

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: November 25, 2014

TO: Board of County Commissioners

FROM: Vicente Archuleta, Development Review Team Leader *VA*

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

FILE REF.: CDRC CASE # S 12-5452 Cielo Colorado Estates Final Plat and Development Plan

ISSUE:

Cielo Colorado LLC., Applicant, James W. Siebert, Agent, request Final Plat and Development Plan approval for Phase 1 (Lots 11-16) consisting of 6 lots of the Cielo Colorado Estates 24-lot residential subdivision on Tract 15A-2 of the Eldorado at Santa Fe Subdivision consisting of 246.30 acres more or less.

The Applicant also requests approval to vacate and relocate 2 portions of the Camino Acote 50 foot ingress/egress and utility easement that is located within proposed Lot 1, vacate the portion of Camino Acote that runs through Lots 10, 16, 17, 18 and 19 and vacate the old ingress/egress and utility easement that runs through proposed Lot 1, which is no longer in use.

The property is located on the east side of US 285, off Camino Acote, within Sections 20, 21 and 22, Township 15 North, Range 10 East (Commission District 4).

Vicinity Map:



Site Location

SUMMARY:

On October 16, 2014 the County Development Review Committee (CDRC) recommended approval of the Final Plat and Development Plan for Phase 1 consisting of 6 lots (Lots 11-16) of the Cielo Colorado Estates 24-lot residential subdivision consisting of 246.30 acres (refer to October 16, 2014 CDRC Meeting Minutes as Exhibit 8).

In 1995, a Master Plan for Cielo Colorado was approved by the BCC. The Master Plan included 91 lots with an average density of 3.79 acres on 344.58 acres. Twenty-five of the 91 proposed lots were platted in 1995. An amended Master Plan eliminating four lots totaling 12.5 acres was recorded in 2000. In 2002 the Master Plan was vacated to allow the platting of larger lots at the east end of Tract 15A-2. This Application includes the remainder of the property that has not been platted within Tract 15A-2.

On July 18, 2013, the County Development Review Committee (CDRC) recommended approval of the Applicant's request for Master Plan approval for a 24-lot residential subdivision. The CDRC also approved two cul-de-sacs (Dead End Roads) to exceed 500 feet in length (Refer to July 18, 2013 CDRC Meeting Minutes as Exhibit 5).

On September 10, 2013, the Board of County Commissioners (BCC) approved the request for Master Plan approval for a 24-lot residential subdivision on 246.30 acres (Refer to September 10, 2013 BCC Meeting Minutes as Exhibit 6).

On April 8, 2014, the Board of County Commissioners (BCC) approved a request for Preliminary Development Plan and Plat approval for 24 lots on 246.30 acres within tract 15A-2 of the Eldorado at Santa Fe Subdivision in conformance with the approved Master Plan and a Variance of Ordinance No. 2008-10 (Stormwater Prevention and Stormwater Management) to allow access through a 100-year floodplain without an all-weather crossing (refer to April 8, 2014, BCC Meeting Minutes as Exhibit 7).

The Applicants now request Final Plat and Development Plan approval for Phase 1 consisting of 6 lots (Lots 11-16) of the 24 lot subdivision in conformance with the approved Master Plan which was to be developed in 4 phases. Lot sizes will range from 8.72 acres to 14.89 acres.

The Applicant also requests to vacate and relocate approximately 800 feet of the Camino Acote 50 foot wide ingress/egress and utility easement that is located within proposed Lot 1. At the time Camino Acote was constructed, the alignment straightened the road which caused portions to be located outside of the easement. Therefore, the Applicant is requesting to vacate and relocate the portions of easement to include the road.

The Applicant is also requesting to vacate the portion of Camino Acote, which was a looped road that runs through proposed Lots 10, 16, 17, 18 and 19. A cul-de-Sac at Lots 18, 19, 20 and 21 was approved by the CDRC on July 18, 2013, which will be constructed within a future phase.

Finally, The Applicants requests to vacate the old ingress/egress and utility easement that runs through proposed Lot 1, which is no longer in use.

Article V, Section 5.7.1 (Vacation of Plats – Cause) states: “any final plat filed in the Office of the County Clerk may be vacated or a portion of the final plat may be vacated if:

- a. The owners of the land proposed to be vacated sign an acknowledgement statement, declaring the the final plat or a portion of the final plat to be vacated, and the statement is approved by the Board; or
- b. The Board finds that a plat was obtained by misrepresentation or fraud and orders a statement of vacation to be prepared by the County.”

Article V, Section 5.7.2 (Action) states: “Action shall be taken at a public meeting. In approving the vacation of all or part of a Final Plat, the Board shall decide whether the vacation will adversely affect the interests of persons on contiguous land or of persons within the subdivision being vacated. In approving the vacation of all or a portion of a Final Plat, the Board may require that roads dedicated to the County in the Final Plat continue to be dedicated to the County.”

Article V, Section 5.7.3 (Filing) states: “The approved statement declaring the vacation of a portion or all of a Final Plat shall be filed in the office of the County Clerk.”

Article V, Section 7.5.4 (Utilities) states: “The rights of any utility existing before the total or partial vacation of any Final Plat are not affected by the vacation of a Final Plat

This Application was submitted on May 14, 2014.

Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is in compliance with County criteria for Final Development Plan and Plat approval for Phase 1 and recommends approval of the vacation and relocation of the easements as proposed.

APPROVAL SOUGHT:

Final Plat and Development Plan approval for Phase 1, consisting of 6 lots of the Cielo Colorado Estates residential subdivision on 246.30 acres within Tract 15A-2 of the Eldorado at Santa Fe Subdivision.

Vacation and relocation of the ingress/egress and utility easement of Camino Acote located in Proposed Lot 1, the vacation of easement located in Lots 10, 16, 17, 18 and 19 and the vacation of the old ingress/egress and utility easement located in proposed Lot 1, which is no longer in use.

**GROWTH MANAGEMENT
AREA:**

Galisteo, SDA-2

LOCATION:

The development is located east of US/285 off of Camino Acote.

HYDROLOGIC ZONE:

Basin Fringe, minimum lot size per Code is 12.5 acres per dwelling unit with a 0.25 acre foot per year per lot water restriction; lot size can be further reduced to 2.5 acres per dwelling unit if water availability is proven to support increased density or Eldorado Area Water and Sanitation District (EASWD) water is available.

ARCHAEOLOGIC ZONE:

Medium Potential, Archeological report required for development of more than 10 acres. An Archaeological report was submitted for review with the Master Plan. The State Historic Preservation Division had no concerns regarding this site.

ACCESS AND TRAFFIC:

The site will be accessed off US 84-285 via Camino Acote. Camino Acote is an existing privately owned and maintained road.

AFFORDABLE HOUSING:

The Affordable Housing Regulations require that 8 percent of the market rate lots be constructed in the affordable ranges specified in the affordable housing ordinance.

The six lots proposed in Phase 1 are not sufficient to trigger the requirement for an affordable housing unit. The next phase will trigger the need for an affordable housing unit.

A Draft of the Affordable Housing Agreement (refer to Draft Agreement as Exhibit 4) is in process and will be finalized prior to BCC approval.

FIRE PROTECTION:

There are three volunteer fire sub-stations located in Eldorado. Station No. 3 is located off of Old Road North and US-285, at the Santa Fe County Transfer Station which is approximately 1,000 feet from the Subdivision entrance. EAWSD will provide the water source for fire protection; fire hydrants shall be located within 1,000 feet of all buildable areas.

WATER SUPPLY:

EAWSD has an existing 8 inch waterline that services the existing 25 lot Cielo Colorado Subdivision to the east. A ready, willing and able to serve letter has been provided by EAWSD for Cielo Colorado Estates.

LIQUID WASTE:

NMED approved individual conventional on-site septic systems. Each lot has been designed to provide a minimum of .75 acres of land outside areas with slopes of 15 percent or less and outside flood plain limits

SOLID WASTE:

Individual lot owners will be responsible for contracting with a licensed solid waste disposal service for pick up on a weekly basis. Individual lot owners may also dispose of solid waste on their own at a local solid waste transfer station. This condition is noted in the Subdivision Disclosure Statement.

**FLOODPLAIN &
TERRAIN MANAGEMENT:**

The site has slopes of 8%-12% or less and there are limited areas with slopes of 20%. The project conforms to Article VII, Section 3, Terrain Management Regulations of the Santa Fe County Land Development Code. The Applicant's Proposal shows existing topography, natural Drainage, and a proposed grading and drainage plan. The proposed grading and drainage plan contains pre and post development drainage. Two (2) detention ponds are proposed in Phase I and Phase II .

OPEN SPACE:

A 14.21 acre site has been reserved as open space for the benefit of the owners of lots within the Subdivision. The open space is located at the entrance to Lot 15, along the main drainage where the vegetation is the most dense. This tract will be owned by the Cielo Colorado Estates Homeowners Association.

The open space will contain an equestrian trail with markers every one-tenth of a mile.

PHASING:

The subdivision is to be completed in four phases over an eight year period, with the first phase to begin in 2014 and the final phase to be completed in the year 2022.

STAFF RECOMMENDATION: The Application for Final Plat and Development Plan approval is in conformance with the previously approved Master Plan and Preliminary Plat and Development Plan and with all Code requirements. Approval of the vacation and relocation of the easements as proposed will not adversely affect the interests of

persons on contiguous land or of persons within the subdivision being vacated. Therefore, staff recommends approval of the request for Final Plat and Development Plan for Phase 1 and approval to vacate/relocate the easements as proposed subject to the following conditions:

1. The Final Plat and Development Plan must be recorded with the County Clerk's office.
2. The Applicant shall submit a financial guarantee, in sufficient amount to assure completion of all required improvements prior to Final Plat recordation as per Article V, Section 9.9 of the Land Development Code.
3. The Affordable Housing Agreement must be, reviewed and approved by the BCC prior to plat recordation of Phase 1.

EXHIBITS:

1. Development Request
2. Developer's Report
3. Developer's Plans
4. Affordable Housing "Draft" Agreement
5. July 18, 2013 CDRC Meeting Minutes
6. September 10, 2013 BCC Meeting Minutes
7. April 8, 2014, BCC Meeting Minutes
8. October 16, 2014 CDRC Meeting Minutes
9. Aerial Photo of Site and Surrounding Areas



**JAMES W. SIEBERT
AND ASSOCIATES, INC.**

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siebert.associates@comcast.net

May 9, 2014

Vicki Lucero
Building and Development Services Section Manager
P.O. Box 276
Santa Fe, NM 87504

Re: Cielo Colorado Estates

Dear Ms. Lucero:

As planning consultant for Cielo Colorado Land Company LLC I am submitting an application for a Final Plat and Plan for phase 1 of the approved preliminary plat showing 24 lots. This application is submitted in conformance with a previously approved preliminary plat and plan for 24 lots approved by the Board of County Commissioners on April 8, 2014 as Case # S/V 12-5451.

The following items are submitted with this application and transmittal letter:

- (12) Sets of a 24" x 36", 15 sheet plan set.
- (1) Reduced 11" x 17" plan set.
- (12) Development Plan Reports in an 8 ½ "x 11" format.
- Completed Development Permit application.
- Development and Fire review fees in the amount of \$2,950.00
- Two copies of Affordable Housing Agreement.



Vicki Lucero
Cielo Colorado
May 9, 2014
Page 2 of 2

Please schedule this request for the July 17, 2014 CDRC meeting.

Sincerely,



James W. Siebert

Xc: Ed deZevallos
Chris deZevallos

BACKGROUND INFORMATION

HISTORY OF ENTITLEMENTS

On July 18, 2013, the County Development Review Committee recommended approval of the Master Plan, Case# Z/S 12-5450 and on September 10 2013, the Board of County Commissioners approved the master plan for a 24-lot subdivision on 246.30 acres within Tract 15A-2 of the Eldorado of Santa Fe Subdivision. On February 20th, 2014, the CDRC approved the preliminary plat Case# S/V 12-5451 for a 24 lot subdivision and the Board of County Commissioners approved the preliminary plat and plan and a variance to the crossing of a 100 year flood plain with a low water crossing on April 8, 2014. The April 8, 2014 BCC meeting minutes are included in the report as Appendix A.

This development request is located east of US 84/285 at the Acote intersection. Figure 1 is a vicinity map describing the location of this project relative to known geographic features.

DEVELOPMENT REQUEST

A request is submitted for a final subdivision plat and plan for phase 1 consisting of 6 lots. This plat and plan is consistent with the approved master plan and preliminary subdivision plat and plan.

The request is submitted in conformance with regulatory standards for plat and plan review set forth in the Santa Fe County Land Development Code. This request will be heard by the County Development Review Committee which makes a recommendation to the Board of County Commissioners. The Board of County Commissioners takes final action on the request unless it is appealed to the District Court.

OWNERSHIP AND LEGAL LOT OF RECORD

The property is owned by Cielo Colorado LLC., a New Mexico Limited Liability Company. The warranty deed for the property is found in Appendix B of the report. The plat for the subject land establishing legal lot of record is provided in Appendix C of the report and is the basis of the survey work for the site planning on the property.

EXHIBIT

2
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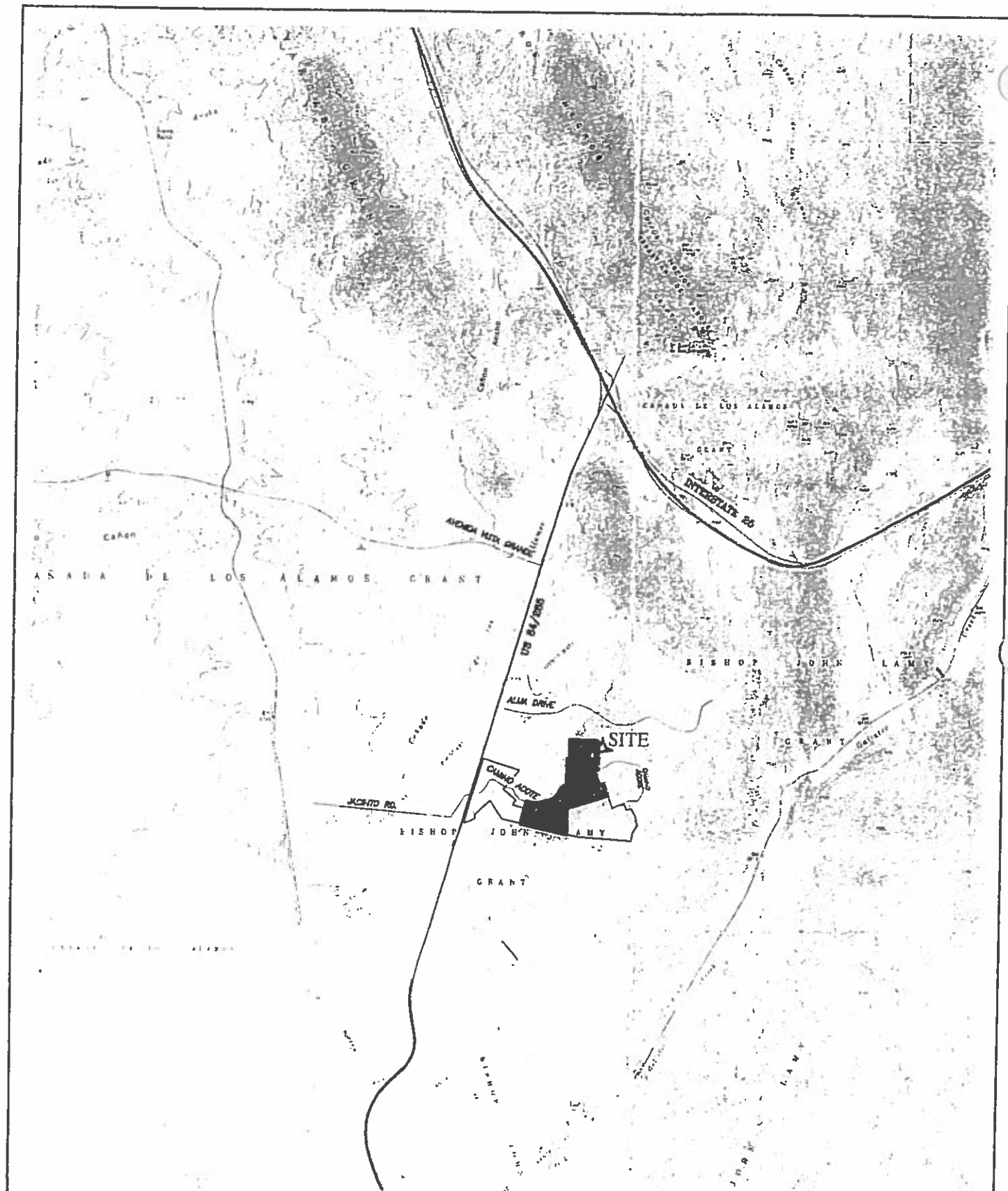



FIGURE 1 1b

<p>JAMES W. SIEBERT AND ASSOCIATES, INC.</p> <p>815 MERCER STREET • SANTA FE, NEW MEXICO 87505</p> <p>(505) 883-5588 FAX (505) 888-7313</p>	<p>CIELO COLORADO</p> <p>VICINITY MAP</p>	<p>NORTH</p>  <p>SCALE: 1" = 5000'</p>
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SUMMARY DESCRIPTION PHASE 1

Total Acres in Subdivision:	62.86 acres
Number of Lots:	6
Average Lot Size:	10.48 acres
Smallest Lot:	8.72 Acres
Largest Lot:	14.89 Acres

EXISTING CONDITIONS

UTILITIES

Water

Eldorado Area Water has been extended into the property to serve the existing 25 lot Cielo Colorado Subdivision and larger lot subdivision to the east on Lot 15. The existing 8 inch line extends further to the east along the platted Camino Acote roadway. Fire hydrants have been installed on this line and have been tested to determine the flow capacity of the hydrant. The Utilities Plan in the plan set describes the location and size of existing water lines and location of the existing fire hydrants that serve this phase of the development. These plans are reviewed by the EAWSD since they are the Mutual Domestic providing water service.

Wastewater

There is no community wastewater system in the Eldorado area. Conventional septic systems are proposed for the lots within the development. Each lot has been designed to provide a minimum of .75 acre of land outside areas with slopes of 15 percent or less and outside flood plain limits. The Eldorado Area Water and Sanitation District does not currently have any plans to construct a community wastewater system in the Eldorado Area.

Electric

There is an overhead three phase electric line located on the east side of US 285. There is an existing overhead electric line running north-south through the midsection of Lot 15A-2. Electric service lines have been extended into the subdivision to serve the 24 lot subdivision and the larger lots to the east. All electric lines which serve the developed lots within Lot 15 have been constructed below ground. PNM Electric will determine the need for additional transformers once the plat is recorded. All future electric lines within the subdivision and lateral lines to the houses will be constructed underground.

Telephone

Telephone lines exist on the overhead electric lines that run parallel and adjacent to US 285. Telephone lines are located within Lot 15 coincident with the electric lines. An older overhead telephone line that traversed Lot 15 from the north to the south has been removed and the easement has been abandoned. There is an underground telephone line that runs coincident with the overhead electric line located towards the central part of Lot 15A-2. Telephone lines should be sufficient to serve this phase of Cielo Colorado, but that assessment will be conducted by Century Link once the plat is recorded.

Natural Gas

Natural gas has not been extended into the subdivision. Natural gas is available in the Ridges subdivision to the north in Rey de Reyes Road. There is currently no plan to extend natural gas service to the subdivision.

SLOPES

Slopes are relatively gentle throughout the development with typical slopes in the 8%-12% range. There are limited areas within the development plan that have slopes in excess of 20%. There is no evidence of areas with significant erosion on the site. Suitable building sites on slopes of less than 20% are available for all lots as proposed on the final development plan. The terrain management assessment has been prepared in conformance with the future SLDC development standards.

VEGETATION

The vegetation is typical of the Eldorado area. A variety of grasses have established themselves within the development. Typical plants that were observed on the property consist of:

Grasses

Blue Grama
Galleta
Dropseed
Muhly

Forbs

Snakeweed
Verbena
Purple Coneflower
Indian Paintbrush
Russian Thistle
Threadleaf Sagewort
Wolfberry

Buffalo Guard
New Mexico Sunflower
Globemallow
Purple Aster
Winterfat
White Evening Primrose
Narrow Leaf Yucca
Prickly Pear
Cholla Cactus
Datil Yucca

Trees

One Seed Juniper
Pinon

ARCHAEOLOGY

A Cultural Resource Survey was prepared by Sandra Marshall for a tract larger than the development, but included all the land area within the project. Sixty isolated occurrences were observed within the investigated tract that were not worthy of preservation. Two sites, LA 104986 and LA 104987 were recorded with the State Historic Preservation Office, considered worthy of preservation. These two sites are not included within the boundary of this subdivision plat.

The Cultural Resource Survey was included in the submittal for the master plan and is not duplicated in this application. The approval of the study by the State Historic Preservation Office is provided in Appendix D

OPEN SPACE

A 14.21 acre site has been reserved as open space for the benefit of the owners of lots within the Subdivision. This tract will be owned by the Cielo Colorado Estates Homeowners Association. This open space is located along the main drainage where the vegetation is most dense. It is also located at the entrance to Lot 15, and was a design concept supported by the existing homeowners residing within Lot 15.

This open space area will be granted to the Cielo Colorado Estates Homeowners Association by a subsequent plat.

DRAINAGE

Lots 12 and 13 north of Camino Acote have a small drainage that traverses these lots from east to west. A 10 foot drainage easement has been designated for these lots. A storm water detention pond will be constructed on lot 11 to detain the storm water to historic flows at it leaves the Subdivision. Lots 14, 15 and 16 have a drainage swale at the most southerly end of these lots. A 10 foot drainage easement is shared between these lots and the remainder property to the south. A storm water detention pond will be constructed on lot 16 and the remainder lot to detain the water as it enters a future phase of the subdivision in order to maintain the water at the exit point to historic flows.

The final plat grants the drainage easement for two above described detention ponds located within the subdivision. These ponds will be constructed as part of the improvements for phase I and will be maintained by the Cielo Colorado Estates HOA.

SOILS

Utilizing the USDA Natural Resources Conservation Mapping, the soils identified on the property are:

<u>Classification Name</u>	<u>Soils Number</u>
Tanoan-Encantado Complex	201
Alire Loam	202
Buckhorse-Altanzano Complex	203
Nazario Gravelly Loam	205
Alire-Urban Land Complex	208

201—Tanoan-Encantado complex, 5 to 25 percent slopes

Map Unit Setting

Elevation: 5,500 to 7,500 feet

Mean annual precipitation: 13 to 15 inches

Mean annual air temperature: 47 to 50 degrees F

Frost-free period: 140 to 160 days

Map Unit Composition

Tanoan and similar soils: 45 percent

Encantado and similar soils: 40 percent

Description of Tanoan Setting

Landform: Eroded fan remnants

Landform position (two-dimensional): Shoulder

Down-slope shape: Convex

Across-slope shape: Convex

Parent material: Alluvium derived from granite, gneiss, schist, and loess over residuum weathered from basaltic tuff or granitic sandstone

Properties and qualities

Slope: 5 to 15 percent

Depth to restrictive feature: More than 80 inches

Drainage class: Somewhat excessively drained

Capacity of the most limiting layer to transmit water (Ksat): High (2.00 to 5.95 in/hr)

Depth to water table: More than 80 inches

Frequency of flooding: None

Frequency of ponding: None

Calcium carbonate, maximum content: 15 percent

Maximum salinity: Nonsaline (0.0 to 1.0 mmhos/cm)

Sodium adsorption ratio, maximum: 4.0

Available water capacity: Low (about 5.1 inches)

Typical profile

0 to 3 inches: Gravelly sandy loam

3 to 7 inches: Loam

7 to 24 inches: Loam

24 to 32 inches: Sandy loam

32 to 57 inches: Loam

57 to 70 inches: Gravelly loamy coarse sand

70 to 84 inches: Gravelly coarse sandy loam

Description of Encantado Setting

Landform: Eroded fan remnants

Landform position (two-dimensional): Backslope

Down-slope shape: Linear

Across-slope shape: Linear

Parent material: Colluvium and slope alluvium derived from granite, gneiss, and schist over residuum weathered from granitic fanglomerate and sandstone

Properties and qualities

Slope: 10 to 25 percent

Depth to restrictive feature: More than 80 inches

Drainage class: Somewhat excessively drained

Capacity of the most limiting layer to transmit water (Ksat): High (2.00 to 6.00 in/hr)

Depth to water table: More than 80 inches

Frequency of flooding: None

Frequency of ponding: None

Calcium carbonate, maximum content: 30 percent

Maximum salinity: Nonsaline to very slightly saline (0.0 to 4.0 mmhos/cm)

Sodium adsorption ratio, maximum: 4.0

Available water capacity: Very low (about 2.5 inches)

Typical profile

0 to 3 inches: Very gravelly sandy loam
3 to 9 inches: Very gravelly loam
9 to 22 inches: Very gravelly coarse sandy loam
22 to 33 inches: Gravelly loamy coarse sand
33 to 45 inches: Very gravelly loamy coarse sand
45 to 54 inches: Very gravelly loamy coarse sand
54 to 63 inches: Gravelly loamy sand
63 to 85 inches: Very gravelly loamy sand

202—Alire loam, 2 to 6 percent slopes

Map Unit Setting

Elevation: 6,100 to 7,400 feet
Mean annual precipitation: 13 to 15 inches
Mean annual air temperature: 47 to 50 degrees F
Frost-free period: 140 to 160 days

Map Unit Composition

Alire and similar soils: 90 percent

Description of Alire Setting

Landform: Eroded fan remnants
Landform position (two-dimensional): Summit
Down-slope shape: Linear
Across-slope shape: Linear
Parent material: Alluvium derived granite, gneiss, schist, loess, and volcanic ash

Properties and qualities

Slope: 2 to 6 percent
Depth to restrictive feature: More than 80 inches
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high (0.20 to 0.57 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate, maximum content: 40 percent
Gypsum, maximum content: 1 percent
Maximum salinity: Nonsaline to slightly saline (2.0 to 8.0 mmhos/cm)
Sodium adsorption ratio, maximum: 13.0
Available water capacity: High (about 9.7 inches)

Typical profile

0 to 2 inches: Loam
2 to 8 inches: Clay loam
8 to 15 inches: Clay loam

15 to 28 inches: Clay loam
28 to 45 inches: Loam
45 to 57 inches: Gravelly loam
57 to 71 inches: Gravelly sandy loam
71 to 105 inches: Gravelly sandy loam

203—Buckhorse-Altazano complex, 2 to 8 percent slopes, flooded

Map Unit Setting

Elevation: 5,700 to 7,500 feet
Mean annual precipitation: 13 to 15 inches
Mean annual air temperature: 47 to 50 degrees F
Frost-free period: 140 to 160 days

Map Unit Composition

Buckhorse and similar soils: 55 percent
Altazano and similar soils: 35 percent

Description of Buckhorse Setting

Landform: Eroded fan remnants
Landform position (two-dimensional): Toeslope
Down-slope shape: Linear
Across-slope shape: Linear
Parent material: Slope alluvium derived from granite, gneiss, schist, granitic sandstone, fanglomerate, and mudstone

Properties and qualities

Slope: 2 to 8 percent
Depth to restrictive feature: More than 80 inches
Drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Calcium carbonate, maximum content: 15 percent
Maximum salinity: Nonsaline (0.0 to 2.0 mmhos/cm)
Sodium adsorption ratio, maximum: 4.0
Available water capacity: Moderate (about 6.3 inches)

Typical profile

0 to 4 inches: Coarse sandy loam
4 to 11 inches: Coarse sandy loam
11 to 22 inches: Loam
22 to 37 inches: Loam
37 to 49 inches: Fine sandy loam
49 to 61 inches: Sandy loam

61 to 83 inches: Gravelly coarse sand

Description of Altazano Setting

Landform: Inset fans on eroded fan remnants

Down-slope shape: Convex

Across-slope shape: Convex

Parent material: Slope alluvium derived from granite, gneiss, schist, granitic sandstone, fanglomerate, and mudstone

Properties and qualities

Slope: 2 to 8 percent

Depth to restrictive feature: More than 80 inches

Drainage class: Well drained

Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.60 to 1.98 in/hr)

Depth to water table: More than 80 inches

Frequency of flooding: Frequent

Frequency of ponding: None

Calcium carbonate, maximum content: 20 percent

Maximum salinity: Nonsaline (0.0 to 2.0 mmhos/cm)

Sodium adsorption ratio, maximum: 4.0

Available water capacity: Low (about 5.7 inches)

Typical profile

0 to 2 inches: Gravelly sandy loam

2 to 8 inches: Gravelly coarse sandy loam

8 to 19 inches: Very gravelly loamy coarse sand

19 to 29 inches: Gravelly sandy loam

29 to 46 inches: Loam

46 to 65 inches: Loam

65 to 74 inches: Gravelly coarse sandy loam

74 to 90 inches: Gravelly loamy coarse sand

205—Nazario gravelly loam, 2 to 8 percent slopes

Map Unit Setting

Elevation: 6,200 to 7,400 feet

Mean annual precipitation: 13 to 15 inches

Mean annual air temperature: 47 to 50 degrees F

Frost-free period: 140 to 160 days

Map Unit Composition

Nazario and similar soils: 90 percent

Description of Nazario Setting

Landform: Eroded fan remnants

Landform position (two-dimensional): Summit

Down-slope shape: Convex

Across-slope shape: Linear

Parent material: Alluvium derived from granite, gneiss, schist, and loess over residuum weathered from granitic fanglomerate and sandstone

Properties and qualities

Slope: 2 to 8 percent

Depth to restrictive feature: 20 to 28 inches to strongly contrasting textural stratification

Drainage class: Well drained

Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.60 to 2.00 in/hr)

Depth to water table: More than 80 inches

Frequency of flooding: None

Frequency of ponding: None

Calcium carbonate, maximum content: 30 percent

Maximum salinity: Nonsaline (0.0 to 2.0 mmhos/cm)

Sodium adsorption ratio, maximum: 4.0

Available water capacity: Very low (about 2.7 inches)

Typical profile

0 to 2 inches: Gravelly loam

2 to 7 inches: Gravelly loam

7 to 15 inches: Gravelly loam

15 to 24 inches: Gravelly loam

24 to 43 inches: Very gravelly loamy coarse sand

43 to 52 inches: Gravelly loamy coarse sand

52 to 67 inches: Coarse sand

67 to 94 inches: Gravelly coarse sand

208—Alire-Urban land complex, 2 to 8 percent slopes

Map Unit Setting

Elevation: 6,400 to 7,400 feet

Mean annual precipitation: 13 to 15 inches

Mean annual air temperature: 47 to 50 degrees F

Frost-free period: 140 to 160 days

Map Unit Composition

Alire and similar soils: 50 percent

Urban land: 40 percent

Description of Alire Setting

Landform: Eroded fan remnants

Landform position (two-dimensional): Summit

Down-slope shape: Linear

Across-slope shape: Linear

Parent material: Alluvium derived from granite, gneiss, schist, and loess

Properties and qualities

Slope: 2 to 8 percent

Depth to restrictive feature: More than 80 inches

Drainage class: Well drained

Capacity of the most limiting layer to transmit water (Ksat): Moderately high (0.20 to 0.57 in/hr)

Depth to water table: More than 80 inches

Frequency of flooding: None

Frequency of ponding: None

Calcium carbonate, maximum content: 40 percent

Gypsum, maximum content: 1 percent

Maximum salinity: Nonsaline to slightly saline (2.0 to 8.0 mmhos/cm)

Sodium adsorption ratio, maximum: 13.0

Available water capacity: High (about 9.3 inches)

Typical profile

0 to 4 inches: Loam

4 to 11 inches: Clay loam

11 to 20 inches: Clay loam

20 to 27 inches: Loam

27 to 42 inches: Loam

42 to 51 inches: Gravelly loam

51 to 69 inches: Gravelly loam

69 to 95 inches: Gravelly loam

95 to 99 inches: Gravelly sandy loam

Description of Urban LandSetting

Landform: Eroded fan remnants

Down-slope shape: Linear

Across-slope shape: Linear

EXISTING ACCESS AND TRAFFIC CIRCULATION

The principal access to the subdivision is from US 84/285. The New Mexico Department of Transportation provided for an improved intersection access as part of the widening improvements for US 285. The Acote roadway aligns with Jacinto Road on the west side of US 285. Camino Acote has been constructed as a 24 foot asphalt surfaced roadway through a majority of Tract 15A-2.

The New Mexico Department of Transportation had a concern regarding the potential spill-over of water onto the US 285 right-of-way at the entrance to the subdivision on Camino Acote. This concern has been addressed by requiring the construction of a detention pond on the north side of

Camino Acote which controls the discharge of water entering the culvert under Camino Acote. The detention pond and drainage structures controlling the discharge of water from the ponds will be constructed as part of the improvement for the lot development that will take place consistent with the location of the pond.

School Impact

The issue of the impact to public schools was addressed as part of the master plan application.

FUTURE UTILITIES

Water

This subject project is located within the service area of the Eldorado Area Water and Sanitation District. Water was extended into tract 15A-2 to serve the 25 lot subdivision created in 2002. Since that time water has been extended into the larger lot area with the 8 inch water line terminating at the east end of Camino Acote. The existing 8 inch line will serve this phase of the Subdivision.

Cielo Colorado LLC currently pays for three meters that are located within phase 1 of the Subdivision. This reduces the number of water meters needed for this phase of the Subdivision to three.

A ready willing and able letter has been provided to Cielo Colorado LLC., for more services than currently needed. The Service Agreement has been approved by the Board of the Eldorado Area Water and Sanitation District. The ready willing and able letter from EAWSD is found in Appendix E. The EAWSD will review and approve the engineering plans for the water system as part of their plan review.

Wastewater

A central wastewater system does not exist in Eldorado for the residential development. Private on-site liquid waste systems are proposed for Cielo Colorado. Unless decided otherwise by the lot owner conventional septic tanks and leach fields will be used as the collection, treatment and disposal system. Every lot within the project has an area for the leach field with slopes of 15 percent or less. Each lot has soils that are adequate to accommodate a conventional wastewater treatment system.

The size of the septic tank and area for the leach field will be determined as part of the review for issuance of a building permit on each lot. The New Mexico Environment Department will issue the permit for the septic tank and leach field.

Electric

There is single phase underground electric line located within the developed section of Camino Acote. This line is sufficient to provide electrical service to this initial phase of the Subdivision.

The length of the driveways to the house sites may necessitate the placement of transformers near the house. Given the size of the larger lots the placement of transformers along the roadway may not be practical in some instances. Transformers may have to be located close to the house due to the drop in line voltage over longer distances.

Natural Gas

The existing lots within the Cielo Colorado subdivision are not served by natural gas. There are no plans to extend natural gas into the subdivision.

Telephone

There is an existing underground telephone line that runs north-south through the approximate mid-section of the development. There is sufficient capacity in the existing underground telephone system to satisfy the demand estimated for telephone service in this phase of the project.

Design drawings for the telephone system will not be prepared until the subdivision is recorded.

Comcast

Comcast is available within Eldorado. The main service line would have to be extended from off site for some distance to reach the Subdivision. A cost estimate has been provided for the developer and a determination has been made that it is not cost effective to bring in this communication line to the property.

WATER BUDGET

Each lot will be limited to a maximum annual water use of .25 acre-feet. This provision will be specified in the Restrictive Covenants, Disclosure Statement and will be recorded with the Subdivision plat.

The total estimated annual water use is shown below:

$$6 \text{ lots} \times .25 \text{ ac. ft. /yr.} = 1.5 \text{ acre feet per year}$$

As pointed out previously in the report there are three existing meters on the property that are not currently being used. All three of the existing meters are within phase I and only 3 more meters will be needed to serve phase I of the Subdivision.

The developer is required to pay a connection charge to receive water service from the EAWSD. This connection fee includes the cost of EAWSD acquiring the necessary water rights to serve the project. The developer has entered into a Service Agreement for guaranteed water service from EAWSD.

Water Conservation

Santa Fe County has aggressively pursued water conservation measures in the County, beginning in 2002. The water conservation regulations the County has adopted consist of the following:

2002 Mandates indoor and outdoor conservation, including water conserving plumbing fixtures (Ordinance 2002-13).

2003 Mandates water harvesting for residential dwellings with passive or active systems depending on size of dwelling (Ordinance 2003-6).

2006 The 2003 ordinance was amended to include mandatory water re-circulation hot water systems and insulation for hot water pipes (Ordinance 2006-8)

Santa Fe County has one of the more aggressive water conservation standards of any county in New Mexico. While water conservation was previously enforced through covenants imposed on residents within the subdivision the County has now mandated water conservation by law enforced at the time of building permit review. The covenants will specify compliance with the County's water conservation ordinances.

FIRE PROTECTION

There is a fire sub-station located at the intersection of the US 285 and the access road to the Transfer Station. The distance from the fire sub-station located at US 285 by the transfer station to the furthest lot in the Subdivision is 1.3 miles. There are three fire stations located in Eldorado. Station 1 is located on Avenida Vista Grande near Avenida Torreon and is equipped with two fire engines and 2 ambulances. Station 2 is located at Avenida Vista Grande and Casa del Oro and is equipped with two engines and one tanker. Station 3 is located off of Old Road North and US-285 at the Santa Fe County Transfer Station and is equipped with four engines. Station 3 is located within the closest distance to the Cielo Colorado Estates development. There is also a fire station located on the I-25 frontage road near US 285 intersection that is a 24 hour manned station.

