

**Henry P. Roybal**  
Commissioner, District 1

**Miguel M. Chavez**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Kathy Holian**  
Commissioner, District 4

**Liz Stefanics**  
Commissioner, District 5

**Katherine Miller**  
County Manager

**DATE:** April 28, 2015

**TO:** Board of County Commissioners

**FROM:** John Lovato, Development Review Specialist Sr.

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

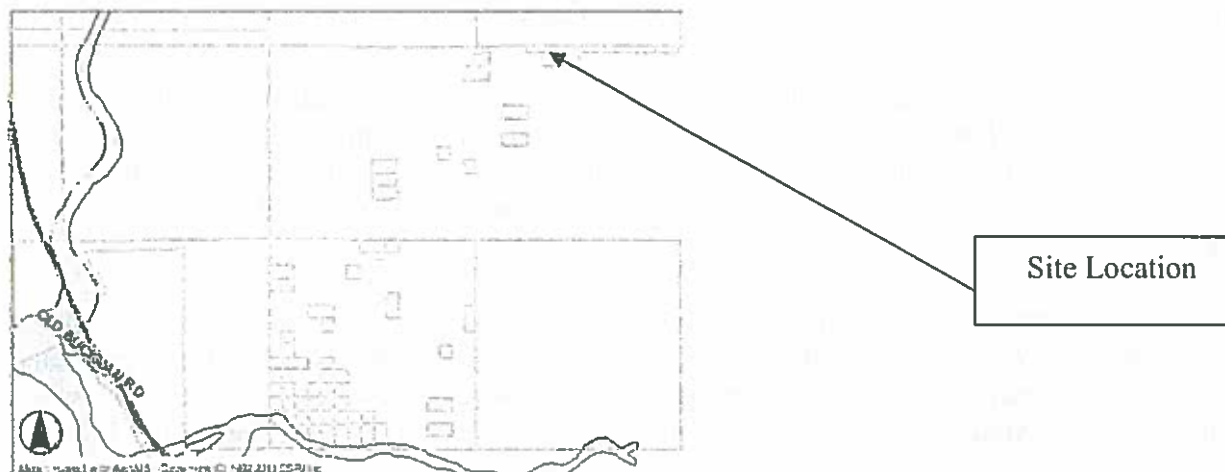
**FILE REF.:** BCC CASE # MIS 13-5051 Patrick Christopher and Marga Friberg

**ISSUE:**

Patrick Christopher and Marga Friberg, Applicants, request reconsideration of a condition imposed by the BCC requiring a 0.25 acre foot water restriction for an approved 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) to allow the construction of a residence on 14.981 acres.

The property is located at 250-C Kalitaya Way off Old Buckman Road, within Section 29, Township 19 North, Range 8 East, (Commission District 1).

**Vicinity Map:**



## SUMMARY:

On May 14, 2013, the BCC approved 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) to allow the construction of a residence on property consisting of five lots which total 14.981 acres (with staff conditions). The Applicants agreed to all conditions which also included a lot consolidation. The lots consisted of 3.84 acres, 3.87 acres and three 2.5 acre lots. The subject properties are part of a subdivision created in the 1940's with the US Government's "Small Parcel Act" which assisted veterans in acquiring their own property.

The properties all have Land Patents from the US Government dating from 1962. The lots are recognized as legal lots of record, and the variance was required as there is inadequate access to the lots. The condition for consolidation reduced the number of lots from five (5) buildable lots to one buildable (1) lot.

On June 11, 2013, the BCC approved a Final Order with findings that the Application for 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) to allow the construction of a residence on 14.981 acres should be approved conditioned on the Applicant complying with the following conditions: 1) Water use shall be restricted to 0.25 acre foot per year. A water meter shall be installed for the proposed home. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office (**As per Article III, § 10.2.2 and Ordinance 2002-13**). 2) The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review and Development Permit Application (**As per 1997 Fire Code and 1997 Life Safety Code**). 3) A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval for the lot consolidation (**As per Article III, § 2.4.2**). 4) A note must be placed on the Plat regarding the lack of all-weather access to the subject lot. This restriction 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. (**As per Ordinance No. 2008-10**). The approved Final Order was recorded with the County Clerk's Office on August 20, 2013, (Exhibit 7).

The Applicant's request reconsideration of condition number one imposed by the BCC which states: Water use shall be restricted to 0.25 acre foot per year. A water meter shall be installed for the proposed home. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office.

The Applicant's state the condition to limit water use to 0.25 acre feet per year is excessive due to him having to consolidate five legal lots of record into one 14.981 acre lot. The Applicant further states that each lot could have potentially had 0.25 acre feet each for a total of 1.25 acre feet per year. The Applicant requests a water allocation of 0.50 acre feet per year for the 14.981

acre lot. The Applicant also states he intended to ask for this water allocation at the time the variance was being requested but neglected to do so.

The property lies within the Basin Fringe Hydrologic Zone, and the minimum lot size per Code is 50 acres per dwelling unit. Lot size can be reduced to 12.5 acres per dwelling unit with signed and recorded water restrictions. The lot is 14.981 acres and larger than the minimum lot size of 12.5 acres. Therefore, the lot shall be restricted to 0.33 acre feet per year.

The owners of the Property Marga Friberg and Patrick Christoper, acquired the Property by warranty deed recorded in Instrument # 1629196 in the Santa Fe County Clerk's records dated March 11, 2011

Notice requirements were met as per Article II § 2.4.2, of the Land Development Code. In advance of a hearing on the Application, the Applicant provided a certification of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for twenty one days on the property, beginning on April 19, 2015. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on April 21, 2015, as evidence by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners.

**This Application was submitted on May 3, 2015.**

**APPROVAL SOUGHT:** Reconsideration of a condition imposed by the BCC requiring a 0.25 acre foot water restriction for an approved variance to allow the construction of a residence on 14.981 acres to allow for a 0.50 acre foot water restriction.

