the Property into the National Forest. Further:

There are three properties up in the national forest. We own one and there are two others that are privately owned, and that Hagen Creek Road is used to access those properties. The residents wouldn't use it - we would use it to access the zip structures in addition to accessing our private property up in the forest.

7) As to the Zip Line Structures:

I'm actually probably not the best person but there's a governing body called ACCT that sets standards. There's another one called ASTM. Our zip lines were built by those standards and we had, up until we got the Notice of Violation had them inspected regularly and adhered to those standards.

We're required to have an annual inspection by an outside party, but our staff was trained also to do daily inspections. The state CID also inspects annually. So in addition to an ACCT authorized inspector we would have the State of New Mexico CID Department would inspect as well.

8) As to the unpermitted dump on the Property that has been reclaimed:

Yes. Madam Chair, the solid waste had been stored for I don't know how many years before we got there and that was an existing dump. When we did some modifications to some structures, some remodeling, we added to it and we shouldn't have. But it was an existing dump. It's been there for years. We cleaned it up. I wish we could go back and have not had it and had not done it and to Commissioner Hamilton's point, I wish we had started right. But we didn't and now we're here asking you for variances because that's the process we have to go through. That's what the code prescribes when you fail. What it prescribes is you get in compliance and that's what we're trying to do here before you tonight.

e. The sworn testimony of Colleen Gavin [Transcript at 51, 53-63, 74-79, 86] on behalf of Applicant, summarized as follows:

1) Ms. Gavin explained the contents of the Appeal Response and the one-page summary that Applicant provided at the hearing. (Testimony that provides information and statements already described above is generally not included in this summary.)

2) As to her qualifications and representation of Applicant, Ms. Gavin testified:

I'm a partner at JenkinsGavin. We are land use consultants. I am a licensed architect. I've been licensed for 21 years. I've been a land use consultant for over 18 years. I do represent clients in navigating the land use process. As we know, it can be challenging and thorough and layered and so I've been representing Glorieta Camps since February of 2017.

3) As to Applicant's compliance history and pre-application process:

A Notice of Violation and Cease and Desist Order was issued in February 2017. My clients immediately contacted me and we started a dialogue with the Land Use Department. From day one we have adhered, followed, listened and submitted all requests from the Land Use Department. We immediately had a TAC meeting. The Technical Advisory Committee, that's the first step for any type of land use submittal. That was done in March of 2017. At that point we were directed by the Land Use staff to submit building development permit applications, essentially building permit applications for some improvements on existing structures that have not been altered. So basically structures where there was internal remediation required for life safety, or some work that had been done that had not been properly permitted.

At that point we submitted with[in] three to four weeks ten building permit applications that were processed through the Santa Fe County Land Use Department, issued. They went to CID. CID issued all those permits within a day of submittal. All those improvements have been completed. With all of that, Santa Fe Fire Marshal had done numerous inspections and site visits. I personally have met with Fire Marshal Blay on the property three to four times. We've had meetings going over the concerns as far as the Fire Marshal's concerns. All of those issues have been addressed and in your booklet. I will point out that we have the most current inspection from the Fire Marshal and it shows that there are no violations on the property.

As required by the code, we had a neighborhood meeting, again, April of 2017. We submitted our site development plan as well as our variance requests in June of 2017. So Violation was issued at the end of February; we had a submittal in by mid-June.

4) As to the need for variances generally:

The variance requests before you were identified by the Land Use staff. In order to do this comprehensive site development plan application there was a variance request, because again, this property is unlike any other property in Santa Fe County for this use, for this legal use, this historical use. And so therefore that's why variances are contemplated. You have to have a process for something that doesn't quite fit into the SLDC. The SLDC did not contemplate an outdoor activity camp with challenge courses and zip lines.

They didn't contemplate that this development was going to be at 7,400 feet and above.

... The SLDC, again, I don't think it contemplated that development would happen at such a high elevation [i.e., above 7,400 feet].