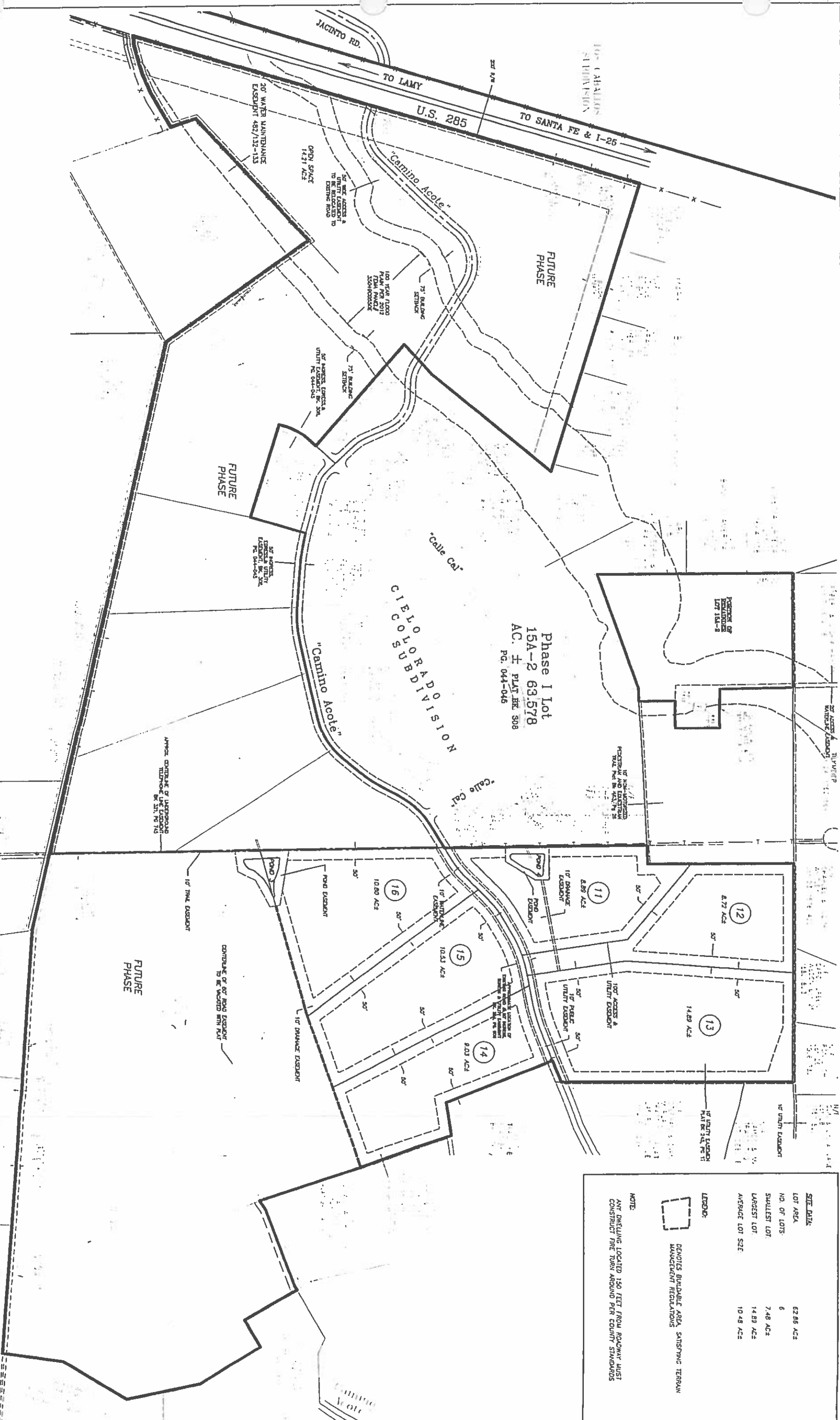
AFFORDABLE HOUSING

The current affordable housing regulations require that 8 percent of the market rate lots be constructed in the affordable ranges specified in the affordable housing ordinance. The six lots in this subdivision are not sufficient to trigger the requirement for an affordable housing unit. The next phase of the project will trigger the need for an affordable housing unit. The development of phase 1 will provide evidence of the market acceptance for these larger lots.


FUTURE ACCESS AND TRAFFIC CIRCULATION

The only access to the property is from US 285, which is a federal highway facility, managed by the New Mexico Department of Transportation. The US 285 and Camino Acote/Jacinto intersection was improved as part of the widening of US 285. There are two protected left turn lanes in each direction with a substantial amount of stacking capacity.

A Traffic Impact Assessment was prepared by Jorge Gonzalez, PE as part of the master plan application. New Mexico Department of Transportation was notified of the reduction from 67 lots to 24 lots and responded that improvements to US 285 were not required by this development. Appendix F includes the last correspondence from NMDOT on Cielo Colorado Estates.



<u>SITE DATA:</u>	
LOT AREA	6285 AC±
NO. OF LOTS	6
SMALLEST LOT	748 AC±
LARGEST LOT	1483 AC±
AVERAGE LOT SIZE	1048 AC±

 DENOTES BUILDABLE AREA, SATISFYING TERRAIN
MANAGEMENT REGULATIONS

NOTE:
ANY DRILLING LOCATED 150 FEET FROM ROADWAY MUST
CONSTRUCT FIRE TURN AROUND PER COUNTY STANDARDS

SANTA FE COUNTY APPROVAL, NOTES AND CONDITIONS

COUNTY LAND USE ADMINISTRATION JS-12-5452 BCC CASE NUMBER

COUNTY TREASURER'S OFFICE _____ COUNTY REAL ADDRESSING _____

COUNTY DEVELOPMENT REVIEW COMMITTEE CHAIRMAN _____ DATE _____

Approved at The Board Of County Commissioners
meeting of _____

BCC CHAIRMAN _____ DATE _____

COUNTY CLERK _____ DATE _____

FIRE MARSHAL _____ DATE _____

PUBLIC WORKS _____ DATE _____

SANTA FE COUNTY NOTES AND CONDITIONS

SOIL RATING: PURSUANT TO THE SANTA FE COUNTY LAND DEVELOPMENT ACT, THE COUNTY ENGINEER HAS DETERMINED THAT THE SOILS ARE OF MODERATE/SEVERE REGARDING LIMITATIONS TO SEPTIC TANKS. POTENTIAL ENVIRONMENTAL DEPARTMENT WHETHER THESE SOILS ARE SUITABLE FOR A CONVENTIONAL SEPTIC SYSTEM OR IF AN ALTERNATIVE SYSTEM IS REQUIRED.

SANTA FE COUNTY'S APPROVAL OF THIS SURVEY PLAT DOES NOT INCLUDE THE CONSTRUCTION OF THE PRIVATE EASEMENT(S) OR ROAD(S) AS SHOWN. THE CONSTRUCTION OF SUCH EASEMENT(S) OR ROAD(S) IS THE RESPONSIBILITY OF THE LANDOWNER. THE LANDOWNER SHALL MAINTAIN AND IMPROVE THE EASEMENT(S) OR ROAD(S) FOR AND THEN APPROVED BY THE SANTA FE COUNTY LAND USE DEPARTMENT.

THE APPROVAL OF THIS PLAT DOES NOT CONSTITUTE THE APPROVAL OF ANY BUILDABLE AREAS AND ROADWAYS FOR THESE LOTS MAY HAVE NATURAL SLOPES OF 15% OR GREATER. ALL DEVELOPMENT ON THESE LOTS MUST BE IN CONFORMANCE WITH THE APPROVED TERRAIN MANAGEMENT PLAN FOR THESE LOTS. DEPENDENT PLANS MAY BE NECESSARY TO MEET TERRAIN MANAGEMENT AND DISSEMINATING REQUIREMENTS OF THE SANTA FE COUNTY LAND DEVELOPMENT CODE.

THE SUBDIVISION DISCLOSURE STATEMENT FOR THESE TRACTS IS FILED IN THE OFFICE OF THE COUNTY CLERK. RECORDED IN BOOK _____ PAGES _____ AS DOCUMENT NO. _____

MAINTENANCE OF ACCESS ROADS: IS THE "LOT OWNERS ASSOCIATION" UNLESS CURRENTLY MAINTAINED BY THE SANTA FE COUNTY PUBLIC WORKS DEPARTMENT. ROADS DUE TO BE PRIVATE AND SHALL BE MAINTAINED BY THE "LOT 15A-2 LOT OWNERS ASSOCIATION". THIS PLATTING DOES NOT CHANGE PREVIOUS ROAD MAINTENANCE CONDITIONS.

EXISTING NATURAL DRAINAGEWAYS WILL NOT BE MODIFIED OR IMPROVED WITHOUT THE WRITTEN PERMISSION OF THE LAND USE ADMINISTRATOR OR THE COUNTY ENGINEER. DEVELOPMENT SHALL NOT IMPROVE HISTORIC FLOOD PLATES OR PATTERNS TO OR FROM THESE LOTS.

THESE LOTS ARE SUBJECT TO SANTA FE COUNTY FIRE AND RESCUE IMPACT FEES AT THE TIME OF APPLICATION FOR BUILDING PERMIT.

THESE LOTS ARE SUBJECT TO CC & R S RECORDED IN THE OFFICE OF THE COUNTY CLERKS AS DOCUMENT NO. _____

WASTE WATER IS DISPOSED OF BY INDIVIDUAL SEPTIC SYSTEMS FOR BUILDABLE AREAS REFER TO DEVELOPMENT PLAN

UTILITY SIGNATURES

CENTURY LINK _____ (PHONE) _____ DATE _____

PUBLIC SERVICE CO OF NEW MEXICO _____ (RECE) _____ DATE _____

NEW MEXICO GAS _____ (GAS) _____ DATE _____

CO-CAST _____ (CABLE) _____ DATE _____

ELDORADO IDEA WATER SANITATION DISTRICT (WATER) _____ DATE _____

FLOOD NOTES:

A PORTION OF THESE LOTS LIE WITHIN ZONE 2, AREAS DETERMINED TO BE OUTSIDE THE 0.25 ANNUAL CHANCE FLOODPLAIN.

A PORTION OF THESE LOTS LIE WITHIN ZONE 1, AREAS DETERMINED TO BE OUTSIDE THE 1% ANNUAL CHANCE FLOOD. NO BASE FLOOD ELEVATIONS DETERMINED.

FLOOD ZONE INFORMATION WAS TAKEN FROM FEMA FIRM MAP #2049C0250E DATED DECEMBER 4, 2012.

NOTE THAT THE FLOOD ZONES REFERENCED ABOVE REVISE PREVIOUS FLOOD ZONE LOCATIONS (FEMA MAP DATED 11/4/88) DUE TO FEMA MAP REVISIONS DATED 6-17-98 AS NOTED. THE PREVIOUS LIMITS OF ZONE 1, AS SHOWN HEREON, WERE GRANTED AS A DRAINAGE EASEMENT.

THERE IS A 25' "NO-BUILD" SETBACK FROM THE NATURAL EDGE OF DRAINAGEWAYS WITHIN A 100-YEAR STORM FLOW OF 100 CFS OR GREATER AND NON-FEMA ARROYOS WITH DRAINAGE AREAS OF MORE THAN 30 ACRES. FROM PLAT OF NOTE 1A.

NOTE THAT THE "NO-BUILD" SETBACK FROM THE NATURAL EDGE OF DRAINAGEWAYS IS HEREBY MODIFIED TO 75' WITH THIS PLATTING.

OWNERS' CONSENT

THE UNDERSIGNED OWNERS AND PROPRIETORS OF THE LANDS SHOWN HEREON HAVE CAUSED THESE LANDS TO BE SUBDIVIDED AS SHOWN. THIS SUBDIVISION IS BEING MADE WITH THE FREE CONSENT OF AND IS IN CONFORMANCE WITH THE DESIRES AND WISHES OF THE UNDERSIGNED. THE UNDERSIGNED HEREBY WARRANT THAT THE LANDS SHOWN HEREON ARE FREE OF ALL LIENS, ENCUMBRANCES, EASEMENTS, AND OTHER INTERESTS, UNLESS OTHERWISE SPECIFICALLY NOTED ON THESE LOTS. THE UNDERSIGNED HEREBY GRANTED TO THE OWNERS/USERS OF THESE LOTS FOR PUBLIC UTILITIES, SAID EASEMENTS ARE FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF UTILITIES AS SHOWN HEREON. THE UNDERSIGNED HEREBY WARRANT THAT THEY CURRENTLY WITHIN THESE TRACTS OR LOTS.

MAINTENANCE OF PIPES AND DRAINAGE STRUCTURES IS THE RESPONSIBILITY OF THE CIELO COLORADO ESTATES HOMEOWNERS ASSOCIATION.

MAINTENANCE OF ROADS IS THE RESPONSIBILITY OF THE "LOT 15A-2 LOT OWNERS ASSOCIATION".

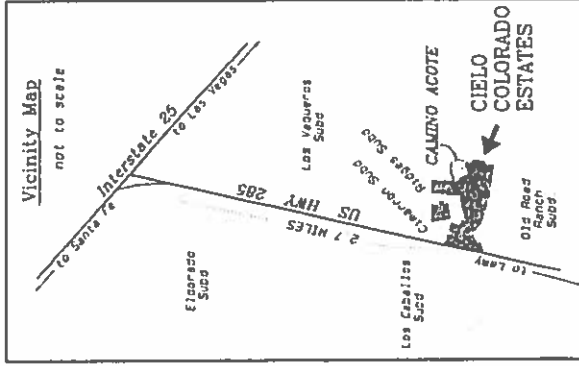
PREVIOUS LOCATIONS OF "CAMPING ACOTES" (THRU LOTS 10, 16, 17, 18 & 19) 5. THRU THE "PROPOSED FUTURE OPEN SPACE, LOT 1 & LOT 21 ARE HEREBY VACATED FOR ACCESS AND UTILITIES. AS SHOWN, PORTIONS OF CAMPING ACOTE ARE HEREBY REVISED & RELOCATED TO THE LOCATIONS AS SET FORTH HEREON. "CAMPING ACOTE" IS HEREBY GRANTED AS SHOWN.

THESE TRACTS LIE WITHIN THE PLANNING AND PLATTING JURISDICTION OF THE SANTA FE COUNTY, NEW MEXICO.

CIELO COLORADO LAND COMPANY, LLC
EDWARD P. ORTEGA, PRESIDENT
AS PRESIDENT OF PALMER PROPERTIES, INC.
MANAGING MEMBER OF CIELO COLORADO LAND COMPANY, LLC

STATE OF NEW MEXICO _____
COUNTY OF SANTA FE _____
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2014.
MY COMMISSION EXPIRES _____

NOTARY PUBLIC



SURVEYORS CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT AND THE NOTES HEREON WERE PREPARED BY ME OR UNDER MY PERSONAL SUPERVISION AND ARE A TRUE AND ACCURATE REPRESENTATION OF A FIELD SURVEY WHICH WAS COMPLETED ON 5/8/2014. TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF, THIS SURVEY COMPLIES WITH THE MINIMUM STANDARDS FOR LAND SURVEYING IN NEW MEXICO.

PRELIMINARY

DEAN L. SHLODER NEW MEXICO PROFESSIONAL SURVEYOR NO. 12451



COUNTY OF SANTA FE
COUNTY CLERK
I hereby certify that this instrument was filed for record on the _____ day of _____, A.D. 20____ at _____ o'clock _____ P.M. and was duly recorded in book _____ of the records of Santa Fe County.

Witnessed by me and Seal of Office
Notary Public
County Clerk, Santa Fe County, N.M.

Deputy _____

BCC Case #S-12-5452 SHEET 1 OF 4

INDEXING INFORMATION FOR COUNTY CLERK
UPC # 1-057-087-382-187

OWNER	SECTION	TOWNSHIP	RANGE	LOCATION/STREET NAME
CIELO COLORADO, LLC	21 & 22	T 10 N	R 10 E	COUNTY CLERK'S OFFICE

HIGH DESERT SURVEYING, INC.
PROFESSIONAL SURVEYING

1925 ASPEN DRIVE, SUITE 401
SANTA FE, NM 87505
PHONE: (505) 438-8094
FAX: (505) 424-1709

DTC, MAKE CIELO COLORADO ESTATES SUBDIVISION-PHASE 1 | PROJ. No. 00010-C02-P1

FINAL PLAT FOR
"CIELO COLORADO ESTATES"
Subdivision Phase 1

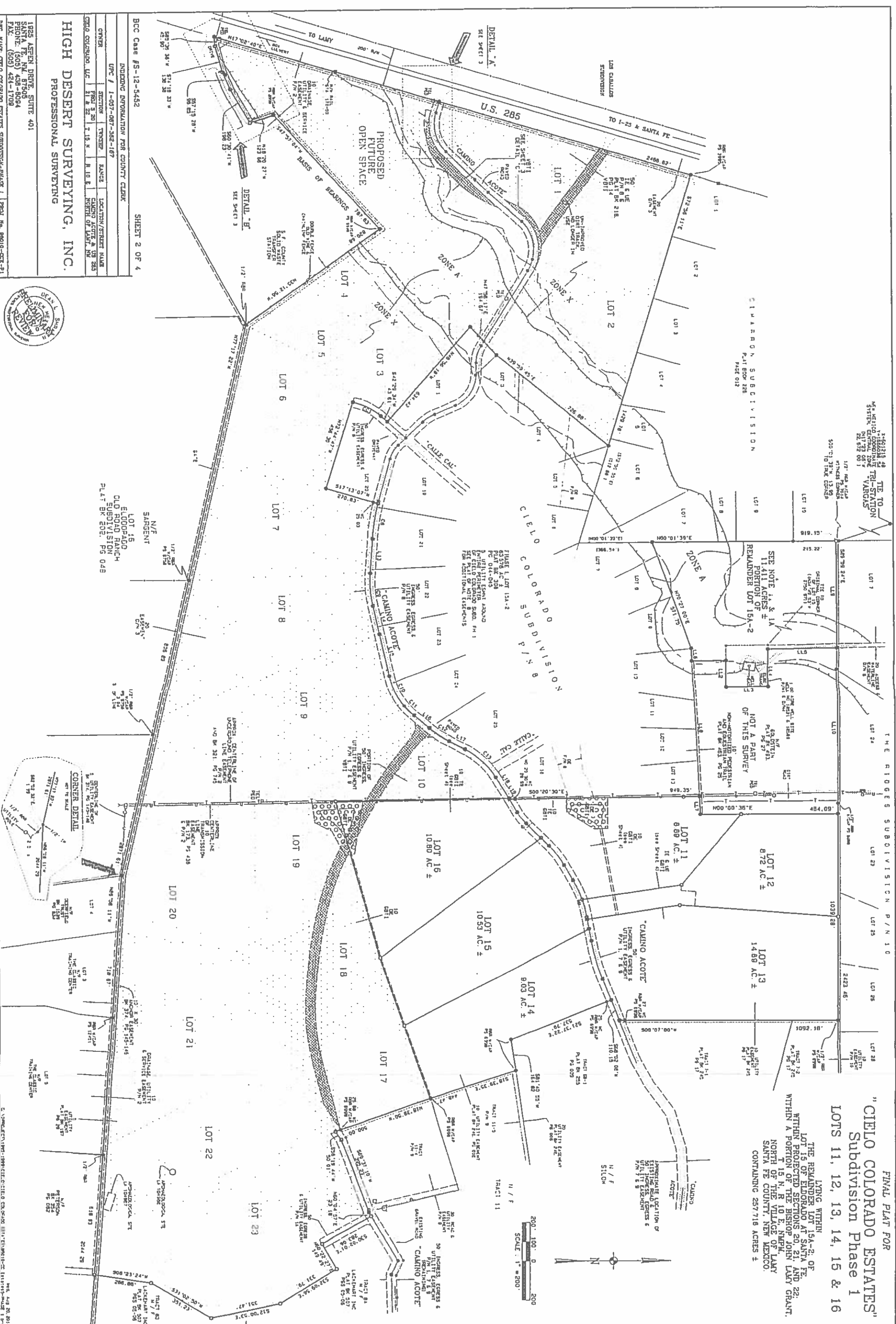
LOTS 11, 12, 13, 14, 15 & 16
LYING WITHIN
THE REMAINDER LOT 15A-2; OF
LOT 15 OF ELDORADO AT SANTA FE,
WITHIN PROJECTED SECTIONS 20, 21, AND 22;
WITHIN A PORTION OF THE BISHOP JOHN LAMY GRANT,
T 15 N, R 10 E, NMPM.
NORTH OF THE VILLAGE OF LAMY
SANTA FE COUNTY, NEW MEXICO.
CONTAINING 257.716 ACRES ±

NOTES:

- 1) REFER TO A PLAT TITLED "LOT SPLIT FOR RED SKY LAND AND CATTLE CO.", BY RICHARD A. MORRIS, PS 10277, FILED AT THE OFFICE OF THE SANTA FE COUNTY CLERK ON 8/28/94. AS DOCUMENT NO. 873,751. IN PLAT BOOK 284, PAGE 006
- 1A) REFER TO A "SUMMARY REVIEW SUBDIVISION OF LOT 15A-2 FOR RED SKY LAND AND CATTLE L.L.C.", PREPARED BY DEAN L. SHLODER, PS 12451, ON 1/27/2002. FILED AT THE OFFICE OF THE SANTA FE COUNTY CLERK ON 7/13/2002. AS DOC NO. 1214,607. IN PLAT BOOK 507, PAGES 05-06
- 2) REFER TO "ELDORADO AT SANTA FE, COMPRISING PORTIONS OF THE CANADA DE LOS ALAMOS AND BISHOP JOHN LAMY GRANTS, T 15 N, R 10 E, NMPM, AS SHOWN ON THE MAP DATED JAN. 1980 FILED AT THE OFFICE OF THE SANTA FE COUNTY CLERK ON 10/15/1981. IN PLAT BOOK 107, PAGE 006
- 3) REFER TO A "20' EASEMENT FOR CONSTRUCTION, REPAIR, AND MAINTENANCE OF A WATER SYSTEM", SAID EASEMENT WAS RECORDED AT THE OFFICE OF THE SANTA FE COUNTY CLERK IN MISC BOOK 482, PAGES 132-133
- 4) REFER TO A "SUBSTITUTION OF EASEMENT", DATED 12/21/88, AS RECORDED IN THE OFFICE OF THE SANTA FE COUNTY CLERK ON 1/17/89. IN BOOK 637, PAGES 035-036
- 5) (INTENTIONALLY OMITTED)
- 6) REFER TO A "20' MATERIAL EASEMENT WITHIN LOT 15, ELDORADO AT SANTA FE, RECORDED AT THE OFFICE OF THE SANTA FE COUNTY CLERK IN BOOK 484, PAGE 430
- 7) REFER TO A "LOT SPLIT FOR RED SKY LAND & CATTLE CO." BY MITCHELL, NORMAN, PS 8998, RECORDED AT THE OFFICE OF THE SANTA FE COUNTY CLERK ON 7/14/92. AS DOC NO. 779,921. IN PLAT BOOK 237, PAGE 038
- 8) REFER TO A PLAT TITLED "CIELO COLORADO SUBDIVISION - PHASE 1" CHURCH, CLARK, PS 10577, RECORDED AT THE SANTA FE COUNTY CLERK'S OFFICE, PS 10577/95. IN PLAT BOOK 308, PAGES 044-045. AS DOC NO 958,939
- 9) REFER TO A "LOT SPLIT FOR TOM L. CARRELL", PREPARED BY MITCHELL, NORMAN, PS 10577, RECORDED AT THE OFFICE OF THE SANTA FE COUNTY CLERK ON 3-29-93. AS DOC NO. 808,527. IN PLAT BOOK 246, PAGE 006.
- 10) REFER TO A PLAT TITLED "SURVEY PLAT IN THE RIDGES A SUBDIVISION OF LOT 15A-1. . . . PREPARED BY GARY E. DANSON, PS 7014
- 11) FOR BASIS OF BEARINGS REFER TO A "BOUNDARY SURVEY PLAT OF REMAINDER PORTIONS OF THE CIELO COLORADO LAND COMPANY, LLC, NEW MEXICO LIMITED LIABILITY COMPANY, DATED 4/10/2011, RECORDED AT THE OFFICE OF THE SANTA FE COUNTY CLERK ON APRIL 15TH, 2011 AS INSTRUMENT NO 1632,358. IN PLAT BOOK 730, PAGES 37-38

FINAL PLAT FOR
"CIELO COLORADO ESTATES"
Subdivision Phase 1
LOTS 11, 12, 13, 14, 15 & 16

LYING WITHIN
THE REMAINDER LOT 15A-2 OF
LOT 15 OF ELUDORADO AT SANTA FE,
WITHIN PROTECTED SECTIONS 20, 21, AND 22,
T 15 N, R 10 E, NMPM,
NORTH OF THE VILLAGE OF LAMY,
SANTA FE COUNTY, NEW MEXICO.
CONTAINING 257.716 ACRES ±



BCC Case #S-12-5452
SHEET 2 OF 4

DIVIDING INFORMATION FOR COUNTY CLERK

OWNER	SECTION	TOWNSHIP	RANGE	LOCATION/STREET NAME
ELUDORADO	20	15 N	10 E	LOT 15
ELUDORADO	21	15 N	10 E	LOT 21
ELUDORADO	22	15 N	10 E	LOT 22

HIGH DESERT SURVEYING, INC.
PROFESSIONAL SURVEYING

1925 ASPEN DRIVE, SUITE 401
SANTA FE, NM 87505
PHONE: (505) 438-8084
FAX: (505) 421-1708
DEC. NAME: CIELO COLORADO ESTATES SUBDIVISION - PHASE 1 | PROJ. NO. 00010-001-01



CORNER DETAIL

LOT 15
ELUDORADO
OLD ROAD RANCH
SUBDIVISION
PLAT BK 202, PG 048

LOT 15
ELUDORADO
OLD ROAD RANCH
SUBDIVISION
PLAT BK 202, PG 048

LOT 15
ELUDORADO
OLD ROAD RANCH
SUBDIVISION
PLAT BK 202, PG 048

LOT 15
ELUDORADO
OLD ROAD RANCH
SUBDIVISION
PLAT BK 202, PG 048

DRAFT

DRAFT

**SANTA FE COUNTY
AFFORDABLE HOUSING AGREEMENT
CIELO COLORADO ESTATES**

This Affordable Housing Agreement (the "Agreement") for Cielo Colorado Estates subdivision (the "Project") is entered into this _____ day of _____, 2014, between Cielo Colorado Land Company, LLC, a New Mexico LLC, with its principal place of business at 915 Mercer Street, Santa Fe, NM 87505 (the "Applicant") and Santa Fe County (the "County").

RECITALS:

WHEREAS, the Applicant has received master plan approval and preliminary development plan and plat approval from the Board of County Commissioners ("BCC") for a 24 lot residential subdivision named Cielo Colorado Estates subdivision located within tract 15A-2 of the Eldorado at Santa Fe subdivision (the "Approval")

WHEREAS, Santa Fe County Ordinance No. 2006-02 and Ordinance No. 2012-1 ("Ordinances") require, among other things, the Applicant to provide Affordable Units within the Project and/or comply with the Ordinance through alternative means; and

WHEREAS, the County has adopted the Santa Fe County Affordable Housing Regulations ("Regulations") to implement the Ordinance; and

WHEREAS, pursuant to the Ordinance and Regulations, Applicant submitted an Affordable Housing Plan which was approved by the Affordable Housing Administrator (the "Plan"); and

WHEREAS, the Project is classified as a minor project and the Ordinances establish the affordable housing requirement for a minor project at eight percent (8%); and

WHEREAS, the Applicant desires to meet its affordable housing obligations by constructing and selling affordable units in conformance with the Regulations; and

WHEREAS, Applicant and the County desire to memorialize the Applicant's obligations under the Approval, the Ordinances and the Regulations.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the County and Applicant hereby agree as follows:

1. **Definitions.** All capitalized terms herein have the same meanings given them in the Ordinances and the Regulations.
2. **Controlling Affordable Housing Ordinance and Regulations.** The Ordinances and the Regulations shall apply to this Project and shall govern the Applicant's performance of



all obligations under this Agreement, unless otherwise stated herein. The applicable affordable housing percentage for the Project is eight percent (8%).

3. **Required Affordable Units and Lots.** The eight percent (8%) affordable housing requirement is applied to the twenty four (24) lots in the Project, resulting in a requirement of two (2) Affordable Units. Applicant agrees to cause to be built and sold one (1) Affordable Unit for Income Range 2 and one (1) Affordable Unit for Income Range 3 to Eligible Buyers at Maximum Target Housing Prices set forth in the Regulations. The County may revise the Maximum Target Housing Prices annually and the Applicant agrees to be subject to this revision. Until this revision is made, the Applicant shall be subject to the current Maximum Target Housing Prices in the Regulations. The Maximum Target Housing Prices represent the maximum effective purchase prices to be paid by the Eligible Buyer, after any subsidies are applied, including the County Affordability Mortgage and Lien. The contract sales prices, as set forth in the HUD-1 settlement statement, for all Affordable Units shall be set at ninety five percent (95%) of the unit's appraised value. Both Affordable Units shall be three bedroom, two bath homes located on lots four (4) and five (5) of the Project and shall meet the minimum structural requirements, minimum bedrooms and bathrooms, minimum heated floor area, energy efficiency requirements and other requirements set forth in the Ordinances and the Regulations, unless otherwise stated herein.
4. **Adjustment of Maximum Target Housing Prices.** The Maximum Target Housing Prices set forth in the Regulations may be adjusted annually and the Applicant agrees to be subject to the adjusted prices.
5. **Adjustment of Maximum Target Housing Prices Due to Homeowners Association Fees.** In the event that the homeowners' association fee applicable to an Affordable Unit exceeds \$100 per month (regardless of the billing cycle), the Maximum Target Housing Price as defined in Section 3 for each Affordable Unit shall be reduced by the Applicant so that the buyer's mortgage loan principal amount is reduced by the amount that the monthly fee exceeds \$100. Applicant must disclose the homeowners' association fee to the County and make any required adjustment to the Maximum Target Housing Price in order for the Affordable Unit sale to be certified as a Qualified Transaction.
6. **Alternate Means of Compliance in Lieu of Construction.** The parties have chosen to cause to be built and sold Affordable Units within the Project, rather than present an Alternate Means of Compliance for the fulfillment of the Applicant's affordable housing obligations.
7. **Development Schedule.** The development schedule for the Project shall be such that a minimum of one (1) Affordable Unit shall be constructed for every seven (7) units constructed. The parties agree that the first phase of the Project shall consist of six (6) units and shall not include Affordable Units and further agree that the second phase of the Project consisting of four (4) lots shall include one (1) Affordable Unit.

8. **Integration of Affordable Units and Affordable Lots in the Project.** Lot numbers 4 and 5 of the Project are the lots upon which Affordable Units shall be designed and built in conformance with the Ordinances and the Regulations. Architectural and landscaping features of the Affordable Units and market rate units shall be similar in appearance.
9. **Final Plat Recordation.** This Affordable Housing Agreement must be filed and recorded simultaneously with the Final Plat for the first phase and subsequent phases of the Project. Should the Final Plat for any phase be filed and recorded without this Affordable Housing Agreement, such filing and recordation shall be null and void and without any legal effect.
10. **Marketing Plan.** In accordance with the Plan, Applicant agrees to market the Affordable Units through print advertising, fliers and other promotional media, notice to the County, notice to affordable housing agencies whose mission it is to promote affordable housing and first time homebuyers, and notice to real estate brokers.
11. **Closing of Qualified Transactions.** All Qualified Transactions shall be closed in accordance with the procedures in this Section.
- A. Notice of Closing; Appraisal. The Applicant shall give the County at least ten (10) days' advance written notice of the scheduled closing date for a Qualified Transaction. The notice shall include:
1. The name of the Eligible Buyer (s) as well as a copy of their Certification of Eligibility;
 2. The date and time of the scheduled closing;
 3. The name and location of the title company closing the transaction and the name and telephone number of the closing agent(s);
 4. An appraisal of the Affordable Unit being sold, which appraisal shall (i) be prepared by a properly licensed, certified real estate appraiser; (ii) be paid for by the Applicant, unless such appraisal is required by the mortgage lender, in which case it shall be paid for by the lender or the Eligible Buyer; and (iii) has been prepared within the previous six (6) months.
- B. Recordation of Affordability Mortgage and Lien. The Ordinances' goals of having Affordable Units owner-occupied by Eligible Buyers and maintaining long term affordability shall be achieved through the execution at closing of a County Affordability Mortgage and Lien, which contains a right of first refusal as set forth in the Ordinances and the Regulations. At least two (2) business days prior to the date of the scheduled closing, the County shall deliver to the title company (with a copy to the Applicant and the Eligible Buyer), the Affordability Mortgage and Lien along with written instructions to the closing agent concerning the execution, recording, and returning of the Affordability Mortgage and Lien. Any cost associated with the recording and returning of the Affordability Mortgage and Lien shall be borne by the Applicant.
- C. Settlement Statement. The Applicant shall cause the title company to

transmit, within ten (10) days of the closing of a Qualified Transaction, a copy to the County of the Settlement Statement (HUD-1) for the Qualified Transaction, signed by the seller and purchaser.

D. Certificate of Compliance. Upon receipt and review by the County of the closing statement from the title company or the Applicant, the County shall issue a Certificate of Compliance for the Qualified Transaction.

12. **Affordability Lien and Maintenance of Long-Term Affordability.** Notwithstanding the provisions of Section 11, County and Applicant agree that the Applicant may provide the required Affordable Units through a program with a non-profit housing organization where the non-profit holds a lien in lieu of the County affordability lien provided that the total lien held by the non-profit, including its cash subsidy, can be no greater than three (3) times the amount of cash proven to be contributed by the non-profit from its own funds to subsidize the homeowner. Furthermore, the principal amount of the lien shall equal the contract sales price as shown on the HUD-1 settlement statement, which includes all liens; less the effective sales price, which is the affordable buyer's first mortgage amount plus down payment from their own funds; less the cash subsidy contributed by entities other than the non-profit. If there remains a difference between the total principal amount of the lien that is allowed per the above formula and the maximum lien amount that can be retained by the non-profit, as set forth above, the difference shall become the principal amount of a subordinate County affordability mortgage and lien. The effective sales price paid by the Eligible Buyer after any subsidy shall be less than or equal to the Maximum Target Housing Price, as set forth in the Regulations. Applicant agrees that the contract sales price for an Affordable Unit must be set between ninety-five percent (95%) and one hundred percent (100%) of the unit's appraised value. Applicant agrees that the note and mortgage instruments used by the non-profit to secure this lien shall represent a deferred payment, non-amortizing, zero percent (0%) loan that shall not include a shared appreciation provision, nor include a right of first refusal with the County and must be approved by the Affordable Housing Administrator. Applicant agrees that the difference between the cash subsidy provided by the non-profit and the total amount of the lien retained by the non-profit shall, upon payoff of this subsidy loan, be committed to affordable housing programs for households in Santa Fe County, per an agreement between the non-profit and the Applicant, a copy of which shall be provided to the County prior to the first closing of an Affordable Unit under this Agreement. Applicant agrees that for such a transaction to be certified as a Qualified Transaction, all other provisions of Section 11 of this Agreement must be satisfied, along with all provisions of the Ordinances and Regulations, unless otherwise stated herein.
13. **Incentives.** In consideration of Applicant's obligations hereunder and in accordance with the Ordinances, County has agreed to provide the following incentives to Applicant:
 - A. **Density Bonus.** County agrees to grant Applicant a density bonus of zero (0) units for the provision of the Affordable Units identified in Section 3 hereof.
 - B. **Relief from Development Fees.** County agrees to waive all development fees for each Affordable Unit to be provided by Applicant hereunder.

14. **Successors, Assigns and Buyers of Affordable Lots.** Applicant's obligations hereunder shall be binding upon its successors and assigns as well as any developer, contractor or other third party (other than an Eligible Buyer) to whom an Affordable Lot identified in Section 8 is transferred. Applicant agrees to provide County with ten (10) business days advance written notice of its intent to transfer an Affordable Lot to someone other than an Eligible Buyer, such notice to include a copy of the sales contract or other agreement by which such third party shall irrevocably assume Applicant's obligations hereunder with respect to such Affordable Lot. County shall have the right to (i) request further assurances that Applicant's obligations with respect to the Affordable Lot are being assumed by the transferee; (ii) require changes to the portion of the sales contract or other agreement concerning the transferee's assumption of Applicant's obligations; and (iii) attend the closing of the transfer to assure that the sales contract or other agreement whereby the transferee assumes Applicant's obligation is executed.
15. **Remedies.** Applicant acknowledges and agrees that, but for the Affordable Housing Agreement, County would not have approved the final plat for the Project. Applicant further acknowledges and agrees: (i) that because the Affordable Units to be provided by Applicant are a public good, no adequate remedy exists at law to remedy Applicant's failure to fulfill its obligations hereunder; and (ii) that it would be inconvenient and unfeasible for County to accurately measure the value of some of the incentives that Applicant received hereunder; and (iii) an appropriate remedy for Applicant selling Affordable Lots to non-Eligible Buyers, or for Applicant to not provide the required number of Affordable Units in the Project, is to: (a) pay the County 50% of the Maximum Target Housing Price set forth in the Affordable Housing Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range; (b) collect all development fees that were waived for each house on an Affordable Lot. Accordingly, County shall be entitled to the following remedies for the indicated breaches by Applicant of this Agreement, which remedies Applicant acknowledges and agrees are fair and reasonable.

