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**CASE # SCSD 17-5330 Pilot Travel Center, LLC Conceptual Plan
Exit 278, LLC/Pilot Travel Centers, LLC, Applicants**

ORDER

THIS MATTER came before the Santa Fe County Board of County Commissioners (BCC) for hearing on May 8, 2018, on the Application of Exit 278, LLC/Pilot Travel Centers, LLC (Applicants) for approval of a Conceptual Plan of a 3-parcel phased non-residential development (Proposed Development) on a twenty-six acre tract (Property) pursuant to Section 4.9.9 and Section 8.10.3 of Ordinance No. 2016-9, the Santa Fe County Sustainable Land Development Code (SLDC). The Property is located at the intersection of NM Highway 14 and I-25, within the Santa Fe Community College District (CCD), a Planned Development District, and zoned as Employment Center (CCD-EC). The BCC, having reviewed the Application, Staff Report [NBB-1], the Hearing Officer's Recommended Decision and Order [NBB-182], and the Planning Commission Recommended Decision and Order [Staff Report, Exhibit 19], and having conducted a public hearing on the Application, finds that the Application should be denied in part and approved in part, and makes the following findings of fact and conclusions of law:

I. Background

1. The Property on which the Proposed Development will occur is located within SDA-1, between Interstate 25 (I-25) and State Road 14 (SR 14), west of the exit from I-25

onto the southbound lane of State Road 14, as further described in the Conceptual Plan Report (CP Report) prepared by James W. Siebert & Associates.

2. The Property is owned by Exit 278, LLC. Exit 278, LLC and Pilot Travel Centers, LLC, are co-applicants.
3. The Applicants describe the phases of the Proposed Development as follows: Phase 1 (Area 9-A) – Gas Station, truck terminal, convenience store, and three fast food restaurants one with a drive-thru; Phase 2 (Area 9-B East) – two hotels containing 100 rooms each; and Phase 3 (Area 9-B West) – Full service sit down restaurant, retail shops, warehouse, and manufacturing/light industrial.
4. The main focus of the Application is Phase 1, consisting of the 10 acre \pm parcel on which the Pilot Flying J Travel Center will be developed, including a 13,600 square foot structure that will house restaurants, a convenience store, restrooms, and other amenities. Phase 1 is generally referred to as a “Travel Center” or “Truck Stop.”
5. The Application for conceptual plan approval consists of: (a) the CR Report; (b) a Conceptual Site Plan (CSP), including twenty-two sheets showing planning, surveying, and engineering details [Staff Report, Exhibit 2]; (c) quitclaim deed of the Property to Exit 278 LLC [Staff Report, Exhibit 4]; (d) April 19, 2018, letter from Karl H. Sommer to Penny Ellis Green (eliminating certain uses from the proposed conceptual plan) [Staff Report, Exhibit 20]; (e) April 25, 2018, letter from Karl H. Sommer to Penny Ellis Green (arguing that land uses should not be approved or disapproved at the conceptual plan stage and, alternatively, that the proposed uses are allowed in the CCD-EC) [Staff Report, Exhibit 22]; (f) April 25, 2018, letter from Timothy V. Flynn-O'Brien to the Board (arguing in more detail that land uses should

not be approved or disapproved at the conceptual plan stage and, alternatively, that the proposed uses are allowed in the CCD-EC [Staff Report, Exhibit 23]; (g) Environmental Impact Report (EIR) [Staff Report, Exhibit 12]; (h) Adequate Public Facilities Assessment (APFA) [Staff Report, Exhibit 13]; (i) Ready, Willing and Able Letter [Exhibit 14]; (j) Traffic Impact Analysis (TIA) [Staff Report, Exhibit 15]; (k) Air Quality Assessment [Staff Report, Exhibit 16]; and (l) Noise Impact Study [Staff Report, Exhibit 17].

6. In accordance with Section 4.4.1.4 of the SLDC, County staff solicited agency review of the Application from the following agencies: New Mexico Environment Department (NMED), County Public Works (Public Works), the County Fire Marshal, County Utilities (SFCU), County Planning, the New Mexico Department of Transportation (NMDOT), and the State Historic Preservation Office (SHPO). Responses were received from County Public Works, the County Fire Marshal, County Utilities, County Planning, NMDOT, and SHPO.