**GROWTH MANAGEMENT AREA:** El Centro, SDA-3

**HYDROLOGIC ZONE:** Basin Fringe Hydrologic Zone, minimum lot size per Code is 50 acres per dwelling unit. Lot size can be reduced to 12.5 acres per dwelling unit with signed and recorded water restrictions of 0.25 acre foot water restrictions.

**FIRE PROTECTION:** Agua Fria Fire District.

**WATER SUPPLY:** Well

**LIQUID WASTE:** Conventional Septic System

**STAFF RECOMMENDATION:** The property is located within the Basin Fringe Hydrologic Zone; minimum lot size per Code is 50 acres per dwelling unit. Lot size can be reduced to 12.5 acres per dwelling unit with 0.25 acre foot signed and recorded water restrictions. The Applicant's lot is 14.981 acres. Therefore, the code

would allow a 0.33 acre foot water restriction. Staff recommends denial of the request for 0.50 acre foot water restrictions and recommends a restriction of 0.33 acre foot per year.

**EXHIBITS:**

1. Letter of Intent
2. Warranty Deed
3. Legal Noticing
4. Aerial Photo of Property
5. June 11, 2013 BCC Minutes
6. Final Order Recorded June 12, 2013

March 6, 2015

To the Santa Fe County Board of Commissioners:

In June of 2013, Marga Friberg and Patrick Christopher applied and received approval for a Variance to construct a residence on 15.3 acres on a property located at 250-C Kalitaya Way, within Section 29, Township 19 North, Range 8 East. This was referred to as CASE NO. V 13-5050 and recorded with Santa Fe County.

Ms. Friberg and I agreed to the consolidation of the five legal lots to create this single 15.3 acre parcel in a good faith effort to reduce the level of possible development in this rural area.

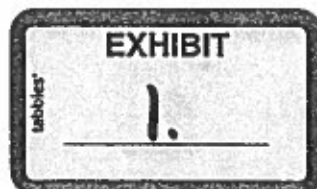
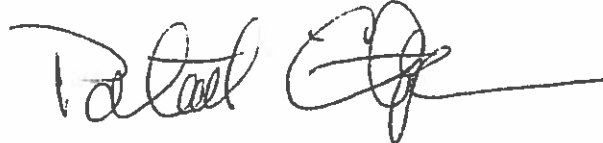
What was overlooked at the time by everyone involved, including the Santa Fe County Planning staff, was the appropriate water allocation for this newly created 15.3 acre lot. Previous to this consolidation, the five legal lots would each have been entitled to a water allocation of .25 acre/feet, for a total of 1.25 acre/feet. However, in creating the new single lot, only .25 acre/feet/year of water was granted at the time although we intended to ask for a water allocation of .50 acre/feet, but neglected to do so.

I am writing now to request the approval by the Commission of a revised water allocation from .25 acre/feet to .50 acre/feet/year for the 15.3 acre parcel known as 250-C Kalitaya Way so that we might have sufficient water for a residence and guest house proposed for the property. We sincerely hope that you will approve this request. Thank you again.

Patrick Christopher

518 Alto Street

Santa Fe, NM 87501



## SPECIAL WARRANTY DEED

Michael C. Haley and Linda L. Haley, his wife, for consideration paid, grant to Marga Friberg, a single woman and Patrick Christopher, a single man, as tenants in common, whose address is P.O. Box 33261 Santa Fe, NM 87594 following described real estate in Santa Fe County, New Mexico:

T. 19N, R. 8 E., Sec. 31, Lot 112  
\*\* T. 19N, R. 8 E., Sec. 29, Lot 22  
T. 19N, R. 8 E., Sec. 29, Lot 14

All as shown and delineated on Resurvey and Partial Subdivision of Section, dated October 24, 1961  
filed as Document 253,530 in Plat Book 9, Page 18, records of Santa Fe County, New Mexico.

County ADO ellh

SUBJECT TO: taxes and assessments for 2011 and subsequent years and to restrictions, reservations and easements of record.

with special warranty covenants.

Witness our hands this 8<sup>th</sup> day of March, 2011.

Michael C. Haley  
Michael C. Haley

Linda L. Haley  
Linda L. Haley

## ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF COLORADO

COUNTY OF Douglas

This instrument was acknowledged before me on March 8<sup>th</sup>, 2011 by Michael C. Haley and Linda L. Haley, his wife.

My Commission Expires: 7/10/2012

K. A. Daniel  
Notary Public



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss  
SPECIAL WARRANTY DEED  
PAGES: 1  
I Hereby Certify That This Instrument Was Filed for  
Record On The 11TH Day Of March, 2011 at 10:59:55 AM  
And Was Duly Recorded as Instrument # 1629196  
Of The Records Of Santa Fe County

KENNETH L. DANIEL  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires 7/10/2012

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



4-1222  
(Acq 1957)

New Mexico 0309485

# The United States of America,

To all whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Land Office at **Santa Fe, New Mexico**, has been issued showing that full payment has been made by the claimant

**Eunice Morris**

pursuant to the provisions of the Act of Congress approved June 1, 1938 (52 Stat. 609), entitled "An Act to provide for the purchase of public lands for home and other sites," and the acts supplemental thereto, for the following-described land:

**New Mexico Principal Meridian, New Mexico.**

**T. 19 N., R. 8 E.,**

**Sec. 29, Lot 22.**

The area described contains **2.50** acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT unto the said claimant and to the heirs of the said claimant the Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right-of-way thereon for ditches or canals constructed by the authority of the United States. Excepting and reserving, also, to the United States all oil, gas and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938. This patent is subject to a right-of-way not exceeding **33** feet in width, for roadway and public utilities purposes, to be located **along the west and south boundaries of said land.**

This entry is made under Section 29 of the Act of February 25, 1920 (41 Stat. 437), and the Act of March 4, 1933 (47 Stat. 1570), and the patent is issued subject to the rights of prior permittees or lessees to use so much of the surface of said lands as is required for mining operations, without compensation to the patentee for damages resulting from proper mining operations.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be