In the event Applicant does not sell Affordable Units to Eligible Buyers in the amount required in Section 3 and Section 7 within seven (7) years, which time may be extended by the County if a proportional number of market rate units also remains unsold, and has not paid the County fifty percent (50%) of the Maximum Target Housing Price set forth in the Regulations for each required Affordable Unit, defined as a three bedroom unit, in the applicable Income Range, the County shall be entitled to:

- A. Execute an injunction halting all construction or development on the Project until such time as Applicant remedies its breach and complies with its obligations hereunder;
- B. Refuse to grant preliminary or final plat approval for any future phase of the Project;
- C. Collect all development fees that were waived for each house on an Affordable Lot that Applicant sold to a non-Eligible Buyer or;

- D. Receive title at no cost to all remaining identified Affordable Lots, per Exhibit A;
- E. Receive fifty percent (50%) of the Maximum Target Housing Price set forth in the Regulations for each required, yet unsold Affordable Unit, defined as a three bedroom unit, in the applicable Income Range.

16 . Miscellaneous Provisions.

- A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.
- B. This Agreement shall be construed and enforced in accordance with the Ordinances, and the Regulations and the laws of the State of New Mexico.
- C. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.
- D. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.
- E. At the request of the County, Applicant shall provide the County with such documentation the County deems relevant to establish Applicant's compliance with this Agreement. Any failure by Applicant to comply with this subparagraph shall constitute a breach of this Agreement, subjecting Applicant to the per unit payment provisions of Section 15 above, multiplied by the number of Affordable Units for which information has been requested.
- F. This Agreement shall not relieve Applicant from complying with present or future County ordinances, duly adopted resolutions or regulations applicable to development within the County.
- G. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties thereto.
- H. This Agreement must be filed and recorded.

17. This Agreement shall terminate upon the County issuing a certificate of compliance with the Agreement in accordance with Section 7.5 of the Regulations. The County may terminate this Agreement and impose all Section 15 enabled payments for the required, yet unsold Affordable Units and recapture the cost of any granted incentives in the event of a breach of the Applicant.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of this _____ day of _____, 2014.

APPLICANT:

CIELO COLORADO LAND COMPANY, LLC
A New Mexico Limited Liability corporation

By: _____
Managing Member

SANTA FE COUNTY

By: _____
Board of County Commissioners

SANTA FE COUNTY AFFORDABLE
HOUSING ADMINISTRATOR

By: Steven Brugger, AICP

APPROVED AS TO FORM:

By: _____
Gregory S. Shaffer, County Attorney

By: Katherine Miller, County Manager

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

The foregoing was acknowledged before me this ____ day of _____,
2014, by _____ (name), _____ (title) of _____
_____, a New Mexico corporation, on behalf of said corporation.

Notary Public

My commission expires:

V. APPROVAL OF MINUTES: June 20, 2013

Member Katz moved to approve the June minutes as submitted. Member DeAnda seconded and the motion passed by unanimous [7-0] voice vote.

VI. OLD BUSINESS

- A. CDRC CASE # Z/S 12-5450 Cielo Colorado Subdivision. Cielo Colorado, LLC., Applicant, Jim Siebert, Agent, requests Master Plan Zoning approval for a 24-lot residential subdivision on 246.30 acres \pm within Tract 15A-2 of the Eldorado at Santa Fe Subdivision. The Applicant also requests to allow two cul-de-sacs (dead-end roads) to exceed 500 feet in length. The property is located on the east side of US 285, off Camino Acote, within Sections 21 & 22, Township 15 North, Range 10 East (Commission District 4).

Mr. Larrañaga presented the staff report as follows:

"On February 21, 2013, the County Development Review Committee met and acted on this case. The decision of the CDRC was to table this case so that the Applicant could have further conversations with the community. The Applicant has had several meetings with the community and as a result has amended the Master Plan submittal to accommodate the concerns of the adjoining property owners.

"In the original Master Plan Zoning application the Applicant requested a 67-lot residential subdivision with the lot sizes ranging between 2.50 and 7.29 acres on 257.16 acres. The proposed subdivision would have been developed in 9 phases over a 9-year period with an anticipated start date of 2015.

"The Applicant is now requesting Master Plan Zoning for a 24-lot residential subdivision with the lot size ranging in size between 2.54 and 16.16 acres on 246.30 acres. The proposed subdivision will be developed in four phases over an eight-year period with an anticipated start date of 2014.

"Tract 15 A-2 was created as part of the Eldorado at Santa Fe Subdivision. A Master Plan for Cielo Colorado was approved by the BCC in 1995. The Master Plan included 91 lots with an average density of 3.79 acres on 344.58 acres; 25 of the 91 proposed lots were platted in 1995. An amended Master Plan, recorded in 2000, eliminated 4 lots totaling 12.5 acres. In 2002, the Master Plan was vacated to allow the platting of larger lots at the east end of Tract 15A-2. This Application for Master Plan includes the remainder of the property that has not been platted within Tract 15A-2.

"Article V, § 5.2.1.b states: 'A Master Plan is comprehensive in establishing the scope of a project, yet is less detailed than a Development Plan. It provides a



means for the County Development Review Committee and the Board to review projects and the sub-divider to obtain concept approval for proposed development without the necessity of expending large sums of money for the submittals required for a Preliminary and Final Plat approval’.

“The Applicant also requests that the CDRC allow two cul-de-sacs to exceed 500 feet in length. The dead end road which serves Lots 3-6 is 787 feet in length, and requires a cul-de-sac with a minimum driving surface radius of 50 feet. The second dead end road, which is an extension of Camino Acote, serves Lots 18-21 and is 1,361 feet in length. These closed end roads will have a cul-de-sac with a minimum driving surface radius of 60 feet.”

Mr. Larrañaga said staff reviewed the Applicant’s request and recommends the approval of two cul-de-sacs to exceed 500 feet in length subject to the following staff conditions:

1. The Applicant shall comply with design standards set forth in Article V, § 8.2.1d.
2. The Applicant shall comply with the Santa Fe County Fire Marshal requirement that the extension of Camino Acote maintain a cul-de-sac with a minimum driving surface radius of 60 feet.

Staff also recommends approval for Master Plan Zoning for a 24-lot residential subdivision on 246.30 acres \pm within Tract 15A-2 of the Eldorado at Santa Fe Subdivision subject to the following staff condition:

1. Master Plan with appropriate signatures shall be recorded with the County Clerk, as per Article V, § 5.2.5.
2. The Applicant shall address the requirement for all weather access on Camino Acote with the Preliminary Development Plan.
3. A detailed water budget and water restrictive covenants shall be submitted prior to Preliminary Development Plan.
4. An analysis of appropriate liquid waste disposal setback shall be required for the first sustainable phase of this development prior to Preliminary Development Plan.

Mr. Larrañaga noted DOT’s review [*Exhibit 1*] and a packet of support letters regarding the development [*Exhibit 2*] that were distributed to the CDRC

Duly sworn, Jim Siebert, agent for the applicant, said the developers have held five meetings with the neighbors following the CDRC’s tabling. The project began with 67 lots and after several meetings there are now 24 lots.

Using a site map, Mr. Siebert located Tract 15 within the area and the existing utilities within the subdivision. The original master plan consisting of 2.5-acre lots was vacated to plat larger lots. He discussed the agreement with the Eldorado Area Water and Sanitation District to provide service, which was originally for 67 taps, and that will be revised and reduced. He discussed the entry to the subdivision, the equestrian and pedestrian trail and how the moratorium affected this subdivision.

Mr. Siebert said the developer is confident that water can be supplied to the subdivision. He added that the hydrants in the area meet the County's 500 gpm flow standard.

Duly sworn, Gregory Hart, 116 Camino Acote, president Lot 15A2 Homeowners Association, said a group of area residents concerned with the development met and organized to ask questions of the developer. He and other area residents now support the development. Mr. Hart said the revised master plan will definitely "increase value to our homes."

Chair Gonzales thanked the speaker and noted it was good when the area residents and developer can meet and come to agreement.

There were no other speakers on this case.

Member Katz moved to approve the variance regarding the cul-de-sac and recommend approval of Z/S 12-5450 master plan zoning with all staff-imposed conditions. His motion was seconded by Member Anaya and passed by unanimous [7-0] voice vote.

- VI B. CDRC CASE # Z/S 13-5130 La Bajada Ranch Master Plan
Amendment: Santa Fe County, Applicant, requests a Master Plan Amendment for a previously approved Master Plan (Santa Fe Canyon Ranch) to amend the water supply plan and to provide consistency with the current property owner boundaries. The amended Master Plan will allow for 156 residential lots on the 470.55 acres that the County of Santa Fe now owns. The amended Master Plan will utilize the Santa Fe County Water Utility (instead of the previously proposed new on-site community water system). The property is located off Entrada La Cienega along Interstate 25 in the La Cienega/La Cieneguilla Traditional Historic Community within Sections 1, 2, 10, 12, 13, Township 15 North, Range 7 East and Sections 5, 6, 7, 8, Township 15 North, Range 8 East (Commission District 3)
[Exhibit 3: Conditions distributed by staff; Exhibit 4: Toups letter to CDRC dated 7/18/13]

Chair Gonzales recused himself from this case and Member Martin assumed the responsibilities of Chair.

Vicente Archuleta, Development Review Team Leader, reviewed the staff report as follows:

"On June 20, 2013, the CDRC met and acted on this case. The decision of the CDRC was to table to allow the Applicant to address concerns brought forth by the community.

~~COMMISSIONER ANAYA: Madam Chair, I would move to extend the contract, the agreement with Katherine Miller, note that we had good discussion about opportunities that we have before us as a County, and that we look forward to taking on those opportunities with her leading as our County Manager.~~

~~COMMISSIONER CHAVEZ: Second.~~

~~CHAIR HOLIAN: Okay. So, Commissioner Anaya, your motion is to approve amendment #2?~~

~~COMMISSIONER ANAYA: It is.~~

~~CHAIR HOLIAN: Okay, I have a motion and a second. Is there any further discussion?~~

~~The motion passed by unanimous [5-0] voice vote. [Commissioner Mayfield's vote was recorded after the fact. See below.]~~

XVIII.B. 2. CDRC Case # Z/S 12-5450 Cielo Colorado Subdivision. Cielo Colorado, LLC, Applicant, Jim Siebert, Agent, Requests Master Plan Zoning Approval for a 24-Lot Residential Subdivision on 246.30 Acres + within Tract 15A-2 of the Eldorado at Santa Fe Subdivision. The Property is Located on the East Side of US 285, Off Camino Acote, within Sections 21 & 22, Township 15 North, Range 10 East (Commission District 4)

JOSE LARRAÑAGA (Case Manager): Thank you, Madam Chair. On February 21, 2013, the County Development Review Committee met and acted on this case. The decision of the CDRC was to table this case so that the Applicant could have further conversations with the community. The Applicant has had several meetings with the community and as a result has amended the Master Plan submittal to accommodate the concerns of the adjoining property owners.

On July 18, 2013, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend approval of the Applicant's request for Master Plan Zoning for a 24-lot residential subdivision. The CDRC also approved two cul-de-sacs to exceed 500 feet in length.

In the original Master Plan Zoning Application the Applicant requested a 67-lot residential subdivision with the lot sizes ranging between 2.50 and 7.29 acres on 257.16 acres. The proposed subdivision would have been developed in nine phases over a nine-year period with an anticipated start date of 2015.

The Applicant is now requesting Master Plan Zoning for a 24-lot residential subdivision with the lot size ranging in size between 2.54 and 16.16 acres on 246.30 acres. The proposed subdivision will be developed in four phases over an eight-year period with an anticipated start date of 2014.

Tract 15 A-2 was created as part of the Eldorado at Santa Fe Subdivision. A Mast



Plan for Cielo Colorado was approved by the Board of County Commissioners in 1995. The Master Plan included 91 lots with an average density of 3.79 acres on 344.58 acres. 25 of the 91 proposed lots were platted in 1995. An amended Master Plan, recorded in 2000, eliminated four lots totaling 12.5 acres. In 2002, the Master Plan was vacated to allow the platting of larger lots at the east end of Tract 15A-2. This Application for Master Plan includes the remainder of the property that has not been platted within Tract 15A-2.

Building and Development Services staff has reviewed this project for compliance with pertinent Code requirements and has found that the following facts presented support the request for Master Plan Zoning: the Application is comprehensive in establishing the scope of the project; the review comments from State Agencies and County staff has established that this Application for Master Plan, is in compliance with State requirements, Ordinance No. 2005-8 and Article V, Section 5, Master Plan Procedures, of the Land Development Code.

Staff recommendation is for approval for Master Plan Zoning for a 24-lot residential subdivision on ±246.30 Acres within Tract 15A-2 of the Eldorado at Santa Fe Subdivision subject to the following conditions. Madam Chair, may I enter these conditions into the record?

[The conditions are as follows:]

1. Master Plan with appropriate signatures shall be recorded with the County Clerk, as per Article V, § 5.2.5.
2. The Applicant shall address the requirement for all weather access on Camino Acote with the Preliminary Development Plan.
3. A detailed water budget and water restrictive covenants shall be submitted prior to Preliminary Development Plan.
4. An analysis of appropriate liquid waste disposal setback shall be required for the first sustainable phase of this development prior to Preliminary Development Plan.

MR. LARRAÑAGA: Madam Chair, I stand for any questions.

CHAIR HOLIAN: Are there any questions for staff? Seeing none, is the applicant here? Will you please be sworn in?

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: Madam Chair, my name is Jim Siebert. My address is 915 Mercer. Let me first say that we began with 67 lots and faced a considerable amount of neighborhood opposition and what you have before you tonight is really kind of the culmination of about six different neighborhood meetings that we've worked on this project.

But let me give you a little background on this. This is Lot 15 in the Eldorado Subdivision which is this kind of area here. The area outlined in black is the area that we're proposing for the subdivision. The area in red is actually the area that has a paved road and utilities in it. This area right here is the first subdivision that took place within Lot 15. There are 25 2 ½-acre lots and all utilities including Eldorado water are already within the area outlined in the red.

This is the subdivision. The entry off 285 – we've met with the neighbors here to make sure that they're in agreement with the lot layout. We had originally 14 lots at the entry that didn't seem to fly. We're down to two now, and a large area that will remain as common open space for the entire development. There is very little new construction that needs to take place. The distance from the road to the end of the cul-de-sac here will be new construction. This cul-de-sac here would be new construction and the lots as laid out can be served off the existing roadways and existing utilities.

In all, we're in agreement with conditions as stated by staff and I'll answer any questions you may have.

CHAIR HOLIAN: Thank you, Mr. Siebert. Are there any questions for Mr. Siebert? Seeing none, this is a public hearing. Is there anyone here from the public who would like to speak about this case, either in favor or in opposition? Seeing none, the public hearing is closed. Are there any questions for either the staff or Mr. Siebert?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Siebert, I do have a question now on the archaeological zone. So as far as water and it will be serviced by the Eldorado water utility?

MR. SIEBERT: That's correct.

COMMISSIONER MAYFIELD: And staff – a question for staff now, please. Based on the diagram all the infrastructure is already there for the water utility hookups?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, they will have to extend some of the waterlines and of course improve the extended roads and the roadways, but yes, the infrastructure is already in, and there are some fire hydrants in place.

COMMISSIONER MAYFIELD: Okay. And there's no issues with low water pressure or anything else with that system out there?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, not that I am aware of.

COMMISSIONER MAYFIELD: Okay. Thank you. That's all I have, Madam Chair.

CHAIR HOLIAN: Are there any further questions? What are the wishes of the Board? Commissioner Chavez.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Yes.

COMMISSIONER STEFANICS: I'll move for approval with staff conditions.

COMMISSIONER CHAVEZ: Second.

CHAIR HOLIAN: Okay. I have a motion and a second for approval of CDRC Case Z/S 12-5450, Cielo Colorado Subdivision with staff conditions.

The motion passed by unanimous [5-0] voice vote.

COMMISSIONER CHAVEZ: I have a follow-up question, Madam Chair, for staff.

CHAIR HOLIAN: Yes.

COMMISSIONER CHAVEZ: For staff. Are these conditions of approval, are they recorded anywhere on the plat or how are they documented, Mr. Larrañaga?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, they are documented on the final order, of course which is the final decision and then the follow-up would be getting the master plan recorded with the proper signatures and so on.

COMMISSIONER CHAVEZ: Got it. Okay. That was really more for my clarification but I wanted just to be sure that we were tracking that. Thank you, Madam Chair.

- XVIII.B. 3. CDRC Case # V/Z/PDP 13-5080 Windmill Water Variance, Master Plan & Preliminary Development Plan. Diana & Leon Richter, Applicants, Jim Siebert, Agent, Request Master Plan Zoning & Preliminary Development Plan Approval to Allow a Small Scale Commercial Use Consisting of a Domestic Water Supply Service. This Request Includes a Variance of Article VII, Section 6.4.1d (Requirements for Water Availability Assessments). The Applicant Also Requests That Final Development Plan Be Approved Administratively. The Property is Located at 2042 Old U.S. 66, Near the Town of Edgewood, within Section 34, Township 10 North, Range 7 East, (Commission District 3)

MR. LARRAÑAGA: Thank you, Madam Chair. On June 20, 2013, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend approval of the Applicants' request for a variance of the requirement to demonstrate a 100-year water supply, Master Plan Zoning, Phase I and II Preliminary Development Plan and to allow the Final Development Plan, for Phase I and II to be reviewed and approved administratively.

The Applicants request Master Plan Zoning approval to allow a small-scale commercial use consisting of a domestic water supply service to be completed in two phases. The request also includes Preliminary Development Plan approval for Phase I and II. Phase I consists of a 2,200 square foot residence, a 1,064 square foot garage, a 100 square foot shed, a 1,188 square foot bottling plant, a 224 square foot office, a 5,000 gallon storage tank, a 50 square foot self-serve dispenser structure, a domestic well and a well registered with State Engineer as a commercial well. Phase II will consist of a 1,200 square foot addition to the existing dwelling to be utilized as an office. The site is located within the Edgewood Traditional Community where commercial zoning may be approved anywhere provided the performance standards and criteria set forth by the code are met. The Applicants' request includes that the Final Development Plan, for Phase I and II, be reviewed and approved

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the meeting as well. If there are no other questions or comments of the applicant we'll open the public hearing. Is there anybody present to speak in favor or against this proposal? Seeing none, the public hearing portion is closed. What's the pleasure of the Board? Commissioner Mayfield, you had a comment?

CHAIR MAYFIELD: Commissioner, this is in your district so I'll defer.

COMMISSIONER ANAYA: Okay. Commissioner Chavez.

COMMISSIONER CHAVEZ: Mr. Chair, I'll go ahead and make a motion to approve BCC case MIS 10-5152, Extension of the Downs at Santa Fe Master Plan.

CHAIR MAYFIELD: Second, Commissioner.

COMMISSIONER ANAYA: There's a motion from Commissioner Chavez to approve the two-year time extension, a second by Commissioner Mayfield, Chairman Mayfield. Any further discussion? Just a comment from me. I too look forward to continued communication and coordination as the Commissioner from District 3 that has the Downs in the district. I'm happy that you've continually worked with Mr. Dickens and other members of the La Cienega Valley area, keeping their interests in mind and know that those communications will continue. If there's no other questions or comments.

The motion passed by unanimous [4-0] voice vote.

- VI. A. 5. CDRC Case # S/V 12-5451 Cielo Colorado Estates Preliminary Development Plan, Plat and Variance. Cielo Colorado LLC, Applicant, James W. Siebert, Agent, Request Preliminary Development Plan and Plat Approval for a 24-Lot Residential Subdivision on Tract 15A-2 of the Eldorado at Santa Fe Subdivision Consisting of 246.30 Acres, More or Less. The Application Also Includes a Request for a Variance of Ordinance No. 2008-10 (Flood Damage Prevention and Stormwater Management) to Allow Access Through a 100-Year Flood Plain without an All-Weather Crossing. The Property is Located on the East Side of US 285, off Camino Acote, within Sections 21 and 22, Township 15 North, Range 10 East (Commission District 4)

VICENTE ARCHULETA (Case Manager): Thank you, Mr. Chair. On February 14, 2014 the County Development Review Committee recommended preliminary development plan and plat approval for a 24-lot residential subdivision on Tract 15A-2 at the Eldorado at Santa Fe Subdivision consisting of 246.30 acres. The CDRC also recommended approval of a variance of Ordinance No. 2008-10 to allow access through a 100-year floodplain without an all-weather crossing. On July 18, 2013, the CDRC recommended approval Master Plan approval of a 24-lot residential subdivision. The CDRC also approved two cul-de-sacs to exceed 500 feet in length.

On September 10, 2013, the Board of County Commissioners approved the request



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for Master Plan for a 24-lot residential subdivision on 246.30 acres. In 1995, a Master Plan for Cielo Colorado was approved by the BCC. The Master Plan included 91 lots with an average density of 3.79 acres on 344.58 acres. Twenty-five of the 91 proposed lots were platted in 1995. An amended Master Plan eliminating four lots totaling 12.5 acres was recorded in 2000. In 2002 the Master Plan was vacated to allow the platting of larger lots at the east end of Tract 15A-2. This Application includes the remainder of the property that has not been platted within Tract 15A-2.

The Applicants now request Preliminary Development Plan and Plat approval for 24 lots on 246.30 acres within tract 15A-2 of the Eldorado at Santa Fe Subdivision in conformance with the approved Master Plan. Lot sizes will range from 2.54 acres to 16.16 acres, more or less.

The Applicants also request a variance of Ordinance No. 2008-10, Section 4.2, to allow for access to the subdivision through an existing road that crosses over a FEMA designated special flood hazard area.

The Applicant states the roadway crossing the drainage has been in place for over 20 years, serving over 30 housing units, and there has been no occurrence of damage to the road or drainage structures under the road during heavy rainstorms. The floodplain is unusually wide and shallow requiring an extensive drainage infrastructure across the entire width of the drainage in order to comply with the 100-year crossing standards. The initial subdivision was reduced from 67 lots to 24 lots to address the concerns of the residents living within the Cielo Colorado Subdivision. The expense of such a 100-year crossing of the drainage is beyond the financial resources of this 24-lot subdivision.

The Applicant has submitted an analysis and calculations from a Professional Engineer which addresses the existing low water crossing dip-section and the 100-year storm event. The letter states the crossing will be subject to a water depth of 8 inches for a period of fifteen minutes or less. The existing curb will hold back a depth of six inches for a period of forty-five minutes while it drains via an existing curb cut. Therefore, the engineer's opinion is emergency vehicles and fire apparatus will be able to safely cross the low water crossing during a 100-year event.

Growth Management staff has reviewed this Application for compliance with pertinent Code requirements and finds the project is in compliance with County criteria for this type of request with the exception of the all-weather access.

The Application for Preliminary Development Plan and Plat approval is in conformance with all Code requirements. Therefore, staff recommends approval of the request for Preliminary Plat and Development Plan subject to the following conditions:

1. The Applicant shall comply with all review agency comments and conditions, Article V, Section 7.1.3.c.
2. All portions of the 50-foot ingress/egress and utility easement to be vacated must be approved by the BCC.
3. The Applicant must apply for an access permit from NMDOT prior to construction.

Mr. Chair, I stand for questions.

COMMISSIONER ANAYA: Are there any questions of staff? Seeing no questions of staff, is the applicant present?

[Duly sworn, Victoria Dalton testified as follows:]

VICTORIA DALTON: Victoria Dalton with James Siebert and Associates, 915 Mercer Street, Santa Fe, New Mexico, 87505. So as staff stated the request is for preliminary development plan and preliminary plat. This is the same designed that you reviewed during the master plan last September for approval and in addition we are requesting a variance for the crossing of the floodplain. The project engineer has submitted the study which supports access across the floodplain. I stand for questions if you have any.

COMMISSIONER ANAYA: Would the applicant be amendable to a notation on the plat that states that they understand that they're in a floodplain area?

MS. DALTON: I believe we would. Yes, I can agree to that.

COMMISSIONER ANAYA: Because I think that would be consistent with what we've done in the past. That would be one thing I would ask any maker of the motion to consider. Any other questions? Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, I guess I have a question to staff and it has to do with the low-water crossing. I know that these can be expensive but they can also cause problems for people getting in and out of their homes and also for the emergency vehicles. But we have a staff recommendation. It says that the professional engineer, which addresses the low-water crossing dip section, the engineer concluded that emergency vehicles will be able to safely cross the low-water crossing during a 100-year storm event. Does our staff concur with that? You're in agreement with that?

MR. ARCHULETA: Mr. Chair, Commissioner Chavez, we got a recommendation of approval from our Fire Department.

COMMISSIONER CHAVEZ: Okay. Thank you. Thank you, Mr. Chair. I just wanted to double check. So having said that – you're going to do the public hearing?

COMMISSIONER ANAYA: I'm going to go ahead and open up the public hearing. Is there anyone here to speak on behalf of or against this project? Seeing none, the public hearing is closed.

COMMISSIONER HOLIAN: Mr. Chair.

COMMISSIONER ANAYA: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. I am satisfied with the engineering analysis about the floodplain crossing, and I would also like to thank the developer for working with the community to rework the platting so that the neighborhood was satisfied with how it all turned out.

MS. DALTON: Thank you. He worked hard on it.

COMMISSIONER HOLIAN: And I would like to make a motion to approve CDRC Case S 12-5451, Cielo Colorado Estates preliminary development plan, plat and variance with staff conditions, and I'm amenable to an extra condition noting on the plat about the floodplain crossing.

DRAFT

COMMISSIONER CHAVEZ: Second.

COMMISSIONER ANAYA: There's a motion and a second with staff conditions and an additional notation relative to the flood plain. Is there any other questions or comments? Commissioner Mayfield? I don't think we have Commissioner Mayfield. I don't have any other questions.

The motion passed by unanimous [4-0] voice vote. [Commissioner Mayfield's vote was recorded after the meeting.]

VII. CONCLUDING BUSINESS

- A. Announcements
- B. Adjournment

Having completed the agenda and with no further business to come before this body, Chair Holian declared this meeting adjourned at 7:56 p.m.

Approved by:

Board of County Commissioners
Daniel W. Mayfield, Chair

ATTEST TO:

GERALDINE SALAZAR
SANTA FE COUNTY CLERK

Respectfully submitted:

Karen Farrell, Wordswork
453 Cerrillos Road
Santa Fe, NM 87501

- B. CDRC CASE # S 12-5452 Cielo Colorado Estates Final Plat and Development Plan. Cielo Colorado LLC., Applicant, James W. Siebert, Agent, request Final Plat and Development Plan approval for Phase 1 (Lots 11-16) consisting of 6 lots of the Cielo Colorado Estates 24-lot residential subdivision on Tract 15A-2 of the Eldorado at Santa Fe Subdivision consisting of 246.30 acres more or less. The property is located on the east side of US 285, off Camino Acote, within §§ 20, 21 and 22, Township 15 North, Range 10 East (Commission District 4)

Vicente Archuleta read the caption and gave the staff report as follows:

"In 1995, a Master Plan for Cielo Colorado was approved by the BCC. The Master Plan included 91 lots with an average density of 3.79 acres on 344.58 acres. Twenty-five of the 91 proposed lots were platted in 1995. An amended Master Plan eliminating four lots totaling 12.5 acres was recorded in 2000. In 2002 the Master Plan was vacated to allow the platting of larger lots at the east end of Tract 15A-2. This Application includes the remainder of the property that has not been platted within Tract 15A-2.

"On July 18, 2013, the County Development Review Committee recommended approval of the Applicant's request for Master Plan approval for a 24-lot residential subdivision. The CDRC also approved two cul-de-sacs to exceed 500 feet in length.

"On September 10, 2013, the Board of County Commissioners approved the request for Master Plan approval for a 24-lot residential subdivision on 246.30 acres.

"On April 8, 2014, the Board of County Commissioners approved a request for Preliminary Development Plan and Plat approval for 24 lots on 246.30 acres within tract 15A-2 of the Eldorado at Santa Fe Subdivision in conformance with the approved Master Plan and a Variance of Ordinance No. 2008-10 to allow access through a 100-year floodplain without an all-weather crossing.

"The Applicants now request Final Plat and Development Plan approval for Phase 1 consisting of 6 lots of the 24 lots on 246.30 acres within tract 15A-2 of the Eldorado at Santa Fe Subdivision in conformance with the approved Master Plan which was to be developed in 4 phases. Lot sizes will range from 8.72 acres to 14.89 acres.

"Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is in compliance with County criteria for Final Development Plan and Plat approval for Phase 1."



Mr. Archuleta said the Application for Final Plat and Development Plan approval is in conformance with the previously approved Master Plan and Preliminary Plat and Development Plan and with all Code requirements. Therefore, staff recommends approval of the request for Final Plat and Development Plan subject to the following conditions:

1. The Final Plat and Development Plan must be recorded with the County Clerk's office.
2. The Applicant shall submit a financial guarantee, in sufficient amount to assure completion of all required improvements prior to Final Plat recordation as per Article V, § 9.9 of the Land Development Code.
3. The Affordable Housing Agreement must be, reviewed and approved by the BCC prior to plat recordation of Phase 1.
4. ~~The affordable lots shall be reasonably dispersed within the project as per Ordinance No. 2006-2. The Applicant will be required to relocate one of the affordable housing lots and designate the new location of the affordable lot with the final Plat submittal for Phase 2. [Deleted at staff report]~~

Duly sworn, Jim Siebert, agent, said this was the third time the project had been before the CDRC. There have been six meetings with the neighbors and they have approved the project as being presented. He said the applicants are in agreement with the conditions.

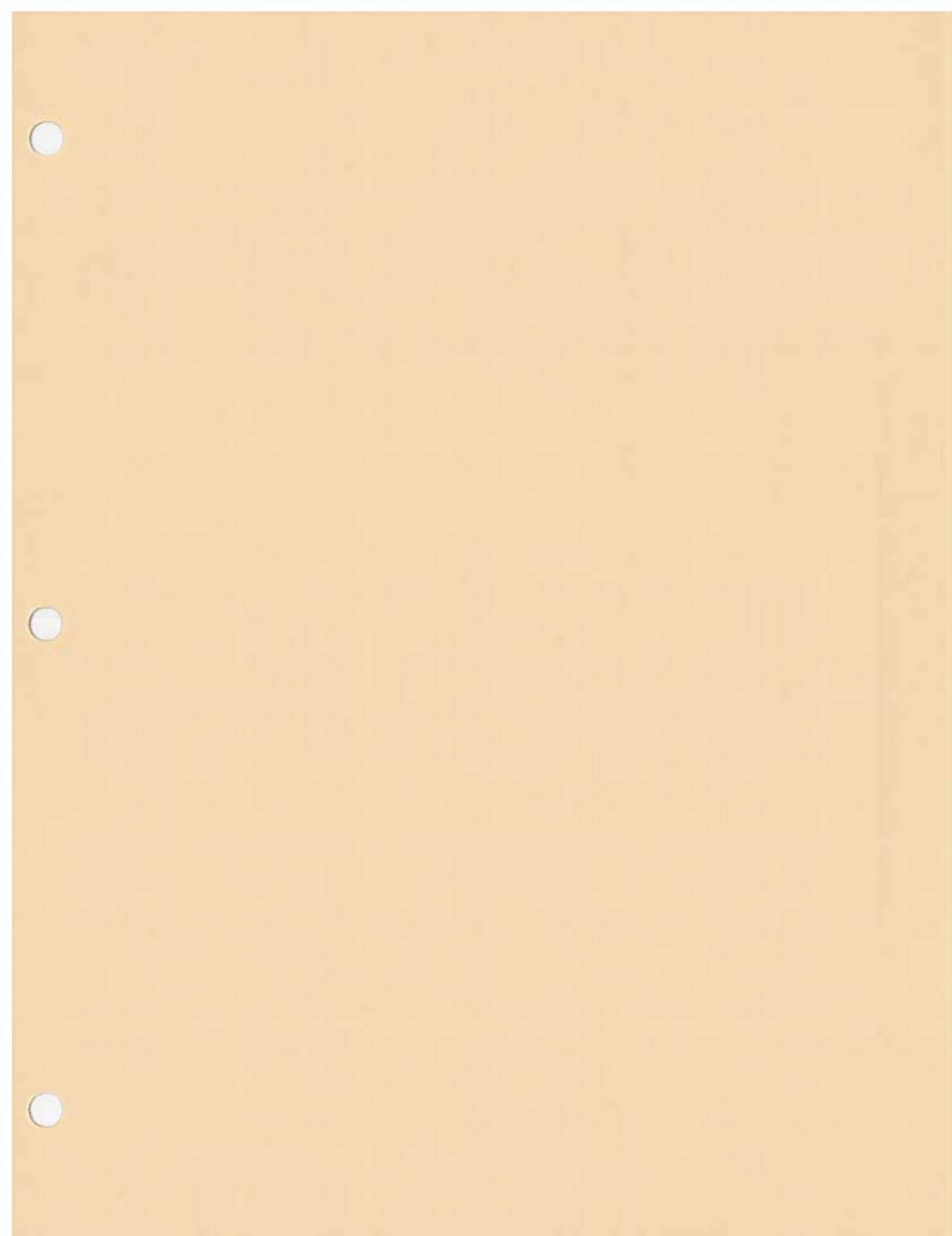
There was no one from the public wishing to speak.

Member Anaya moved to approve CDRC Case #S 12-5452 with staff conditions. Member Booth seconded and the motion carried without opposition [4-0].

- ~~C. CDRC Case #Z 06-5033 Village at Galisteo Basin Preserve. TABLED~~
- ~~D. CDRC Case #V Vincent Mastrantoni/Webb Garrison Variance. TABLED~~
- ~~E. CDRC CASE # V 14-5300 Cathy and Chris Stoia Variance. Cathy and Chris Stoia, Applicants, request a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow a Land Division of 12.87 acres into two lots. The property is located at 20 La Barbaria Road, within § 17, Township 16 North, Range 10 East (Commission District 4)~~

~~Wayne Dalton read the caption and staff report:~~

~~"The subject lot is recognized as a non-conforming lot. There is currently a residence and an accessory structure on the property. The residence on the property is recognized as legal non-conforming and was constructed in 1974. On December 11, 2012, the Applicants were granted a variance of height and placed an addition onto the existing residence. The Applicants now wish to divide their property into two lots: One lot consisting of a 5.06 acre and one lot consisting of 7.81 acres.~~



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: November 25, 2014

TO: Board of County Commissioners

FROM: John Lovato, Development Review Specialist Senior

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

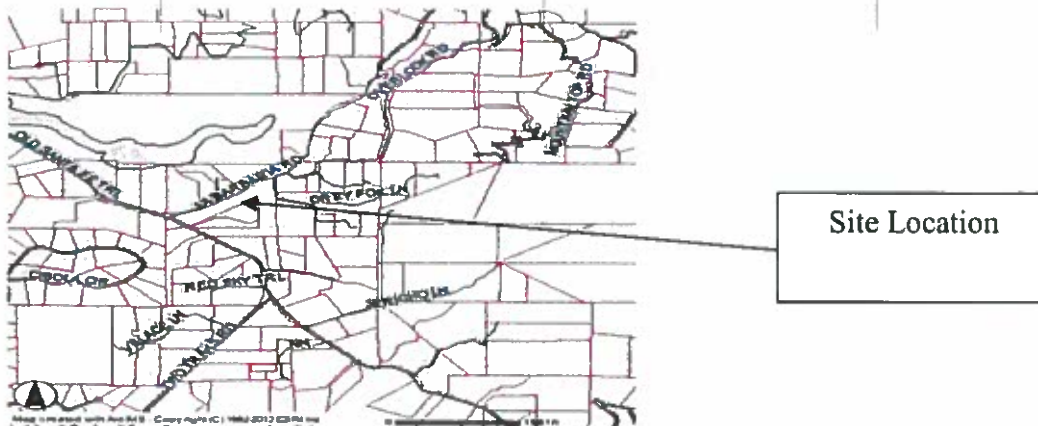
FILE REF.: CDRC CASE # V 14-5300 Cathy and Chris Stoia Variance

ISSUE:

Cathy and Chris Stoia, Applicants, request a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow a Land Division of 12.87 acres into two lots.

The property is located at 20 La Barbaria Road, within Section 17, Township 16 North, Range 10 East (Commission District 4).

Vicinity Map:



SUMMARY:

The subject lot is recognized as a non-conforming lot. There is currently a residence and an accessory structure (shed) on the property. The residence on the property is recognized as legal non-conforming and was constructed in 1974. On December 11, 2012, the Applicants were granted a variance of height and placed an addition onto the existing residence. The Applicants now wish to divide their property into two lots: One lot consisting of 5.06 acres and one lot consisting of 7.81 acres. Currently, there are two wells located on the property and each lot will have its own well.

The minimum lot size in this area is 20 acres with 0.25 acre foot water restrictions. Lot size can be further reduced with proven water availability. On August 6, 2013, the Applicants applied for a Summary Review Subdivision to create two lots and submitted a Geohydrological report for review. It was determined by the County Hydrologist that the information submitted in the report was outdated and insufficient. Therefore, the Geohydrological report did not prove adequate water to divide the land, and the Application was denied.

The Applicants state, they have stalled their Application in hopes the Sustainable Land Development Code (SLDC) would take effect. The Application would be in conformance with the proposed SLDC, where the property falls within the Residential Fringe Zoning District and will be subject to minimum lot sizes of one dwelling per 5 acres. The Applicant further states that the proposed 5.08 acre lot and 7.81 acre lot are larger than most lots in the surrounding area and will not be out of character with existing densities in the area. Lot sizes range from 1.55 acres to 7.87 acres within the immediate area (Exhibit 9).

The Applicant provided receipts for mailing notices before the CDRC and BCC by certified mail on September 24, 2014. It appears that all noticing requirements of the Code were met. Noticing in the legal section of the Santa Fe New Mexican occurred on September 23 and 25, 2014 as evidence by the clipping of that publication in the file and the affidavit of publication provided by the New Mexican. A certification of posting and photographs of the posting were provided by the Applicant.