5) As to **Variance #1**, Hagen Creek and Zip Tour Roads should be classified as "internal service roads" rather than as "local roads." Further:

As I mentioned before, I met with Fire Marshal Blay onside I believe four times. We [drove] both these roads together and identified where improvements need to be made in order to make these roads meet a level of safety and a standard where he felt comfortable utilizing these roads. And in those site visits he identified areas for either widening the road or providing turnouts or pullouts or hammerheads.

... You can see that both roads have been constructed and been maintained to minimize the disturbance of the natural vegetation of the existing grades to minimize any type of erosion.

... None of these improvements are rerouting the road. They're not creating any new scarring or disturbance. This is minimizing the requisite improvements to utilize these roads not only for Glorieta and their activities but also for the other property owners in the area, for the Forest Service, as well as for emergency responders.

6) As to **Variance #2**:

[This] variance ... is for the Hagen Creek Road and the Zip Line Road. There are two footbridges that were constructed over drainage ways, and there's disturbances on those banks, minimal disturbances. The reclamation area which had been previously discussed where there was solid waste being stored, those areas have been completely remediated, inspected by the EPA, by Santa Fe County, but there were some areas that were disturbed in the storage of those solid materials.

The Zip Tour platforms - those are the platforms that participants either take off from or land onto, there's some disturbances there. There's a parking lot and bike terrain area, some trails, and again, there's another bike terrain area.

... We have a property here that the majority of this property, 98.6 percent of this property is over an elevation of 7,400 feet.

When you get up to those elevations obviously you're going to have steep slopes. These improvements have been in place for three-plus years. They're

stabilized. We've identified some areas of remediation where we may need some drainage improvements, retention ponds, but as far as any type of instability of these structures and these improvements, they are stable. Obviously, the vegetation has grown. From the imagery you saw on the video, Glorieta Camps takes very good care of this property and they took this violation notice very seriously.

We're here today to request that because of our unique situation of being at a high elevation, a unique situation where we are such a large property with these camp related activity facilities, it's required that for these type of amenities you need terrain. You need a change in elevation, and with that, inherently comes slopes over 30 percent.

... I just want to - in regards to the 30 percent slope disturbance for the trails, trails are meant to go through natural areas. Trails are meant to meander up and down. This property has extensive trails that have been there historically. Glorieta Camps built an additional 10,000 linear feet of trails. We have probably 100,000 linear feet of existing trails that meander in and out of this densely wooded, steep, mountainous area. The request for a variance for trails in some ways seems ironic because it's a footpath. You're walking through a footpath. Some of these trails were cleared with equipment to get either boulders, tree stumps or just maintenance of the existing trails.

7) As to **Variance #3:**

If you turn to the next exhibit, the area that's [cross-hatched] in red, that's the [very small] area on our property that is under the 7,400 elevation point. That's the area that we would be restricted to building any new roads. As you can see again, the site is very unique. It's a peculiar situation and there's undue hardships because of the existing historical use of this property and the adaption of Glorieta Camp's program to this property and the desire to improve it, to build upon it, but then we're being restricted by where we can and cannot develop.

If you turn to the next page, again we're identifying where the roads are actually creating the disturbance and 25 percent and greater slopes. You can see it's pretty minimal. Again, we are mountainous terrain. It's steep, and we're faced with a situation where we are trying to provide amenities in a very unique situation. Again, Hagen Creek Road was already in existence, had already created disturbances at grades over 25 percent. The improvements that are being requested by the Fire Marshal are adding to that but that's in order to make Hagen Creek Road a safe road to access the amenities and the forest above. And then the Zip Line Road again was built in a way to minimize the scarring, to not be publicly visible, and so we respectfully request an approval of this variance request, as that it is in the public interest to do these improvement to both these roads. It's in the spirit of the SLDC that roads are

allowed in mountainous areas to provide for defensible zones, fire breaks, access to public lands.