10/15/62

# SANTA FE NEW MEXICAN

Founded 1849

CHRISTOPHER. PATRICK  
518 ALTO ST  
SANTA FE, NM 87501

ACCOUNT: 21757  
AD NUMBER: 0000118158  
LEGAL NO 98284 P.O. #:  
1 TIME(S) 83.30  
AFFIDAVIT 20.00  
TAX 7.64  
TOTAL 100.94

## AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO  
COUNTY OF SANTA FE

I, W. Barnard, being first duly sworn declare and say that I am Legal Advertising Representative of THE SANTA FE NEW MEXICAN, a daily newspaper published in the English language, and having a general circulation in the Counties of Santa Fe, Rio Arriba, San Miguel, and Los Alamos, State of New Mexico and being a newspaper duly qualified to publish legal notices and advertisements under the provisions of Chapter 167 on Session Laws of 1937; that the Legal No 98284 a copy of which is hereto attached was published in said newspaper 1 day(s) between 04/21/2015 and 04/21/2015 and that the notice was published in the newspaper proper and not in any supplement; the first date of publication being on the 21st day of April, 2015 and that the undersigned has personal knowledge of the matter and things set forth in this affidavit.

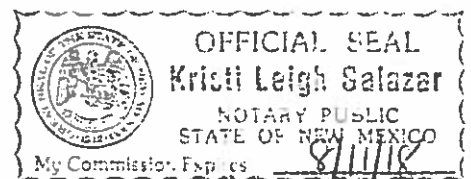
/s/

LEGAL ADVERTISEMENT REPRESENTATIVE

Subscribed and sworn to before me on this 21st day of April, 2015

Notary

Kristi Leigh Salazar  
Commission Expires: August 11, 2018



EXHIBIT

3.

8.



THE SANTA FE  
**NEW MEXICAN**  
Founded 1849

LEGAL # 98284

CDRC CASE # MIS 13-5051

**NOTICE OF PUBLIC  
HEARING**

Notice is hereby given that public hearing will be held to consider a request by Patrick Christopher, Applicant, for reconsideration of a condition imposed by the BCC requiring a 0.25 acre foot water restriction for an approved Variance of Article III, 2.4.1a.2.b (Access) of the Land Development Code and variance of Article 4, 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow the construction of a residence on 15.3 acres. The property is located 250-c Kalitaya Way within the vicinity of Buckman within Section 29, township 19 North Range 8 East, (Commission District 1).

A public hearing will be held in the County Commission Chambers of the Santa Fe County Courthouse, corner of Grant and Palace Avenues, Santa Fe, New Mexico on the 12th day of May 2015, at 5 p.m. on a petition to the Board of County Commissioners.

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

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

Published in the Santa Fe New Mexican on April 21, 2015

# SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BLM  
301 Dinosaur Trail  
Santa Fe, NM  
87508

2. Article Number

(Transfer from service label)

7013 1710 0001 1192 8538

# COMPLETE THIS SECTION ON DELIVERY

A. Signature

x R Duman

☐ Agent

☒ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail®

☐ Priority Mail Express™

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

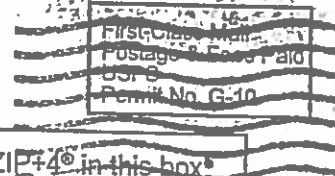
☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee)

☐ Yes

PS Form 3800, July 2013 Domestic Return Receipt

UNITED STATES POSTAL SERVICE



• Sender: Please print your name, address, and ZIP+4® in this box.

Patrick Christopher  
518 Alto St.  
Santa Fe, NM 87501

# U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only) Insurance Coverage Provided

For delivery information visit our website at [www.usps.com](http://www.usps.com)

SANTA FE NM 87508

Postage	\$	\$0.49
Certified Fee		\$3.30
Return Receipt Fee (Endorsement Required)		\$2.70
Restricted Delivery Fee (Endorsement Required)		\$0.00
<b>Total Postage &amp; Fees</b>	<b>\$</b>	<b>\$6.49</b>



Sent To

BLM  
301 Dinosaur Trail  
Santa Fe, NM 87508

PS Form 3800, August

See Reverse for Instructions

959 2611 1000 DTLT E102

## CERTIFICATION OF POSTING

I herby certify that the public notice posting regarding Land Development

Case # MIS 13-5051 was posted for 21 days on the property beginning

The 19<sup>th</sup> day of April  
2015 . \*\*

[Signature]  
Signature

\*Photo of posting must be provided with certification

**\*\*PLEASE NOTE:** Public notice is to be posted on the most visible part of the property. Improper legal notice will result in re-posting for an additional 21 days. It is the applicant's responsibility to ensure that the notice is on the property for the full 21 days.

STATE OF NEW MEXICO }  
COUNTY OF SANTA FE }

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of

April, 2015, By Patrick Christopher.

[Signature]  
Notary Public

My Commission Expires:

June 19, 2017



Patrick Christopher  
250-C Kalitaya Way  
Santa Fe County  
Posted April 19, 2015



## PUBLIC NOTICE

Notice is hereby given that an application has been filed with Santa Fe County for Reconsideration of a Condition imposed by the Board of County Commissioners requiring a 0.25 acre foot water restriction for an approved variance of Article III, Section 2414.2b (variance of the Land Development Code and a variance of Article 4 section 4.2 of ordinance 100, 2001 (Red Drought and Stormwater Management)) to allow the construction of a residence on 15.3 acres.

Name of Applicant Patrick Christopher

Address of Request 250-C Kalitaya Way

Legal Description: Section 29 Township 19 North

Range 8 East NMPM Santa Fe County, New Mexico.