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

This Application was submitted on August 8, 2014.

On October 16, 2014, the CDRC met and acted on this case. The decision of the CDRC ended in a tie vote with two Committee members voting in favor of the motion to approve

the requested variance and two Committee members voting against the motion to approve the requested variance. Under Commission Rules of Order the Application is automatically tabled until the next meeting at which a greater number of members are present. (CDRC minutes attached as exhibit 1).

On November 20, 2014, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the Applicant's request by a 3-2 vote. CDRC minutes attached as exhibit 2).

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

APPROVAL SOUGHT: Approval of a variance of Article III, § 10 (Lot Size Requirements) to allow a Land Division of 12.87 acres into two lots.

GROWTH MANAGEMENT AREA: SDA-2

HYDROLOGIC ZONE: Mountain Hydrologic Zone. The minimum lot size is 80 acres per dwelling unit. Lot size can be reduced to 20 acres per dwelling unit with signed and recorded water restrictions. Lot sizes can be further reduced with proven water availability. The request does not meet the minimum lot size requirements for this area.

FIRE PROTECTION: Hondo Fire District.

WATER SUPPLY: Domestic Wells

LIQUID WASTE: Conventional Septic System

VARIANCES: Yes

AGENCY REVIEW:	<u>Agency</u>	<u>Recommendation</u>
	County Fire	Conditional Approval

STAFF RECOMMENDATION: Denial of a variance of Article III, § 10 (Lot Size Requirements) to allow a Land Division of 12.87 acres into two lots. The decision of the CDRC was to recommend approval of the Applicant's request, with imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the

Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (**As per Article III, § 10.2.2 and Ordinance No. 2008-05**).

2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (**As per Article III, § 2.4.2**).
3. Further Division of either tract is prohibited; this shall be noted on the plat. (**As per Article III, § 10**)
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat Review (**As per 1997 Fire Code and NFPA Life Safety Code**).

EXHIBITS:

1. October 16, 2014 CDRC Minutes
2. November 20, 2014 CDRC Minutes
3. Letter of request
4. Article III, § 10 (Lot Size Requirements)
5. Article II, § 3 (Variances)
6. Letters of Opposition
7. Letter of Support
8. Site Photographs
9. Proposed Plat
10. Aerial of Site and Surrounding Area
11. Review Comments

Mr. Archuleta said the Application for Final Plat and Development Plan approval is in conformance with the previously approved Master Plan and Preliminary Plat and Development Plan and with all Code requirements. Therefore, staff recommends approval of the request for Final Plat and Development Plan subject to the following conditions:

1. The Final Plat and Development Plan must be recorded with the County Clerk's office.
2. The Applicant shall submit a financial guarantee, in sufficient amount to assure completion of all required improvements prior to Final Plat recordation as per Article V, § 9.9 of the Land Development Code.
3. The Affordable Housing Agreement must be reviewed and approved by the BCC prior to plat recordation of Phase 1.
4. ~~The affordable lots shall be reasonably dispersed within the project as per Ordinance No. 2006-2. The Applicant will be required to relocate one of the affordable housing lots and designate the new location of the affordable lot with the final Plat submittal for Phase 2. [Deleted at staff report]~~

Duly sworn, Jim Siebert, agent, said this was the third time the project had been before the CDRC. There have been six meetings with the neighbors and they have approved the project as being presented. He said the applicants are in agreement with the conditions.

There was no one from the public wishing to speak.

Member Anaya moved to approve CDRC Case #S 12-5452 with staff conditions. Member Booth seconded and the motion carried without opposition [4-0].

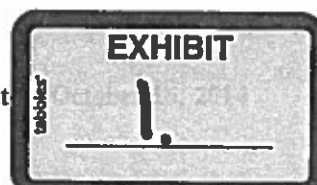
C. CDRC Case #Z 06-5033 Village at Galisteo Basin Preserve. TABLED

D. CDRC Case #V Vincent Mastrantoni/Webb Garrison Variance. TABLED

E. CDRC CASE # V 14-5300 Cathy and Chris Stoia Variance. Cathy and Chris Stoia, Applicants, request a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow a Land Division of 12.87 acres into two lots. The property is located at 20 La Barbaria Road, within § 17, Township 16 North, Range 10 East (Commission District 4)

Wayne Dalton read the caption and staff report:

"The subject lot is recognized as a non-conforming lot. There is currently a residence and an accessory structure on the property. The residence on the property is recognized as legal non-conforming and was constructed in 1974. On December 11, 2012, the Applicants were granted a variance of height and placed an addition onto the existing residence. The Applicants now wish to divide their property into two lots: One lot consisting of a 5.06 acre and one lot consisting of 7.81 acres.



"The minimum lot size in this area is 20 acres with 0.25 acre-foot water restrictions. Lot size can be further reduced with proven water availability. On August 6, 2013, the Applicants applied for a Summary Review Subdivision to create two lots and submitted a geohydrological report for review. It was determined by the County Hydrologist that the information submitted in the report was outdated and insufficient. Therefore, the geohydrological report did not provide adequate water to divide the land, and the Application was denied.

"The Applicants state, they have stalled their Application in hopes the Sustainable Land Development Code would take effect. The Application would be in conformance with the proposed SLDC, where the property falls within the Residential Fringe Zoning District and will be subject to minimum lot sizes of one dwelling per five acres. The Applicant further states that the proposed 5.08-acre lot and 7.81-acre lot are larger than most lots in the surrounding area and will not be out of character with existing densities in the area. Lot sizes range from 1.55 acres to 7.87 acres within the immediate area."

Mr. Dalton stated staff was recommending denial of a variance of Article III, § 10 (Lot Size Requirements) to allow a Land Division of 12.87 acres into two lots. If the decision of the CDRC is to recommend approval of the Applicants' request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance No. 2008-05).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, § 2.4.2).
3. Further Division of either tract is prohibited; this shall be noted on the plat. (As per Article III, § 10)
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat Review (As per 1997 Fire Code and NFPA Life Safety Code).

Acting as agent for the applicants, Bryan Berg was placed under oath. He distributed materials to the committee members (not provided for the record). He pointed out that approval of the SLDC is being delayed and the applicants would like to get earlier approval. He referred to an area map showing the parcel in question is the largest in the vicinity. He pointed out a lot-size precedent has already been set and the new zoning in the SLDC establishes the lot minimum at five acres. The well output on the current lot is 4 gpm, which is much better than the 5.9 gpm on his lot which serves five homes. He said the water levels depend more on drought conditions than on usage.

Mr. Berg reviewed the County Hydrologist's report and concluded there was little leeway allowed and she had a grudge against this project. He said if five-acre lots are

allowed there would be no way to enforce geohydrological standards vis-à-vis a 100-year water supply under the property. He said Santa Fe's growth is inevitable.

Duly sworn, Antonia Quast, business partner and friend of Ms. Stoia explained there were medical and financial hardships involved and it is the in community's best interest to have the Stoias not have to sell the whole property. The prospective buyer for the split off lot is her romantic partner who would adhere to design standards.

Member Anaya asked how far away the County's water system was from the property. Mr. Berg speculated that it wouldn't be in place for 50 years. Ms. Lucero said the closest point appears to be at Quail Run, around 3.5 to 4 miles away.

Member Gonzales asked if a condition could be placed prohibiting further lot splits. Mr. Dalton said that is already a condition.

Member Gonzales asked if there were two wells on the property as indicated on the plat. Mr. Berg said the previous owner, Dr. Kirk, had planned to divide and drilled a well on the other part of the property. Mr. Dalton said the first well probably has three acre-feet of water and the second one acre-foot. Mr. Berg pointed out that if both wells had water restrictions they would be using much less water than what is currently allowed.

Under oath, Paula Tackett referred to her letter *[Exhibit 1]* and stated she lived in the area. She understood Dr. Kirk drilled the second well as backup. She said she has to keep lowering the pump in her well. "Water is an issue."

Member Anaya asked Ms. Tackett if she had a storage tank. She said she has a small pressure tank.

There was no one else from the public wishing to speak and Mr. Berg read from a report indicating that the decline in water levels were due to climate issues and that recharge is possible.

Member Gonzales suggested adding a condition to the effect that if one or the other of the wells on the property goes dry.

Chair Katz asked about the mention of using the house as a vacation rental, and Mr. Berg said whether the Stoias or someone else was staying there the water use would be the same.

Chair Katz noted that the zoning of five acres specified in the SLDC implies staff has satisfied themselves that is the appropriate size, but it appears that decision is not final at this point.

Land Use Administrator Penny Ellis-Green said staff was given direction by the BCC to hold off on the SLDC amendments and zoning map to allow major portions of the code to be written. This will allow issues and problems in the zoning to be worked out

and will allow community overlays to be sorted out. Responding to a question by Member Booth She said there is no overlay contemplated for the area in question, but all zoning is in abeyance. September 2015 would probably be the earliest the SLDC would be ready so until that time the old code is still in effect.

Noting progress needs to proceed and change is good, Member Anaya moved to approve CDRC Case #14-5300 with staff conditions and with the additional condition:

5. There will be a shared well agreement in the case one of the wells fails, with water restrictions of 0.25 acre-foot per residence per year. This is to be noted on the plat.

Member Gonzales seconded. The motion tied by a 2-2 voice vote with Member Anaya and Member Gonzales voting in favor and Member Booth and Chair Katz voting against.

Member Booth explained her vote saying going from 20-acre minimum to five was too much. She noted that the argument that the lowering of the water table was due to climate was not a compelling argument, given that the projections are for the climate to get drier and hotter.

Ms. Brown clarified that the case will come back when the full panel is present.

- F. **CDRC CASE # V 14-5270 Madeleine Wells and Mary O'Brien Variance**, Madeline Wells and Mary O'Brien, Applicants, request a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 6.195 acres. The property is located at 30 Sibley Road, within the vicinity of Cañoncito, within § 13, Township 15 North, Range 10 East, (Commission District 4)

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

"The subject lot was created in 1993, by way of a land division, approved by the Land Use Administrator, and is recognized as a legal lot of record. In 1995, by warranty deed, Maria O'Brien transferred to Madeline Wells an undivided half interest in the subject property. There is currently a residence, an abandoned structure, and two storage sheds located on the property. The abandoned structure is non-habitable, and the current habitable residence is 1,425 square feet.

"The Applicants request a variance of Article III, § 10 to allow two dwelling units on 6.195 acres. The Applicants state when they initially purchased the property in 1993, both structures existed. Since the purchase of the property, the structure across the creek has been abandoned and is no longer accessible due to lack of all-weather access and the structure is non-habitable. The proposed new structure will not be located across the river and will have all-weather access. The Applicants state they purchased the property together with the intention of constructing a second dwelling so they both have homes they could reside in. Their request is to

Member Anaya moved approval as amended and Member Katz seconded. The motion carried by unanimous 5-0 voice vote.

IV. APPROVAL OF MINUTES: October 16, 2014

Member Katz moved to approve the October minutes as submitted. Member Anaya seconded and the motion passed by unanimous 5-0 voice vote.

VI. OLD BUSINESS

- A. CDRC CASE # V 14-5300 Cathy and Chris Stoia Variance. Cathy and Chris Stoia, Applicants, request a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow a Land Division of 12.87 acres into two lots. The property is located at 20 La Barbaria Road, within Section 17, Township 16 North, Range 10 East (Commission District 4) [*Exhibit 1: Tackett Letter of Opposition*]**

Chairman Drobnis read the case caption and John Lovato gave the staff report as follows:

“On October 16, 2014 the CDRC met and acted on this case. The decision of the CDRC ended in a tie vote with two committee members voting in favor of the motion to approve the requested variance and two committee members voting against the motion of the requested variance. Under Commission rules of order the application is automatically tabled until the next meeting where a greater number of members are present. This case now is coming before the CDRC for vote only.”

Member Anaya moved to approve CDRC Case #V 14-5300 with staff conditions and an additional condition as follows:

5. There will be a shared well agreement in the case one of the wells fails, with water restrictions of .25 acre-foot per residence per year. This is to be noted on the plat.

Member Gonzales seconded and the motion passed by majority [3-2] voice vote with Members Anaya, Gonzales and Drobnis voting in favor and Members Katz and Booth voting against

- B. CDRC CASE # MIS 14-5360 Mark Martineau Accessory Structure. Mark Martineau, Applicant, requests approval to allow an accessory structure greater than 2,000 square feet on 15.03 acres to be utilized as a garage/storage building. The property is located at 22 Ranchos Canoñcito, off Ojo de la Vaca Road, within Section 14, Township 15 North, Range 10 East, (Commission District 4)**

Mathew Martinez gave the following staff report:



Permits Santa Fe

13 OLD ROAD, SANTA FE, NEW MEXICO 87540
www.permitssantafe.com

August 6, 2014
Santa Fe County Land Use
102 Grant Avenue
Santa Fe, NM 87501

RE: Variance for lot split of 20 LaBarbaria Road.

Dear Land Use staff,

The applicants, Cathy and Christopher Stoia, seek a variance to subdivide their current 13 acre parcel into two parcels. The resulting subdivision would result in one parcel of approximately 8 acres (with an existing dwelling), and one adjoining undeveloped parcel of approximately 5 acres.

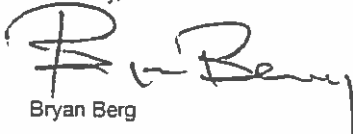
The Stoias have stalled this application for several months in hopes that the proposed Santa Fe County Sustainable Land Development Code (SLDC) would be approved and in effect. When the SLDC does eventually go into effect, the subject property (20 LaBarbaria) will then be in the area designated as "Residential Fringe" and will therefore be subject to minimum lot sizes of 1 dwelling per 5 acres. The proposed variance is therefore essentially a pleading by the applicants to proceed with a lot subdivision that is clearly in keeping with the intent of the proposed SLDC.

The proposed six acre parcel has a high quality, non-shared well that will convey with the property. This well has tested at 4 gallons per minute. An attached Geohydrology report authored by Watershed West summarizes an extensive study of many local wells, known local geology, and documented aquifer levels in the area. This report concludes that: drought patterns (not development) have had the only measurable impact on well water levels in the neighborhood, that the proposed development will have zero drawdown effect on neighboring wells, and that eventual residential development on this parcel will not measurably impact the long-term viability of the aquifer which serves the neighborhood and beyond. Please see sections 7, 8 and 9 of the Geohydrology report for this information.

As to the general nature of this proposed subdivision of land at 20 LaBarbaria Road, the proposed 5 and 8 acre parcels will not be out of character with existing development densities in the neighborhood, other than that the proposed parcels would still be larger than what is currently existing and typical in the neighborhood. An attached map and spreadsheet clearly demonstrate that when the acreages of 23 surrounding parcels is averaged, the result is an average local acreage of only 3.376 acres. The proposed new parcels will be within the intent of the proposed SLDC, and will contribute to less urban sprawl by allowing increased density in an area that is closer to our urban center.

Thank you for your consideration in these matters.

Sincerely,


Bryan Berg

Agent/Owners Representative



TYPE OF USE	NUMBER OF PARKING SPACES
Retail Centers	1 per 1 employee plus per 200 sq. ft.
Restaurants, Bars	1 per 1 employee plus per 150 sq. ft.
Gas Stations	1 per 1 employee plus 1 per 300 sq. ft. of garage space.
Industrial	1 per employee plus 1 per 500 sq. ft.
Small Scale Centers, Home Occupations	1 per 1 employee plus 1 per 400 sq. ft. of commercial space.
Large Scale Residential, Institutional, Residential Resorts	2 per dwelling unit
Churches, auditoriums, theaters, arenas, spaces used for public assembly	1 for each 4 seats
Uses not listed	As determined by the County

9.2 Multiple use projects shall calculate cumulative parking needs for each type of use in the project to be developed.

9.3 Minimum size of parking space shall be 300 square feet which includes the parking stalls and aisles.

9.4 Commercial, industrial, other non-residential and large scale residential uses shall provide for handicap parking.

History: 1980 Comp. 1980-6, Section 9, Parking Requirements was amended by County Ordinance 1990-11 adding requirements for auditorium uses, multiple uses and handicap access.

SECTION 10 - LOT SIZE REQUIREMENTS

10.1 Relationship of Lot Sizes to Water Policies

The General Plan sets forth the policy that future population growth in the County should be supported by adequate long term water availability and concentrate population growth in Urban and Metropolitan Areas and Traditional Communities. Development within these areas will generally be served by one or more regional water systems, or community water systems. Development outside of the Urban, Metropolitan Areas and Traditional Communities using domestic wells (Section 72-12-1 wells) should consider estimated long term water availability and protect water resources for existing County residents having domestic wells. Development may also be permitted if the applicant for a development permit demonstrates that he/she has water rights, excluding rights permitted under 72-12-1 NMSA 1978 or 75-11-1 NMSA 1953, recognized and permitted by the Director of Water Resources Department of Natural Resources Division of the State of New Mexico which are approved for transfer by the Director of Natural Resources Division to the site of the Development, and the permitted water rights are sufficient to support the proposed development.



10.1.1 Water Policies Governing Lot Sizes Where the Development will Utilize Permitted Water Rights

Applicants seeking a development permit may base their application on water rights authorized and permitted by the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico, (with the exception of water rights permitted under Section 75-11-1 NMSA 1953 or 75-12-1 NMSA 1978). The applicant shall provide evidence that he/she owns or has an option to purchase the permitted water rights in an amount adequate to meet the needs of the development as shown by Article VII, Section 6.6.2, Water Budgets and Conservation Covenants. Any development permit approved and issued by the County shall be expressly conditioned upon the applicant obtaining final non appealable order or final non appealable approval from the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico authorizing the change in use and change in point of diversion to meet the needs of the proposed development. The minimum lot size permitted by this Section shall be 2.5 acres, unless the proposed development is within an Urban, or Metropolitan Area or a Traditional Community, in which case further adjustments of the lot size shall be permitted as provided by Sections 10.4, 10.5.2 and 10.5.3.

10.1.2 Water Policies Governing Lot Sizes Where Developments Will Not Utilize Permitted Water Rights

BASIN ZONE: Minimum lot size shall be calculated based upon ground water storage only. Water that is in storage beneath the lot in the Basin Zone may be depleted over a 100-year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water without consideration of recharge of the ground water.

BASIN FRINGE ZONE: Same as Basin Zone.

HOMESTEAD ZONE: Minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 100 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 100 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead Zone minimum lot sizes based on storage in this zone would be larger than those based on recharge.

MOUNTAIN ZONE: Same as Homestead Zone.

METROPOLITAN AREAS-BASIN AND BASIN FRINGE: For Basin and Basin Fringe zones within a Metropolitan Area as shown on Code Maps 12, 14 and 15, it is anticipated that regional water systems will eventually be developed. Therefore, water that is in storage beneath a lot within a Metropolitan Area may be depleted over a 40 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 40 year supply of water without consideration of recharge of the ground water.

METROPOLITAN AREAS-HOMESTEAD AND MOUNTAIN ZONE: For Homestead and Mountain Zones within a Metropolitan Area, the minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not

both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 40 year lifetime. The lot must be large enough to have a ground water in storage beneath the lot for a 40 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 40 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead and Mountain Zones, minimum lot sizes based on storage in these zones would be larger than those based on recharge.

10.2 Calculation of Minimum Lot Size

Calculation of the minimum lot size under Section 10.1.2 shall be determined by the formula:

$$\frac{\text{Acre Feet}}{\text{Use (Year) x acres}}$$

Minimum Lot Size (Acres)=Water Available in acre feet per acre/year

$$\text{MLS} = \frac{U \times \text{acres}}{A}$$

Where:

MLS is the minimum lot size in acres; it is the size of a lot needed to supply anticipated water needs.

U is the anticipated water needs for the lot; it is the use of water which will occur from the intended development of the lot, measured in acre-feet per year. The standard values listed for A were derived using the procedures set forth in the water appendix of the Code. The standard value for U is set forth in Section 10.2.2. A is the amount of water available in the aquifers which are beneath the lot, measured in acre-feet per acre per year using recharge or storage as described in 10.1.2.

10.2.1 Standard Values for A and Adjustments. The standard values for A shall be as follows:

<u>BASIN ZONE:</u>	0.1 acre-feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.02 acre-feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre-feet per acre per year
<u>HOMESTEAD ZONE:</u>	.00625 acre-feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>BASIN ZONE:</u>	10 acres
<u>BASIN FRINGE ZONE:</u>	50 acres
<u>MOUNTAIN ZONE:</u>	80 acres
<u>HOMESTEAD ZONE:</u>	160 acres

The standard values of A may be adjusted if the applicant submits a hydrology report, either a detailed report (see Section 6.4 of Article VII), or a reconnaissance report (see Section 6.7 of Article VII). Values of A determined in such reports shall be reviewed by the County Hydrologist, who shall recommend to the Code Administrator whether or not

the value is reasonable, and if not, shall recommend a value appropriate for the use in determining minimum lot size.

The actual value of A used shall be based on the information submitted by the applicant, by the County Hydrologist or by others submitting information. If water conservation measures are used, as provided in Section 10.2.4b, and an actual value of A is determined, in most cases minimum lot sizes will be reduced below those listed in Section 10.2.1. However, applicants are advised that because of varying geologic conditions in Santa Fe County there is no assurance that a hydrology report will determine that the water supply in an area is more abundant than indicated by the standard value of A. In cases where the actual study shows a value of A which is less than the standard value (that is, there is less water available than assumed by the standard value), minimum lot size requirements may be increased beyond those indicated in this Section.

10.2.2 Calculation of Use

U shall have a standard value of 1.0 acre feet per year per dwelling unit for residential use. For all other uses U shall be equal to the actual anticipated consumptive use for the development. The standard value for residential use may be adjusted if an applicant proposes to utilize water conservation measures. There shall be no adjustments for conservation in Urban, Traditional Community and Agricultural Valley Areas.

The Code Administrator shall maintain an application form upon which are listed potential water conservation measures. This form shall indicate the effect of each conservation measure on the value of U. As a minimum, the measures shall include: restrictions on use of water for irrigation purposes (including watering of lawns, gardens and shrubbery); restrictions on use of water for swimming pools; restrictions on the number of bathrooms per dwelling unit; restrictions on garbage disposal units; devices which reduce the utilization of water by appliances, kitchen fixtures, and bathroom fixtures; and pressure-reduction devices on in-coming water lines.

Any applicant who uses the application form as a basis for proposing conservation measures shall be allowed to reduce U in accordance with the effectiveness of the measures proposed. The maximum reduction in U which shall be considered achievable using this approach shall be a reduction of U to no less than 0.25 acre feet per year per dwelling unit. An applicant who proposes water conservation measures sufficient to reduce U to less than 0.25 acre feet per year per dwelling unit shall be required to prepare a water conservation report: See Section 6.6 of Article VII.

The actual value of U, and the minimum lot sizes which result, will depend on the conservation measures proposed by the applicant. In general, applicants who substantially restrict the use of irrigation (lawn and garden) water will be assumed to have a U of 0.5 acre feet per year per dwelling unit, while those who further restrict other types of water use will be assumed to require even less water. For reference purposes, the following lot sizes would be allowed if U is equal to 0.5 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	5 acres
<u>BASIN FRINGE ZONE:</u>	25 acres
<u>MOUNTAIN ZONE:</u>	40 acres
<u>HOMESTEAD ZONE:</u>	80 acres

For reference purposes, the following lot sizes would be allowed if U is equal to 0.25 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	12.5 acres
<u>MOUNTAIN ZONE:</u>	20 acres
<u>HOMESTEAD ZONE:</u>	40 acres

10.2.3 Special Standards for Calculation of Use for Small Scale Commercial Development

Special standards which set forth specific limitations on use for small scale commercial developments are set forth in this subsection. Applicants who propose small scale commercial development are required to prepare a written estimate of water use. The value of U shall be determined by that estimate unless otherwise determined by the Code Administrator. The Code Administrator shall have on file, a list of standard water consumption requirements for commercial activities. The applicant may use these figures in lieu of the written estimate of water use. Applicants may use standardized values for A as set forth in Section 10.2.2, or they may submit a hydrology report which contains an actual estimate of A for the land which is to be developed.

10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas

Special standards which set forth limitations on water availability for metropolitan areas shown in Code Map 12, 14, and 15 are set forth in this Sub-section.

a. Standard Values of Water Availability

Because the policy for water management in Metropolitan areas allows for depletion of storage over a 40 year period, standard values for A are as follows:

<u>BASIN ZONE:</u>	.25 acre feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.05 acre feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>METRO BASIN ZONE:</u>	4 acres
<u>METRO BASIN FRINGE ZONE:</u>	20 acres
<u>METRO MOUNTAIN ZONE:</u>	80 acres

b. Adjustments for Water Conservation

For the division of land into four (4) or less lots, the minimum lot size may be adjusted using the procedures set forth in Section 10.2.2. For reference purposes, the minimum lot sizes which result if U = 0.25 acre feet per year per dwelling unit or commercial use are:

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	5 acres
<u>MOUNTAIN ZONE:</u>	20 acres

10.3 Exceptions to Minimum Lot Size Requirements

The minimum lot sizes calculated under Sections 10.1 and 10.2 shall not apply to the areas described in this Section and the minimum lot size contained in this Section shall control.

10.3.1 Metropolitan Area - Community Water Systems

Where a community water system provides water service to a development within the Metropolitan Areas, as shown on Code Maps 12, 14 and 15, the minimum lot sizes shall be:

<u>BASIN ZONE:</u>	1 acre
<u>BASIN FRINGE ZONE:</u>	2.5 acres
<u>MOUNTAIN ZONE:</u>	5 acres

10.3.2 Agricultural Areas

In the Estancia Valley Agricultural Area, minimum lot sizes shall be 50 acres for the Basin Fringe Zone and 10 acres for the Basin Zone. Adjustments for water conservation and water availability will not be allowed. In the Northern Valley Agricultural Area, the minimum lot size for lands with permitted water rights shall be five (5) acres. Adjustments to lot sizes in these areas are conditioned on the finding in each case by the County Development Review Committee that it is in the best interest of the County to convert water rights from agricultural to commercial or residential use.

10.3.3 Traditional Communities

The minimum lot size in traditional communities as shown on Code Maps 40-57, shall be .75 acres, except as follows:

14,000 sq. ft. - Where community water service and community sewer service systems are utilized, or a Local Land Use and Utility Plan is adopted.

10.3.4 Urban Areas

The minimum lot size in Urban Areas shall be 2.5 acres, except as follows:

1 acre - Where community water or community liquid waste disposal systems are utilized.

.50 acre - Where community water and community sewer systems are utilized.

10.4 Density Transfer

The minimum lot sizes specified in this Section 10 shall be taken as gross figures for the purposes of determining the total number of dwellings allowed in a particular development. The arrangement of dwellings in clusters or in such locations as to take advantage of topography, soil conditions, avoidance of flood hazards, access and reduced cost of development, shall not violate the lot size requirements of the Code so long as the total number of acres per lot conforms with the requirements of the Code.

SECTION 11 - IMPORTING OF WATER

11.1 Location Requirements

Developments which import water from the surface Rio Grande or other locations outside Santa Fe County to any location in Santa Fe County designated in the Development Code as other than urban or metropolitan locations are permitted to locate anywhere in the County provided they meet all requirements of the Code, except that in lieu of the density requirements as specified in Article III, Section 10, the proposed development shall meet the following criteria.

2.5 Zoning

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

2.6 Subdivisions

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

2.7 Other Requirements

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

SECTION 3 - VARIANCES**3.1 Proposed Development**

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

3.2 Variation or Modification

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

3.3 Granting Variances and Modifications

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

3.4 Height Variance in Airport Zones

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



1 October 2014

Santa Fe County Growth Management/Land Use Administrator
and Santa Fe
County Development Review Committee
PO Box 276
Santa Fe, NM 87504-0276

RE: Variance Request to Sub-divide a 13-acre property at 20 La Barbaria Road
CDRC Case # V14-5300

Dear Land Use Administrator and CDRC Members:

I am writing to request that the County deny the referenced Development Permit Variance Request. When a similar variance request, at this same property [20 La Barbaria Road], was under consideration in September of 2013 [V-13-3064], I spoke with the County and was informed that the County [Norman Lagasse] had asked for more information on the hydrology at this property, along with related information. Subsequently, SF County staff DENIED this permit based upon the hydrology report submitted - the data did not support the requested variance.

It is my understanding, after talking to County Staff [John Lovato] on September 30, 2014, that the property owner has submitted exactly the same hydrology report submitted last year to support this new variance request. The county and CDRC must deny this permit because the hydrology data is no different this year than it was last year and the variance was denied previously.

PLEASE DENY THIS VARIANCE REQUEST - WE LIVE IN A FRAGILE AREA WITH WATER RESOURCES DETERIORATING. New information about water availability and the fragile nature of the water in the La Barbaria Canyon area includes the following anecdotal information:

- Two Close-By Properties [Both On Roy Crawford Lane The Next Road Up From La Barbaria Road] Have Just This Year Had Water Wells That Went Dry And Have Had To Drill Deeper Just To Get Water For Home Use.
- Further Up La Barbaria Canyon We Know At Least 12 Homes That Were On Shared Wells - All Wells Went Dry And A New Well Had To Be Drilled. Legal Action Was Involved And The Result Of Both The Well Drilling And The Legal Actions Cost Each Property Owner Prohibitive Amounts Of Money.
- In La Barbaria Canyon, We All Share The Same Water Sources And We Simply Cannot Continue To Allow More Homes Than Can Be Supported By The Available Water.

In summary, I am requesting, as a directly adjacent neighbor, that you deny this variance to "sub-divide" this 12+ acre property into 2 6+ acre properties because:

#1- The WATER supply, availability, and quality in this part of the county is FAR TOO PRECARIOUS and un-predictable for the County - particularly in light of the SLDC that has already been adopted and the "zoning map" that is close to adoption - to grant this variance request. It would be outrageous and inconsistent with the current County position on land development for the County to grant this right of sub-division based on water and sustainability alone. The lack of a common area-wide sewer system to handle household waste in the this part of the County means that the only viable means of household waste management remains



individual septic systems for residential properties. We KNOW from reports by SF County staff that this very neighborhood has HUGH problems with water quality being compromised and severely damaged by existing septic systems.

#2- This is an area that has had a 20-acre minimum lots size for years and despite the fact that we await the adoption of a new land use code for the County MANY of the existing residents in the La Barbaria Canyon area have not been allowed to sub-divide their property into smaller than 20-acre plots and have not been given the benefit of a land-split provision never intended for the new owners of this property [as noted below]. The County and CDRC must fully enforce the land use code and regulations currently in force.

#3 - The current property owners purchased this property about one year ago and moved from out of state into Santa Fe County. This is NOT A PROPERTY OWNER who should be allowed to take advantage of the "family land split" provisions of the current code. There is NO JUSTIFICATION for letting a brand new property owner, who was fully aware of the current code, to be granted a land-split based upon the specific provisions allowing such splits in the old SF County Code. New owners, without any history of long-term family held property, should NOT be benefitting from a provision in the Code that gave preferences to long-held family plots to split lots for the exclusive use of other family members. Indeed, as we all know the concept of "family land splits" - which has been SO ABUSED over the past two decades, is one of the MAJOR REVISIONS/CHANGES SF COUNTY STAFF are recommending by eliminating this provision in the new SLDC.

#4 - Further erosion of the visual quality of the foothills area in this part of the County. If this variance is granted, once again the unique visual qualities of the La Barbaria Canyon area will be further eroded by more homes of a greater density than is currently allowed. The precedent of allowing for any lot split simply for the promise of "economic" gain by the current owners - in order to sell the 2nd plot - is unfair and further impacts all the surrounding residents - for the benefit of only one resident. The previous variance that SF County granted - allowing the building to be higher than the code permits - has already produced an un-intended negative visual impact across the entire area. The house sticks out like a sore thumb! for miles around.

I know that Santa Fe County Staff, and the CDRC members, understand and support the principles and on-the-ground realities of what is necessary to implement a truly "sustainable" land development code. I am therefore, HOPEFUL that the CDRC will support the previous County Staff recommendation to deny this variance request [the same as was presented in 2013] and will decide to DENY this lot split variance request.

PLEASE ACT RESPONSIBLY as our County Staff - as residents of the County, we count on staff to make the tough decisions and do the right thing

PLEASE DENY THIS PERMIT.

Thanks for your time in reviewing this request.

Majon Cox
16 Grey Fox Lane
Santa Fe, NM 87505

Alison Keogh / Robert Mang
6, Placita Lorenzo
Santa Fe, NM 87505

October 6, 2014

County Land Use Administration Office
PO Box 276
Santa Fe, NM 87504

CDRC CASE # V 14-5300

Attn: John Lovato

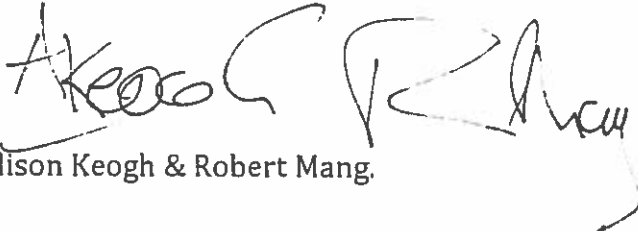
Concerning the above case # we are submitting our comments regarding the request for a variance to allow a lot split.

We do **not** support this variance request due to the following criteria;

- 1 Increased water consumption on an aquifer which is all ready stressed. Flow rates in the neighborhood have decreased.
- 2 Fire hazard – increased risk.
- 3 Inter-urban wildlife interface will be further compromised.
- 4 Preservation of the night sky.
- 5 Increased traffic – ingress and ingress onto presumably La Barbaria Rd.

Currently the owners are using 20, La Barbaria as a vaction rental through various on line sites, airbnb and flipkey under the title Casa Que Pasa. If the lot is split and developed this will increase the potential for another vacation rental. There is less ability to control all of the above criteria when transient renters are not responsible and not sensitive to the fragile nature of this environment.

Sincerely,


Alison Keogh & Robert Mang.

PAULA TACKETT
7459 B. OLD SANTA FE TRAIL
SANTA FE, NEW MEXICO 87505
(505) 982-3784; ptackett13@gmail.com

November 18, 2014

Penny Ellis-Green
County Land Use Administrator
c/o Land Use Dept.
P.O box 276
Santa Fe, New Mexico 87504-0276

Subject: Stoia Request for a Variance of Article III, Section 10 (Lot Split Request)
CDRC Case # 14-5300


Dear Ms. Ellis-Green:

I attended the earlier hearing in October on this matter and have learned that there will be a follow-up hearing on November 20, 2014. I will unfortunately be out-of-town on that day, but after the last hearing I was able to visit with Antonia Quast and the gentleman who attended the hearing representing the Stoias, who were unable to appear because of a family emergency. We discussed their willingness to accede to Commissioner Anaya's suggestion regarding limiting the water usage to ¼ acre foot per lot if the split was allowed. I also believe there was some discussion about requiring a third-party monitoring condition but I did not get that down in my notes.

I have since had a conversation with Antonia Quast who confirmed the Stoias' willingness to agree to limiting the water usage on each of the parcels to ¼ acre-foot as a condition of approval of the lot split. As I expressed at the October hearing, my primary concern was the impact the use of two wells would have on the existing water table, given that one of the wells alone had authorization for 3-acre feet of water. If, as a condition of the lot split, the Stoias and the purchasers of the 5 + acre parcel agree to reduce their water usage to the ¼ acre foot per lot as suggested by Commissioner Anaya, and agree to install meters on their wells to allow for third-party monitoring and reporting on the usage on a quarterly basis, the normal reporting requirement for the county, then I would withdraw my earlier objection to this lot split.

Although I am out-of-state at meetings, I can be reached on my cell phone, 505 803-7084 if any of the members of the County Development Review Committee have any questions, or if I can be of any further assistance. Thank you for your attention to this matter.