II. Applicable Provisions of the SLDC

7. Chapter 4, Section 4.4.8. Land Use Facilitation:

4.4.8.1 Purpose. Land use facilitation is intended to provide a means of communication between an applicant proposing a development, and persons that would be impacted by the proposed development. Land use facilitation provides an opportunity for the applicant and residents to exchange information, ask questions, and discuss concerns about the proposed development.

8. Chapter 4, Section 4.9.9 Conceptual Plan. For approval of certain large scale and phased development as set forth below:

4.9.9.1. Purpose. A conceptual plan is comprehensive in establishing the scope of a project, yet is less detailed than a site development plan. It

provides a means to review projects and obtain conceptual approval for proposed development without the necessity of expending large sums of money for the submittals required for a preliminary and final plat approval. A conceptual plan submittal will consist of both plans and written reports.

4.9.9.2 Applicability, a conceptual plan is required for the following developments:

1. all subdivisions containing more than 24 lots;
2. all developments in MU, P/I, I, IL, CG, CN that are to be built in phases;
3. all new PD developments; and
4. *all development in the CCD in accordance with Section 8.10.3 of this SLDC.*

(Emphasis added).

9. Table 8.44: Use Table Labels states for "Uses not specifically enumerated":

When a proposed use is not specifically listed in the use matrix, the Administrator may determine that the use is materially similar to a listed use if:

The proposed use is listed as within the same structure or function classification as the use specifically enumerated in the use matrix as determined by the Land-Based Classification Standards (LBCS) of the American Planning Association (APA), or

If the use cannot be located within one of the LBCS classifications, the Administrator shall refer to the most recent manual of the North American Industry Classification System (NAICS). The proposed use shall be considered materially similar if it falls within the same industry classification of the NAICS manual. A proposed use shall be treated in the same manner as the listed use to which it is materially similar. For example, if the proposed use is materially similar to a permitted use, this proposed use shall also be a permitted use.

10. Chapter 8, Section 8.10.3.13, Employment Center Subdistrict Development Standards

(CCD-EC) states:

The Employment Center Subdistrict is intended to accommodate mixed uses, where large scale employers, anchor business and light industry can locate in support of New Community Center Subdistrict development. The Employment Center Subdistrict provides a concentrated planned multi-use environment for light industrial and

business uses. Retail uses may be included as necessary to support the needs of anchor employees.

11. Table 6-1 lists the Required Studies, Reports and Assessments (SRAs).
12. Chapter 7 – Sustainable Design Standards.
13. Chapter 8, 8.10.3 Planned District Santa Fe Community College District:

8.10.3.1. Purpose and Intent. The Community College District (CCD) is a planned development district and is intended to promote and focus compact, mixed-use development in a village land use pattern in the large county area south of the city of Santa Fe. It is a major employment, education and cultural center serving the city, county and other regional areas; and, its presence has led to the development of related public and institutional uses including churches and other educational institutions, which are integral to the creation of “community” and historically have been uses around which new communities and settlements have successfully developed.

The CCD was created to curb sprawl, maximize infrastructure efficiency and preserve open space in an area of Santa Fe County under substantial development pressure, and to otherwise to implement the vision, goals and principals of the CCD Plan. The CCD is expected to be the first of a number of new communities to be developed outside the urban area over the next 20 years.

The CCD Plan calls for New Community Centers, Neighborhood Centers and Employment Centers. These centers should be active places with identities and ambiance that attract people. They shall have a mixture of uses that keep them active and the heart of commerce and community activities in the District. Centers should be designed to principles that are different than typical strip commercial. Buildings, plazas, walks, parking and the landscape shall be designed to create centers that will be the focus of community life described in the CCD Plan.