A Public Hearing will be held/made at the

Old Santa Fe County Courthouse, corner of Palace and Grant

Avenues, Santa Fe, New Mexico (on) after the 12<sup>th</sup> day of

May, 2015, at 6:00 pm before the Board of

County Commissioners

Further information can be obtained by contacting,

the Land Use Department, P.O. Box 276, Santa Fe, NM 87504

Phone (505) 986-6225. Development Permit # MS 13-5051

Patrick Christopher  
250-C Kalitaya Way  
Santa Fe County  
Posted April 19, 2015

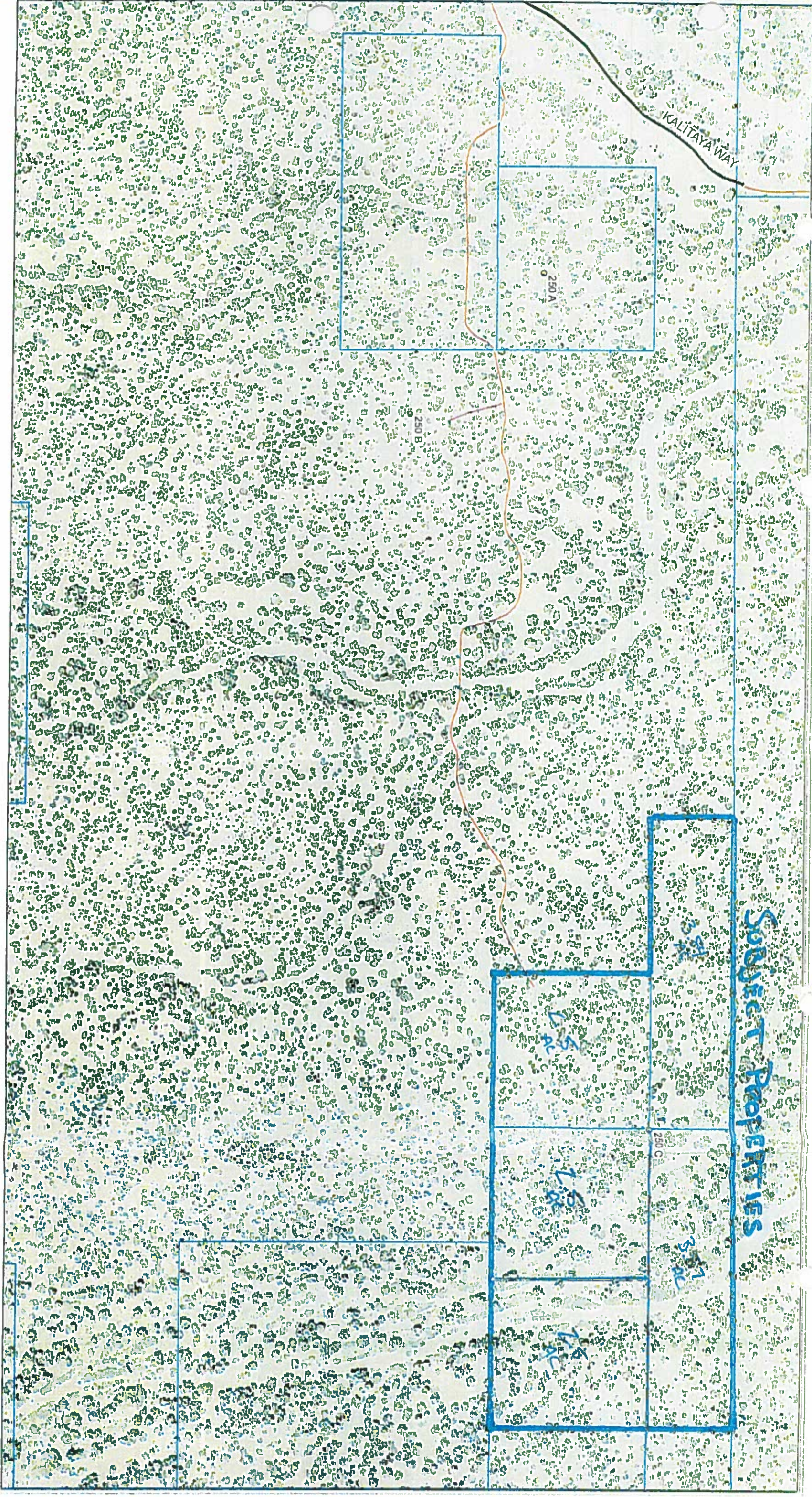




Patrick Christopher  
250-C Kalitaya Way  
Santa Fe County

Posted April 19, 2015  
at Property line





SUBJECT PROPERTIES

Legend

- ROADS
- DRIVEWAYS
- Parcels

1:2,344

1 inch represents 195,3125 feet



This information is for reference only  
Santa Fe County assumes no liability for  
errors associated with the use of these data

User are solely responsible for  
confirming data accuracy.

2008 Orthophotography  
2 FOOT CONTOURS



March 13, 2013

tabbles®  
**EXHIBIT**  
**4.**







COMMISSIONER MAYFIELD: Madam Chair, I do have a question for the applicant. Mr. Senutovich, hopefully, I got your name correct, are you amenable to staff's recommendation if this is approved by the County Commission tonight?

MR. SENUTOVICH: Yes, it's going to look great. Thank you.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, with that I will I would move for approval with staff conditions.

COMMISSIONER CHAVEZ: Second.

CHAIR HOLIAN: Okay, I have a motion and second for approval of CDRC Case V 13-5030 with staff conditions. All those in favor signify by saying "aye."

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

CHAIR HOLIAN: The variance is approved 4-0.

- XVII. A. 8. **CDRC CASE # V 13-5050 Patrick Christopher & Marga Friberg Variance. Patrick Christopher & Marga Friberg, Applicants, Request 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 the Construction of a Residence on 15.3 acres. The Property is Located at 250C Kalitaya Way Off Old Buckman Road, within Section 29, Township 19 North, Range 8 East (Commission District 1)**

WAYNE DALTON (Building and Development Services Supervisor): Thank you, Madam Chair. The Applicants request a variance to allow the construction of a residence on property consisting of five lots which total 15.3 acres. The lots consist of 3.84 acres, 3.87 acres and three 2.5-acre lots. The subject properties are part of a subdivision created in the 1940's with the US Government's "Small Parcel Act" which assisted veterans in acquiring their own property. The properties all have Land Patents from the US Government dating from 1962, and are recognized as legal lots of record.