Sincerely,

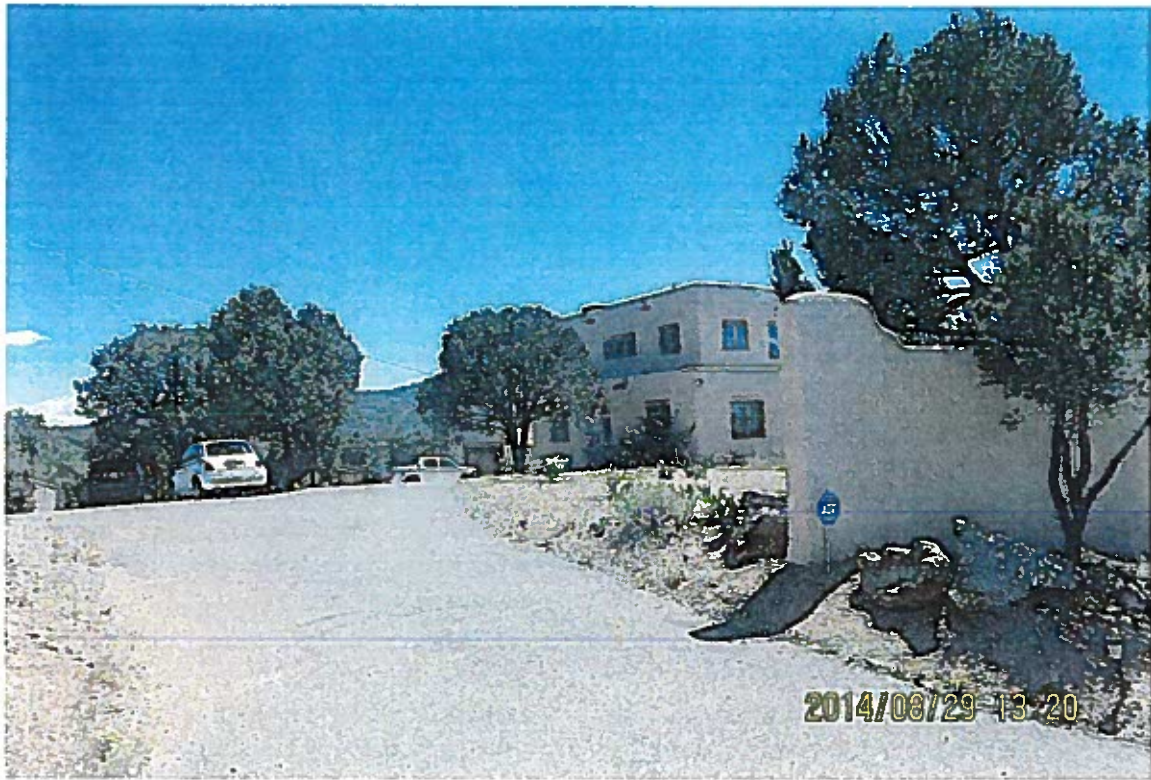


Paula Tackett

cc. John Lovato, Case Manager
Kathy Stoia
Antonia Quast







SUMMARY REVIEW SUBDIVISION OF TRACT 20
NO. 20 LA BARBARIA ROAD
SECTION 17, T16N R10E, N4PM
SANTA FE COUNTY, NM

OWNER'S CONSENT

THE UNDERSIGNED OWNER(S) DO HEREBY ATTEST THAT THE LOT SPLIT OF THIS EXISTING LOT, EASEMENTS AND THE EASEMENTS AS SHOWN ON THIS SUBDIVISION MAP DO HEREBY GRANT EASEMENTS FOR ALL EXISTING UTILITIES SERVING THIS PARCEL. THESE LANDS LIE WITHIN THE PLATTING AND PLANNING JURISDICTION OF THE CITY AND COUNTY OF SANTA FE, STATE OF NEW MEXICO.

CHRISTOPHER C. STOLA

STATE OF NEW MEXICO)
COUNTY OF SANTA FE) SS
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS
DAY OF 2013 BY CHRISTOPHER C. STOLA

NOTARY PUBLIC

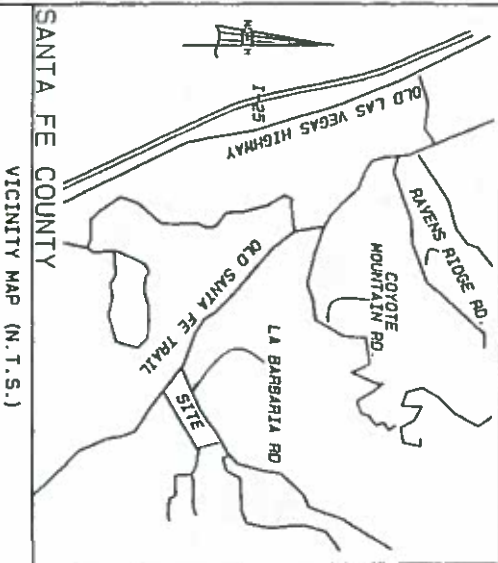
MY COMMISSION EXPIRES

KATHY K. STOLA

STATE OF NEW MEXICO)
COUNTY OF SANTA FE) SS
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS
DAY OF 2013 BY KATHY K. STOLA

NOTARY PUBLIC

MY COMMISSION EXPIRES



SANTA FE COUNTY APPROVAL, NOTES AND CONDITIONS

LAND USE ADMINISTRATION DATE FIRM ADDRESSING DATE
COUNTY DEPT. PERMIT NO. COUNTY TREASURER DATE

- THE LANDS SHOWN HEREON LIE WITHIN THE PLANNING AND PLATTING JURISDICTION OF SANTA FE COUNTY.
 - MAINTENANCE OF PRIVATE ACCESS EASEMENTS, UTILITY EASEMENTS AND/OR EASEMENTS FOR PUBLIC UTILITIES SHALL BE THE RESPONSIBILITY OF THE LANDOWNER. THE COUNTY ENGINEER AND THE BOARD OF COUNTY COMMISSIONERS SHALL REVIEW AND APPROVE ANY CHANGES TO THE PLANNING AND PLATTING.
 - THE APPROVAL OF THIS PLAT DOES NOT CONSTITUTE THE APPROVAL OF ANY EASEMENTS OR EASEMENTS FOR PUBLIC UTILITIES. THE APPROVAL OF ANY EASEMENTS OR EASEMENTS FOR PUBLIC UTILITIES SHALL BE THE RESPONSIBILITY OF THE LANDOWNER. THE COUNTY ENGINEER AND THE BOARD OF COUNTY COMMISSIONERS SHALL REVIEW AND APPROVE ANY CHANGES TO THE PLANNING AND PLATTING.
 - ACCORDING TO FEMA FLOOD INSURANCE RATE MAP (FIRM) COMMUNITY PANEL NO. 30490C033E, DATED DECEMBER 04/2012, THIS PROPERTY LIES OUTSIDE THE FLOOD HAZARD ZONE. THE FLOOD HAZARD ZONE IS SHOWN ON THE FLOOD INSURANCE RATE MAP (FIRM) COMMUNITY PANEL NO. 30490C033E, DATED DECEMBER 04/2012, THIS PROPERTY LIES OUTSIDE THE FLOOD HAZARD ZONE.
 - THE TRACTS, PARCELS AND/OR LOTS SHOWN HEREON LIE INSIDE THE EXTREME NORTH AND SOUTH BOUNDARIES OF THE COUNTY OF SANTA FE. THE TRACTS, PARCELS AND/OR LOTS SHOWN HEREON LIE INSIDE THE EXTREME NORTH AND SOUTH BOUNDARIES OF THE COUNTY OF SANTA FE.
 - WATER USE ON THESE TRACTS, PARCELS AND/OR LOTS IS RESTRICTED BY THE COUNTY ENGINEER. THE OFFICIAL RECORD OF THE COUNTY ENGINEER'S INSTRUMENT NO. 1111111111 IS RESTRICTED TO 0.50 ACRE FEET PER YEAR OF LESS THAN 15%.
 - BUILDABLE AREA IS DEPICTED HEREON. THE BUILDABLE AREA INDICATED HAS SLOPES OF LESS THAN 15%.
 - THE SUBDIVISION DISCLOSES STATEMENT REGARDING THESE TRACTS/PARCELS AND/OR LOTS IS FILED IN THE OFFICE OF THE COUNTY CLERK AS INSTRUMENT NO. 1111111111.
- SPECIAL BUILDING PERMIT CONDITIONS
- THE INSTALLATION OF AN AUTOMATIC FIRE SUPPRESSION SYSTEM IS HIGHLY RECOMMENDED FOR ALL HOMES ON LOTS.
 - THE PARCELS, LOTS, OR TRACTS PLATTED HEREON ARE SUBJECT TO ARTICLE VII, SECTION 1, AND ORDINANCE 2008-10, AS WELL AS ALL PERMITTING COUNTY CODE AND ORDINANCES AT THE TIME OF DEVELOPMENT.
 - THESE LOTS ARE SUBJECT TO SANTA FE COUNTY FIRE AND RESCUE IMPACT FEES AT THE TIME OF APPLICATION FOR DEVELOPMENT PERMIT.
 - NEW DRIVEWAY/ROADWAY ACCESS FROM LA BARBARIA ROAD IS SUBJECT TO APPROVAL BY THE COUNTY PUBLIC WORKS DIRECTOR AND FIRE MARSHAL.
 - DEVELOPMENT PERMITS FOR BUILDING CONSTRUCTION WILL NOT BE ISSUED UNTIL THE SUBDIVISION DISCLOSES STATEMENT REGARDING THESE TRACTS/PARCELS AND/OR LOTS IS APPROVED BY STAFF.

SURVEYOR'S CERTIFICATE

I, MITCHELL K. NORDMAN, N.M.P.L.S. No. 6998 DO HEREBY CERTIFY TO CHRISTOPHER C. & KATHY K. STOLA THAT THIS BOUNDARY SURVEY PLAT AND THE ATTACHED SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION ON 07/18/2013. I AM RESPONSIBLE FOR THIS SURVEY THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR A BOUNDARY SURVEY IN THE STATE OF NEW MEXICO, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

MITCHELL K. NORDMAN

N.M.P.L.S. No. 6998

DATE

AT

DAY OF

MONTH

YEAR

OF THE RECORDS OF

SANTA FE COUNTY

WITNESS MY HAND AND SEAL OF OFF

GRADUATE SURVEYOR

COUNTY CLERK, SANTA FE COUNTY

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MY COMMISSION EXPIRES



- SURVEYOR'S NOTES:
- 1) BASIS OF BEARING: IS TAKEN FROM AUTONOMOUS GPS OBSERVATIONS OF ASTROMETRIC NORTH ON 07/18/2013. ANY MONUMENTED LINE NOTED HEREON MAY BE USED AS A LOCAL BASIS OF BEARING.
 - 2) REFER TO A PLAT OF SURVEY ENTITLED "BOUNDARY SURVEY PREPARED FOR WILLIAM KELLER, BY CLARK IN BOOK 169, PAGE 047."
 - 3) REFER TO A WARRANTY DEED BETWEEN WILLIAM KELLER (GRANTOR) TO CHRISTOPHER C. & KATHY K. STOLA (GRANTEES) RECORDED WITH THE SANTA FE COUNTY CLERK'S OFFICE INSTRUMENT NO. 107000, DATED 06/28/74, AND A WARRANTY DEED BETWEEN WILLIAM KELLER III (GRANTOR) TO WILLIAM KELLER III RECORDED AS INSTRUMENT NO. 1683485.
 - 4) REFER TO PLAT ENTITLED "WINK SUBDIVISION" BY JACK G. HOPPE, N.M.P.S. NO. 689, DATED 06/28/74.
 - 5) THIS SURVEY IS SUBJECT TO CHAIN OF DEEDING FOR LEGAL LOT OF RECORD.
 - 6) BOTH RECORDED AND UNRECORDED.

PURPOSE: THIS PLAT CREATES TWO RESIDENTIAL LOTS.
TRACT 20A & TRACT 20B FROM TRACT 20

INDEXING INFORMATION FOR COUNTY CLERK

NAME: CHRISTOPHER C. & KATHY K. STOLA
FILE: No. 170700
SUBDIVISION: N/A
SECTION: 17, T16N R10E
DATE: 07/18/2013
PROJECT NO: 7-7-100



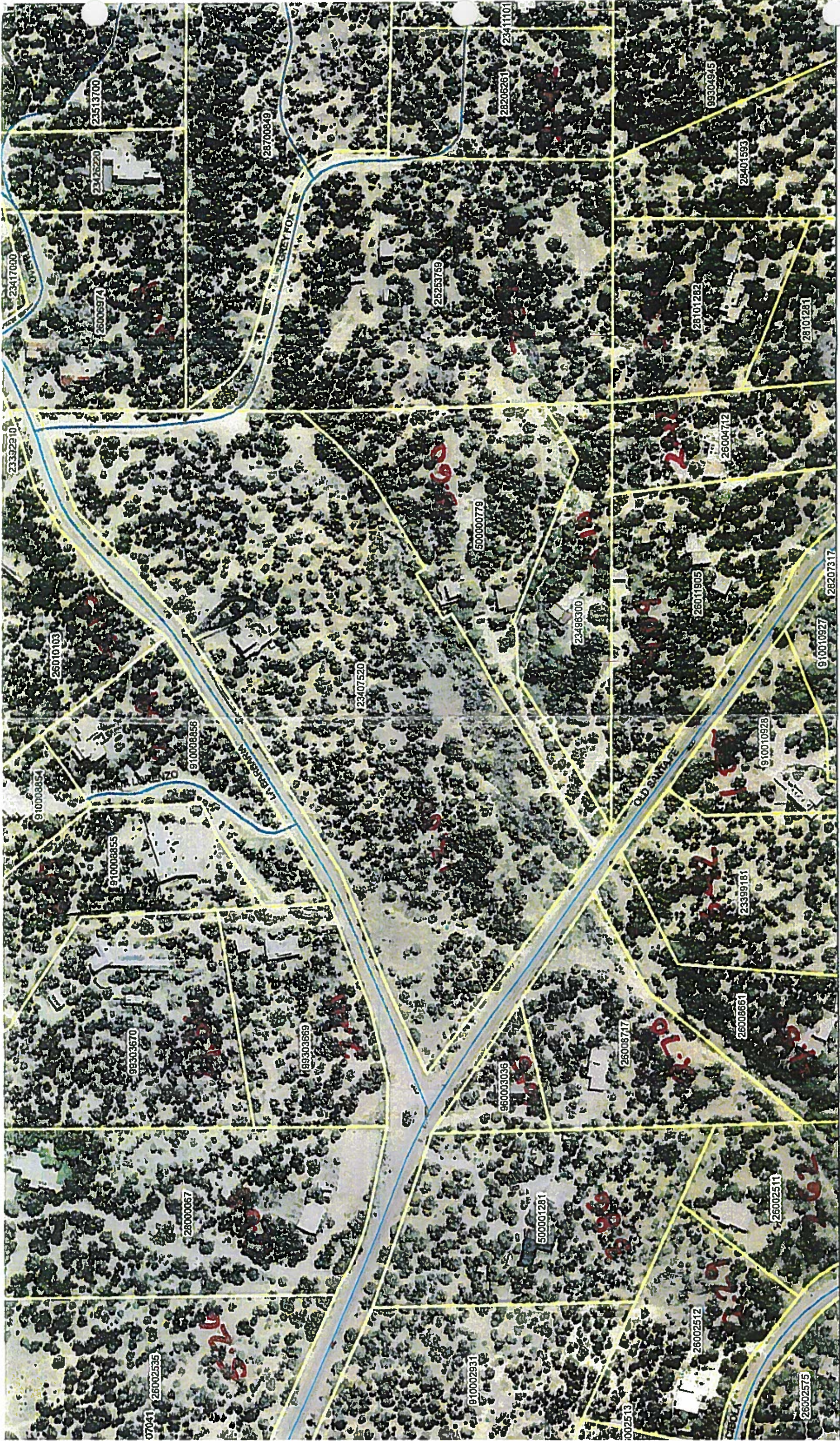


EXHIBIT
10.



WARNING:
Two (2) foot contour data sets are
NOT SUITABLE FOR ENGINEERING WORK.
These data are appropriate for
PLANNING PURPOSES ONLY

Orthophoto from 2008

Contour Interval 2 Feet

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

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Santa Fe County Fire Department Fire Prevention Division

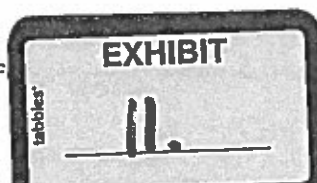
Official Development Review

Date	October 2, 2014		
Project Name	Stoia, Cathy & Chris		
Project Location	20 La Barbara Road T16; R10; S17 "Extreme Wildland-Urban Hazard Area"		
Description	Variance for lot split (density)	Case Manager	John Lovato
Applicant Name	Chris & Cathy Stoia	County Case #	14-5300
Applicant Address	20 La Barbara Road Santa Fe, NM 87508	Fire District	Hondo
Applicant Phone	505-603-1066		
Review Type:	Commercial <input type="checkbox"/>	Residential <input checked="" type="checkbox"/>	Sprinklers <input type="checkbox"/> Hydrant Acceptance <input type="checkbox"/>
	Master Plan <input type="checkbox"/>	Preliminary <input type="checkbox"/>	Final <input type="checkbox"/> Inspection <input checked="" type="checkbox"/> Lot Split <input checked="" type="checkbox"/>
	Wildland <input checked="" type="checkbox"/>	Variance <input checked="" type="checkbox"/>	
Project Status:	Approved <input type="checkbox"/>	Approved with Conditions <input checked="" type="checkbox"/>	Denial <input type="checkbox"/>

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

Summary of Review

- Per plat notes: New driveway/roadway access from La Barbara Road is subject to approval by the County Public Works Director and Fire Marshall. (page #2)
- Per plat notes: Development permits for building construction will not be issued until required improvements for road emergency turn around are completed and approved by staff. (page #2)
- This driveway/fire access shall not exceed 11% slope and shall have a minimum 28' inside radius on curves. (page #3)
- This development's location is rated within an "Extreme Wildland-Urban Hazard Area" and shall comply with all applicable regulations... (page #3)



Fire Department Access

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

• Fire Access Lanes

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

▪ Roadways/Driveways

Shall comply with Article 9, Section 902 - Fire Department Access of the 1997 Uniform Fire Code inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal

Per plat notes: New driveway/roadway access from La Barbaria Road is subject to approval by the County Public Works Director and Fire Marshal.

Development permits for building construction will not be issued until required improvements for road emergency turn around are completed and approved by staff.

Roads shall meet the minimum County standards for fire apparatus access roads within this type of proposed development. Driveway, turnouts and turnarounds shall be County approved all-weather driving surface of minimum 6" compacted basecourse or equivalent. Minimum gate and driveway width shall be 14' and an unobstructed vertical clearance of 13'6".

The driveway for any proposed building site shall incorporate a turnaround area for emergency vehicle purposes such as a cul-de-sac or K-type or hammerhead type turnaround conforming to the access and turnaround requirements and dimensions of the Santa Fe County Fire Department.

▪ Street Signs/Rural Address

Section 901.4.4 Premises Identification (1997 UFC) Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property.

Section 901.4.5 Street or Road Signs (1997 UFC) When required by the Chief, streets and roads shall be identified with approved signs.

Properly assigned legible rural addresses shall be posted and maintained at the entrance(s) to each individual lot or building site within 72 hours of the commencement of the development process for each building.

▪ Slope/Road Grade

Section 902.2.2.6 Grade (1997 UFC) *The gradient for a fire apparatus access road shall not exceed the maximum approved.*

This driveway/fire access shall not exceed 11% slope and shall have a minimum 28' inside radius on curves.

▪ Restricted Access/Gates/Security Systems

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

To prevent the possibility of emergency responders being locked out, all access gates should be operable by means of a key or key switch, which is keyed to the Santa Fe County Emergency Access System (Knox Rapid Entry System). Details and information are available through the Fire Prevention office.

Fire Protection Systems

Automatic Fire Protection/Suppression

Due to the location of the proposed development/residence and the lack of a pressurized hydrant or water storage (draft hydrant) system in this area, for life safety and property protection this office highly *recommends* the installation of an Automatic Fire Suppression system meeting NFPA 13D requirements on any new construction. Assistance in details and information are available from the Fire Prevention Division.

Urban-Wildland Interface

SFC Ordinance 2001-11, Urban Wildland Interface Code

This development's location is rated within an "Extreme Wildland-Urban Hazard Area" and shall comply with all applicable regulations within the SFC Ordinance 2001-11 / EZA 2001-04 as applicable for the Urban Wildland Interface Code governing such areas.

▪ Building Materials

Buildings and structures located within urban wildland interface areas, not including accessory structures, shall be constructed in accordance with the Fire Code, the Building Code and the Urban Wildland Interface Code.

▪ Location/Addressing/Access

Per SFC 2001-11/EZA 2001-04, addressing shall comply with Santa Fe County Rural addressing requirements.

Per SFC 2001-11 / EZA 2001-04 Chapter 4, Section 3.2 Roads and Driveways: Access roads, driveways, driveway turnarounds and driveway turnouts shall be in accordance with provisions of the Fire Code and the Land Development Code. Roads shall meet the minimum County standards for fire apparatus access roads within this type of proposed development.

▪ Vegetation Management

It is recommended that the development also have a vegetation management plan to establish fire-safe areas and to minimize the threat and occurrence of fire in the urban wildland interface areas. Assistance in details and information are available through the Fire Prevention Division

General Requirements/Comments

▪ Inspections/Acceptance Tests

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

▪ Permits

As required

Final Status

Recommendation for Development Plan approval with the above conditions applied.

Tim Gilmore, Inspector



Code Enforcement Official

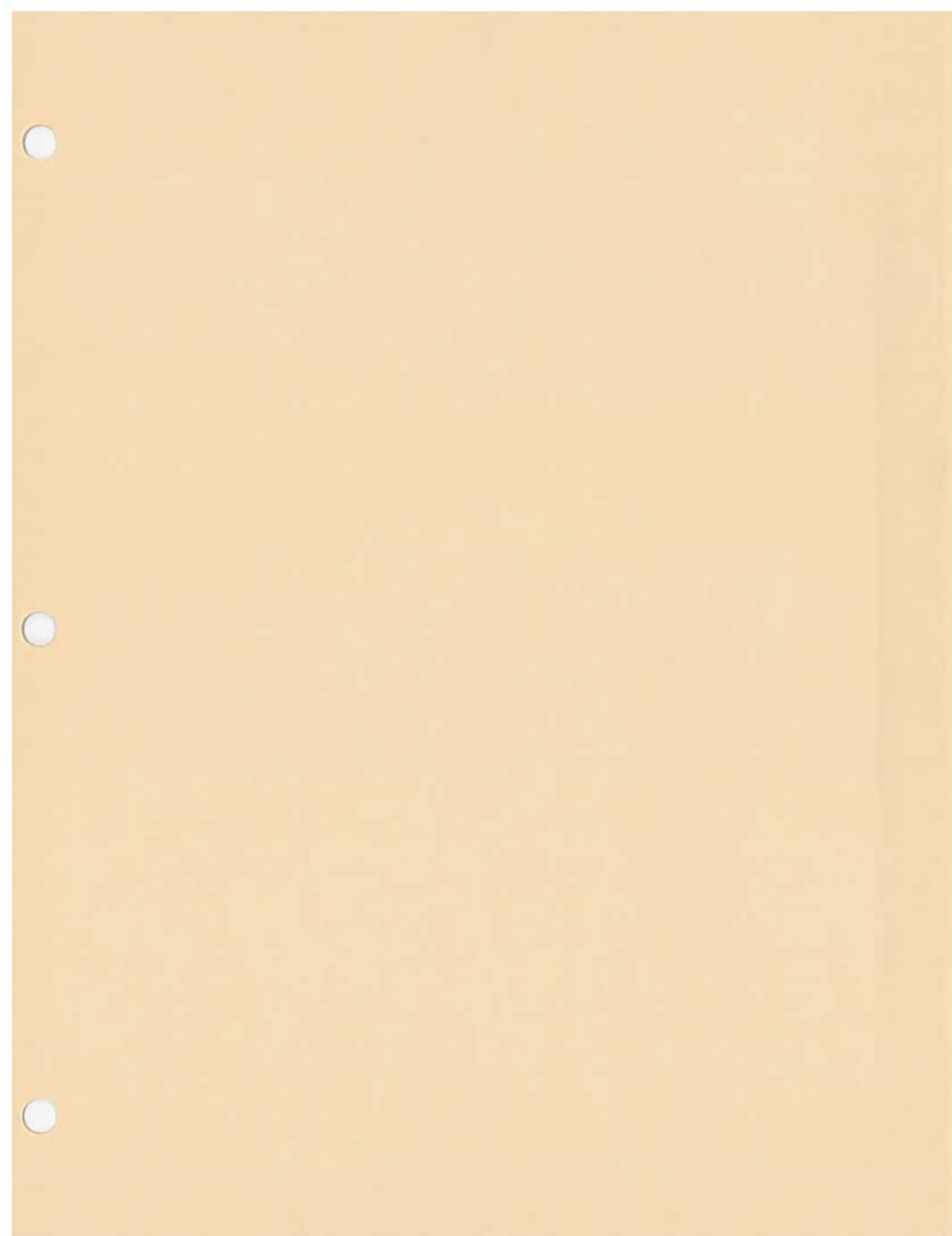
10-2-14
Date

Through David Sperling, Chief

File: DevRev/H/Stoia/100214

Cy: Buster Patty, Fire Marshal
John Lovato, Land Use
Applicant
BC & Regional Lts
District Chief
File

Official Submittal Review
4 of 4



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: November 25, 2014

TO: Board of County Commissioners

FROM: John Lovato, Development Review Specialist Senior

VIA: Katherine Miller, County Manager
Penny Ellis-Green, Land Use Administrator
Vicki Lucero, Building and Development Services Manager
Wayne Dalton, Building and Development Services Supervisor

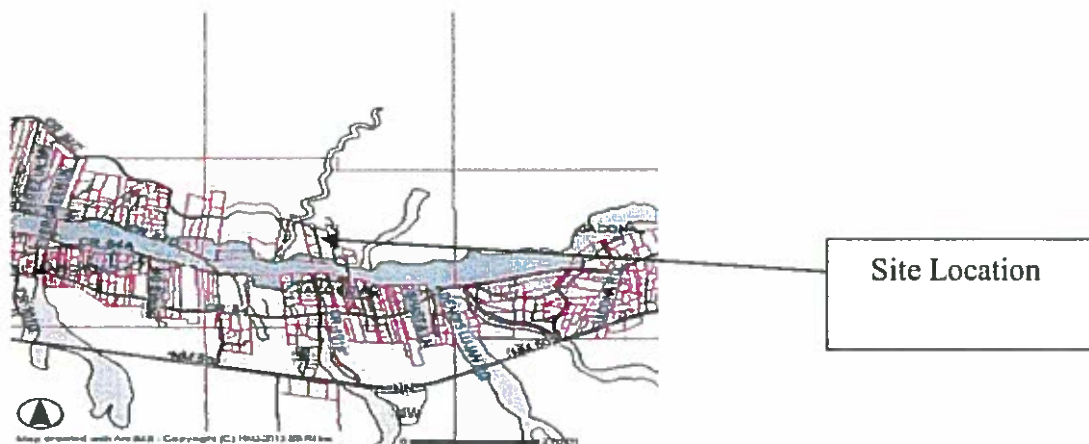
FILE REF.: CDRC CASE # V 13-5190 Minnie Walsh Variance

ISSUE:

Minnie Walsh, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements), and a variance of Article III, Section 2.4.1a.2.b (Access) of the Land Development Code, and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a Family Transfer Land Division of 1.195 acres into two lots. The Board of County Commissioners rendered a decision to approve this request on October 8, 2013. The BCC's decision was then appealed to District Court and the Court decision on July 31, 2014, was to remand the case back to the BCC for a rehearing.

The Property is located at 58 Arroyo Jaconita, within the Traditional Community of Jacona, within Section 11, Township 19 North, Range 8 East, (Commission District 1).

Vicinity Map:



REQUEST SUMMARY:

On October 8, 2013, this request came before the BCC. The decision of the BCC was to approve the request by a vote of 3-2 with staff's recommended conditions. The BCC's decision was appealed to the First Judicial District Court by Kris and Misha Peterson. The Honorable Raymond J. Ortiz remanded the case back to the Board so that the board can make specific written findings under its Land Development Code requirements and also under both prongs of the Paule case to justify the decision they made. Similarly, this is also required for the floodplain variance, for a re-representation of evidence for written findings to justify the decision and make specific findings, or to make specific findings whether or not those requirements are applicable in the first instance.

The Applicant requests a variance to allow a Family Transfer Land Division of 1.195 acres into two lots. The property is accessed by Arroyo Jaconita Road (Private Road) and Loma Encantada (Private Road). Arroyo Jaconita is a dirt/sand driving surface and is located in and crosses a FEMA designated Special Flood Hazard Area. The portion of Arroyo Jaconita Road that services the property is approximately 750 feet in length and 15 feet in width. Loma Encantada is a dirt driving surface that ends and enters the Jacona Land Grant. A portion of Loma Encantada crosses a FEMA designated Special Flood Hazard Area and is approximately 1/4 mile in length and 15 feet in width. Both Arroyo Jaconita, and Loma Encantada do not have all-weather driving surfaces and may be frequently impassible during and after inclement weather, and thereby are not all weather accessible.

Currently, there is a double wide manufactured home, a single wide mobile home, and two accessory structures (Sheds) on the property. The property is served by two onsite wells, a conventional septic system, and a split flow septic system. Article III, Section 10 of the Land Code states that the minimum lot size in this area is 0.75 acres. In order to divide the subject property into two lots, the property would have to be at least 1.50 acres. The Applicant is requesting a variance to this requirement.

In 2006, the BCC granted a two year temporary approval to allow the placement of a second dwelling unit on the property. The Applicant failed to remove the structure at the conclusion of the two year period. (Exhibit 11) The approval stated that if the Applicant sought to retain the second dwelling unit for more than two years, the Applicant was to apply for temporary approval every two years to be approved by the CDRC and report water meter readings to the Land Use Administrator by January 31st of each year.

The Applicant states the reason for this is due to the loss of her husband, and it has taken a few years for the family to focus and take the necessary steps toward making a home for her daughter's family permanent. The Applicant would like to provide her daughter and her family with an affordable place to live and provide clear title to the land so that they may build a permanent residence. Furthermore, she would like to maintain family ties to the land where her daughter grew up.

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

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

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

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

- A. The Board of County Commissioners (Board) after recommendation by the County Development Review Committee (CDRC) shall hear and render judgment on a request for variance from the requirements of this Ordinance.
- B. The CDRC may recommend and the Board take action on an appeal of the Floodplain Administrator's decision only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.
- C. Any person or persons aggrieved by the decision of the Board may appeal such decision to a court of competent jurisdiction within thirty days of the Board's decision.
- D. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- E. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Ordinance.
- F. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C (2) of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- G. Upon consideration of the factors noted above and the intent of this Ordinance, the Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance (Article 1, Section C).

- H. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- I. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

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

- a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
Staff's response: There are no other access points to the property and the proposed access shall relieve hardship on the Applicant.
- b. Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
Staff's response: Proposed access will not increase flood heights and will be an expense to the public and Applicant to reconstruct All weather access.
- c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
Staff's response: There are no proposed structures within the designated FEMA Flood Hazard area. Any future development shall comply with FEMA and all Ordinance standards.
- d. Variances may be issued by the BCC for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - i. the criteria outlined in Article 4, Section D (1)-(9) are met, and
 - ii. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.**Staff's response: There is a typographical error in Section D as this does not exist in the Ordinance. All other measures will be addressed at time of Building Permit.**

Article II, § 3 (Variances) states: "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to

the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance.” This Section goes on to state “In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified”. The variance criterion does not consider financial or medical reasons extraordinary hardships.

This Application was submitted on June 6, 2013.

On July 18, 2013, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicants request by a 5-2 vote. (Minutes Attached as Exhibit 2)

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

APPROVAL SOUGHT: A variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow a Family Transfer Land Division of 1.195 acres into two lots, a variance of Article III, § 2.4.1a.2.b (Access) of the Land Development Code, and a variance of Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management)

GROWTH MANAGEMENT AREA: El Norte, SDA-2

HYDROLOGIC ZONE: Traditional Community of Jacona, minimum lot size per Code is 0.75 acres per dwelling unit. Proposal does not meet minimum lot size criterion.

ACCESS: Arroyo Jaconita and Loma Encantada

FIRE PROTECTION: Pojoaque Fire District

WATER SUPPLY: Domestic Well

LIQUID WASTE: Conventional Septic System /Split Flow System

VARIANCES: Yes

AGENCY REVIEW:	<u>Agency</u>	<u>Recommendation</u>
	County Fire	Denial
	Floodplain Administrator	Denial
	State EID	Approval

STAFF RECOMMENDATION: On October 8, 2013, the decision of the BCC was to approve the request for a variance of Article III, Section 10 (Lot Size Requirements), a variance of Article III, Section

2.4.1a.2.b (Access), and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a Family Transfer Land Division of 1.195 acres into two lots, with following conditions:

1. Water use shall be restricted to .50 acre foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (**Article III, § 10.2.2 and Ordinance 2002-13**).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval. The Plat must be recorded within 18 months of approval. (**Article III, § 2.4.2**).
3. The Applicant must comply with all conditions of approval within 90 days and prior to plat approval.
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review (**1997 Fire Code and 1997 Life Safety Code**).
5. The Placement of more than one dwelling unit per lot and further division of the land is prohibited on the property (**Article III, § 10**).
6. The Applicant shall divide the property into two equal parcels.
7. A note must be placed on the Plat regarding the lack of all-weather access to the subject lots. This note shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site Access, including access by Emergency vehicles, may not be possible at all times (**Ordinance 2008-10**).

If the decision of the BCC is to approve the request, staff also recommends the following findings of fact and conclusions of law in support of the decision:

FOF and Conclusions of Law:

Floodplain Variance

1. Portion of access that crosses the FEMA designated floodplain is off-site. Family Transfers are exempt from off-site improvements.
2. 6 other parcels utilize the same secondary access to the subject parcel.
3. 4 other parcels utilize the primary access to the subject property.
4. All-weather access affects many of the properties in the area. For this reason, staff is recommending that the floodplain section be amended in the Sustainable Land Development Code (SLDC) to require all-weather access only for major subdivisions, multi-family developments, or non-residential development over 10,000 square feet.
5. It would be an extraordinary hardship to the Applicant if they were required to construct an all-weather access due to unusual topography that would benefit everyone who utilizes the access. Moreover, applicant does not own the land constituting the 750' long and 15' wide all-weather crossing and there is no other access to the parcel.
6. The road crossing the FEMA designated floodplain is existing and no improvements are proposed so there will be no construction within the floodplain

Minimum Lot Size Variance

1. Primary Home is 2,200 square feet and the secondary home is 952 square feet. This meets the requirements of the SLDC for an accessory dwelling.
2. Strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant in that Applicant is seeking to permit one of her Daughters to divide the lot by way of small Lot Family Transfer pursuant to a variance to assist her daughter with an affordable place to reside and own, where so the Applicant's daughter has been living in a residence on the property since 2006.
3. The granting of the requested variance is a minimal easing of the Code requirement to address topography or other such non-self-inflicted conditions to allow a

Family Transfer Land Division on the applicant's property and will not nullify the purpose of the Code.

EXHIBITS:

1. October 8, 2013 BCC Meeting Minutes
2. August 15, 2013 CDRC Minutes
3. September 12, 2006 BCC Minutes
4. Letter of Intent
5. Letters of Opposition
6. Article III, § 10 Lot Size Requirements
7. Article III, § 2.4.1a.2.b (Access)
8. Article V, § 8.1.3 (Legal Access)
9. Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management)
10. Article II, § 3 (Variances)
11. September 14, 2006 Conditions of Approval Memo
12. Site Photographs
13. Aerial of Site and Surrounding Area
14. Review Agency Comment Letters
15. Court Order

CHAIR HOLIAN: Mr. Scott, can you be sworn in, please?

[Duly sworn, Andrew Scott testified as follows:]

ANDREW SCOTT: We share the West Santa Fe Association's concerns and are committed to creating and maintaining that type of establishment in those particulars that are set forth in the letter.

COMMISSIONER CHAVEZ: So on one specific point you would agree to beer and wine only and not a full-service bar?

MR. SCOTT: When we last spoke, and we still, to this day are not committed to or convinced that spirits are necessary in that establishment for it to be viable. We're still obviously in the preliminary stages of the business development model and execution but no, it is not inherently – it is not necessarily the case that spirits will be served in this establishment.

COMMISSIONER CHAVEZ: But are you saying that as a minimum you would like to have beer and wine?

MR. SCOTT: Absolutely. I think it's very important, as is stated in the letter, for the effort to be viable.

COMMISSIONER CHAVEZ: Okay. Thank you. Thank you, Madam Chair.

CHAIR HOLIAN: Is there a motion?

COMMISSIONER STEFANICS: I'll move for approval.

COMMISSIONER CHAVEZ: Second, and I would like to –

CHAIR HOLIAN: Is there any further discussion?

COMMISSIONER CHAVEZ: I would just like to present this hard copy for the minutes. Do you have it? Okay. [Exhibit 4]

CHAIR HOLIAN: Any further discussion? There is a motion and a second for approval of BCC case MIS 13-5280.

The motion passed by unanimous [5-0] voice vote.

- XVIII. A. 2. CDRC CASE # V 13-5190 Minnie Walsh Variance. Minnie Walsh, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) and a Variance of Article III, Section 2.4.1a.2.B (Access) of the Land Development Code and a Variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to Allow a Family Transfer Land Division of 1.195 Acres Into Two Lots. The Property is Located at 58 Arroyo Jacanita, within the Traditional Community of Jacona, within Section 11, Township 19 North, Range 8 East, (Commission District 1)**

VICKI LUCERO (Building and Services Division): Thank you, Madam Chair, I'll be presenting tonight. The applicant requests a variance to allow a family transfer land division of 1.195 acres into two lots. . The property is accessed by Arroyo Jacanita Road, which is a private road, and Loma Encantada which is also a private road. Arroyo Jacanita is



SFC CLERK RECORDED 11/14/2013

a dirt/sand driving surface and is located in and crosses a FEMA designated Special Flood Hazard Area. The portion of Arroyo Jaconita Road that services the property is approximately 750 feet in length and 15 feet in width. Loma Encantada is a dirt driving surface that ends and enters the Jacona Land Grant. A portion of Loma Encantada crosses a FEMA designated Special Flood Hazard Area and is approximately ¼ mile in length and 15 feet in width. Both Arroyo Jaconita, and Loma Encantada do not have all-weather driving surfaces and may be frequently impassible during and after inclement weather, and thereby are not all-weather accessible.

Currently, there is a manufactured home, a single-wide mobile home, and two accessory structures on the property. The property is served by two onsite wells, a conventional septic system, and a split-flow septic system. Article III, Section 10 of the Land Code states that the minimum lot size in this area is 0.75 acres. In order to divide the subject property into two lots, the property would have to be at least 1.50 acres. The Applicant is requesting a variance to this requirement.