The CCD Plan designates areas for Institutional Campuses. Campuses shall be anchored by an educational, large-scale non-profit, vocational, research or similar institution that desires a campus setting. In all Campuses, the first phase of the anchor institution must be built prior to or in conjunction with all other buildings. Commercial and residential uses support the anchor institution and its users, but are subordinate in design and size. Without the anchor institution, no other uses are allowed in this zone. Institutional campuses are not intended for large-scale commercial or retail

businesses that desire a campus setting, these users may locate in Employment Centers or New Community Centers.

14. Chapter 8, Section 8.10.3.4, Conceptual Plan. A conceptual plan is required for multi-phased development within the CCD. The conceptual plan shall:

1. define the boundaries of the landscape types and the resulting designation and configuration of Village, Employment Center, Institutional Campus, and Fringe Zones and Open Space;
2. calculate the zoning allowances and requirements including the minimum and maximum number of residential units, the minimum and maximum range of commercial square footage and the open space and park requirements;
3. establish categories of land uses with sufficient specificity to allow for an analysis of the traffic and other impacts of the proposed uses, within each category;
4. identify the location and general configuration of New Community Centers, Neighborhood Centers, Neighborhoods, Employment Center Zones and Institutional Campus Zones that are included in the master plan area. A digitized aerial photograph containing metes and bounds description may be used to establish zone locations;
5. identify the proposed categories of land uses to be developed to demonstrate the mixed-use nature of the development;
6. establish the general road layout and classification of road segments as living-priority, mixed-priority and traffic-priority roads;
7. establish the general trail network and classification as district, village, local or any separate equestrian trails;
8. establish a phasing schedule which details the timing for the proposed development which shall include a general description of each phase of the development, with projected sales and buildout;
9. an explanation of how each development phase promotes the mixed-use intent of this Section; a description of the phased development of the on-site infrastructure and the manner in which it is coordinated with development of needed off-site infrastructure to ensure that the standards of the zones and densities of the development required by this Section are achieved; and
11. the minimum area which must be included in a conceptual plan shall be an entire Village Zone, Employment Center Zone or Institutional Campus Zone, or that portion of such zone owned by the applicant.

15. Chapter 8, Section 8.10.3.10, New Community Center Subdistrict Development

Standards, states:

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The New Community District subdistrict is intended to accommodate compact mixed use, with the highest density possible in relation to design standards, and a variety of housing choices. Civic, community, commercial, retail and services for the CCD district are to be concentrated in the New Community Center Subdistrict.

16. Chapter 8, Section 8.10.3.13, Employment Center Subdistrict Development Standards states:

The Employment Center Subdistrict is intended to accommodate mixed uses, where large scale employers, anchor businesses and light industry can locate in support of New Community Center Subdistrict development. Businesses with special needs for access; buffering for visual, noise or other impacts; technology; storage and size can [be] located in the Employment Center Subdistrict. The Employment Center Subdistrict provides a concentrated planned multi-use environment for light industrial and business uses. Retail uses may be included as necessary to support the needs of anchor employees.

17. The Community College District Plan, Section 8, Employment Centers, states:

The intent is that Employment Centers be developed with the following characteristics:

* * *

- 5) Employment Centers should serve the District and the greater Santa Fe Community.

18. Chapter 8, Section 8.10.3.19, Use Table, sets out the uses permitted in the Community College District. It provides regarding "Uses not specifically listed":

When a proposed use is not specifically listed in the use matrix, the Administrator may determine that the use is materially similar to a listed use if:

The proposed use is listed as within the same structure or function classification as the use specifically enumerated in the use matrix as determined by the Land-Based Classification Standards (LBCS) of the American Planning Association (APA).