As part of the permitting process, the Applicants have agreed to consolidate all five lots in order to have the proposed residence on one lot consisting of 15.3 acres. The Applicants intend to sell the property contingent upon the outcome of the variance process and the buyer of the property will be constructing the residence.

Madam Chair, I was just informed by the applicant today that the deal for the property has fallen through so the applicants will actually be constructing the residence on the property.

CHAIR HOLIAN: Pardon, say that again, please, Wayne.

MR. DALTON: The applicants were intending to sell this property and that deal has fallen through so actually it will be the applicants constructed the residence on the property.

CHAIR HOLIAN: Okay, thank you, Wayne.

MR. DALTON: The property is located at 250C Kalitaya Way Off Old Buckman Road which is a



County maintained Road on BLM Land and Kalitaya Way which is a public road on BLM Land. Old Buckman Road is a dirt/sand driving surface and is located in, and crosses two FEMA designated Special Flood Hazard Areas, numerous contributing arroyos and drainage ways. The portion of Old Buckman Road that services the property is approximately 9 miles in length. Kalitaya Way is a dirt-driving surface and crosses one FEMA designated special flood hazard areas, contributing arroyos and several drainage ways. The portion of Kalitaya Way that services the property is approximately 2.5 miles in length. Both Old Buckman Road and Kalitaya Way do not have an all-weather driving surface and may be frequently impassible during and after inclement weather, and thereby are not all weather accessible.

The Applicants state they are not in a position to upgrade 9 miles of Old Buckman Road to County standards, nor the 2.5 miles of Kalitaya Way. However they are interested in doing all they can to build responsibly. The Applicants also state that after consulting with County staff and the Fire Prevention Division, they understand that there are certain items that can be incorporated into the building plans to substantially enhance the protection against fire danger. These improvements may include a turnaround on the property, a water storage tank, sprinkler system, a vegetation management plan, and compliance with the Urban Wild Land Interface Code for building materials for any proposed structures on the property and that is to be determined by Fire Prevention Division.

On March 21, 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 are attached as Exhibit 1.

Staff recommendation: Denial of a variance from Article III, § 2.4.1a.2.b , Access of the Land Development Code and denial of a variance of Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management).

If the decision of the BCC is to approve of the Applicant's request for variances, staff recommends imposition of the following conditions, and Madam Chair, may I enter those into the record?

CHAIR HOLIAN: Yes, you may.

The conditions are as follows

1. Water use shall be restricted to 0.25 acre foot per year. A water meter shall be installed for the proposed home. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance 2002-13).
2. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review and Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).
3. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval for the lot consolidation (As per Article III, § 2.4.2).
4. A note must be placed on the Plat regarding the lack of all weather access to the subject lot. This restriction 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. (As per Ordinance 2008-10).

CHAIR HOLIAN: Are there any questions of staff? Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Dalton, just to a few clarifying questions to have onto the record under my request. This application reduces five lots which total 15.3 acres to one lot?

MR. DALTON: Madam Chair, Commissioner Anaya, that's correct. Right now as it stands we're looking at five legal lots of record. The applicants have agreed to consolidate all five lots into one lot which would total 15.3 acres.

COMMISSIONER ANAYA: Madam Chair, Mr. Patty, is Mr. Patty still here? There was a question that I asked before I ask of you, Mr. Patty, just one second. It was asked of the applicants - it was noted that the road conditions are very difficult and the applicants fully understand that and it was also added on the conditions, if approved, similar to the last case or the case before that that we just approved that there would be a notation on the deed that speaks specifically to a note must be placed on the plat regarding lack of all weather access to the subject lot. This restriction 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. Are the applicants here? Do you fully understand that particular item? When you come up in a while -

CHAIR HOLIAN: Commissioner Anaya, I haven't called the applicants forward yet.

COMMISSIONER ANAYA: Okay, I just wanted to ask that question. Mr. Patty, you were asked at the CDRC if the - something to the effect if the landowners accepted all responsibility for fire or emergency services would that suffice? And your comments was something to the effect that we're going to respond to any and all emergencies could you kind of restate that or clarify my statement?

FIRE MARSHAL PATTY: Madam Chair, Commissioner Anaya, yes, this is in an area that has so many low water crossing and the road is so substandard and they are not able to do anything to it that the road for the most part isn't passable with our equipment. If you were to grant this and they were out and they called 911 call, we're not going to say we're not coming. We're going to make every attempt to try to go but we have - the applicant has to know for themselves or whomever they may sell this piece of property to that we may not be able to make it regardless of weather conditions the way it is right now.

COMMISSIONER ANAYA: And as it stands if it would go through that's a deed restriction that would be noted on the deed of the property currently and for conveyance.

MARSHAL PATTY: Madam Chair, Commissioner Anaya, yes, we were requiring some language like that on the plat when it was recorded.

COMMISSIONER ANAYA: Thank you, Mr. Patty. Thank you, Madam Chair.

CHAIR HOLIAN: Any further questions for staff. Seeing none, is the applicant present? Would you please come in and be sworn in and state your names for the

record.

[Duly sworn, Marga Friberg, testified as follows:]

MARGA FRIBERG: Marga Friberg.

CHAIR HOLIAN: Is there anything that you would like to add, Ms. Friberg?

MS. FRIBERG: Yes, I would just like to say that I'm a homeowner in the historic Guadalupe District. I have a house that is 900 square feet. I share a wall with my neighbor on one side. I have the Boys and Girls Club behind on the other. I have my other neighbor 10 feet away on the south side and across one car lane I have my neighbors in front of me and I absolutely adore it. However, I'd love also to go walking and hiking and get away to a retreat and I like to drive if that's what I have to do and leave town. It was wonderful to be able to build a small retreat cabin. To be able to just be quiet and alone. We know that it's out in the middle of nowhere and that's what we love. We're both architects and we embrace the idea of being able to design something that fits with the land and is very light on it. Thank you.