8) As to **Variance #4:**

[This] is an existing development that historically has been there, dating back to the 1950s where Glorieta has come in and they are adding amenities, improving, trying to restore this property. The percentage of improvements on this property, if you take this overall property, you actually take the areas that have been improved, it's actually only .18 percent of the entire property. This property is almost 99 percent above 7,400 elevation. So to restrict our development to 12,000 square feet for a property that's zoned Public-Institutional – it doesn't make sense. It feels like the 12,000 square foot limitation was almost meant for more of a residential development.

You can see here on my outline, I've identified the areas of new improvement. Again, they include both of the roads, both of the footbridges, the Zip Tour platforms, the Oklahoma parking and terrain park and the bike terrain area. I do want to point out that all of these improvements are not visible from the public viewshed. They're not visible from the public viewshed.

When we get to variance #7, staff is now recommending approval of variance #7, because they say there's non-visibility to the public. I question why is that a criteria to approve variance #7 and recommend approval for variance #7 but not for any of these other improvements? Because of the dense, wooded terrain, these improvements are not publicly visible and we do have some exhibits to that statement.

If you flip through the exhibits here, again, you see the same exhibit identifying the limited area of on property that's under 7,400 feet in elevation, creating a hardship. And then the next exhibit is actually again, it's a site plan of the property itself and I've just highlighted the amenities and the improvements that are part of this variance request. You can see on this map all the improvements on the property of the camp proper, you can see that this is very little. The variance request on these improvements is very small if you look at the overall improvements of Glorieta Camps.

9) As to **Variance #5:**

We had the - the trees were not actually removed. I want to clarify that. They were actually cut down. 101 trees were cut down underneath the zip line structures - excuse me, the zip line cables in order to provide a safe clearance for the users. The terrain was not disturbed. There is not additional erosion. I have photographs to follow that will show you the actual areas underneath these zip cables where the trees were cut and you can see the vegetation restored. It's stable.

Again, a peculiar and exceptional practical difficulty in locating safe and functional zip line improvements in mountainous and densely wooded terrain, that is what we are dealing with here. In order to do zip line structures you need a vertical drop, you need a vertical change in elevation. The zip structures were constructed and installed in the area behind the campus and they did the requisite cutting of trees to provide a safe activity for the participants.

10) As to **Variance #6:**

This variance request is in relationship to the - is related to the Holcomb flylines. The Holcomb building is the big chapel that you can see from I-25 with the large steeple. That Holcomb building was built in the 1950s. The roof of the Holcomb building is at 89 feet 2 inches. The steeple measures 164 feet 9 inches. It's a legal non-conforming improvement. It's been existing. The zip amenity was built on the top of the lower roof of the Holcomb building. It measures at 75 feet. Our request here is to allow for this structure, this zip amenity to remain on the Holcomb lower roof as it is not publicly visible. It's not intensifying the existing height of the building.

11) As to **Variance #7:**

These structures are not visible. The structures all in question before you are not publicly visible. If the criteria for a variance request is visibility, the public viewshed, then I think that that criteria needs to be applied to all seven variances before you.

12) As to the Zine Line Structures:

The original zip line structures were engineered in 2015, and then as part of this application for the variance requests and the site development plan they were re-evaluated and again stamped in 2017 with this new application.

13) As to consistency with the SGMP:

So the next section is actually just excerpts from the Sustainable Growth Management Plan. As you know, the Sustainable Growth Management Plan is really kind of your master plan of the code, of the SLDC and the intent of the code. And I just want to identify a few areas that are incredibly applicable to our case before you. Section 1.2.1.1, Sustainable development maintains or enhances economic opportunity and community well being while protecting and restoring the natural environment. That is completely in concert with the mission of Glorieta Camps. That is completely in concert with the improvements before you and our pending site development plan application with Land Use.

1.3.1.c, that we continue to protect and create central and mixed-use places in community settings. Glorieta Camps is a central mixed-use place in a community setting. It is the heart of Glorieta. It is the heart of Pecos. It brings in visitors. It creates opportunities. It creates activity. It creates a sense of center, of place, and we will have public speakers speaking to that later in the public testimony. Real desired places that have centeredness allow for focused economic, institutional, social and functional opportunities. Glorieta Camps is doing all of that. They are a unique opportunity for Santa Fe County to maintain this historic property that provided amazing services to our community and to visitors and they continue to do that and in granting these variances it will allow them to continue in their mission and allow us to have the proper regulatory processes to have safe amenities, to have sustainable amenities that work for everybody.