In 2006, the BCC granted a two-year temporary approval to allow the placement of a second dwelling unit on the property. The Applicant never followed up with conditions of approval. The Applicant was to apply for temporary approval every two years to be approved by the CDRC and report water meter readings to the Land Use Administrator by January 31st of each year.

The Applicant states the reason for this is due to the loss of her husband, and it has taken a few years for the family to focus and take the necessary steps toward making a home for her daughter's family permanent. The Applicant would like to provide her daughter and her family with an affordable place to live and provide clear title to the land so that they may build a permanent residence. Furthermore, she would like to maintain family ties to the land where her daughter grew up.

This application was submitted on June 6, 2013. On July 18, 2013 the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicant's request by a 5-2 vote. Growth Management staff have reviewed this application for compliance with pertinent code requirements and finds the project is not in compliance with County criteria for this type of request.

Staff recommendation is for denial of the variance of Article III, Section 10, Lot size requirements, a variance of Article III, Section 2.4.1a.2.b, Access, and a variance of Article IV, Section 4.2 of Ordinance No. 2008-10 to allow a family transfer land division of 1.195 acres into two lots. If the decision of the BCC is to approve the Applicant's request staff recommends the following conditions be imposed. Madam Chair, may I enter those conditions into the record?

CHAIR HOLIAN: Yes, you may.

[The conditions are as follows:]

1. Water use shall be restricted to .50 acre-foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (Article III, § 10.2.2 and Ordinance 2002-13).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the

SFC CLERK RECORDED 11/14/2013

- Building and Development Services Department for review and approval (Article III, § 2.4.2).
3. The Applicant must comply with all conditions of approval within 90 days and prior to plat approval.
 4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review (1997 Fire Code and 1997 Life Safety Code).
 5. The Placement of more than one dwelling unit per lot and further division of the land is prohibited on the property (Article III, § 10).
 6. The Applicant shall divide the property into two equal parcels.
 7. A note must be placed on the Plat regarding the lack of all-weather access to the subject lots. This note shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site Access, including access by Emergency vehicles, may not be possible at all times (Ordinance 2008-10).

COMMISSIONER CHAVEZ: Thank you. I stand for questions.

CHAIR HOLIAN: Are there any questions for staff? Seeing none, is the applicant here? If there is anything that you would like to add please come forward and be sworn in.

[Duly sworn, Minnie Walsh testified as follows:]

MINNIE WALSH: Madam Chair, Commissioners, my name is Minnie Walsh and I have my son-in-law, Mike Adams, he will speak on my behalf.

[Previously sworn, Mike Adams testified as follows:]

MIKE ADAMS: My name is Mike Adams, 58 Arroyo Jaconita. I do have some comments to make with your indulgence. To be clear, my mother-in-law's purpose is to request a family property transfer of the 1.19 acres that belongs to her to my wife Michelle and I for the purpose of building a new home on a permanent foundation so that we may live in close proximity to my mother-in-law, a widow, and help maintain and care for her and her property. I'll restate. Mother's purpose is to divide the 1.19 acres so that we might be able to build a house on a permanent foundation as a family transfer, that we might maintain our ties to the community and be able to help my mother-in-law just so she's not alone out there.

The history of the case, in 2006 the BCC granted us permission for a second dwelling to be placed on the property. This was a temporary permit but with permanent provisions such as a state-approved septic system and I must admit that kind of confused us and me in particular. The Walsh family always intended to split the property permanently so the temporary part of the provision was misunderstood as far as having to reapply when permanent facilities had been approved.

In 2008 before the process could be completed John, Minnie's husband, passed away. This caused an obvious sidetracking of the process and also in 2010 my mother-in-law lost a grandson in a tragic accident. This again took our family's attention away from the matters at hand. There's some legal issues I would like to consider as far as the lot side. As we're requesting a property division under the conditions of a family transfer it is our contention that the following facts should be considered. There is a provision for lots smaller than $\frac{1}{4}$ of

an acre in the code, Section 10.3.3, covering traditional communities of which we are considered. Lots as small as 10,000 square feet, a little over a third of an acre are permissible under certain conditions related to community water and sewage utilization, local land use and utility plan.

It is our contention that the fact that we are a part of the Aamodt settlement, which includes a regional water system and have an advanced septic system which infiltrates no nitrates, only treated graywater, gives us compatibility with that standard. In the event that the Commissioners are not swayed by that argument, the fact that we have two state-approved septic and two federally and state-approved wells on the property presently would lead us to relevant judicial precedent, and I would cite the case of the *Incorporated County of Los Alamos v. Montoya*. I have the details if anyone's interested in them.

The court of appeals instruction in *Gold v. Santa Fe County* in 2001 is that the local ordinances should not permit an act that general law prohibits, or prohibit an act that the general law permits. According to this judicial precedent, the State Environment Department, which actually issues permits for septic systems according to density and other factors, has allowed two systems for our lot size. The State Engineer and by legal court order the federal government have also allowed two wells on the property. If applying the standard of *Gold v. Santa Fe County* the fact that the federal and state governments are satisfied that density requirements have been satisfied it would seem unreasonable to prevent the division.

Also, the area we are in will not see further development as it is land-locked by the Jacona Land Grant and the Pojoaque Pueblo. The pueblo plans no development on the adjacent land as it is their buffalo preserve. There's a letter to that effect with the rest of the permit application. [Exhibit 5] It is also worth noting that nitrate levels in the soil in that area are not an issue according to the County website.

Now, the variance for access I believe is a hardship. I would like to note that we have agreed to all the stipulations, the seven stipulations the County issued if you do grant the variance. This includes the Fire Department's three stipulations – a ten-minute fire suppression system, widening of the access roads to uniform standard, and providing a turnaround for the large trucks. The Fire Department also made it clear that they will attempt to reach the property no matter the conditions. It is also worth noting that it would take a minimum of 15 minutes to reach the property through El Rancho, no matter the weather or road conditions. This is why the ten-minute fire suppression system is crucial.

There are mitigating factors that render the all-weather access ordinance an unreasonable hardship. The access point and road is not on our property. In fact the crossing is through gated, privately accessed land with posted no trespassing signs. We have a legal easement agreement but it is impossible for us to control the land. We have had productive discussions with most of the other 11 families and two renters that rely on Arroyo Jaconita and Loma Encantada for access about some improvements that we may be able to undertake, but these would still have to be agreed to by the Jacona Land Grant. This is the very definition of hardship, as we are landlocked and have no control to effect any changes no matter how willing.

There are several common sense arguments also. We are but two of 11 families and two renters whose sole access is by Arroyo Jaconita and Loma Encantada. Also, the recent

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rains showed us that having an all-weather road is not much benefit when many historic arroyos in the area are flooding. Just as recently as September County Road 84 was closed in several places by the authorities because the all-access paved road was impassable due to flooding arroyos. We were able to traverse the floodplain crossing in question and the other arroyo crossing on 84-C but not County Road 84.

These are just the realities of living in a rural area, which we accept. I would like to mention too there was opposition to our application at the CDRC meeting, and I wanted to clarify some things. At the CDRC hearing one actual neighbor and one area resident voiced their opposition to the variances. Chris Peterson who is our direct neighbor has mailed a letter to the County expressing his opposition to the variances. His reasons were as follows: There has been no attempt to improve the property and the entire rationale for the property division is to build a new home on a permanent foundation with landscaping. I can understand Chris' concern over property values with their own house for sale but they lived in a single-wide trailer before they built the very nice home they live in now, and it seems reasonable that we should have the same opportunity. The septic system they thought was inadequate but it's been re-inspected by the State and it is up to the codes.

The population density increase, we've already been there for seven years; we're not actually increasing the population density, and it sets a precedent for similar small divisions and I think that our case is extremely unique. Chris' father, Scott Peterson also voiced identical concerns. Chris also retained a lawyer who contended that we had an illegal well on the property and in reviewing relevant state laws and after discussion with Steve Massovich, who's the Aamodt water master, the facts are that the two wells on the property are both part of the final disposition of the Aamodt settlement. They are both therefore legal as far as the state and federal governments are concerned. He even suggested that the property division would be desirable as it would bring the permits into conformity with the Aamodt settlement.

Also, area residents Bill and Mary Ogle voiced their opinion that since they were unable to obtain a building permit we should not be allowed to either. I would like to respectfully point out that the Ogles' situation is very different from ours. Even though there is no record they ever actually applied for a permit the County representative that they dealt with relayed to me that they were initially told they would be denied a permit because their house is actually in the external limits of the Special Flood Hazard area, the arroyo crossing and that's why they would be denied a permit. They do not gain access to their property through Loma Encantada, so their issue is one of property unsuitability, not access or lot size. After a search of County records it is also true that they have never requested a variance or a permit. I feel confident if they had requested a hardship variance the County would have granted it with conditions.

I'd like to read – the Commissioners were given six letters of report and if it's okay can I read them to you?

CHAIR HOLIAN: Mr. Adams, we do have them here and we can read them.

MR. ADAMS: Okay. Well, in conclusion, something that I think is very important to me personally and to my mother-in-law. There's a lot of talk of legalities of it and the access and the different codes. But the whole reason why we're requesting this as a family transfer, and if you look at the County code it says the purposes of the family land

transfer is to maintain local cultural values by perpetuating and protecting a traditional method of land transfer within families, especially within the traditional communities, which we live in. And to permit transfers of lots which do not meet the lot size requirements of the code from grandparents, parents, or legal guardians as a one-time gift to a child or grandchild in order to provide a more affordable home site for these adult children. And I would ask the Commissioners that I believe that that's a moral imperative. There's something that goes beyond more than just an ordinance that was enacted in 2008. Family transfers are a tradition that goes back generations in northern New Mexico and I believe that because it's so important to the culture that there should be a very compelling reason for denying such a request.

CHAIR HOLIAN: Mr. Adams, let me ask you this. Is Mrs. Walsh in agreement with the proposed staff conditions, including no further lot splits?

MS. WALSH: Yes, I am.

CHAIR HOLIAN: Any questions for the applicant? Commissioner Mayfield, do you have questions, or do you want –

COMMISSIONER MAYFIELD: If there's anybody else that wants to speak first before I ask my questions.

CHAIR HOLIAN: Okay. This is a public hearing. Is there anyone here from the public who would like to speak about this case, either in favor or in opposition? Please, if any of you are not attorneys please can you stand up and be sworn in at once, and then when you come forward, state your name and address for the record. Please come forward to address the Board. Who would like to start?

[Duly sworn, Karen King testified as follows:]

KAREN KING: Madam Chair and esteemed Commissioners, my name is Karen King. I've lived next to these guys for the past 21 ½ years and they're very good neighbors. I don't see why they should be denied what the rest of us want, equal justice under the law.

CHAIR HOLIAN: Thank you, Ms. King. Who's next.

[Duly sworn, Michelle Adams testified as follows:]

MICHELLE ADAMS: Michelle Adams. I also live at 58 Arroyo Jaconita. Madam Chair, Commissioners, I'd just like to state that I have wonderful plans for our property and it's just a matter of – there's a process that needs to be taken and I'm in charge of all the yard stuff so my commitment is to make it very lovely and there's a gentleman by the name of James Ludy Construction out of Albuquerque that when this is all said and done the process is obviously – it will start and so there's weeds now and I would surely not leave it like it is but there are plans to make it very beautifully. Thank you.

CHAIR HOLIAN: Thank you, Mrs. Adams. Who would like to speak next.

JOSEPH KARNES: Good evening, Madam Chair, members of the Commission. My name is Joseph Karnes, Sommer, Karnes and Associates. I'm speaking tonight on behalf of Chris and Misha Peterson who live next door to the Walsh property at 19 Loma Encantada. Chris Peterson is here present this evening. And also present are Chris' parents, Scott and Eva Peterson who live nearby at 25 Loma Encantada. We stand in opposition to the application this evening and we agree with the recommendations made to

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you by the Growth Management staff, the floodplain administrator and the Fire Chief and the CDRC's recommendation that this application be denied because it does not meet any of the criteria for granting either the lot size variance or the access variances that have been requested.

As you well know, the applicant has the burden to demonstrate that grounds exist to satisfy the variance criteria and I know that you have lot size variance requests come before you on a fairly regular basis. The applicant has the burden of showing that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of the unusual topography or other such non-inflicted condition, or that these conditions would result in inhibiting the achievement of the purposes of the code. Staff explains in bold face print the variance criterion does not consider financial or medical reasons as being extraordinary hardships.

You've read the staff report. You've had the report from the CDRC and the recommendation. You've heard from the applicant this evening. The applicant has not demonstrated any hardship relating to the physical characteristics of the property. They simply have a desire to have a second residence become permanent on the property and that is it. Their issue is the lot is too small. The staff report says clearly, contrary to the applicant's representation that the minimum lot size in this area is .75 acres. They need an acre and a half to have two lots and they have not demonstrated any physical criteria that constitutes that extraordinary hardship with respect to the lot size.

Typically in these types of applications that's the end of the story. There's simply not grounds present here for you to find that an extraordinary hardship exists and that variance criteria are satisfied. As has been discussed in the staff report and by the applicant, in addition to that you shouldn't confuse the issue. This application initially rises or falls based on the request for the lot size variance, but in addition to that it's been explained that there are serious access issues for this area. Eleven or so was mentioned property owners are facing the lack of all-weather access that is a serious problem. The Fire Department in their staff report observed that the Arroyo Jaconita actively floods at various times of the year. In fact this summer, both in August and a couple of weeks ago in September, the arroyos were running and there were serious issues getting to properties in this immediate vicinity, including my clients' property.

One could say, and it was said at the CDRC meeting that, well, these people all live here and deal with that situation, so what's the problem? Well, the problem is that these people aren't here asking you for a variance. There's a big difference. In fact others that you hear from tonight have – and they'll communicate themselves, but they have been before the County trying to get a building permit and they have been denied. The precedent of not making a bad situation worse has already been set in your County code and in the decisions you've made in the past. To get a variance for the access requirements to be allowed to cross arroyos that don't have all-weather crossings again requires a finding of extraordinary hardship. And if the floodgate was opened here, no pun intended, and every lot in this area doubled in density, the existing access problems would worsen, both emergency vehicles getting into properties when the arroyos are running and residents trying to get out. You'd be making a bad situation much worse and you could expect more applications if this particular

application was granted.

Again, the applicant attempted to describe the road hardship but they can get into their property. The applicant explained that Mr. Peterson constructed a nice home on his property; he did. He constructed one home on his property. He didn't come to you asking for a variance to construct two homes on a lot that was not large enough, and that's exactly what this applicant is asking you to do. They're asking you to take an extraordinary step and grant both a lot size variance and an access variance. Your Fire Department, your floodplain administrator and the CDRC all recommended against this and I urge you to follow their recommendations.

And I'll point out one more thing. The floodplain administrator identified in her staff report that in cases where somebody requests a variance to the access requirements, they're required to submit a floodplain analysis. They're required to come in, they have the burden to come in and demonstrate to you via evidence from an expert what their proposal is going to do with respect to the floodplain. There's nothing in your staff report. There's nothing in your case file. The applicant simply didn't submit that information. Rather, they came to you and said this is what we want to do, and we speak of justice and moral imperatives and so forth and we ask you to do it on some sort of equitable basis. That's not the law here. Your obligation is to apply the variance requirements and the criteria set forth therein to this application, and I submit to you that none of the criteria have been satisfied.

We ask that you consider the recommendations of your staff and the CDRC and deny this application. I'll stand for any questions you may have.

CHAIR HOLIAN: Thank you, Mr. Karnes. I have a question. Is any part of this property in the floodplain?

MR. KARNES: I think that's a question for staff. I do not know whether the property itself is in the floodplain.

CHAIR HOLIAN: Vicki, do you know whether any part of the lot is in the floodplain?

MS. LUCERO: Madam Chair, the actual property itself is not within the floodplain. It's just the access that crosses the floodplain.

CHAIR HOLIAN: Thank you. Is there anyone else who would like to come forward to speak from the public?

[Duly sworn, Mary Ogle testified as follows:]

MARY OGLE: Good evening, Commissioners. Thank you. My name is Mary Ogle. My address is 343-B County Road 84-C, Jaconita, and I we have property right next to the Loma Encantada Road that crosses a very large arroyo and we were to have been allowed to build on that property the Fire Department came out, sent a marvelous young fire assistant chief or whatever, or assistant whatever she was, and she explained that we would not be able to use the access that we usually use to get on our property which is due to the Jacona Grant and up the arroyo and into our property because the trucks would not be able to negotiate that sandy arroyo at all. So that's the same arroyo that just -- to the north of our property. Our property isn't on the Loma Encantada Road, which is the really the road that the Walshes would have to be able to cross, or the Fire Department would have to, or any other emergency vehicles would have to be able to cross. So that arroyo, when it runs, it completely takes out

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the road and so the Fire Department told us we would actually have to build a big huge culvert and have a 20-foot wide road that would then come off of that road and onto our property. And we felt that that was a good reason to not try to pursue getting a building permit. And it made sense to us.

My grandfather in Las Vegas, New Mexico was volunteer fire chief for many decades so I learned early about fire protection and all of that. And we hadn't thought of that. So I would say that the road, the Petersons – Chris Peterson and his father, try to always fix that road so that it will stay passable and have done an extra Herculean effort this year with big boulders and bringing in a truck with big boulders to try to fix that road where the arroyo comes through. It just took it out with the last rain and it had been taken out before that so this time they did all this extra work so it was twice this year that even with all their extra work, and they worked very hard just the two of them and anybody they can hire. We have never helped and I've never actually seen anybody else help fix that road. I believe that John Walsh when he was alive did help try to maintain that road as I recall.

So it's a big job for more than one family. It requires a lot of money to put in a huge culvert, tens of thousands of dollars we understand, and that only takes care of part of the problem. We would have had to, in our case, also put the 20-foot road across the northern part of our property so that the emergency vehicles could get there.

So we feel strongly that having been told that this was not a safe or a good idea to just let it go and so we did. We have no further plans to ask for any building permits. Even if you were to grant these three variances I doubt if we would continue because of the cost and also because so much of the land would be torn up and the arroyo is already at such great risk, so I plan native plants all the time and seeds to try to help the environment. Thank you very much. Do you have any questions?

CHAIR HOLIAN: Thank you, Ms. Ogle. Any questions? Is there anyone else who would like to speak? Mrs. Walsh, you will have a chance to respond. I'm asking if there's anyone else from the public who would like to speak.

[Duly sworn, William Ogle testified as follows:]

WILLIAM OGLE: Madam Chairperson and Commissioners. I'm William Ogle and I just wanted to second what my wife has said. We have – we did try. We talked with the Fire Department. We talked with the – I think it was the zoning board here and found that there are several families that are affected by not being able to have all-weather access and therefore not able to get building permits in that area, and I think that if this is an issue that the families in the county should work together to try to resolve the all-weather access rather than granting individual variances. Thank you very much.

CHAIR HOLIAN: Thank you, Mr. Ogle. Is there anyone else from the public that would like to speak?

MS. OGLE: May I say one more thing?

CHAIR HOLIAN: Sure.

MS. OGLE: About when I say the road was taken out, there is a drop-off of anywhere between I would say two and four feet, just straight drop-off when that arroyo comes through on each side. Or it's certainly on one side; maybe not quite that much on the other side. Just to give you an idea of what we're up against with that. That's on the Jacona

Grant land, by the way, that road. Thank you.

CHAIR HOLIAN: Thank you, Mrs. Ogle. Is there anyone else from the public that would like to speak? Seeing none, the public hearing is closed. Mrs. Walsh, would you like to respond.

MS. WALSH: I've lived there for 30-something years and it is sometimes the road can be a problem, but I wouldn't give it up for nothing. The view there is absolutely beautiful. And there's others, about ten families in my area right there that use that road. The Ogles don't use that road. And I'm not going nowhere. I'm staying there. So I don't mind the inconveniences some times, because all my family lives there and I'm not going nowhere. Thank you.

CHAIR HOLIAN: Thank you, Mrs. Walsh. Yes, Mr. Adams.

MR. ADAMS: Could I address a couple things?

CHAIR HOLIAN: Sure.

MR. ADAMS: Going back to what Mr. Karnes said, obviously the reason why we request these variances is because the letter of the law is against us, but I think that the main issue is, if you go back to *Gold v. Santa Fe County*, the legal precedent is there that the County shouldn't make a law that prohibits something the state allows. The state has allowed our population density. We have legal septic permits; we have legal wells, the state has no problem with out population density. I think that that legal precedent is very strong and I think that would counteract Mr. Karnes' argument.

The other thing that is to me so important to emphasize besides the nature of the family transfer is that this is a private – the Jacona land grant, it's a – we have a legal easement but we are limited in our ability to control that access point. Now, we've had very constructive discussions with many of the families. I would welcome working with the Petersons and anyone to try to see what we can do. I think the Jacona Land Grant would be receptive to certain things, but it is an extreme hardship not to do any of it. If my reading of the code is correct it's a non-self-inflicted hardship. It's the nature of the land. My mother-in-law was there for years and years before the ordinance in 2008 was enacted. And I just – I understand the nature of the new permits but I believe those are cogent arguments. Thank you very much.

CHAIR HOLIAN: Are there any questions for staff or the applicant?
Commissioner Stefanics, then Commissioner Mayfield.

COMMISSIONER STEFANICS: Thank you, Madam Chair. Steve, I have a couple questions I think for you. If this variance were to be granted, then any of the other entities that either have not applied or were denied administratively could reapproach the County with their request. Is that correct?

MR. ROSS: Madam Chair, Commissioner Stefanics, you mean other persons?

COMMISSIONER STEFANICS: Yes.

MR. ROSS: Well, I suppose anything we do could suggest to people that they could file an application and seek the same thing that somebody else did. In other words, is it a precedent? It's not what I would call a legal precedent but it's certainly a factual precedent.

COMMISSIONER STEFANICS: And the second question, Madam Chair, is even under our new codes this wouldn't be approved. Is that correct?

MR. ROSS: Madam Chair, Commissioner Stefanics, certainly the density would be an issue under the new code just like it is under the current code. The all-weather access issue is supposed to be treated differently in the new code than it is in the current code. In other words, an applicant like this seeking a single lot division wouldn't necessarily be required to provide all-weather access but somebody providing five or more lots would be. And that's an artifact of our current floodplain ordinance. But certainly the density would be the same problem we currently have.

COMMISSIONER STEFANICS: Thank you very much.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, thank you and everybody who's here tonight, thank you. I guess Commissioner Stefanics broached a couple things I was going to talk about. One, recently in our ICIP and our CIP plan I have talked about our all-access crossings for the majority part of all northern Santa Fe County and I think this Commission has heard me pretty loud on that. So 84-C should also be being addressed in that plan, because it's a concern to me. So hopefully that will be being addressed also. But Mr. Ross, as far as what Commissioner Stefanics said and with what the applicants are asking for right now, and I do have the potential new code that we're going to be looking at next Tuesday in front of me. So if we look at 10.4 right now as far as an accessory dwelling unit, this potentially could fall right in line with an accessory dwelling unit as it's going to be proposed to this Commission.

As I'm reading it today I see Ms. Ellis-Green right here. I don't want to get off topic right now but depending what this Commission does with this tonight or not, I guess if they waited a week or two, maybe it would be a little longer than that they could just come back in and apply for an accessory dwelling unit on this property. Am I wrong with that, Ms. Ellis-Green? If this Commission approves it as it's written and proposed.

MS. ELLIS-GREEN: Madam Chair, Commissioners, the new code does propose accessory dwelling units. It does allow those. There is a square footage limitation and I don't know the square footage of these existing homes.

COMMISSIONER MAYFIELD: So Commissioner Stefanics just kind of put that out there.

MS. ELLIS-GREEN: Madam Chair, Vicki just reminded me, Madam Chair, Commissioners, that they're actually asking to divide the land. So an accessory dwelling unit would be different. It would be on one piece of property, a main house and a smaller second accessory dwelling unit.

COMMISSIONER MAYFIELD: Okay. So that would be without the land division. But any home could ask for an accessory dwelling though, if there was not the land division, it's a clear distinction of the land division.

MS. ELLIS-GREEN: Madam Chair, Commissioners, that is on our use table as accessory uses in all zoning districts, all residential zoning districts.

COMMISSIONER MAYFIELD: Regardless if it's in a traditional community at 3/4-acre or whether we have our biggest land at 40 acres in Commissioner Anaya's district.

MS. ELLIS-GREEN: Madam Chair, Commissioner Mayfield, it's 160 acres.

COMMISSIONER MAYFIELD: Bigger than I thought. Thank you. So I just

wanted to let that out there also, if there wasn't the land split that there could be potential accessory dwelling. And hasn't this Commission already taken some action on variance requests anticipating the potential of an accessory dwelling? And I would go to Mr. Ross on that.

MR. ROSS: Madam Chair, Commissioner Mayfield, I don't remember accessory dwellings. Maybe Penny does, but we certainly have taken action in anticipation of the floodplain restrictions we were talking about. All-weather access.

COMMISSIONER MAYFIELD: Different for a single-family residence versus like a subdivision.

MR. ROSS: Right.

COMMISSIONER MAYFIELD: And I'm hearing concerns from both sides and from the attorney that was just here. But 84-C is that low-water crossing. But I just also heard from the applicant also that there could be access and looking at the maps that are provided to me, and I'm very familiar with the area, Arroyo Jacanita also. But you all, and this is a question I guess for the applicant, you do have an easement from the Jacona Land Grant to get into that back side, and I do see that as far as one of the restrictions or excuse me, as far as one of the requests from our Fire Marshal's office, that they would ask for an emergency access easement?

MR. ADAMS: I'm not sure I understood the question.

COMMISSIONER MAYFIELD: Let me just go to a page back here. I'm on - from our Fire Department, excuse me. I'm on our Santa Fe County Fire Department Fire Prevention Division. There's an alternate access to the property via the Santa Fe County Road 84-C through the Jacona Land Grant. So you do all have an easement through the Jacona Land Grant?

MR. ADAMS: Yes, Commissioner, we do.

COMMISSIONER MAYFIELD: And is that a permanent granted easement that you can use all the time?

MR. ADAMS: Yes. We pay for it every year.

COMMISSIONER MAYFIELD: Okay. And Mr. Adams, maybe through Ms. Walsh, do you all - are you part of the Jacona Land Grant?

MR. ADAMS: We're not part of it.

MS. WALSH: No, we're not.

COMMISSIONER MAYFIELD: Oh, but you do have that access easement through the Jacona Land Grant.

MS. WALSH: We all do that live in that area.

COMMISSIONER MAYFIELD: Okay. So you do not always have to go through then Arroyo Jacanita.

MS. WALSH: No, we don't. We have two ways to get in there. The Pojoaque River or the road in the back.

COMMISSIONER MAYFIELD: Right. And I do see here that Pojoaque Pueblo gave you all a letter also. So on that, and I guess this might be for our Chief Patty, and I know that you probably got a promotion there somehow, Chief Patty. Sorry if I keep missing it. So do - and do they put like a lock - I don't know what that's called? A Knox

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lock? On that gate, or is there even a gate on that, on the land grant road?

MS. WALSH: The land grant did not put the lock there.

COMMISSIONER MAYFIELD: So there's just a full road that they can go on?

MS. WALSH: That's up to us if we want to put a lock on it. It's gated but –

COMMISSIONER MAYFIELD: Let me ask the Chief.

CHAIR HOLIAN: Marshal Patty.

COMMISSIONER MAYFIELD: Marshal. Thank you. Thank you for the promotion. So Marshal, on that, if it's gated, I don't know if it's locked but there would be a – what's that word?

BUSTER PATTY: Madam Chair, Commissioner Mayfield, you're correct. What it would be if they were to gate that second access it would be required to have a Knox lock placed on that. That is for Fire Department access only. They could have their lock on their also so that they could come and go, but it would be designated as an emergency ingress-egress only for our purposes.

COMMISSIONER MAYFIELD: For yours.

MARSHAL PATTY: Right. And it's for a dwelling in there, it would have to be a minimum 14-foot wide and meet grades and low-water crossings, all-weather driving surface.

COMMISSIONER MAYFIELD: But again, Madam Chair and Marshal, but hearing the applicants, you all have permanent use of that if you so choose to use that all the time.

MARSHAL PATTY: Sorry?

COMMISSIONER MAYFIELD: This was for the applicants. The applicants, you all have permanent use of that easement as long as you keep your payments up.

MR. ADAMS: Yes, Commissioner.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, that's all I have for now. Thank you.

CHAIR HOLIAN: Commissioner Anaya, and then Commissioner Chavez.

COMMISSIONER ANAYA: Madam Chair, just statements. If I say anything inaccurate, Mr. Ross, you can chime in if you want to. This Commission and prior Commissions have approved variances associated with the size of a lot, going below lot sizes that are within the code, and this Commission and prior Commissions have also provided variances associated with crossing and whether or not they're all-weather or not and provided conditions. The difference that this Commission has done in particular associated with those crossing is made notations on the plat and there's been specific conversations and clarity to those applicants that they're understanding that they're taking on a responsibility and a liability that could be beyond service for emergency access.

The other thing I would point out is that on the record, we have said on many occasions that the County has ourselves roads that are County roads that are all-weather areas that when it floods, when it rains – I can think of several in my district. General Goodwin Road washed out completely where it was inaccessible at all, a County road, that we ourselves have many roads that during inclement weather are impassable. So Madam Chair,

on those notes I just make those comments for the record. Thanks.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Thank you, Madam Chair. I wanted to also touch on the all-weather crossing or the low-water crossing, because we have a combination of those types of crossing and as Commissioner Anaya pointed out the all-weather crossings can get inundated with water and are impassable. So they're not a foolproof solution. Unfortunately a lot of our roads and our waterways sometimes are one and the same. And they meander and the cross each other's paths. And when you have a storm event, the water doesn't discriminate; it makes its own path. It doesn't care if there's an all-weather crossing or if there's a road. It will undermine that if there's enough water in that event.

And so we're going to have to continue to deal with that and Commissioner Mayfield referenced the new code and even though we would hope that the County would be able to provide the financial resources to make all the improvements we do have a provision in the new code in Chapter 12 that is the public improvement district concept where we would be asking individuals, individual homeowners in a case like this to impose a public improvement district to establish a public improvement district for said improvements like all-weather crossings. It's going to place a financial burden on you for a while but once those improvements are paid for then the debt is satisfied. So I just wanted to bring that to our attention because the resolution declaring intent to form a district would only take 25 percent support of those individual property owners. It may not be the best solution but it is an option that I think we're going to have to pursue in the future. I just wanted to point that out as a future reference because I don't think that it's realistic for us to think that we are going to be able to provide all of the improvements. Thank you, Madam Chair.

CHAIR HOLIAN: Any further discussion? Commissioner Mayfield.

COMMISSIONER MAYFIELD: And I know the case law at hand but I know we've also on some other land use cases we've talked about the potential impact of a new code. Madam Chair, Attorney Ross or Director Ellis-Green, on our new code, where are we talking about family transfers in the new code?

MS. ELLIS-GREEN: Madam Chair, Commissioners, that would be in the subdivision chapter, which is Chapter 5, under the exempt divisions.

COMMISSIONER MAYFIELD: Okay. So I'm just going to look at that. So just give me a general overview of what you're proposing in Chapter 5 for family transfers.

MS. ELLIS-GREEN: Family transfers are an exemption to the State Subdivision Act and so they're listed as one of the exemptions.

COMMISSIONER MAYFIELD: Okay, so maybe as it would be applicable to this case that's in front of us tonight. Would it be –

MR. ROSS: Madam Chair, Commissioner Mayfield, that provision is not too different than the current rules because that's state statute and we're powerless to change that. So some of the things that are relevant to this discussion are the changes to the floodplain ordinance and low-water crossings, the requirement for all-weather access that previously was applicable – or it's currently applicable to any application like this.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Ross, that's fine. So the case that Mr. Adams referenced, excuse me, Madam Chair, Mr. Ross, the case Mr. Adams

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referenced a little earlier tonight. Could you give me maybe a little background if you have any?

MR. ROSS: Madam Chair, Commissioner Mayfield, that principle is not the law as far as I know. He's talking about a general pre-emption of local laws when the state acts to regulate in a similar but unrelated field. We have explicit and express authority to regulate the general police power for the public health, safety and welfare and to regulate against public nuisances, and the zoning authority which is extremely broad. All these regulations that they're chafing at here were enacted under the zoning authority and the state does not regulate zoning and it's not pre-empted by the state. There are ancillary regulations concerning installation of sewage, septic tanks and liquid waste facilities that have their own requirements for acreage. So for example if you're going to put in a conventional sewage system NMED regulations require you to have 1.25 acres. But that doesn't mean that the County must allow a lot of 1.25 acres. That's simply the minimum acreage on which you may place a conventional septic system. So those kinds of things, they really don't affect density rules that might be established under zoning.

COMMISSIONER MAYFIELD: And Madam Chair, Mr. Ross of Ms. Ellis-Green, are we looking at the advanced systems within our new code also or no?

MR. ROSS: Madam Chair, Commissioner Mayfield, advanced systems are encouraged but there's not necessarily a requirement of an advanced system. What is encouraged is hooking up to public water and wastewater where they're available or where they might be available in the future. So you may hook up to a conventional septic system but if the County or some other entity arrives on your street with centralized liquid waste disposal you'll be required to hook up.

COMMISSIONER MAYFIELD: Thank you. And a question for the applicant, Madam Chair. Do you all have an advanced system right now on your –

MR. ADAMS: Yes, sir. We do.

COMMISSIONER MAYFIELD: And question, Madam Chair, for applicants. You have two wells that have been permitted by the OSE?

MR. ADAMS: Yes, sir. They're part of the Aamodt settlement.

COMMISSIONER MAYFIELD: Well, as far as the Aamodt settlement, they've been dug. Just tell me what you mean by the Aamodt settlement. There are so many different things about the Aamodt settlement.

MR. ADAMS: I'm sorry. Yes, they're both legally permitted at the federal level. They have legal state permits that are recognized by the Aamodt decision.

COMMISSIONER MAYFIELD: Okay. So you have wells that have both been permitted through the OSE and recognized by the OSE?

MR. ADAMS: Yes.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Adams, and are those wells, are they post-82? One might be a pre-82?

MR. ADAMS: My mother-in-law's well is pre-moratorium. Ours is not; it was drilled in 2007. As part of the settlement though we both have – we get half of an acre-foot a year. So the pre-moratorium, when I talked to Mr. Massovich, he said that's kind of out. He said everybody's going with a half-acre. So each well is limited to a half-acre.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Adams, you had a permit from the OSE and even the County to drill that 2007 well?

MR. ADAMS: Yes.

COMMISSIONER MAYFIELD: Okay. And then Madam Chair, Mr. Adams, you also, your septic systems – I heard you, they're registered through the OSE also?

MR. ADAMS: Not the OSE but the –

COMMISSIONER MAYFIELD: I'm sorry. The Environment Department. Thank you. And they're advanced systems again, right?

MR. ADAMS: Well, one system, my mother-in-law's system is a conventional system, and then the system we have is an advanced treatment, the split-flow system. The state and the literature should have been in the packets. They claim are effective down to a quarter-acre. So that's why they have the two systems on there for the 1.19 acres.

COMMISSIONER MAYFIELD: And Madam Chair, Mr. Walsh, knowing what the new – I don't know if you're familiar with the – if you're following with the proposal of the new Santa Fe code. It's been out there. We've put a lot of publicity on what the potential new Santa Fe code is going to do, and understanding that we live in a traditional community, at least the area that we're all in is .75, and I don't know if it's online right now, our code, as far as the accessory dwellings. Have you all looked at that? Would you all be satisfied with doing something like that, of having the existing home and then doing, if this Commission again approves what the County staff would be recommending to us or proposing to us, accessory dwelling structures without that actual lot split?

MR. ADAMS: Well, the reason why we want to do a lot split is because we seek to build a new house with a mortgage. We want to secure the land so that we can build a new house and have a mortgage and those type of things. An accessory dwelling would basically be kind of like an extension of what we're doing now, and I suppose that if that's the best we can do we would prefer to be able to build a permanent new house on the land.

COMMISSIONER MAYFIELD: That's all I have for now, Madam Chair.

COMMISSIONER ANAYA: Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: I move for approval with the following conditions: Water use shall be restricted to .50 acre-foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. 2) A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval. 3) The Applicant must comply with all conditions of approval within 90 days and prior to plat approval. 4) The Applicant shall comply with all Fire Prevention Division requirements. (1997 Fire Code and 1997 Life Safety Code). The Placement of more than one dwelling unit per lot and further division of the land is prohibited on the property. The Applicant shall divide the property into two equal parcels. Then, as I referred to earlier, a note must be placed on the Plat regarding the lack of all-weather access to the subject lots. This note shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site Access, including access by Emergency vehicles, may not be possible at all times (Ordinance 2008-10).

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COMMISSIONER CHAVEZ: Madam Chair, I'd like to second that motion and ask the applicant if they're in agreement with all these conditions of approval.

MS. WALSH: Yes, I'm in agreement.

COMMISSIONER CHAVEZ: Thank you. Thank you, Madam Chair.

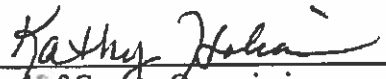
CHAIR HOLIAN: There's a motion and a second. Any further discussion?

The motion passed by majority 3-2 voice vote with Commissioners Anaya, Chavez and Mayfield voting in favor and Commissioners Holian and Stefanics voting against.

XIX. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chair Holian declared this meeting adjourned at 8:45 p.m.