III. The Public Hearing Process

19. The Applicants presented the Application to the Technical Advisory Committee (TAC) on September 7, 2017, at the regular scheduled monthly meeting, as required by Chapter 4, Section 4.4.4.3, Pre-Application TAC Meeting and Table 4-1.
20. The Applicants presented the Application at a Neighborhood Meeting held on September 25, 2017, as required by Chapter 4, Section 4.4.4.4, Pre-Application Neighborhood Meeting. The Applicants submitted material that was to be presented at the meeting, a sign-up sheet, and a list of individuals notified of the meeting inclusive of Registered Organizations registered with Santa Fe County.
21. Notice requirements were met as per the SLDC, Section 4.6.3., General Notice of Application Requiring a Public Hearing. In advance of a hearing on the Application, the Applicants provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for fifteen days on the property, beginning on April 17, 2018. Additionally, notice of hearing was published in the Santa Fe New Mexican on April 17, 2018, as evidenced by a copy of that notice contained in the Exhibit 7 of the record. Notice of the hearing was sent to owners of land within 500' of the subject property and a list of persons sent a mailing is contained in the record.
22. On December 6, 2017 a Facilitated Public Meeting was conducted at the Santa Fe Community College. Facilitation was recommended by the Administrator as per Section 4.4.8.3. (Types of Cases Referred) which states, "in general, any Application which presents controversy, in which residents have questions or concerns, or that the applicant feels is appropriate for facilitation, may be referred to facilitation." The

- December 6, 2017, facilitation addressed process and requirements for the Conceptual Plan, quality of life, traffic/roads, wastewater/water, appropriateness of the project to the area, and economic development.
23. The Application was presented to the Sustainable Land Development Hearing Officer (Hearing Officer) for consideration on January 11, 2018.
24. The Hearing Officer recommended approval of the Application, subject to the following conditions:
- a. The Conceptual Plan showing the site layout and conditions of approval shall be recorded at the expense of the applicant in the office of the County Clerk in accordance with Chapter 4, Section 4.9.9.9.
 - b. Compliance with all Reviewing Agency/Department Comments.
25. The Application was presented to the Santa Fe County Planning Commission (Planning Commission) for consideration on March 15, 2018.
26. The Planning Commission recommended denial of the Application, because the proposed truck stop: (a) conflicts with the Sustainable Growth Management Plan, (b) violates the requirement of SLDC Section 8.10 that developments within the CCD have a village land use pattern, and (c) is not an allowable land use within the CCD.

IV. Standard of Review

27. An Application for conceptual plan approval for a subdivision in the CCD is subject to discretionary review and decision following a quasi-judicial hearing before the Board. Table 4-1; *see also* SLDC § 3.2.2 ("The Board shall hold public hearings and issue development orders, on Applications for ... discretionary development approval, except where a final development order is authorized to be issued by the Planning Commission"); SLDC § 4.3.2 ("These decisions require an exercise of

discretion in applying the requirements and standards of the SLDC, state and federal law.”).

28. Under the discretionary review standard, the Board has the authority “to approve, approve with conditions or deny specific Applications,” including Applications for conceptual plan approval. SLDC § 3.2.1.3.

29. The Board may impose conditions on conceptual plan approval “in addition to any general standard specified in the SLDC or the SGMP, as [it] may [deem] necessary.”

SLDC §4.9.9.7.

30. SLDC Section 1.4.2.28 describes the conditions of approval generally applicable under the discretionary review standard. Among other things, it provides:

Applications for discretionary development approval shall be required to provide ... as a pre-condition to approval ... , Demonstrated consistency with the SGMP, and applicable area, district and/or community plans[.]

31. Section 8.10.3.5, Conceptual Plan Review Criteria. The criteria for approval of a conceptual plan in the CCD are as follows:

1. conformance to the Sustainable Growth Management Plan as amended by the Community College District Plan;
2. viability of the proposed phases of the project to function as completed developments in the case that subsequent phases of the project are not approved or completed; and
3. conformance to this Section 8.10 and other applicable law and ordinances in effect at the time of consideration, including required improvements, proposed roads and trails, community facilities, design and or construction standards, and open space standards.

32. The findings and conclusions set forth in this Order are based on standards and requirements pertinent to applications for conceptual plan approval. Actual development on the Property will require appropriate development orders under the

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SLDC to authorize that development, which may require additional, supplemental, or more detailed Studies, Reports, and Assessments (SRAs).