CHAIR HOLIAN: Mr. Christopher would you like to add anything?

[Duly sworn, Patrick Christopher testified as follows:]

PATRICK CHRISTOPHER: Yes, I'm Patrick Christopher. And I also live in the Guadalupe neighborhood very close to the church. I've worked on a number of projects in the past as an architect that are off the grid and in places that are wild and undeveloped and absolutely gorgeous and this is exactly, we looked a long time to find these lots. We had no idea that they even existed and we were startled to find that such a thing was there in Santa Fe County and we do understand that Buckman Road is not really passable with large emergency equipment and Kalitaya Way is not either. On the other hand, we love everything about these remote lots just because they are not citified and the skies are dark and brilliant at night and they're quiet and it's a place to really commune with New Mexico in way that you can rarely find in this County and we respect that.

We also, maybe because we've been architects for some time and have worked in some remote areas we fully understand what it means to be kind of unreachable and to take these risks of maybe spending a weekend or a week at a cabin where emergency access is not available. And we understood that from the beginning. It is quite apparent when you're out there. We spent a year working with the Bureau of Land Management to go through every step that they required so that we could have legal access to this property. We wanted to do exactly the same with Santa Fe County and follow every single step. There were a few people out there who are squatting and who had just brought in their RVs and doing whatever and that's not the way we operate and we wanted to do it properly but we also want to proceed.

We've spent two years doing this. We've got a million design ideas and we would love to proceed with your help.

CHAIR HOLIAN: So Mr. Christopher, you understand all the restrictions that go with that property, correct?

MR. CHRISTOPHER: We do indeed. In fact, we worked very closely with the planning staff here. I think this is all entirely appropriate and, yes, we do.

CHAIR HOLIAN: Do you plan to live out there full time or use it as a cabin?

MR. CHRISTOPHER: Yes, it's a retreat property, a cabin, a weekend use, that sort of thing. No we love living in the center of Santa Fe.

CHAIR HOLIAN: I have to make full disclosure. My husband and I built a cabin somewhat like you're describing on the top of Glorieta Mesa and we don't have access year-round either, as a matter of fact. So I know exactly what you're facing.

MR. CHRISTOPHER: I know we're not alone in this. I've explored a lot of parts of northern New Mexico. But I think this addition – this limitation, this wording for the deed is something that we feel is appropriate and that that kind of communication needs to be on the plat to be very clear with any future owners as well.

CHAIR HOLIAN: And have you investigated homeowners insurance?

MR. CHRISTOPHER: We understand that it will be tricky to say the least, yes. Our ideas are to build with fire retardant materials to be as careful as we can. To have water onsite but obviously we can't cover for every possible incident.

CHAIR HOLIAN: Any further questions for the applicants or for staff?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, staff, as far as the area and I think I'm pretty familiar with it, but what basin is in as far as the water basin? It's not in Pojoaque Basin is it?

MR. DALTON: Madam Chair, Commissioner Mayfield, this is actually in the basin fringe hydrologic zone.

COMMISSIONER MAYFIELD: And, I'm sorry. I am having audio problems but I'm also having some heat problems.

MR. DALTON: Madam Chair, Commissioner Mayfield, this is actually in the basin fringe hydrologic zone. I'm not sure what basin it is in.

COMMISSIONER MAYFIELD: Is this upside of the Otowi gage or downside of it?

CHAIR HOLIAN: Commissioner Mayfield, if I might answer that question because I've been out there. I don't know if you've taken the tour of the BDD project but you know the road that goes out to where the intake area is? It's before you get to the intake area. It's maybe about half way down that road.

COMMISSIONER MAYFIELD: Before to the right?

CHAIR HOLIAN: To the right?

MR. DALTON: Yes.

COMMISSIONER MAYFIELD: So then it could potentially be on the upside of the Otowi gage, right? Do you all know? Does the applicant know; are you on the upside of the Otowi gage?

CHAIR HOLIAN: It's on the downside of the Otowi gage because it's along that road before you get to the intake for the BDD project.

COMMISSIONER MAYFIELD: Okay, [inaudible] the Pojoaque Basin, okay. Fair enough.

CHAIR HOLIAN: Ms. Friberg, would you like to comment on that? Come up and speak into the mike.

MS. FRIBERG: At this point we're not looking at drilling a well any way.

COMMISSIONER MAYFIELD: Oh, I know [inaudible] thank you.

CHAIR HOLIAN: Commissioner Mayfield, you still have the floor.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. So let's go back to this real quick on this section. They're consolidating the property. Let me look at something real quick, give me a second, Madam Chair, please. So, again, as far as the lot consolidation what are the lot size requirements and this is for staff, sir. What are the lot size requirements out in the area and I appreciate the applicant is doing this on their own?

MR. DALTON: Madam Chair, Commissioner Mayfield, the minimum lot size in this area is 12.5 acres per dwelling unit.

COMMISSIONER MAYFIELD: Okay, 12.5 that's fine. Again, if they decided to do anything they would be under grandfathered status and they could use the lot size as existing.

MR. DALTON: Madam Chair, Commissioner Mayfield, yes, these lots are all legal lots of record, pre-code lots so yes.

COMMISSIONER MAYFIELD: So they're doing something different. And on that, how many homes are in the area because I think there are quite a few?

MR. DALTON: Madam Chair, Commissioner Mayfield, in this vicinity there are not homes in this area.

COMMISSIONER MAYFIELD: None. Then – there's an area out there off of Old Buckman Road that has a few homes because me and Mr. Ross were looking at an issue with some roads and I think even Commissioner Chavez when we approved a limited use road somewhere in that area we talked about some roads. Where is that road area that I'm thinking of, Steve? That's the one that's more to the right.