Accommodate and encourage local businesses that create employment opportunities to the county and it identifies ecotourism that is Glorieta Camps. In Chapter 6 of the SGMP it states that Santa Fe County's landscape includes incredible outdoor recreational opportunities. Enhance the quality of life and economic value to the county. Open space, parks, recreation areas, trails, scenic lands and vistas, attract businesses in ecotourism and strengthen the county's communities.

And lastly, as far as the trails. The trails, they improve the quality of life in the community. They attract desirable businesses to the county. The County code and the Sustainable Growth Management Plan encourages connectivity of trails. We have trails on this property that have been there for 68 years, probably longer. There are some new trails that we'd like to incorporate in that and that connect the public through Glorieta's property into the national forest.

14) As to visibility of the improvements, generally:

Again, if you go to the next section as I mentioned before, this whole issue of visibility. What we did is we actually went out and took photographs along the highway and along the frontage road. We took ten images. They're identified on the map and if you go through the images you can see what is the visibility of this property. What you see are trees. You see the steeple; you see the chapel of course. It's a landmark. But as far as all the amenities that are part of these seven variance requests, they are not visible.

There is no visible scarring due to the roads, to the trails, to a treehouse, to a bike terrain park. Everything is internal to the property. So if you just go through you can see the various vantage points of the property.

15) As to public interest, generally:

And I would just like to quote here and state that there's a child psychologist that wrote a book called Homesick and Happy. Michael Thompson. And I actually got his book and reviewed it because it was so applicable to what we're discussing here today. He says that the happiest childhood memories are when kids are not with their parents, when kids can fully experience things. They're encouraged to take risks. Encouraged to do it without that parental supervision or caution or comment. That having children go out and do camp, be in nature, form identity. If we want our kids to be independent we have to allow them to go it alone.

What Glorieta Camps is providing, it's not just for children but I think there are programs for the kids, the family camps, the couples camps, the programs for wounded warriors, the programs for the day camps, the religious camps. These are all opportunities to enhance our community. It's not just about a zip tour; it's about as Jeff Ward mentioned, allowing the participants to get themselves to a point where they're feeling the risk in a comfortable zone and they allow you to take that leap of faith. Glorieta Camps is providing that and it's such a unique opportunity for Santa Fe County. There's nothing like this in the surrounding counties. I don't think there's anything like this in the state of New Mexico.

16) As to Condition # 1 imposed by the Planning Commission:

The Planning Commission specifically said their intent was to allow us to use the zip line structures, to use those amenities. It's in the final order. It's in the verbatim minutes. It was their intent to allow us to use it. But the restriction to not allow participants to utilize - to be able to be taken up in vehicles limits the use of these amenities. Basically, you would have to 800 to 900 feet vertically in two miles if you were to hike up these roads to be able to use the zip line structures. And you'd have to carry about 30 pounds of deadweight. You'd be wearing your harness or carrying your harness, and then have your trolley that would attach to the cable.

This camp is for children. This camp is for families. This camp is for elderly people. This camp is for the wounded warriors. I'm a physically fit person; I run every day. I don't think I could do that. I'd be exhausted carrying 30 pounds up a road 900 feet in elevation, two miles long.

f. Public testimony at the hearing consisted generally of the following:

1) Approximately 15 persons testified in favor of the Application. They included pastors, Applicant's employees, parents of children who attended camps and other programs at the Property, and past participants. Among those testifying in favor of the

Application were the former mayor of Pecos, Eddy Duran, Tim Fowler of Outside Bike and Brew Festival, and Pat Brown of the International Mountain Bicycling Association. The testimony generally highlighted the positive and transformative impact of Applicant's programs on participants, especially children and young adults, the employment and economic benefits, the boost to tourism, and Applicant's renovation of the Property. Mr. Fowler and Mr. Brown highlighted the importance of the Property to mountain biking generally and, in particular, as a sponsor of race events and festivals that draw people to Santa Fe.