V. Compliance with the SLDC

Utilities and Public Facilities

33. The Applicants propose to provide electricity to the proposed development via a 46 KV overhead line located on the north side of State Road 14. [NBB-35; NBB-91] The Applicants state that all electrical lines will be placed underground and that PNM electrical engineering review does not occur until the project has received the necessary approvals. *Id.*
34. The Applicants propose to obtain gas service via an extension from a two-inch gas line that was recently constructed on the west side of the Property and has sufficient capacity. *Id.*
35. Because the electrical utilities plan and gas extension will be reviewed in greater detail at a later stage in the development approval process, the BCC finds that the Applicants' proposal to obtain utility service from PNM is adequate.
36. The Property is located within SDA-1 and the Proposed Development will obtain domestic and fire protection water services from SFCU. SLDC *See* §§ 5.7.3.3, 6.4.2.3, 7.12.2.3.
37. SFCU issued a Ready, Willing, and Able Letter (RWA Letter), dated September 27, 2017, for the Development. The RWA Letter states that SFCU is ready, willing, and able to provide water service to the Development via the existing 12-inch water line installed along State Road 14, subject to the following conditions:

- a. Before final plat approval, the Developer shall enter into an agreement (Water Agreement) with the County that will govern the terms and conditions under which the SFCU deems necessary or appropriate, including provisions governing required utility line extensions, water rights transfers, constructions standards, metering requirements, design approval process, infrastructure inspections and dedications, and easement dedications. The applicant will be responsible for all costs, including the design and construction of the facilities and upon verification that all applicable requirements have been met to SFCU's satisfaction and the County's acceptance of all required dedications, the County will assume ownership of the dedicated infrastructure and thereafter be responsible for its operation and maintenance. SFCU will not accept dedication of infrastructure constructed on private property associated with this project.
- b. The Developer shall transfer to the County pre-1907 surface water rights that are divertible at the Buckman Direct Diversion (BDD) in accordance with the Water Agreement. The consumptive use amount transferred shall equal the water budget for Development.
- c. The Developer shall contract with the City of Santa Fe Water Division (City) for hydraulic modeling services to identify what, if any, additional water utility infrastructure is needed in order to supply the total proposed 50.0 AFY demand to this location. A copy of the evaluation will be provided to SFCU. The evaluation shall be certified by a Professional Engineer licensed in the State of New Mexico.
- d. The BCC approves the New Water Deliveries (or the equivalent) for the Development as required by Resolution 2006-57.
- e. The Developer has developed and provided SFCU with a water budget for the Development. If requested, the Developer will provide SFCU with additional data and calculations upon which the water budget was established. SFCU may adjust Development's water budget as appropriate. The Developer shall construct the project premised on Ordinance 2016-09, the Sustainable Land Development Code, which enumerates required conservation measures.
- f. The Developer shall comply with the Water Agreement and meet all other conditions in Resolution 2006-57, Resolution 2012-88, Ordinance 2016-09, the Sustainable Land Development Code, and all other applicable ordinances, resolutions, and SFCU policies.

[NBB-362-365]

38. The BCC finds that RWA Letter satisfies the requirements as to adequate public facilities and services for water, and therefore, no separate Adequate Public Facilities and Services Assessment (APFA) is required for water. SLDC § 6.4.2.3.
39. The BCC finds that the RWA Letter satisfies the requirement to demonstrate readiness to provide water service and that no additional Water Service Availability Report (WSAR) is required. *See* SLDC §§ 7.13.2.3 and 7.13.6.2.
40. The Applicants submitted a Second Updated Feasibility Study on the Wastewater Disposal Alternatives for Phase 1 Travel Center (Wastewater Evaluation), by Sayre Engineering. [Staff Report Exhibit 14, NBB-368-376] The Wastewater Evaluation states that the Travel Center is expected to have an average discharge of 7500 gallons per day (gpd) and a peak discharge of about 8200 gpd. [NBB-369] The Preliminary Water and Wastewater Budget provided by the Applicant states that the estimated water discharge will be 8,500 gpd for Phase 1; 20,400 gpd for Phase 2; and 3,320 gpd for Phase 3. [NBB-45]
41. For wastewater disposal, the Applicants propose a lift station and a 6" force main 13,500 feet along the South and East side of SR-14 that would lift effluent to a manhole on State Road 14, which in turn would carry effluent to the Quill wastewater treatment plant operated by SFCU. [NBB-34; NBB-54]
42. The RWA Letter also states that SFCU can provide wastewater service to the proposed Development. [NBB-365] The Letter states that it is anticipated that the total discharge for all 3 phases of the Development will be 32,130 gallons of wastewater per day. *Id.* The Letter states that the Developer will be required to design and construct a public wastewater collection system for the Development that will be

offered for dedication to the County and the infrastructure offered for dedication will not include the new Truck Terminal lift station. [NBB-366]