Approved by:


Board of County Commissioners
Kathy Holian, Chair


ATTEST TO:


GERALDINE SALAZAR
SANTA FE COUNTY CLERK

11/12/2013



Respectfully submitted:


Karen Farrell, Wordswork
453 Cerrillos Road
Santa Fe, NM 87501

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V. APPROVAL OF MINUTES: July 18, 2013

The Chair referred to a few spelling errors and Member Martin noted an omission. [The corrected minutes were filed.]

Member Martin moved to approve the July minutes as corrected. Member DeAnda seconded and the motion to approve the corrected minutes passed by unanimous [6-0] voice vote. [Member Anaya was not present for this action and arrived directly thereafter.]

VI. CONSENT AGENDA: Final Order

- A. CDRC Case #MIS 13-5180 John DePrimo Radio Antenna. John DePrimo, Applicant, Requested CDRC Approval to Allow a Radio Antenna 45' in height on 5 acres. The property is located at 136 Sunlit Drive West, within Section 9, Township 16 North, Range 10 East (Commission District 4). Approved 7-0.

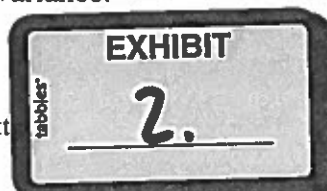
Member DeAnda moved to approve the consent agenda as published. Her motion was seconded by Member Martin and passed by unanimous [7-0] voice vote.

VII. NEW BUSINESS

- A. CDRC CASE # V 13-5190 Minnie Walsh Variance. Minnie Walsh, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) and a variance of Article III, Section 2.4.1a.2.b (Access) of The Land Development Code and a variance of Article IV, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a Family Transfer Land Division of 1.195 acres into two lots. The Property is located at 58 Arroyo Jaconita, within the Traditional Community of Jacona, within Section 11, Township 19 North, Range 8 East, (Commission District 1)

John Lovato, case manager, presented the staff report as follows:

"The Applicant requests a variance to allow a Family Transfer Land Division of 1.195 acres into two lots. The property is accessed by private roads Arroyo Jaconita Road and Loma Encantada. Arroyo Jaconita is a dirt/sand driving surface and is located in and crosses a FEMA designated Special Flood Hazard Area. The portion of Arroyo Jaconita Road that services the property is approximately 750 feet in length and 15 feet in width. Loma Encantada is a dirt driving surface that ends and enters the Jacona Land Grant. A portion of Loma Encantada crosses a FEMA designated Special Flood Hazard Area and is approximately 1/4 mile in length and 15 feet in width. Both Arroyo Jaconita, and Loma Encantada do not have all-weather driving surfaces and may be frequently impassible during and after inclement weather, and thereby are not all-weather accessible. Therefore, the Applicant is requesting a variance.



“Currently, there is a manufactured home, a single-wide mobile home, and two accessory structures on the property. The property is served by two onsite wells, a conventional septic system, and a split flow septic system. Article III, Section 10 of the Land Code states that the minimum lot size in this area is 0.75 acres. In order to divide the subject property into two lots, the property would have to be at least 1.50 acres. The Applicant is requesting a variance to this requirement.

In 2006, the BCC granted a two-year temporary approval to allow the placement of a second dwelling unit on the property. The Applicant never followed up with conditions of approval. The Applicant was to apply for temporary approval every two years to be approved by the CDRC and report water meter readings to the Land Use Administrator by January 31st of each year.

“The Applicant states the reason for this is due to the loss of her husband, and it has taken a few years for the family to focus and take the necessary steps toward making a home for her daughter’s family permanent. The Applicant would like to provide her daughter and her family with an affordable place to live and provide clear title to the land so that they may build a permanent residence. Furthermore, she would like to maintain family ties to the land where her daughter grew up.”

Mr. Lovato stated that Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request. Staff recommends denial of a variance of Article III, Section 10, Lot Size Requirements, a variance of Article III, Section 2.4.1a.2.b, Access, and a variance of Article IV, Section 4.2 of Ordinance No. 2008-10, Flood Damage and Stormwater Management, that would allow a Family Transfer Land Division.

If, however, the CDRC is to recommend approval of the Applicant’s request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to .50 acre-foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk’s Office (Article III, § 10.2.2 and Ordinance 2002-13).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (Article III, § 2.4.2).
3. The Applicant must comply with all conditions of approval within 90 days and prior to plat approval.
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review (1997 Fire Code and 1997 Life Safety Code).
5. The Placement of more than one dwelling unit per lot and further division of the land is prohibited on the property (Article III, § 10).
6. The Applicant shall divide the property into two equal parcels.

7. A note must be placed on the Plat regarding the lack of all-weather access to the subject lots. This note shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site Access, including access by Emergency vehicles, may not be possible at all times (Ordinance 2008-10).

Mr. Lovato confirmed that the applicant obtained permission for the temporary placement of a second dwelling. He identified the temporary dwelling as a single-wide that had previously been the permanent dwelling on the property.

Member Katz asked about the allegation that the second well on the property was not noted within the application. Mr. Lovato said NMED inspected the property and for some reason the second well was not part of his report – either NMED failed to note it or the well was drilled after the inspection. He suggested the applicant may be able to answer that question.

Speaking as the County's Floodplain Administrator, Ms. Lucero stated that she recommended denial of the request since the site is absent all-weather access and crossing to the property and it may be frequently impassable. She said both accesses to the property cross 100-year floodplains.

Member Drobnis asked about the applicant's failure to renew the two-year permit. Ms. Lucero said the County approved several two-year temporary applications at the time this applicant received that approval. She said the code does not and did not address temporary approvals and it is no longer a procedure being followed. Granting renewal of the temporary dwellings varied on a case-by-case basis.

Member Drobnis expressed his concern that a two-year temporary permit issued in 2006 has continued for seven years without renewal and only now comes to the County's attention when a new application is submitted.

Responding to Member Anaya's question regarding access or ingress to property during bad/rainy weather, Fire Marshal Patty said there was a recent call where EMS could not cross an arroyo. He mentioned that one of the accesses across the Jacona Land Grant could be widened to improve it. He said fire and rescue will make every attempt to reach the property.

Mr. Lovato identified the advanced septic system as superior to the conventional system. A conventional system serves the main residence and the advanced system serves the second dwelling.

The applicant, Minnie Walsh, and her son in-law, Mike Adams were duly sworn.

Mike Adams said the advanced septic system is actually a split-flow system whereby no nitrates penetrate the groundwater. He said there were nine families that access the crossing. The rear access referred to as the big dip is only used when the river is flooding which occurs for an hour or two at a time.

Mr. Adams said he understood that there were compliance issues; however, their focus at this point is to receive a family transfer. The 2006 temporary permit addressed a financial family hardship and since moving on the property he and his wife have been able to prepare the area by installing the advanced septic system, utilities and drilling a well.

Mr. Adams recited the family transfer section of the Code and said the advanced septic system and their willingness to hook up to the regional water system when available makes their request qualify within the Code. The purpose of the Code, stated Mr. Adams, is the success of the community and granting this application will do that.

Mr. Adams said the single-wide would be replaced once the new home is built.

Ms. Lucero clarified the request was for variances to the lot size and all weather access to allow for the family transfer. If this application is not approved, the applicant will need to comply with the original conditions when the temporary permit was received.

Appreciating the difficulties of losing a family member, Member Katz pointed out to the applicant that he is here before the County asking for variances when in the past he did not carry through with the conditions of the temporary permit. Ms. Walsh responded that her husband had been sick for years before he died. She said it has only been very recently that she is able to straighten out her life and needs her children on the property because her health is failing. Mr. Adams assumed responsibility for not renewing the two-year temporary permit stating his father-in-law's death was very difficult for the family.

Member Katz said he was not prepared to ignore the County's rules regarding access.

Mr. Adams said the low-water crossing at CR 84C affects at least 50 families. He said the dip in the crossing can be an issue even during dry weather. "It's a fairness issue," stated Mr. Adams. He couldn't see how granting the variance could be injurious to his neighbors and he was willing to accept the risks that come with living in the county.

Mr. Adams said if approved they would meet all seven conditions.

Joseph Karnes, legal counsel for Chris and Misha Peterson, adjacent residents of the subject property, said he supported the staff recommendation to deny the variances. The application does not meet any of the criteria for granting the variances. The applicant bases the request on financial hardship and the desire to live on the property – this does not meet the Code requirement of an extraordinary hardship relating to the physical condition of the property. The grounds for granting the variance do not exist in this request.

Mr. Karnes noted that the Floodplain Administrator has recommended denial based on access and that decision for denial can only be overturned if there is a error. There is no error here. Fire Department representative Victoria DeVargas stated in her

report that the two arroyos actively flood at various times during the year and slope issues exist in this application.

Member Roybal pointed out that Mr. Karnes' clients use the low water crossing and it should not be grounds for denial. He understood how the applicant missed renewal of the temporary permit as well as the meter readings.

Member Martin asked whether Mr. Karnes received a response from the State Engineer regarding the well that was not disclosed to the OSE. Mr. Karnes said he has spoken with OSE counsel and a response is in the works.

Duly sworn, Mary and Bill Ogle, neighbors to the applicant, said they requested a building permit through the County and it was denied based on access. She said the County laws are important for the protection of the integrity of the environmental.

The public hearing was closed and Mr. Adams returned to the podium where he said the fairness of the law was important to him. He was surprised to hear of the Ogle's experience and said the rules need to be revisited.

Member Katz said the request did not address the variance criteria and in terms of equity since the Ogles did not receive a building permit for reasons of access and in terms of the betterment of the community, the Ogles do not want the variances granted.

Regarding CDRC Case V 13-5190, Member Katz moved to deny the variances on the basis of the facts. Member Drobnis seconded the motion. The motion passed by majority [5-2] voice vote with members Anaya and Roybal voting against.

B. CDRC CASE # Z/PDP/FDP 13-5070 95-B Ranch Road, Master Plan, Preliminary & Final Development Plan. Paul Reynolds & Tamara Andrews, Applicants, Jenkins/Gavin, Agent, request Master Plan Zoning, Preliminary and Final Development Plan approval to allow a horse boarding facility on 12.5 Acres \pm . The property is located at 95-B Ranch Road, within Section 21, Township 15 North, Range 10 East, (Commission District 4). [Exhibits 1-3: Support letters; Exhibit 4: Graeser Law Firm letter dated April 26, 2013 – representing concerned neighbors – included were six letters dated June 11, 2013 addressed to different County divisions; Exhibit 5: Photo from opponents' property; Exhibit 6: August 10, 2013 letter to Commissioners from Bill Graveen opposing the request]

Member Katz recused himself from this case.

Mr. Larrañaga presented the staff report as follows:

"The Applicants request Master Plan Zoning approval to allow a horse boarding facility. The proposed facility will be completed in two phases. The request also

hearing is closed. What are the wishes of the Commission?

COMMISSIONER SULLIVAN: Move for approval.

CHAIRMAN MONTTOYA: Motion by Commissioner Sullivan for approval.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTTOYA: Second, Commissioner Campos. Discussion?

The motion to approve CDRC Case #V 06-5330 passed by unanimous [5-0] voice vote.

- XII. A. 11. CDRC Case # A/V 06-5250 John and Minnie Walsh Appeal. John and Minnie Walsh Applicants, Request an Appeal of the County Development Review Committee's Decision to Uphold the Land Use Administrator's Decision to Deny the Temporary Placement of a Second Home on 1.19 acres. The Property is Located at 58 Arroyo Jacona, within Section 11, Township 19 North, Range 8 East, (Commission District 1)[*Exhibit 6: Pojoaque Map; Exhibit 7: PPEC Letter*]

MS. COBAU: Mr. Chairman, members of the Commission, on June 15, 2006, the CDRC met and acted on this case. The decision of the CDRC was to uphold the Land Use Administrator's decision to deny temporary placement of a second home on 1.19 acres. The property is located within the Basin Hydrological Zone where the minimum lot size is 10 acres per dwelling unit. Lot size may be reduced to 2.5 acres per dwelling unit if the applicant signs and records water restrictions.

There is currently one home, a septic system and one well on the property. The applicants have applied and been approved for an advanced septic system to serve the second dwelling. The applicants state that they have purchased a new home to replace the older dwelling on the property. The existing dwelling would be moved to another point on the property to be lived in by their daughter and her family. The applicant states that their intentions are to alleviate a financial hardship their daughter and her family would incur by the high prices they are forced to pay in rent.

Recommendation: On June 15, 2006 the CDRC met and acted on this case. The decision of the CDRC was to uphold the Land Use Administrator's decision to deny temporary placement of a second home on 1.19 acres. Staff recommends denial of the requested appeal based on Article III, Section 10, Lot size requirements of the Land Development Code which states that the minimum lot size in this area is 10 acres per dwelling unit. Lot sizes may be reduced to 2.5 acres per dwelling unit with water restrictions. If the decision of the BCC is to approve the request, staff recommends that the following conditions be imposed. Mr. Chairman, may I enter the conditions into the record?



[The conditions are as follows:]

1. A temporary permit will be issued for a period of two years, to be approved for consecutive two-year periods by the CDRC. The applicant at that time must prove the hardship still exists.
2. Water use shall be restricted to 0.25 acre-foot per dwelling. A water meter shall be installed for both homes. Annual water meter readings shall be submitted to the Land Use Administrator by January 31st of each year. Water restrictions shall be recorded in the County Clerk's office.
3. The applicant shall submit a liquid waste permit approved by the New Mexico State Environment Department for the second dwelling.
4. The applicant must follow all other building permit regulations.
5. The existing driveway shall serve both residences.
6. Failure to comply with any of these conditions shall result in administrative revocation of the permit.

CHAIRMAN MONTROYA: Okay. Questions for staff? What significance does the Mike Adams appeal have to this case?

MS. COBAU: Mr. Chairman, Mike Adams is the son-in-law of John and Minnie Walsh and he is acting as their agent. He lives in the home.

CHAIRMAN MONTROYA: Okay. Any other questions for staff?

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN MONTROYA: Commissioner Vigil.

COMMISSIONER VIGIL: Does this qualify in any way for a family transfer? That's not what's being proposed, right?

MS. COBAU: Mr. Chairman, Commissioner Vigil, that's not what's being proposed here, so as a consequence it doesn't qualify as a family transfer.

COMMISSIONER VIGIL: And there's a temporary permit requested here?

MS. COBAU: That's correct. However, I believe the applicant will clarify that when he speaks.

COMMISSIONER VIGIL: Okay. Thanks.

CHAIRMAN MONTROYA: Okay, other questions for staff? Hearing none, if the applicant would please come forward.

[Duly sworn, Mike Adams testified as follows:]

MIKE ADAMS: Mike Adams. Mr. Chairman, Commissioners, there are some things that I'd like to clarify and add to the staff report that I don't think are very clear. One of the things is the advanced septic system is already approved for us to use one of those and in talking to the man I dealt with they said they've been very successful in lot sizes as small as a quarter acre. So I believe the issue of septic and environmental contamination is not a relevant one. We are asking actually for a permanent variance, permanent permission to build the second dwelling there.

I have an exhibit. The property is partially in the traditionally community and it's

just kind of like a line arbitrarily drawn, a few feet of it are in the traditional community and the rest of it isn't and the Land Use made the decision that that means the whole thing is not in there. But I do have an exhibit, a map of the planned development where the property will be part of the traditional community. You can also see exactly how it kind of got stuck out, so if I could approach you guys.

As you can see, the property is right at the very corner. I think the line was just kind of arbitrarily drawn right through the front of it. So that's one of the things to see, that's going to be part of the traditional community. It already borders, in fact it's partly in the traditional community. That's one of our requests is that you would just grant the rest of the property to be part of the traditional community.

That brings me to my third point - and I have another exhibit for you. There's not going to be any development in this area. We border the Pojoaque Pueblo and I have a letter from the Pueblo to the effect that they're not going to develop it. They call it their bison free range. So they're keeping that area reserved strictly for the buffalo to run. So if I could approach and give you this exhibit.

That brings me to my fourth point. It would be a tremendous financial hardship on us for you to rule against us because I'm a pastor and I'm on a fixed income. My wife and I are very committed to serving in northern New Mexico but because of the fact I'm on a fixed income buying a house would be very, very difficult. So this is an opportunity for us to have a house. We've got access to land and we can meet these requirements. It would be a great, great benefit to us.

CHAIRMAN MONTTOYA: Okay. Any questions for the applicant?

Commissioner Vigil.

COMMISSIONER VIGIL: You're requesting a temporary permit. Could you explain that?

MR. ADAMS: That was the Land Use decision. I was always asking for a permanent variance. It would be our intention to live out there from now on if you agree.

COMMISSIONER VIGIL: And are you looking to place a mobile home?

MR. ADAMS: Yes, a three-bedroom dwelling.

COMMISSIONER VIGIL: What currently exists there? What's the dwelling that currently exists there? There is a double-wide three-bedroom and then the other dwelling that we would like to occupy is a single-wide three-bedroom that my in-laws had on the property and we would permission of the Land Use Department move it to another point on the property, depending on the outcome of this. So there's one dwelling that's occupied and hooked up to the well and septic system and there's one that's just being stored right now.

COMMISSIONER VIGIL: And what your hope is that this lot split occurs so that that second unoccupied mobile home becomes an occupied home.

MR. ADAMS: The primary dwelling for us.

COMMISSIONER VIGIL: So there will be two mobile homes on this.

MR. ADAMS: Right.

COMMISSIONER VIGIL: Thank you. I guess I'm done, Mr. Chairman. Do you conduct any services on site or are your services, your pastoral services conducted elsewhere?

MR. ADAMS: If we use it as a primary dwelling we would very much use it because we do what you call small-group Bible studies. Right now, we're not living there so obviously we're not doing anything there. But everywhere where our primary dwelling place is is always available and plus, being a pastor sometime we take people in and different things like that.

MS. COBAU: Mr. Chairman, Commissioner Vigil, I would like to clarify that this is not a land division. It's an application to place two homes on 1.19 acres. There's no land division involved.

CHAIRMAN MONTTOYA: Any other questions for the applicant? If not, this is a public hearing. Is there anyone who would like to speak on behalf of or in opposition to this case, would you please come forward and be sworn in.

[Duly sworn, Michelle Adams testified as follows:]

MICHELLE ADAMS: Hello, my father and my mother is John and Minnie Walsh and I am there daughter and my husband and I are pretty much committing ourselves to being a pastor and making ourselves available to the community and our whole lifestyle is changing. And my father is also in poor health and it just makes sense in my heart that I could provide that to help my mom and my family that I'd be close by and help whatever. My dad's health is deteriorating so it's not just for low-income situation but there's a responsibility of being nearby. Thank you.

CHAIRMAN MONTTOYA: Thank you, Michelle. Anyone else like to come forward? Seeing none, this public hearing is closed. What are the wishes of the Commission? I have a question. How many individuals will be living in your residence?

MR. ADAMS: Four.

CHAIRMAN MONTTOYA: Four. So it's you two and two kids.

MR. ADAMS: Yes, we have two kids.

CHAIRMAN MONTTOYA: And then in the other residence it's -

MR. ADAMS: Two, my in-laws.

CHAIRMAN MONTTOYA: Okay. And as I understand, you'll be on that one septic system.

MR. ADAMS: No. There's an existing septic system.

CHAIRMAN MONTTOYA: So that will still be used.

MR. ADAMS: Yes, that will be used for the other house and what we're going to do is use, if you approve it, the advanced treatment system, which as I've said the state said is effective. They've used them on lot sizes as small as a quarter acre.

CHAIRMAN MONTTOYA: Okay. Any questions? Commissioner Vigil.

COMMISSIONER VIGIL: Staff is recommending that a temporary permit be issued to be reviewed every two years. Would you be amenable to that?

MR. ADAMS: Yes.

CHAIRMAN MONTTOYA: What are the wishes of the Commission?

COMMISSIONER ANAYA: Mr. Chairman, I move that we approve this on a two-year temporary basis where staff reviews it and is there conditions?

CHAIRMAN MONTTOYA: Yes, and that's actually one of them.

COMMISSIONER ANAYA: With conditions.

COMMISSIONER VIGIL: And I believe that the recommendation from staff was that it be reviewed by the CDRC to identify whether or not the hardship still exists. Is that what the intent on your motion was, Commissioner Anaya? I will second that.

CHAIRMAN MONTTOYA: Okay, a motion and a second. Further discussion?

The motion to approve CDRC Case #A/V 06-5250 with conditions passed by unanimous [4-0] voice vote. [Commissioner Campos was not present for this action.]

- XII. A. 12. CDRC Case # V 06-5460 Santa Fe County Public Works Facility. Santa Fe County Project and Facility Management Department, Paul Olafson Agent, Request a Variance of Article III, Section 4.4.4c (Maximum Height) of the Land Department Code to allow a 27' Vehicle Washing Station, a 27'-4" Vehicle Service Garage and a 100' Wind Turbine, which would Exceed the Allowable Height of 24' to Allow Construction of a New Public Works Facility on 45.76 acres. The Property is Located on the NM State Road 599 Frontage Road, within Section 2, Township 16 North Range 8 East (Commission District 2) [Exhibit 8: CDRC 8/17/06 Minutes; Exhibit 9: Opposition Letter]

CHAIRMAN MONTTOYA: Maybe we should table this one.

MS. COBAU: Mr. Chairman, members of the Commission, Santa Fe County Projects and Facilities Department requests a variance of Article III, Section 4.4.4.c of the Land Development Code in order to allow a 27-foot vehicle washing station, a 27-foot 4-inch vehicle service garage and a 100-foot wind turbine for the new Public Works facility.

The Public Works Facility will be located on a 45.76-acre site surrounded primarily by state-owned properties and privately owned and operated commercial and light and heavy industrial uses, just north of Airport Road off the NM 599 frontage road. And there's a map in Exhibit C.

Article III, Section 4.4.4c of the Code states that "Structures shall be limited to a maximum height of 36 feet from the highest point of the surface of the ground at the perimeter of the structure in major or community center districts."

Letter of Intent requesting a family property transfer and division

I, Minnie Walsh would like to subdivide and transfer part of my 1.195 acres of land. We are requesting a subdivision and transfer of approximately 0.30 acres located at 58 Arroyo Jaconita to my daughter Michelle Walsh Sanchez-Adams and my son-in-law Michael Adams.

I would like to transfer the land for the following reasons;

- 1) Help my daughter and her family establish a permanent dwelling. They need clear title to the land to build a house on the property.
- 2) Help my daughter's family maintain their ties to the community through their church ministry and other connections (work in Pojoaque, school, etc.)
- 3) Maintain our family ties to the land my daughter grew up on and be physically close to me.

In 2006, we were granted a permit to place a second home for my daughter's family on the site. We had intended to do the transfer in 2008, but my husband John passed away in June of that year. It has taken a few years for our family to focus on taking the steps towards making a home for my daughter's family permanent.

My daughter and her family have complied with the state requirements for their advanced septic system and well. They also have approved electrical and propane connections.

The property division will allow them to place a home on a permanent foundation.

Our family appreciates you time and consideration in this matter.

Thank you,

Signed, Minnie Walsh

Minnie Walsh



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November 12, 2014

Board of County Commissioners
c/o John Lovato, Case Planner
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501

Re: Minnie Walsh Variance Request – App V-13-1590
58 Arroyo Jaconita (the “Subject Property”)

Dear Commissioners:

On behalf of Kris and Marsha Peterson, I am writing to address again a substantive public safety issue that should be resolved before the Walsh application is considered by the Commission.

In reviewing the original variance application, County Floodplain Administrator Vicki Lucero stated that the applicant has not provided a Stormwater Analysis, which is required by the County’s Flood Damage Prevention and Stormwater Management Ordinance (the “Ordinance”). As a result, there was no basis to evaluate the safety of access to the Subject Property in times of flood for ordinary and emergency vehicles. (August 8, 2013 memo to John Lovato, copy attached)

Ms. Lucero stated that the lack of all-weather access is a “**dangerous and sometimes deadly situation**” and “at a minimum, the applicant should be required to provide an analysis of the depth and velocity of the flooding expected at this crossing using the methodology and techniques of the Ordinance, and place a culvert or other conveyance as needed based on the report to provide dry access for emergency vehicles.”

To date, the applicant has not complied with the Floodplain Administrator’s requirement. Despite multiple requests, including my letter dated August 27, 2014 (copy attached), County staff has not required the applicant to prepare the analysis and has not provided any response or explanation for why the Floodplain Administrator’s report regarding a circumstance that would subject emergency personnel and private individuals to an increased risk of harm has not been imposed on the applicant.

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While some homes in the area are not served by all-weather access, that circumstance in no way justifies placing more people at risk or ignoring the Ordinance requirements explained by the Floodplain Administrator.

As Ms. Lucero stated in her report "notably, death during flash flood events are surpassed only by hurricane fatalities, and more deaths occur nationwide from flood related deaths (sic) than any other natural disaster." The applicant is requesting you to take an action that would put not only themselves, but public safety personnel at greater risk and has ignored the Floodplain Administrator's determination that a flood analysis is required. Given the serious public safety issues at stake, dismissal of the issue by Staff and the Commission would be both illegal and bad public policy.

We request that Staff either require that the applicant to prepare a flood analysis prior to consideration of the application by the Commission or address in its staff report the basis for not following the Floodplain Administrator's direction and the Ordinance requirements.

Sincerely,



Joseph Karnes

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August 27, 2014

Penny Ellis-Green, Land Use Director
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501

Re: Minnie Walsh Variance Request – App V-13-1590
58 Arroyo Jaconita (the “Subject Property”)

Dear Penny:

I am writing you on behalf of my clients Kris and Misha Peterson, who own and reside on property adjacent to the Subject Property. Per the attached Order, District Court Judge Raymond Ortiz directed that the BCC decision on the application be remanded for re-presentation of evidence before any further consideration takes place. Because the application is facially defective and cannot be approved as a matter of law, my clients request that the Growth Management Department reject the application and require that the property owners remove the second dwelling unit from the property before a date certain within the next three months.

If the Department is not prepared to take this action, then as a prerequisite to further consideration of the application, we request that the Department require the applicant to prepare and submit a Stormwater Analysis, as required by the County Code and the County Hydrologist.

The Petersons, who live next door to the Subject Property, have suffered substantial negative effects to their property value and quality of life while the second unit has been illegally maintained on the Subject Property for the past 6+ years. Given the facts, law and passage of time, the County should require that the second unit be removed from the Subject Property.

1. **Background.** The applicant owns a 1.19 acre parcel in an area where the minimum lot size is 0.75 acres per dwelling unit. In 2006, the BCC approved a second dwelling on the Subject Property on a 2-year temporary basis, subject to conditions, despite the fact that the County Code contains no provision authorizing approval of such a temporary use.

The temporary permit was issued for a period of two years and required the applicant to submit for re-approval every two years and prove that the conditions upon which the temporary placement of the

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second home was originally granted. The applicant failed to make the required submittal in 2008 or thereafter. Instead, the applicant proceeded to treat the “temporary” second unit as permanent and proceeded to apply for and obtain a permit for the second well from the State Engineers Office and a second septic permit from the State Environment Department – without telling either agency that they were issuing permits for a temporary dwelling unit that was being illegally maintained.

In 2013, the applicant audaciously attempted to bootstrap the water and septic improvements into a rationale for turning the now illegal temporary dwelling into a permanent dwelling and to subdivide the substandard lot. The applicant applied for variances to the lot size requirement, the all-weather access requirement and the flood damage and stormwater prevention requirements to allow for a lot split.

Both staff and the CDRC concluded that the application could not be approved because the application did not meet the standards for any of the three requested variances. Nonetheless, the BCC approved the application on a 3-2 vote. Following the Peterson’s administrative appeal, in August of 2014, Judge Ortiz ordered that the BCC vacate its decision to approve the application and accept further evidence before taking any further action.

Based on the following, the BCC cannot legally approved the application and the County should require the applicant to remove the “temporary” second dwelling from the Subject Property.

2. There are No Circumstances Under Which the Lot Size Variance Can be Approved

As stated in the staff report for the original variance application: “**The variance criterion does not consider financial or medical reasons extraordinary hardships.**” (AR 78, emphasis in original) Rather the threshold test for a lot size variance applicant is whether “it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the code... .” (Art. II, §3.1)

In its original variance application, the applicant relied *exclusively* on claimed financial hardship as the basis for the request. (AR 81) This is insufficient to satisfy the threshold prong of the *Paule* test, which addresses ONLY the physical conditions of the property. It is not surprising that the applicant did not identify any unusual topography or other non-self-inflicted condition giving rise to an extraordinary hardship. *Paule v. Santa Fe Cnty. Board of Cnty. Comm’rs*, 138 N.M. 82, 92 (NM Sup.Ct. 2005)

The simple reality is that the property is too small and any resulting “hardship” is personal to the applicant. The applicant already has one legal dwelling unit on the property and no legitimate basis exists to find a hardship that satisfies the threshold criteria.

Consistent with the BCC’s recent denial of the recent lot size variance request submitted by Lorenzo Atencio (Case # V1405150), there is no legally recognizable basis on which a lot size variance can be granted for a parcel that is less than twice the minimum lot size. The County should not waste taxpayer resources entertaining such un-approvable applications.

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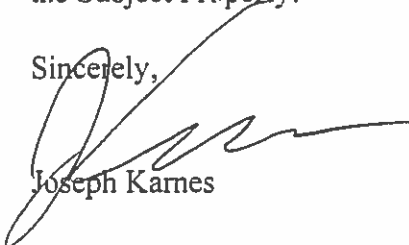
Owners of property less than twice the minimum lot size have paths forward if they want to achieve a lot split. They can either enlarge the size of their parcel via a lot line adjustment with a willing neighbor or they can apply to the County for a rezoning. Otherwise, they must abide by the rules. Any decision that allowing a lot size variance where the parcel is less than twice the minimum lot size runs the risk of not only being judicially rejected, but also encouraging the many owners of property in Santa Fe County in the same circumstance to come forward with their own lot size variance applications.

3. If the Application is to be Considered, the Applicant Must Submit a Stormwater Management Analysis. In reviewing the initial application, County Floodplain Administrator Vicki Lucero noted that the applicant has not provided a Stormwater Analysis, which is required by the County's Flood Damage Prevention and Stormwater Management Ordinance (2008-10, the "Ordinance"), sections 5.2 and 5.11. (AR 108-109) As a result, there was no basis to evaluate the safety of access to the Subject Property in times of flood for ordinary and emergency vehicles. Ms. Lucero observed that the lack of all-weather access is a "dangerous and sometimes deadly situation" and stated "at a minimum, the applicant should be required to provide an analysis of the depth and velocity of the flooding expected at this crossing using the methodology and techniques of the Ordinance, and place a culvert or other conveyance as needed based on the report to provide dry access for emergency vehicles." (AR 109)

The County has no ability to allow a variance application to the all-weather access requirement to be considered absent provision of a Stormwater Management Analysis. "A Stormwater Management Analysis will be required for all land disturbance activity, regardless of the nature of the activity." (Ordinance 2008-10 §5.2) Given that the second residence has remained in place for more than 6 years following expiration of the "temporary" approval, it cannot be treated as a legal use. Both the second residence and access to the Subject Property must be evaluated in the Stormwater Management Analysis before any further consideration by the CDRC or BCC.

Based on the foregoing, the proper course of action is to reject the application and carry out an enforcement action against the applicant requiring that the second dwelling unit be removed from the Subject Property.

Sincerely,



Joseph Karnes

Cc: Greg Shaffer, County Counsel

Kristoffer and Misha Peterson
19 Loma Encantada
Santa Fe, NM 87506

July 2, 2013

Santa Fe Land Use Commissioners

RE: CDRC Case # V 13-5190
58 Arroyo Jaconita Family Transfer

We have examined the documentation for the above Case. We wish to object strongly to the proposed parcel split at 58 Arroyo Jaconita. It was our understanding that the current mobile home was a temporary living situation. We have to wonder, how long is temporary? (CDRC Case # APP 06-5250) Upon placement of the mobile home and for many years after there has been no attempt to maintain the structure or surrounding property. Therefore, resulting in an eye sore for the neighborhood and ultimately affecting the quality of the surrounding properties. Our property and home are located directly adjacent to the above parcel and we have to question both erosion hazards and septic issues that might affect surrounding topography and wells. When we purchased our property we made an investment in rural country living. By definition rural living constitutes low population. In closing we believe that the parcel split and current state of the property are a detriment to the area; we are against the parcel split at 58 Arroyo Jaconita.

Sincerely,



Kristoffer and Misha Peterson

RE: CDRC Case # V 13- 5190

58 Arroyo Jaconita Family Transfer

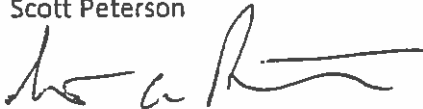
We are against the split of that parcel for the following reasons:

1. It was understood that current use was to be "TEMPORARY" and therefore we had no objection to the second mobile home being placed, given how nice Minnie's home has been kept. However, no attempt has been made to improve the appearance of the second mobile home or its surrounding area, and it has become an eye sore and a detriment to the neighboring properties. The second mobile home has been there roughly seven years, how long is temporary? (See CDRC Case # APP 06-5250 enclosed)
2. We also question the legitimacy of the current septic system and worry about the impact of the increased sewage on neighboring wells. It may not even be possible to have a well and septic on such a small lot given the fact that an arroyo takes up a considerable portion of the lot.
3. There is no permanent all weather access to this site or others in the area or any scheduled or regular maintenance to these easement accesses. Increasing density would be a burden to First Responders. Why create a new parcel that does not adhere to current County Policies regarding access?
4. Allowing this split would be a precedent for others to seek property splits into substandard size parcels, adversely affecting the rural setting of the area, which has been in the Pojoaque Valley's long term plan to preserve.

In conclusion, our current County Land Use Ordinances deal quite clearly with these issues, and we see this case as a poor candidate for a variance. Therefore, we are against the approval of splitting the 1.195 acre parcel into two .597 acre parcels.

We would like to be informed about the outcome of this case. Thank You.

Scott Peterson



Eva Peterson



25 Loma Encantada

Santa Fe, NM 87506

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Licensed in New Mexico and California
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July 31, 2013

Office of the State Engineer
Co/ Steve Mastevich
PO Box 21502
Santa Fe, NM 87504

Re: Report of Violation

Dear Mr. Mastevich:

I am writing to advise you of a violation of State law involving two Section 72-12 wells being permitted and constructed on one lot and to request that the Office of the State Engineer takes action as necessary to ensure compliance with applicable State law.

Attached as Exhibit A is a copy of the plat for certain property consisting of 1.19 acres owned by Minnie Walsh located in Jaconcito, Santa Fe County, New Mexico (the "Property").

Attached as Exhibit B is a copy of the OSE file for RG-38560, which was applied for by John P. Walsh, approved and drilled on the Property in 1982.

Attached as Exhibit C is a copy of the OSE file for RG 88512, which was applied for by Mike Adams, approved and drilled on the Property in 2006.

It is apparent that Mike Adams (who is not the property owner) failed to disclose to the OSE the existence of a well on the property when he submitted his application for RG 88512.

The second well is particularly relevant given the pending application before Santa Fe County for a Family Transfer which, if approved, would divide Property into two lots, with a well and a dwelling unit on each lot. (Exhibit D) The County application identifies only RG 88512 and fails to identify the well serving the existing dwelling unit in the southerly portion of the Property.

The Santa Fe County Development Review Committee is scheduled to consider the Walsh application on August 15, 2013. We would appreciate your response to this letter and an indication of the actions that you will be taking in advance of that meeting.

Sommer, Karnes & Associates, LLP

OSE

July 31, 2013

Thank you for your consideration of this request.

Sincerely,



Joseph Karnes

TYPE OF USE	NUMBER OF PARKING SPACES
Retail Centers	1 per 1 employee plus per 200 sq. ft.
Restaurants, Bars	1 per 1 employee plus per 150 sq. ft.
Gas Stations	1 per 1 employee plus 1 per 300 sq. ft. of garage space.
Industrial	1 per employee plus 1 per 500 sq. ft.
Small Scale Centers, Home Occupations	1 per 1 employee plus 1 per 400 sq. ft. of commercial space.
Large Scale Residential, Institutional, Residential Resorts	2 per dwelling unit
Churches, auditoriums, theaters, arenas, spaces used for public assembly	1 for each 4 seats
Uses not listed	As determined by the County

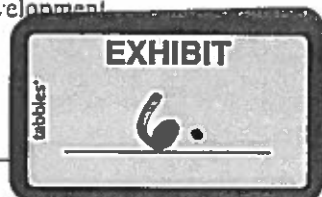
- 9.2 Multiple use projects shall calculate cumulative parking needs for each type of use in the project to be developed.
- 9.3 Minimum size of parking space shall be 300 square feet which includes the parking stalls and aisles.
- 9.4 Commercial, industrial, other non-residential and large scale residential uses shall provide for handicap parking.

History: 1980 Comp. 1980-6. Section 9, Parking Requirements was amended by County Ordinance 1990-11 adding requirements for auditorium uses, multiple uses and handicap access.

SECTION 10 - LOT SIZE REQUIREMENTS

10.1 Relationship of Lot Sizes to Water Policies

The General Plan sets forth the policy that future population growth in the County should be supported by adequate long term water availability and concentrate population growth in Urban and Metropolitan Areas and Traditional Communities. Development within these areas will generally be served by one or more regional water systems, or community water systems. Development outside of the Urban, Metropolitan Areas and Traditional Communities using domestic wells (Section 72-12-1 wells) should consider estimated long term water availability and protect water resources for existing County residents having domestic wells. Development may also be permitted if the applicant for a development permit demonstrates that he/she has water rights, excluding rights permitted under 72-12-1 NMSA 1978 or 75-11-1 NMSA 1953, recognized and permitted by the Director of Water Resources Department of Natural Resources Division of the State of New Mexico which are approved for transfer by the Director of Natural Resources Division to the site of the Development, and the permitted water rights are sufficient to support the proposed development.