2) Five persons testified against the Application. The testimony in opposition focused on the fact that Applicant broke the law in constructing the unpermitted improvements, that the roads and other improvements are unsafe, that Applicant has excluded the public from the Property, that water wells are going dry, and that Applicant is unsustainably wasting water.

FINDINGS OF FACT

28. The Board's findings of fact are based on the testimony, documents, and other evidence in the record of this appeal that are relevant to the Review Criteria set out at Section 4.9.7.4 of the SLDC.

29. The Board finds that granting Variances Nos. 1 through 7, subject to appropriate conditions, "is not contrary to the public interest." The grounds for this finding are based on substantial evidence in the record, including evidence demonstrating the following:

a. Applicant's programs, to which the unpermitted improvements are integral, are of great benefit to participants, particularly children and young adults.

b. Applicant's programs benefit the local and regional economy, enhance tourism, provide a mountain biking and racing venue, and generally create another good reason to choose Santa Fe as a vacation, retreat, and adventure destination.

c. Applicant's activities, including its cooperation with the County Fire Marshall and tree-thinning operation, have reduced the danger of forest fires on the Property.

d. Applicant will endeavor to strictly comply with the SLDC and the conditions imposed by this Order and all permits issued under the SLDC.

e. Applicant minimized adverse impacts to the environment, slope stability, erosion, and the public view shed in constructing the unpermitted improvements, and such adverse impacts can further be reduced by appropriate conditions of approval set out in this Order and permits issued under the SLDC.

f. Substantial evidence in the record demonstrates that engineers and other appropriate professionals designed, oversaw the construction of, and inspected the unpermitted improvements, and that Applicant can further assure the public and program participants of the safety of such improvements through Applicant's compliance with the conditions imposed by this Order and the permits issued under the SLDC

g. *Although it is a close call*, and there is evidence supporting the opposite conclusion, substantial evidence in the record demonstrates that Applicant did not knowingly and in bad faith construct the unpermitted improvements; and that since issuance of the NOVs, Applicant has endeavored in good faith to bring these improvements into compliance with the SLDC.

30. The Board finds that extraordinary and exceptional situations or conditions of the Property would result in exceptional practical difficulties or impose exceptional and undue hardship on Applicant unless Variances Nos. 1 through 7 are granted, subject to appropriate conditions. This finding is based on substantial evidence in the record, including evidence demonstrating:

a. The Property is unique in that it is located in a densely wooded and mountainous area, comprised of approximately 2,227.44 acres, and mostly above 7,400 feet in elevation.

b. Applicant's programs, events, and other activities are all built around and depend upon the abrupt changes in elevation, rugged forested terrain, and other unique conditions of the Property.

c. Applicant's programs are appropriately suited to the densely wooded and mountainous terrain.

d. Applicant could not construct the improvements at issue in strict compliance with the provisions of the SLDC applicable to such high elevation properties without incurring substantial expense and without substantially and negatively changing the natural terrain and character of the Property. Some of the improvements may not have been possible at all absent variances.

31. The Board finds that the spirit of the SLDC will be observed and substantial justice will be done if Variance Nos. 1-7 are granted, subject to appropriate conditions. This finding is based on substantial evidence in the record, including evidence demonstrating:

a. Applicant is not seeking a "use variance," which is prohibited under the SLDC.

b. Applicant reclaimed the unlawful landfill located on the Property, which was first established by Applicant's predecessor.

c. Applicant is actively seeking to bring its improvements into compliance with the SLDC and all other applicable law.

d. Granting the Variances, subject to appropriate conditions, is generally consistent with the following SLDC principles:

1) Minimize adverse impacts on the environment and assure that the improvements at issue are designed, constructed, inspected, and maintained by competent professionals who assure the safety of such improvements. *See* SLDC § 1.4.