43. Public Works, including SFCU, reviewed the Applicants' plans and stated it can "support the ... project" subject to several comments and conditions. [Public Works Memorandum dated October 27, 2017—Staff Report, Exhibit 9, NBB-179 through 181].

44. The NMED reviewed the Application and had no comments, because the Applicants are connecting to the County's wastewater system. [NBB-167]

45. The BCC finds that RWA Letter satisfies the requirements of readiness and the APFA with respect to sewer. *See* SLDC, §§ 6.4.2.4, 7.13.2.3.

46. As indicated in the APFA for Fire Services, the 12 inch water line on the southwestern side of the property located in the State Road 14 right-of-way terminates in a fire hydrant short of the State Road 14 and Rancho Viejo Boulevard intersection. [NBB-357] In accordance with the RWA Letter, the Applicants propose to connect to this water line. The Applicants also state in the APFA that there is a County fire substation located three-quarters of a mile from the subject site and one fire substation located one-half miles from the site. *Id.*

47. The Applicants propose to show fire hydrant locations on future site/development plans for each phase of the project. *Id.*

48. The County Fire Marshal reviewed the Application. [Fire Department Official Development Review, dated October 6, 2017, NBB-169 -171]. The Fire Marshall recommended approval of the Conceptual Plan, subject to the following conditions:

- a. Shall comply with Article 9 - 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
- b. 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.
- c. Fire lanes shall be appropriately marked in red with 6" white lettering reading "FIRE LANE - NO PARKING" as determined by the Fire Marshal prior to occupancy. Assistance in details and information are available through the Fire Prevention Division.
- d. 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.
- e. Roads shall have all-weather driving surface, be a minimum 20 feet wide, and have an unobstructed vertical clearance of 13' 6".
- f. Turnaround/s shall meet the requirements of the Santa Fe County Fire Code, when required.
- g. 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.
- h. Buildings within a commercial complex shall be assigned, post and maintain a proper and legible numbering and/or lettering systems to facilitate rapid identification for emergency responding personnel as approved by the Santa Fe County Fire Marshal.
- i. Shall comply with Article 9, Section 903 - Water Supplies and Fire Hydrants of the 1997 Uniform Fire Code, inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.
- j. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.
- k. The water system and hydrants shall be in place, operable and tested prior to the start of any and all building construction. It shall be the responsibility of the developer to notify the Fire Prevention Division when the system and hydrants are ready to be tested.
- l. The water delivery system shall be designed to meet the minimum standards of the Sangre De Cristo Water and/or Santa Fe County Water utilities.
- m. Fire hydrants subject to possible vehicular damage shall be adequately protected with guard posts in accordance with Section 8001.11.3 of the 1997 UFC.

- n. Fire hydrant locations shall be no further than 10 feet from the edge of the approved access roadways with the steamer connections facing towards the driving surface.
- o. Final placement of the fire hydrants shall be coordinated and approved by the Santa Fe County Fire Department prior to installation.
- p. No building permits shall be granted until such time as the fire hydrants have been tested and approved by the Santa Fe County Fire Marshal.
- q. Each and every individual structure and/or building 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.

49. The BCC finds that Applicants' APFA sufficiently indicates whether fire protection facilities and services are adequate to serve the proposed development in accordance, subject to the Fire Marshall's comments and conditions.

50. Based upon and subject to compliance with the Fire Marshall's comments and conditions, the BCC finds that the Conceptual Plan complies with Section 7.5 of SLDC.