10.1.1 Water Policies Governing Lot Sizes Where the Development will Utilize Permitted Water Rights

Applicants seeking a development permit may base their application on water rights authorized and permitted by the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico, (with the exception of water rights permitted under Section 75-11-1 NMSA 1953 or 75-12-1 NMSA 1978). The applicant shall provide evidence that he/she owns or has an option to purchase the permitted water rights in an amount adequate to meet the needs of the development as shown by Article VII, Section 6.6.2, Water Budgets and Conservation Covenants. Any development permit approved and issued by the County shall be expressly conditioned upon the applicant obtaining final non appealable order or final non appealable approval from the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico authorizing the change in use and change in point of diversion to meet the needs of the proposed development. The minimum lot size permitted by this Section shall be 2.5 acres, unless the proposed development is within an Urban, or Metropolitan Area or a Traditional Community, in which case further adjustments of the lot size shall be permitted as provided by Sections 10.4, 10.5.2 and 10.5.3.

10.1.2 Water Policies Governing Lot Sizes Where Developments Will Not Utilize Permitted Water Rights

BASIN ZONE: Minimum lot size shall be calculated based upon ground water storage only. Water that is in storage beneath the lot in the Basin Zone may be depleted over a 100-year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water without consideration of recharge of the ground water.

BASIN FRINGE ZONE: Same as Basin Zone.

HOMESTEAD ZONE: Minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 100 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 100 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead Zone minimum lot sizes based on storage in this zone would be larger than those based on recharge.

MOUNTAIN ZONE: Same as Homestead Zone.

METROPOLITAN AREAS-BASIN AND BASIN FRINGE: For Basin and Basin Fringe zones within a Metropolitan Area as shown on Code Maps 12, 14 and 15, it is anticipated that regional water systems will eventually be developed. Therefore, water that is in storage beneath a lot within a Metropolitan Area may be depleted over a 40 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 40 year supply of water without consideration of recharge of the ground water.

METROPOLITAN AREAS-HOMESTEAD AND MOUNTAIN ZONE: For Homestead and Mountain Zones within a Metropolitan Area, the minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not

both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 40 year lifetime. The lot must be large enough to have a ground water in storage beneath the lot for a 40 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 40 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead and Mountain Zones, minimum lot sizes based on storage in these zones would be larger than those based on recharge.

10.2 Calculation of Minimum Lot Size

Calculation of the minimum lot size under Section 10.1.2 shall be determined by the formula:

$$\frac{\text{Acre Feet}}{\text{Use (Year) x acres}}$$

Minimum Lot Size (Acres)=Water Available in acre feet per acre/year

$$\text{MLS} = \frac{U \times \text{acres}}{A}$$

Where:

MLS is the minimum lot size in acres; it is the size of a lot needed to supply anticipated water needs.

U is the anticipated water needs for the lot; it is the use of water which will occur from the intended development of the lot, measured in acre-feet per year. The standard values listed for A were derived using the procedures set forth in the water appendix of the Code. The standard value for U is set forth in Section 10.2.2. A is the amount of water available in the aquifers which are beneath the lot, measured in acre-feet per acre per year using recharge or storage as described in 10.1.2.

10.2.1 Standard Values for A and Adjustments. The standard values for A shall be as follows:

<u>BASIN ZONE:</u>	0.1 acre-feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.02 acre-feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre-feet per acre per year
<u>HOMESTEAD ZONE:</u>	.00625 acre-feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows.

<u>BASIN ZONE:</u>	10 acres
<u>BASIN FRINGE ZONE:</u>	50 acres
<u>MOUNTAIN ZONE:</u>	80 acres
<u>HOMESTEAD ZONE:</u>	160 acres

The standard values of A may be adjusted if the applicant submits a hydrology report, either a detailed report (see Section 6.4 of Article VII), or a reconnaissance report (see Section 6.7 of Article VII). Values of A determined in such reports shall be reviewed by the County Hydrologist, who shall recommend to the Code Administrator whether or not

the value is reasonable, and if not, shall recommend a value appropriate for the use in determining minimum lot size.

The actual value of A used shall be based on the information submitted by the applicant, by the County Hydrologist or by others submitting information. If water conservation measures are used, as provided in Section 10.2.4b, and an actual value of A is determined, in most cases minimum lot sizes will be reduced below those listed in Section 10.2.1. However, applicants are advised that because of varying geologic conditions in Santa Fe County there is no assurance that a hydrology report will determine that the water supply in an area is more abundant than indicated by the standard value of A. In cases where the actual study shows a value of A which is less than the standard value (that is, there is less water available than assumed by the standard value), minimum lot size requirements may be increased beyond those indicated in this Section.

10.2.2 Calculation of Use

U shall have a standard value of 1.0 acre feet per year per dwelling unit for residential use. For all other uses U shall be equal to the actual anticipated consumptive use for the development. The standard value for residential use may be adjusted if an applicant proposes to utilize water conservation measures. There shall be no adjustments for conservation in Urban, Traditional Community and Agricultural Valley Areas.

The Code Administrator shall maintain an application form upon which are listed potential water conservation measures. This form shall indicate the effect of each conservation measure of the value of U. As a minimum, the measures shall include: restrictions on use of water for irrigation purposes (including watering of lawns, gardens and shrubbery); restrictions on use of water for swimming pools; restrictions on the number of bathrooms per dwelling unit; restrictions on garbage disposal units, devices which reduce the utilization of water by appliances, kitchen fixtures, and bathroom fixtures; and pressure-reduction devices on in-coming water lines.

Any applicant who uses the application form as a basis for proposing conservation measures shall be allowed to reduce U in accordance with the effectiveness of the measures proposed. The maximum reduction in U which shall be considered achievable using this approach shall be a reduction of U to no less than 0.25 acre feet per year per dwelling unit. An applicant who proposes water conservation measures sufficient to reduce U to less than 0.25 acre feet per year per dwelling unit shall be required to prepare a water conservation report: See Section 6.6 of Article VII.

The actual value of U, and the minimum lot sizes which result, will depend on the conservation measures proposed by the applicant. In general, applicants who substantially restrict the use of irrigation (lawn and garden) water will be assumed to have a U of 0.5 acre feet per year per dwelling unit, while those who further restrict other types of water use will be assumed to require even less water. For reference purposes, the following lot sizes would be allowed if U is equal to 0.5 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	5 acres
<u>BASIN FRINGE ZONE:</u>	25 acres
<u>MOUNTAIN ZONE:</u>	40 acres
<u>HOMESTEAD ZONE:</u>	80 acres

For reference purposes, the following lot sizes would be allowed if U is equal to 0.25 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	12.5 acres
<u>MOUNTAIN ZONE:</u>	20 acres
<u>HOMESTEAD ZONE:</u>	40 acres

10.2.3 Special Standards for Calculation of Use for Small Scale Commercial Development

Special standards which set forth specific limitations on use for small scale commercial developments are set forth in this subsection. Applicants who propose small scale commercial development are required to prepare a written estimate of water use. The value of U shall be determined by that estimate unless otherwise determined by the Code Administrator. The Code Administrator shall have on file, a list of standard water consumption requirements for commercial activities. The applicant may use these figures in lieu of the written estimate of water use. Applicants may use standardized values for A as set forth in Section 10.2.2, or they may submit a hydrology report which contains an actual estimate of A for the land which is to be developed.

10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas

Special standards which set forth limitations on water availability for metropolitan areas shown in Code Map 12, 14, and 15 are set forth in this Sub-section.

a. Standard Values of Water Availability

Because the policy for water management in Metropolitan areas allows for depletion of storage over a 40 year period, standard values for A are as follows:

<u>BASIN ZONE:</u>	.25 acre feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.05 acre feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>METRO BASIN ZONE:</u>	4 acres
<u>METRO BASIN FRINGE ZONE:</u>	20 acres
<u>METRO MOUNTAIN ZONE:</u>	80 acres

b. Adjustments for Water Conservation

For the division of land into four (4) or less lots, the minimum lot size may be adjusted using the procedures set forth in Section 10.2.2. For reference purposes, the minimum lot sizes which result if U = 0.25 acre feet per year per dwelling unit or commercial use are:

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	5 acres
<u>MOUNTAIN ZONE:</u>	20 acres

10.3 Exceptions to Minimum Lot Size Requirements

The minimum lot sizes calculated under Sections 10.1 and 10.2 shall not apply to the areas described in this Section and the minimum lot size contained in this Section shall control

10.3.1 Metropolitan Area - Community Water Systems

Where a community water system provides water service to a development within the Metropolitan Areas, as shown on Code Maps 12, 14 and 15, the minimum lot sizes shall be:

<u>BASIN ZONE:</u>	1 acre
<u>BASIN FRINGE ZONE:</u>	2.5 acres
<u>MOUNTAIN ZONE:</u>	5 acres

10.3.2 Agricultural Areas

In the Estancia Valley Agricultural Area, minimum lot sizes shall be 50 acres for the Basin Fringe Zone and 10 acres for the Basin Zone. Adjustments for water conservation and water availability will not be allowed. In the Northern Valley Agricultural Area, the minimum lot size for lands with permitted water rights shall be five (5) acres. Adjustments to lot sizes in these areas are conditioned on the finding in each case by the County Development Review Committee that it is in the best interest of the County to convert water rights from agricultural to commercial or residential use.

10.3.3 Traditional Communities

The minimum lot size in traditional communities as shown on Code Maps 40-57, shall be .75 acres, except as follows:

14,000 sq. ft. - Where community water service and community sewer service systems are utilized, or a Local Land Use and Utility Plan is adopted.

10.3.4 Urban Areas

The minimum lot size in Urban Areas shall be 2.5 acres, except as follows:

1 acre - Where community water or community liquid waste disposal systems are utilized.

.50 acre - Where community water and community sewer systems are utilized.

10.4 Density Transfer

The minimum lot sizes specified in this Section 10 shall be taken as gross figures for the purposes of determining the total number of dwellings allowed in a particular development. The arrangement of dwellings in clusters or in such locations as to take advantage of topography, soil conditions, avoidance of flood hazards, access and reduced cost of development, shall not violate the lot size requirements of the Code so long as the total number of acres per lot conforms with the requirements of the Code.

SECTION 11 - IMPORTING OF WATER

11.1 Location Requirements

Developments which import water from the surface Rio Grande or other locations outside Santa Fe County to any location in Santa Fe County designated in the Development Code as other than urban or metropolitan locations are permitted to locate anywhere in the County provided they meet all requirements of the Code, except that in lieu of the density requirements as specified in Article III, Section 10, the proposed development shall meet the following criteria.

submittal list and explanation with the development permit application form

2 Reviews

(a) Lot Size Requirement Review

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

(b) Access

- (i) All development sites created under this Section shall demonstrate that access for ingress and egress, utility service, and fire protection whether by public access and utility easement or direct access to a public right-of-way can be provided and meet the requirements of this Code.
- (ii) Installation of culverts, where applicable, shall be required at intersections of driveways with County roads.
- (iii) Road Construction and/or Road Cut Permits must be obtained prior to road or driveways construction. The applicant must provide submittals for new construction pursuant to this Section 2.4.1 and meet standards as applicable and as required in Article V, Section 6, Subdivision Design Standards, and Article VII, Section 3, Terrain Management. Notification of all affected property owners and posting of notice will be required for roads and driveways accessing more than one property.

(c) Special District Review

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

(d) Environmental Review

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

(e) Siting Review

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

(f) Building, Mechanical and Electrical Code Review

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



8.1.2 The Santa Fe County Master Plan For Roads

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

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

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

8.1.5 Coordination of Roads With Surrounding Property

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

8.1.6 Access to highways and arterials: buffering requirements

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

EXHIBIT

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V-21

ARTICLE 4

FLOODPLAIN DEVELOPMENT PERMIT PROCEDURAL REQUIREMENTS

SECTION 4.1. AREAS REQUIRING A FLOODPLAIN DEVELOPMENT PERMIT

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

SECTION 4.2. NON-ELIGIBLE NEW DEVELOPMENT OR CONSTRUCTION

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

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

SECTION 4.3. PROCEDURES FOR SUBDIVISION PROPOSALS

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

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



2.5 Zoning

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

2.6 Subdivisions

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

2.7 Other Requirements

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

SECTION 3 - VARIANCES3.1 Proposed Development

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

3.2 Variation or Modification

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

3.3 Granting Variances and Modifications

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

3.4 Height Variance in Airport Zones

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

Harry B. Montoya
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Paul Campos
Commissioner, District 4

Jack Sullivan
Commissioner, District 5

Gerald T. E. Gonzales
County Manager

Land Use Department

September 14, 2006

Mike Adams
58 Arroyo Jaconita
Santa Fe, Nm 87506

RE: CDRC Case # APP 06-5250

Dear Mr. Adams:

On September 12, 2006 the Santa Fe County Board of County Commissioners met and acted on the referenced case. The decision of the BCC was to grant the temporary placement of a second home on 1.19-acres based on the following conditions:

1. A temporary permit will be issued for a period of two-years, to be approved for consecutive two year periods by the CDRC. The applicant at that time must prove the hardship still exists.
2. Water use shall be restricted to 0.25-acre foot per dwelling. A water meter shall be installed for both homes. Annual water meter readings shall be submitted to the Land Use Administrator by January 31st of each year. Water restrictions shall be recorded in the County Clerk's office.
3. The applicant shall submit a liquid waste permit approved by the New Mexico State Environmental Department, for the second dwelling.
4. The applicant must follow all other building permit regulations
5. The existing driveway shall serve both residences.
6. Failure to comply with any of these conditions shall result in administrative revocation of the permit.

If you have any questions please contact me at 986-6223.

Sincerely,

Shelley Cobau
Development Review Supervisor





Minnie Walsh

58 Arroyo Jaconita





Minnie Walsh

58 Arroyo Jaconita



Minnie Walsh

58 Arroyo Jaconita



Legend

ROADS

Parcels

1 inch represents 100 feet
1:1,200



2008 Orthophotography
2 FOOT CONTOURS

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confirming data accuracy.

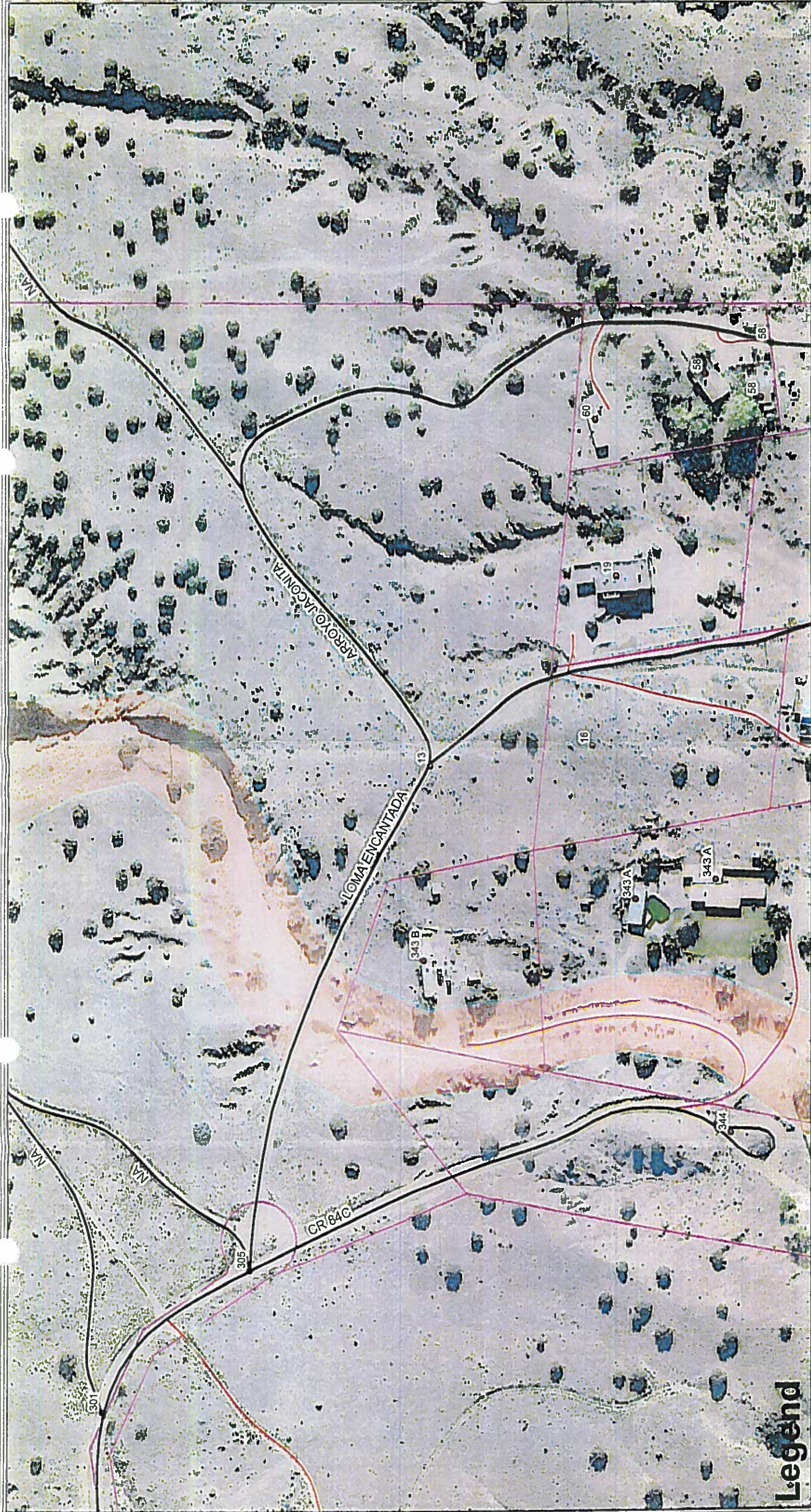


August 2, 2013

EXHIBIT

13.

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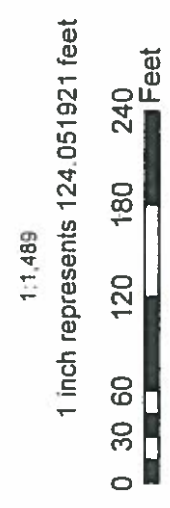


2008 Orthophotography
2 FOOT CONTOURS



August 7, 2013

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confirming data accuracy



Legend

- ROADS
- DRIVEWAYS
- Parcels



Legend

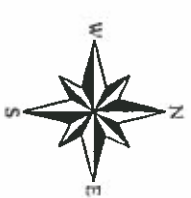
ROADS

DRIVEWAYS

Parcels

1:1,489

1 inch represents 124,051.921 feet

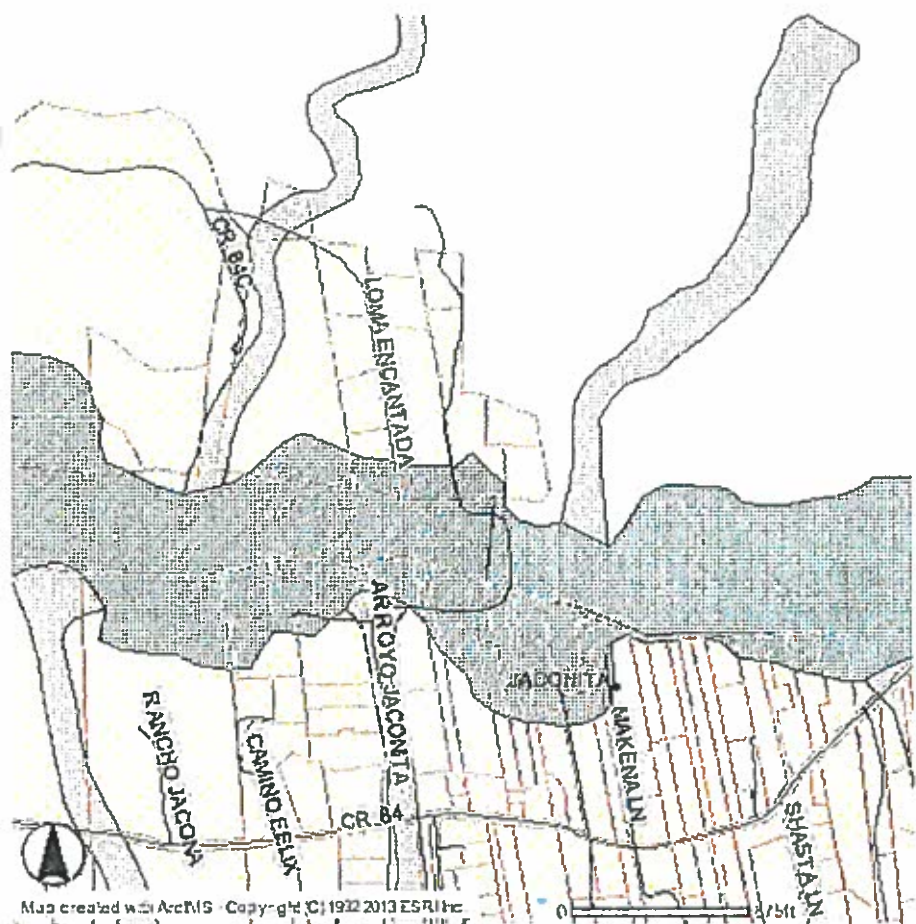


2008 Orthophotography
2 FOOT CONTOURS

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August 7, 2013. 42.



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Santa Fe County Fire Department Fire Prevention Division

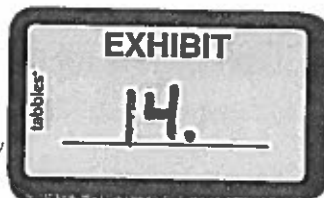
Official Submittal Review

Date	7/18/13		
Project Name	Walsh, Minnie		
Project Location	58 Arroyo Jaconita		
Description	Variance – Family Transfer	Case Manager	J. Lovato
Applicant Name	Minnie Walsh	County Case #	13-5190
Applicant Address	58 Arroyo Jaconita Santa Fe, NM 87506	Fire District	Pojoaque
Applicant Phone	505-670-5394		
Review Type	Commercial <input type="checkbox"/> Master Plan <input type="checkbox"/> Wildland <input type="checkbox"/>	Residential <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Variance <input checked="" type="checkbox"/>	Sprinklers <input type="checkbox"/> Final <input type="checkbox"/> Hydrant Acceptance <input type="checkbox"/> Inspection <input type="checkbox"/> Lot Split <input checked="" type="checkbox"/>
Project Status	Approved <input type="checkbox"/>	Approved with Conditions <input type="checkbox"/>	Denial <input checked="" type="checkbox"/>

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

Summary of Review

- The primary access to this property via Arroyo Jaconita does not meet the requirement of an all weather driving surface, being that it is an active arroyo and actively floods at various times of the year. (*page #2*)
- Properly assigned legible rural addresses shall be posted and maintained at the entrance(s) to each individual lot. (*page #2*)
- Property owner(s) shall contact the Santa Fe Regional Emergency Communication Center and flag this address to have an emergency access through County Road 84C. (*page #2*)
- Both the driveway and fire access have areas that exceed the 11% slope requirement. (*page #3*)



- Due to the remote location of this proposed residence, the lack of water and the possibility of this residence being made inaccessible due to the low water crossings during inclement weather, for life safety and property protection the installation of an Automatic Fire Suppression system meeting NFPA 13D requirements shall be required in future development. (page #3)

Fire Department Access

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

▪ Roadways/Driveways

Shall comply with Article 9, Section 902 - Fire Department Access of the 1997 Uniform Fire Code inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

The primary access to this property via Arroyo Jaconita does not meet the requirement of an all weather driving surface, being that it is an active arroyo and actively floods at various times of the year.

There is an alternate access to this property via Santa Fe County Road 84C through the Jacona Land Grant. If applicant can prove easement through this route, it would be designated as emergency access only and should be specified on the plat as such. This road would require minimum road improvements of widening to a minimum of 14' wide and an all weather driving surface shall be required.

A turn around meeting Santa Fe County Fire Department Access Road Requirements shall be required.

▪ Street Signs/Rural Address

Section 901.4.4 Premises Identification (1997 UFC) Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property.

Section 901.4.5 Street or Road Signs. (1997 UFC) When required by the Chief, streets and roads shall be identified with approved signs.

Properly assigned legible rural addresses shall be posted and maintained at the entrance(s) to each individual lot or building site within 72 hours of the commencement of the development process for each building.

Property owner(s) shall contact the Santa Fe Regional Emergency Communication Center and flag this address to have an emergency access through County Road 84C. This access shall also be marked so that it can be easily found by emergency personnel.

- **Slope/Road Grade**

Section 902.2.2.6 Grade (1997 UFC) *The gradient for a fire apparatus access road shall not exceed the maximum approved.*

Both the driveway and fire access have areas that exceed the 11% slope requirement.

- **Restricted Access/Gates/Security Systems**

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

Automatic Fire Protection/Suppression

Due to the remote location of this proposed residence, the lack of water and the possibility of this residence being made inaccessible due to the low water crossings during inclement weather, for life safety and property protection the installation of an Automatic Fire Suppression system meeting NFPA 13D requirements shall be required in future development. Assistance in details and information are available through the Fire Prevention Division.

It is also recommended that the homeowner and/or property owner contact their home insurance carrier to find out more information on minimum requirements for coverage.

Life Safety

Fire Protection requirements listed for this development have taken into consideration the hazard factors of potential occupancies as presented in the developer's proposed use list. Each and every individual structure of a private occupancy designation will be reviewed and must meet compliance with the Santa Fe County Fire Code (1997 Uniform Fire Code and applicable NFPA standards) and the 1997 NFPA 101, Life Safety Code, which have been adopted by the State of New Mexico and/or the County of Santa Fe.

General Requirements/Comments

- **Inspections/Acceptance Tests**

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

The developer shall call for and submit to a final inspection by this office prior to the approval of the Certificate of Occupancy to ensure compliance to the requirements of the Santa Fe County Fire Code (1997 UFC and applicable NFPA standards) and the 1997 NFPA 101, Life Safety Code.

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

▪ **Permits**

As required

Final Status

Recommendation for Final Development Plan Denial until the above conditions have been applied.

Victoria DeVargas, Inspector

Victoria DeVargas
Code Enforcement Official

7/16/13
Date

Through David Sperling, Chief
Buster Patty, Fire Marshal *P*

File NorthReg/DevRev/Poj/WalshMinnieVAR doc

Cy *J. Lovato, Land Use*
Applicant
District Chief
File

Daniel "Danny" Mayfield
Commissioner, District 1

Virgina Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: August 7, 2013

TO: John Lovato, Development Review Specialist Senior

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

REF.: CDRC Case # V 13-5190 Minnie Walsh Variance

The Applicant is requesting approval to allow a family transfer land division of 1.195 acres into two lots. The proposed lots will not be benefited by all-weather access as required by Code. This application has been reviewed specifically for compliance to Ordinance 2008-10 (Flood Damage Prevention and Stormwater Management Ordinance).

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

1. Arroyo Jaconita, which is the primary access used to access the subject parcel, is within a federally mapped Special Flood Hazard Area, Zone AE. The Zone AE designation indicates these areas will be inundated by floodwater during the 1% recurrence interval storm event, or 100-year storm. This area has been studied by FEMA and Base Flood Elevations have been determined. Secondary access to the site is via Loma Encantada, which is also within a federally mapped Special Flood Hazard Area, Zone A. The Zone A designation indicates these areas will be inundated by floodwater during the 1% recurrence interval storm event, or 100-year storm. This area is unstudied by FEMA and depth, velocity and duration of inundation are not provided
2. The primary and secondary access to the site, are through dirt road low water crossings, which do not provide dry access for emergency vehicles during storm events.
3. Section 5.11 (Basis for Approval or Denial) (E) states: "Approval or Denial of a Stormwater Management Analysis (none provided by applicant), that approval may not be given when certain relevant factors are present", including "The safety of access to the property in times of flood for ordinary and emergency vehicles"
 - a. The applicant has not provided a Stormwater Analysis which identifies the quantity, depth, and velocity of the flows present in the crossings. This information would be

needed to assess the potential danger of this crossing. Note that flow depths of as little as 12", when velocity is considered, are enough to wash away or create buoyancy of an average vehicle. Additional danger arises when motorists are unable to view the driving surface and enter inundated areas. Injury or death can occur if the driving surface has been scoured away by high velocity floodwater, and unknowing motorists often attempt to cross these inundated areas without regard for the surface of the road. Notably, death during flash flood events are surpassed only by hurricane fatalities, and more deaths occur nationwide from flood related deaths than any other natural disaster. This is a dangerous and sometimes deadly situation.

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

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

Finding:

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

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

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

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

John F. Lovato

From: Bencomo, Michael T., NMENV <michaelt.bencomo@state.nm.us>
Sent: Friday, August 16, 2013 9:29 AM
To: John F. Lovato
Subject: FW: Scan - SITE EVALUATION FOR MIKE ADAMS/JOHN WALSH
Attachments: Scanned from District II Espanola Field Office.PDF

Hey John, I went out and took measurements to verify setbacks. The google earth aerial has the measurements showing the setbacks. Everything looks fine. We don't have anything to do with the well, that's a state engineer issue. But working with the engineer's office it's probably OK for them to have both wells. As I mentioned before, a Split-flow is used when too much Nitrogen is being dumped onto the property. 80% of Nitrogen in a household is in the toilet waste, so the Adams have eliminated most of the Nitrogen with their two large holding tanks.

-----Original Message-----

From: do2scanner@state.nm.us [<mailto:do2scanner@state.nm.us>]
Sent: Tuesday, August 13, 2013 5:15 PM
To: Bencomo, Michael T., NMENV
Subject: Scan - SITE EVALUATION FOR MIKE ADAMS/JOHN WALSH

Please open the attached document. It was scanned and sent to you using a Xerox multifunction device.

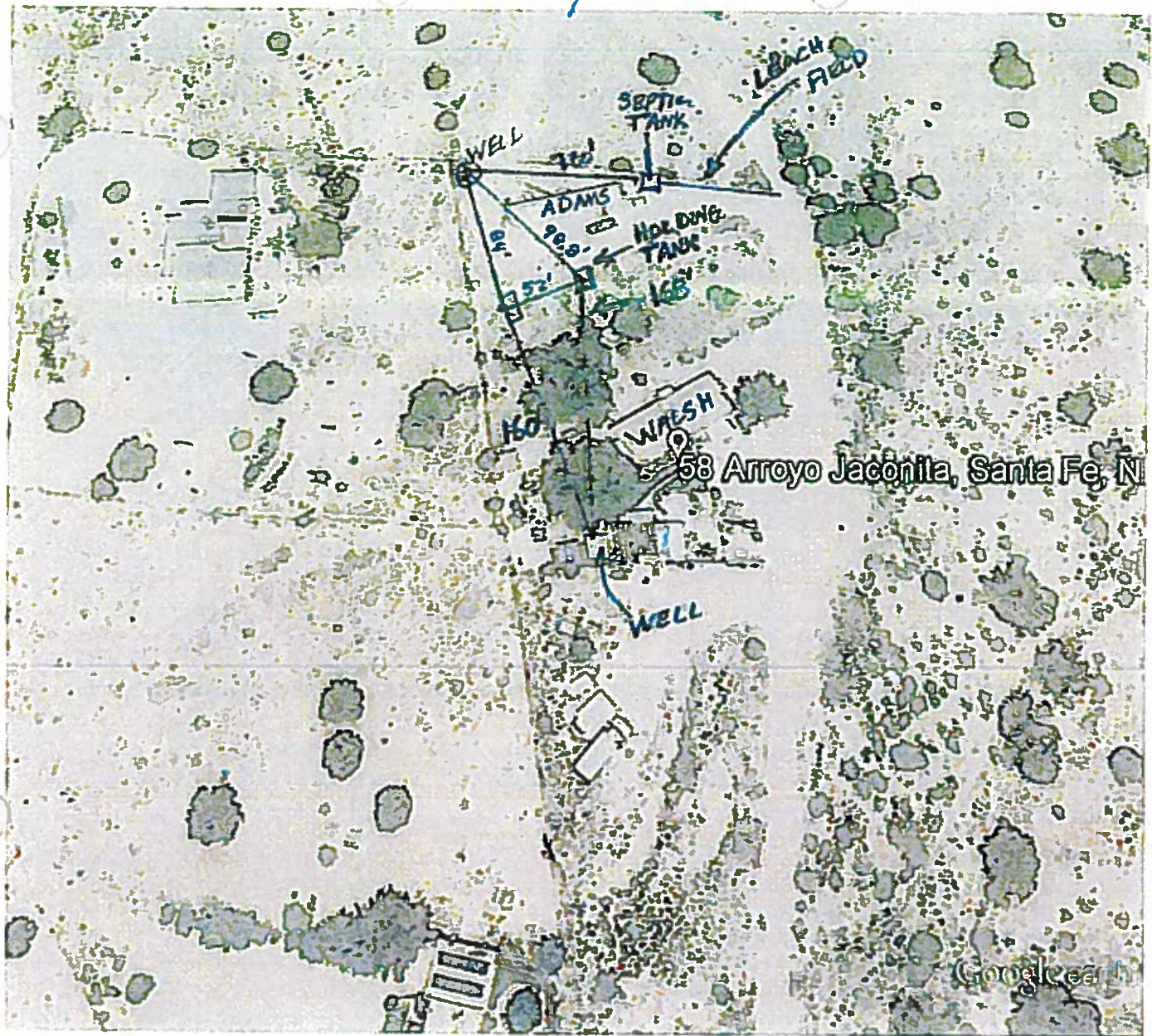
Attachment File Type: PDF, Multi-Page

multifunction device Location: machine location not set

Device Name: esxerox

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

MIKE AND MICHE' ADAMS. / John WALSH



Google earth

feet
meters

200

70



$$\frac{1.64''}{3.28''} = \frac{100'}{200'}$$

Actual MEASUREMENTS (by Michael Bencomi, 8-13-13)

$$1.1'' = 100'$$

$$\sqrt{84^2 + 52^2} = 98.79' \text{ (From Adams Well to Holding Tank.)}$$

$$\sqrt{160^2 + 52^2} = 168' \text{ (From Parent's Well to Holding Tank.)}$$

100' (From Adams Well to Septic Tank) 72
110' (From Adams Well to Leachfield)

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

KRIS PETERSON and MISHA PETERSON,
Plaintiffs/Appellants

vs.

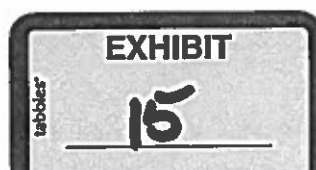
No. D-0101-CV-2013-03108

COUNTY OF SANTA FE, and
THE SANTA FE BOARD OF COUNTY COMMISSIONERS,
Defendants/Appellees.

**FINAL ORDER REMANDING DECISION BACK
TO THE SANTA FE BOARD OF COUNTY COMMISSIONERS**

THIS MATTER came before the Court on June 25, 2014 for a hearing on the merits after full briefing by the parties. Plaintiffs, Kris Peterson and Misha Peterson, were represented by Attorney Joseph Karnes; Defendants, County of Santa Fe and Santa Fe Board of County Commissioners, were represented by Willie R. Brown, Assistant County Attorney, Santa Fe County. The Court, having heard oral argument and examined the pleadings on file herein, FINDS AND ORDERS AS FOLLOWS:

1. On the appellate issue presented to this Court, a whole record review standard applies.
2. The first of two issues specifically presented to this Court for review in this case involved a lot size variance application approved by the Defendants, Santa Fe Board of County Commissioners ("Board") under Santa Fe County Ordinance 1996-10 ("Land Development Code").
3. While the record of the Board was replete with evidence presented as factors required under the Board's Land Development Code and applicable appellate case law, as well as a number of observations by certain Board Commissioners, this evidence and these observations do not amount to specific findings of the Board.
4. The second issue presented to this Court for review involved a requested variance



from obtaining a floodplain development permit that was also approved by the Board but under Santa Fe County Ordinance 2008-10 ("Flood Damage Prevention and Stormwater Management Ordinance").

5. As in the first variance, there was some evidence presented and there were some observations made by some Board Commissioners, but which did not amount to findings by the Board as a whole.

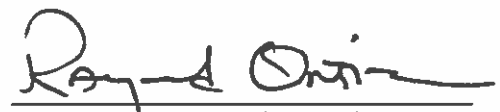
6. The standard for a floodplain variance, which is much more detailed than the standard under the Land Development Code Ordinance, requires:

(1) a showing of good and sufficient cause;

(2) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(3) a determination that granting a variance will not result in increased floodplain heights, additional threats to public safety, extraordinary public expense, creation of a nuisance, cause fraud or victimization to the public, or conflict with existing local laws or ordinances.

WHEREFORE, on the lot size variance, I am remanding this case back to the Board so that evidence can be re-presented and the Board can make specific written findings under its Land Development Code requirements, and also under both prongs of the *Paule* case, to justify whatever decision they make. Similarly, on the floodplain variance, I am remanding this case back to the Board for a re-presentation of evidence and for the Board to make a decision supported by detailed written findings with respect to all the requirements as to the requested flood plain variance to justify its decision, or to make specific findings as to whether or not these requirements are applicable in the first instance if that is the Board's position.


Honorable Raymond Z. Ortiz

Submitted by:

Sommer, Karnes & Associates, LLP
Counsel for Plaintiffs/Appellants

/s/ Joseph M. Karnes

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AND

Santa Fe County Attorney's Office
Counsel for Defendants/Appellees

/s/ Willie R. Brown

Willie R. Brown, Assistant County Attorney

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505-995-2713 (Mr. Brown)

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