2) Assure that new development creates an amenity and does not negatively impact the visual quality of an area.

3) Promote revegetation of disturbed sites and minimize erosion and slope instability. *See* SLDC § 7.6.2.7.

4) Removal and remediation of the damage caused by the unpermitted development would cause further damage to native vegetation and landscapes, and could negatively impact the visual and structural integrity of hillsides and mountainous areas. *See* SLDC § 7.6.2.9.

5) The development was installed in a manner intended to minimize visibility of the improvements from I-25 and its frontage road. *See* SLDC § 7.17.10.2.

e. Granting the Variances, subject to appropriate conditions, is consistent with the SGMP.

f. Condition #1 imposed by the Planning Commission in connection with Variance #1 unreasonably limits access to the improvements via Hagen Creek Road and Zip Tour Road.

CONCLUSIONS OF LAW

32. Paragraphs 10 through 18 above are incorporated into the Board's Conclusions of Law by reference.

33. Variances are generally divided into two types—"use variances" and "area or dimensional variances":

[A] use variance seeks to change the character of the land by permitting a use otherwise prohibited by zoning regulations. An area or dimensional

variance, on the other hand, involves a permitted use but seeks an exemption from zoning regulations with regard to physical limitations. ... Thus, an area or dimensional variance does not seek to change the use of the land, but rather to use the land as allowed under zoning regulations.

Paule, 2005-NMSC-21, ¶ 37 (internal citation omitted). “Use variances” are not permitted under the SLDC.

34. The standard for demonstrating the undue hardship required for an area or dimensional variance “is less stringent than that required for a use variance”:

Under this standard, multiple factors may be considered in deciding whether to grant an area or dimensional variance, “including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.”

Paule, 2005-NMSC-21, ¶ 42 (quoting *Hertzberg v. Zoning Bd. of Pittsburgh*, 554 Pa. 249, 721 A.2d 43 (1998)).

35. A property owner need not “show ‘that the property is valueless without the variance and cannot be used for any other permitted purpose.’” See *Paule*, 2005-NMSC-21, ¶ 43 (quoting *Hertzberg*).

36. The topography of a parcel may be considered in determining whether extraordinary and exceptional situations or conditions of the property exist. See *Paule*, 2005-NMSC-21, ¶ 38.

37. The SLDC does not prohibit the granting of an after-the-fact variance that otherwise meets the Review Criteria, and therefore, it is within the Board’s discretion. In determining whether an after-the-fact variance would be consistent with the public interest, the spirit of the SLDC, and substantial justice, the Board may consider whether an applicant acted in good faith or bad faith:

To the extent that the County is concerned about variance applications arising out of purposeful violations of its ordinance, such concerns should

be alleviated by considering whether the applicant acted in good faith and attempted to comply with the ordinance, and whether, in light of all the factors, the interests of justice will be served by granting the variance. Further, there would be nothing inappropriate in the Board distinguishing between an "unintentional mistake" and "willful and intentional encroachment."

In re Stadsvold, 754 N.W.2d 323, 333 (Minn. S.Ct. 2008).

38. Observation of the "spirit of the SLDC" and "substantial justice" generally mean that, despite the lack of strict compliance, the requested variance is not contrary to the general intent, goals, and purposes of the SLDC; the public health, safety, and welfare and the environment will be protected; and the rights of the public and third parties will not be infringed.

39. Applicant has adequately demonstrated compliance with the Review Criteria.

40. Pursuant to NMSA 1978, Section 3-21-8 and SLDC Section 4.9.7, the Board has discretion to grant Variances Nos. 1-7, subject to such conditions as the Board determines are necessary "to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents."

NOW, THEREFORE, based on the forgoing, the Board **FINDS** that the Application is well-taken and hereby **GRANTS** Variance Nos. 1 through 7, as requested by Applicant, subject to the following conditions:

A. Applicant shall not utilize any of the unpermitted structures, developments, or improvements subject to this Order until such time as development permits are approved by the County and structural permits are granted by the New Mexico Construction Industries Division.