Roads and Access

51. The Applicants propose a 62' access easement from N.M. State Road 14 at the southwestern corner of the middle lot (Area 9-A). This will serve the main entrance off of an existing signalized intersection at Rancho Viejo Boulevard and N.M. State Road 14. A 56' access easement will serve as a connector between the two proposed access easements. [NBB-97; NBB-105; NBB-106]

52. The Applicants propose to create the access easements and other road improvements during the first phase of the project. *Id.*

53. The BCC finds that the access roads are at least 20' wide, and therefore, allow for fire service access. *Id.*

54. The APFA also addresses the adequacy and Level of Service (LOS) for roads to the maximum projected demand. [NBB-355-357]
55. The information regarding the LOS for roads is derived from the Traffic Impact Assessment (TIA), prepared by Terry Brown, PE, a New Mexico licensed traffic engineer. [NBB-50; NBB-354; NBB-377]
56. The TIA concludes that there will be no significant adverse impact upon the adjacent transportation system provided that the following recommendations are followed:

- a. Site design and construction shall maintain adequate sight distances on Rancho Viejo Blvd. and NM S.R. 14 as well as at the driveway.
- b. There should be one signalized full access driveway (aligned with Rancho Viejo Blvd.) to serve this development generally as depicted on the site plan on Pages A-3 and A-3a in the Appendix of this report. The north leg of Rancho Viejo Blvd. will be the only access for this project at present. The driveway should be constructed with a minimum of one entering lane and two exiting lanes (one left turn lane and one thru-right turn lane). The southbound left turn lane should be designed and constructed to a minimum length of 150 feet.
- c. A westbound right turn lane is warranted on NM State Rd. 14 (Cerrillos Rd.) at the proposed Pilot Travel Center driveway (aligned with Rancho Viejo Blvd.). Signal modifications may be required to relocate the mast arm on the northeast corner of the intersection of the right turn deceleration lane may be designed to go behind the signal mast arm at the discretion of the New Mexico Department of Transportation's State Access Management Manual (current edition) based on the posted speed limit for westbound traffic east of Rancho Viejo Blvd. Based on a posted speed limit of 45 MPH, the right turn deceleration lane should be designed and constructed to a length of 370 feet plus transition (12.5:1 straight line ration).

Based on Table 18.K-1, the existing 260 feet long eastbound left turn deceleration lane on New Mexico State Road 14 at Rancho Viejo will need to be lengthened to be 400 feet long plus transition (12.5:1 straight line ration) in order to comply with the requirements of the New Mexico Department of Transportation's *State Access Management Manual*. This study recommends that the left turn deceleration lane be lengthened to 400 feet plus transition.

[NBB-377]

57. The New Mexico Department of Transportation (NMDOT) reviewed the TIA, in accordance with Section 4.4.1.4 of the SLDC. [NMDOT Letter, dated December 29, 2017, NBB-166]

58. NMDOT approved the TIA and concurred with the recommendations set forth above.

Id.

59. In addition to those recommendations NMDOT also required the following:

- a. An ADA compliant route, from the access point at Rancho Viejo Blvd. and NM 14 to the convenience store within the developed property
- b. An ADA compliant sidewalk along the frontage of the property from Rancho Viejo Blvd. southwest to the corner of the property.
- c. For any new access points, the developer will need to apply for an access permit and include a set of construction plans showing improvements to NM 14, for review, before a permit will be issued.

Id.

60. Public Works reviewed the TIA in accordance with Section 4.4.1.4 of the SLDC. [Public Work Memorandum, dated December 27, 2017, and email dated April 27, 2018, NBB-179; NBB-181a]

61. Public Works determined that the proposed development will have no adverse impact on the signalized intersection of SR 599 and NM 14. [NBB-181a]

62. Public Works supports the Application subject to the following conditions:

NM 14 is under the jurisdiction of the NMDOT however both internal driveway connections must meet the minimum intersection spacing of 125 feet measured from return radius to return radius as per the SLDC (CCD Development Standards) Chapter 8.10.3-5 Road Design Standards Table 8-20: Driveway and Intersection Spacing. [NBB-179]