MR. ROSS: Madam Chair, Commissioner Mayfield, that's more to the north. It's probably to the northeast of this area.

COMMISSIONER MAYFIELD: I'm getting off point, okay. So, and I appreciate the applicants' comments as far as being off the grid. Maybe wanting to stay on a more undeveloped area because that's – and this is more for staff. Now we're kind of going through a code rewrite in some remote areas and I just hope that we do have this consideration because we put a lot of requirements on potential applicants when we vote for this permitting process and rightfully so. You know, we want to protect all of our public out there and we also want to protect our response team out there that have to get to these areas. But there are a lot rules and regulations, I would put justifiably so. We ask – you know we pass the night sky ordinances. There are a lot of the residents that I represent that want unimproved roads and the reason they want them is because they're an equestrian community and they want to still ride their horses. They want to still do some biking. They want to do some walking and they don't always want to do it on asphalt. So they just do like that type of scenery but they also understand that they may not have that emergency access all the time. They also don't sometimes want us to approve cell towers in their area so they know they may not have cell communications.

So I just think going forward with our new Code rewrites and stuff that that's something that we should definitely consider too and knowing that if we put these recommendation or these denials, if that's what this Commission so chooses to do, that we just recognize that. That some people still may want to choose to build where they want to

build and I think they're understanding that they may not have that immediate response time that we will make every effort to get there but it just may not be able to be there within a half hour or an hour. But they make those decisions.

I also will just also like to make mention of former Commissioner Mike Anaya who passed the Code of the West just to let individuals know that. You know, Santa Fe County is still a remote area and it can really just be the urban fringes and it's a very remote area and it may not just be immediately accessible and just approved a couple cases a little earlier on low-water crossing variances. Some Santa Fe County roads up in the northern part of Santa Fe County and this is my district, District 1, low-water crossings and these are County roads going through BLM and actually the whole road is a low-water crossing that could run whenever we have water and hopefully we do have some water.

So that's just a point, an observation I want to make, because I think people do understand that there may not be immediate response time not that we don't want to get there. And the County can put out all these restrictions or deny somebody's opportunity to have a home and we really should think that out before we pass that denial.

But one other thing that I want to ask, as far as our BBD site that we're partners with that's kind of down in this facility do we maintain that road, Mr. Ross or Penny Ellis-Green? How far does Santa Fe County maintain that road to the actual BDD site or extraction point where we divert that water?

MR. ROSS: Madam Chair, Commissioner Mayfield the County maintains the entirety of Buckman Road.

COMMISSIONER MAYFIELD: All the way down to –

MR. ROSS: All the way down to the treatment diversion, yes.

COMMISSIONER MAYFIELD: Okay, and that road was probably in pretty bad conditions all the way down to that road at one time or another, right?

MR. ROSS: Madam Chair, Commissioner Mayfield, it requires a lot of grading.

COMMISSIONER MAYFIELD: Right, a lot of grading. And I just want to make that point that those roads in that area are in pretty bad shape. We elected to take that on but – and, Madam Chair, I'll just stop talking but I think people know what they're getting into when they want to build in these remote areas and I know we have codes that we have to abide by but I would just, I guess this more directed toward our code rewrite that we take this into consideration.

That's all I have, Madam Chair, I don't know if you've closed public comment, but I'd like to make a motion when that's done.

CHAIR HOLIAN: Any further questions? Seeing none, this is a public hearing. Is there anyone here from the public who would like to speak on this case either in favor or in opposition? Seeing none the public hearing is closed.

What are the wishes of the Board?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, I guess I do have one – I apologize, I have one question for the applicant. Is the applicant amenable to the staff recommendations if this Commission elects to move forward with this?

MR. CHRISTOPHER: Absolutely, yes.

COMMISSIONER MAYFIELD: Thank you. With that, Madam Chair, I would move for approval with staff's recommendations.

CHAIR HOLIAN: Is there a second.

COMMISSIONER ANAYA: Second.

CHAIR HOLIAN: Okay we have a motion and a second for approval of CDRC Case V 13-5050 with staff conditions. All those in favor signify by saying "aye."

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

CHAIR HOLIAN: The variance is approved 4-0.

COMMISSIONER ANAYA: Madam Chair.

CHAIR HOLIAN: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I appreciate Commissioner Mayfield bringing up the comments he did and commenting on the Code of the West and I just want to say that I penciled on my notebook over here that if you put into years the amount of time I've spent in the wilderness off the grid it equates into several years of time that on purpose I was off the grid where I couldn't be reached. But I will say this, I know Santa Fe County, Mr. Patty and emergency services will do everything to get to me if I needed some help. And, I understand if they can't get there but I think it's a good thing to have places where you're not accessible to anyone if that's what you so choose and if you understand that going in then who am I or any other governing body to tell you you can't do that.

So I appreciate the comments and I think we do need to figure out accommodations in the new code that deal with this very issue. So thank you, Madam Chair.

CHAIR HOLIAN: Thank you, Commissioner Anaya. And I know exactly what you're doing because my husband and I have done it ourselves. So good luck. Thank you.