B. All structures, developments, and improvements subject to this Order shall comply with applicable federal, state, and local law.

C. As to Hagen Creek and Zip Tour Roads, speed limits and any necessary warning signs shall be posted, and Applicant shall comply with all requirements imposed by the County Fire Marshall.

D. As to Hagen Creek Road, where located on the Property, a qualified professional engineer licensed in New Mexico shall certify:

1) The Road complies with appropriate safety standards and is otherwise safe for the intended use by Applicant and participants in Applicant's programs, use by landowners to access private land above the Property, and use by the public to access the National Forest.

2) Road cuts are stabilized, erosion and runoff are appropriately controlled, and any retaining walls or other structures reasonably necessary to maintain slope stability and minimize erosion and runoff are in place.

E. As to Zip Tour Road, which is entirely located on the Property:

1) A qualified professional engineer licensed in New Mexico shall certify:

i. The Road complies with appropriate safety standards and is otherwise safe for the intended uses by Applicant and participants in Applicant's programs.

ii. Road cuts are stabilized, erosion and runoff are appropriately controlled, and any retaining walls or other structures necessary to maintain slope stability and minimize erosion and control runoff are in place.

2) Use of the Road shall be limited to four-wheel-drive vehicles and strictly controlled by Applicant.

F. As to the Zip Line Structures, Tree Structures, and Green Trail Bridges Nos. 1 and 2, a qualified professional engineer licensed in New Mexico shall certify:

1) The structures have been located, designed, and constructed in accordance with sound engineering and geotechnical standards and principles.

2) The structures are structurally sound and safe to use for their intended purposes.

G. As to the Challenge and Overnight Treehouses, and specifically to address the concerns of the Planning Commission regarding overnight use of the Treehouses, Applicant shall submit a fire prevention and emergency response plan to the Administrator for review and approval.

H. Mitigation Measures: As to all surface disturbances caused by the structures or improvements subject to Variance Nos. 1 through 7, including the Roads:

1) Applicant shall implement all mitigation measures set out in the EIR.

2) Slopes disturbed or created by construction of the structures shall be stabilized, erosion and runoff shall be appropriately controlled, and any retaining walls or other ancillary structures reasonably necessary to maintain slope stability and minimize erosion and control drainage and runoff shall be installed.

3) Disturbed areas shall be appropriately reclaimed and re-vegetated to the extent practicable, consistent with the natural environment, safety considerations, and Applicant's intended uses of the structures.

4) Applicant shall prepare and submit to the Administrator for approval a Mitigation Plan to implement the forgoing Mitigation Measures. Implementation of the Mitigation Plan shall not require the issuance of further variances but shall be included within the scope of the variances granted by this Order.

I. As to all structures subject to Variances Nos. 1 through 7, Applicant shall submit an Inspection and Maintenance Plan to the Administrator for approval.

J. Applicant shall comply with all applicable federal, state, and local laws, including but not limited to the United States Clean Water Act, the regulations of the United States Environmental Protection Agency and the Corps of Engineers, and all applicable County Ordinances.

K. In the event of ambiguity, the Administrator shall have authority to interpret this Order to carry out its purposes.

L. Variance Nos. 1 through 7 shall automatically expire within one year of the date of this Order unless the Administrator approves the SDP within that time.

IT IS SO ORDERED.

This Order was adopted by the Board of County Commissioners on this ____ day of _____, 2018.

THE SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Anna Hansen, Chair

ATTEST:

Geraldine Salazar, County Clerk

Date: _____

Approved as to form:

R. Bruce Frederick, County Attorney

NOTICE OF RIGHT OF APPEAL

Any person aggrieved by the forgoing Order may appeal the Order pursuant to NMSA 1978, Section 3-21-9, by filing a Notice of Appeal in the New Mexico First Judicial District Court, Santa Fe, New Mexico, within thirty (30) days of the date of filing of the Order in accordance with Section NMSA 1978, Section 39-3-1.1 and Rule 1-074 NMRA.