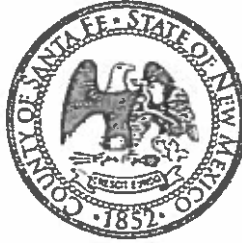
- XVII. A. 9. **CDRC CASE # Z/S 08-5440 Tierra Bello Subdivision.** Joseph Miller, Applicant, Danny Martinez, Agent, Request Master Plan Zoning Approval for a 73-Lot Residential Subdivision on 263.769+ Acres and Preliminary and Final Plat and Development Plan Approval for Phase 1, Which Will Consist of 9 Lots. The Property is Located at the Northeast Intersection of Avenida de Compadres and Spur Ranch Road, South of Avenida Eldorado in Eldorado, within Sections 24 and 25, Township 15 North, Range 9 East, (Commission District 5)  
[Exhibit 7: DOT memo dated 5/2/13; Exhibit 8: Resident (Bischoff/Lindahl) letter raising concerns; Exhibit 9: Emails cited by R. Van Amberg; Exhibit 10: MOU between the Eldorado Area Water and Sanitation District and the Board of County Commissioners]



**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*

**CASE NO. V 13-5050**

**VARIANCE**

**PATRICK CHRISTOPHER & MARGA FRIBERG, APPLICANTS**

**ORDER**

**THIS MATTER** came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on May 14, 2013, on the Application of Patrick Christopher & Marga Friberg (hereinafter referred to as "the Applicant") for a variance of Article III, Section 2.4.1a.2.b (Access) of the Santa Fe County Land Development Code ("Code") and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow the construction of a residence on 15.3 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicants request approval of a variance of Article III, Section 2.4.1a.2.b (Access) of the Code and Section 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow the construction of a residence on 15.3 acres on property located at 250C Kalitaya Way, within Section 29, Township 19 North, Range 8 East ("Property").



2. Article III, Section 2.4.1a.2.b of the Code states that 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.
3. Article V, Section 8.1.3 of the Code states that 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 foot all weather driving surface, grade of not more than 11%, and drainage control as necessary to insure adequate access for emergency vehicles.
4. Ordinance No. 2008-10 states that 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.
5. Article II, Section 3.1 of the Code states that where in the case of a 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. It further states that a Development Review Committee may recommend to the BCC and the BCC may vary, modify or waive the requirements of the Code upon adequate proof that compliance with the Code provision issue will result in an arbitrary and unreasonable taking of the property or exact hardship, and proof that the variance from the Code will not result in conditions injurious to health or safety. Section 3.1 provides that in no event shall a variance be recommended by the Development Review

Committee nor granted by the BCC if by doing so the purpose of the Code will be nullified. Additionally, it states that in no case shall any variation or modification be more than a minimum easing of the requirements.

6. The Applicants request a variance to allow the construction of a residence on property consisting of five lots which total 15.3 acres. The lots consist of 3.84 acres, 3.87 acres and three 2.5 acre lots. The subject properties are part of a subdivision created in the 1940's with the US Government's "Small Parcel Act" which assisted veterans in acquiring their own property. The properties all have Land Patents from the US Government dating from 1962, and are recognized as legal lots of record.
7. As part of the permitting process, the Applicants have agreed to consolidate all five lots in order to have the proposed residence on one lot consisting of 15.3 acres.
8. The property is accessed by Old Buckman Road (County Maintained Road on BLM Land) and Kalitaya Way (Public Road on BLM Land). Old Buckman Road is a dirt/sand driving surface and is located in, and crosses two FEMA designated Special Flood Hazard Areas, numerous contributing arroyos and drainage ways. The portion of Old Buckman Road that services the property is approximately 9 miles in length. Kalitaya Way is a dirt driving surface and crosses one FEMA designated (SFHA) contributing arroyo and several drainage ways. The portion of Kalitaya Way that services the property is approximately 2.5 miles in length. Both Old Buckman Road and Kalitaya Way do not have an all-weather driving surface and may be frequently impassible during and after inclement weather. Neither is all weather accessible.
9. The Applicants state that they are not in a position to upgrade 9 miles of Old Buckman Road to County standards or 2.5 miles of Kalitaya Way. The Applicants also state that

after consulting with County staff and the Fire Prevention Division, they understand that there are certain items that can be incorporated into the building plans to substantially enhance the protection against fire danger. These improvements may include a turnaround on the property, a water storage tank, sprinkler system, a vegetation management plan, and compliance with the Urban Wild Land Interface Code for building materials for any proposed structures on the property.

10. Following a hearing on the Applicants' request for a variance, the CDRC, at its March 21, 2013 meeting, recommended denial of the variance request.
11. Staff recommended denial of the Application, but recommended imposition of the following conditions if the Application was granted:
  - i) Water use shall be restricted to 0.25 acre foot per year. A water meter shall be installed for the proposed home. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office;
  - ii) The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review and Development Permit Application;
  - iii) A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval for the lot consolidation;
  - iv) A note must be placed on the Plat regarding the lack of all weather access to the subject lot. This restriction shall include language as follows: The access to the 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.

12. In support of the Application, the Applicants agreed with the conditions recommended by staff.
13. No members of the public spoke in favor of or in opposition to the Application.
14. In this case strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicants because of unusual topography or other such non-self-inflicted conditions.
15. Granting the requested variances is a minimal easing of the Code requirements to address obstacles to construct a residence on a legal lot of record.
16. Granting this variance request will not nullify the purpose of the Code.

**WHEREFORE** the Board of County Commissioners of Santa Fe County hereby approves the request for a variance of Article III, Section 2.4.1a.2.b (Access) of the Code and a variance of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow the construction of a residence on 15.3 acres on property located at 250C Kalitaya Way based upon the Applicant complying with the conditions as stated in Paragraph 11.

**IT IS SO ORDERED**

This Order was approved by the Board of County Commissioners of Santa Fe County on this 11<sup>th</sup> day of June, 2013.

By: Kathy Holian  
Kathy Holian, Chair

Attest:

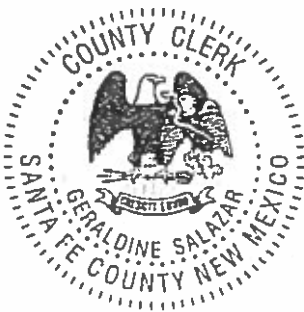
Geraldine Salazar  
Geraldine Salazar, County Clerk

Approved as to form:

Stephen C. Ross  
Stephen C. Ross, County Attorney



CLERK RECORDED 06/12/2013



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

BCC ORDER  
PAGES: 6

I Hereby Certify That This Instrument Was Filed for  
Record On The 12TH Day Of June, 2013 at 10:41:23 AM  
And Was Duly Recorded as Instrument # 1708600  
Of The Records Of Santa Fe County

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