63. The Planning Division also reviewed the TIA and stated that the proposed development in Phase 1 is not anticipated to degrade the LOS at Rancho Viejo

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Boulevard/NM 14 below a standard of D. However, the Planning Division noted that further development, as depicted in the conceptual plan, will need to be analyzed at the time of application for traffic intersections and network. [NBB-175]

64. The BCC finds, for the purpose of conceptual plan approval, that the proposed access easements will provide access to each proposed lot, Area 9-B West, Area 9-A, and Area 9-B East.
65. The BCC finds that the proposed access easements provide access for ingress and egress and fire protection, and therefore complies with section 7.4.1 of the SLDC.
66. Based upon the TIA, NMDOT's comments and recommendations, and Public Works' comments and recommendations, the BCC finds that the proposed development will have no adverse effect on county, state, and local roads and highways, provided that the Applicants comply with all recommendations. The BCC concurs with the Planning Division that further development, as depicted in the conceptual plan, will need to be analyzed at the time of Application for traffic impacts to the intersections and networks.
67. Based upon the APFA, NMDOT's comments and recommendations, and Public Works' comments and recommendations, the BCC finds that Conceptual Plan demonstrates that available capacity exists to accommodate the demand generated by the proposed development and subject to agency recommendations.
68. The BCC finds that the layout of roads and access is adequate to serve the proposed development project, subject to agency recommendations.

Parking

69. The Applicants calculated the minimum number of required auto parking spaces for Phase 1 on Area 9-A as follows: 30.33 spaces of required parking for restaurants/convenience store/shower related facilities (91 seats/1 space per 3 seats); 24.95 spaces for the Retail Area (4,991 square feet/1 space per 200 sq. ft.); 7 spaces for the showers/laundry & game room (1 space per shower). [NBB-47; NBB-94.]
70. Applicants propose to construct a total 63 auto parking spaces having dimensions of 9' x 18'. [NBB-47; NBB-94; NBB-100]
71. The BCC find proposed number and dimensions of regular auto parking spaces complies with Section 7.10.10 and Table 7-7 of the SLDC.
72. The Applicants propose 3 accessible auto parking spaces located in front of the main building. One of the three spaces will be van-accessible and the other two are car-accessible spaces. The two car-accessible spaces have at least a five foot wide access aisle located abutting the designated parking space. [NBB-94; NBB-100]
73. Section 7.10.15 and Table 7-9 of the SLDC require a minimum of 4 accessible auto parking spaces, one of which must be van-accessible; therefore, the Application fails to comply with the SLDC as to accessible parking spaces. However, for the purpose of conceptual plan approval, the BCC finds that general layout of the proposed accessible spaces is adequate, because the proposed spaces are located at the shortest route of travel to the main building, SLDC § 7.10.15.1, and the exact number of accessible spaces will be established with greater specificity at a later stage in the development approval process.

74. The BCC finds that as depicted in the Detailed Site Plan for Area 9-A [NBB-100], the two car-accessible spaces have at least a five foot wide access aisle located abutting the designated parking spaces, as required by Section 7.10.15.2 of the SLDC. The BCC further finds that the van-accessible space as depicted on the Detailed Site Plan for Area 9-A has at least an eight foot wide access aisle abutting the designated parking space as required by Section 7.10.15.2 of the SLDC.
75. The BCC finds that the general layout of the accessible parking spaces complies with the parking space dimensions standards set forth in Section 7.10.15.2 of the SLDC.
76. The Applicants propose to provide parking requirements for Area 9-B East and Area 9-B West as development plans are submitted for those areas. [NBB-47]
77. The BCC finds that the proposed parking spaces are located on the same lot as the principal uses proposed.
78. The BCC finds that the Application complies with the Section 7.10 of the SLDC, because it establishes the general layout, number, and dimensions of parking spaces and the general layout and dimensions of accessible spaces.

Environmental Impacts and Terrain and Storm water Management

79. The Applicants submitted an Environmental Impact Report (EIR) evaluating the proposed project's impact on archeological resources, vegetation, noise, and air quality.
80. The EIR concluded that no archaeological sites of significance or historic sites were encountered on the property that required recordation with State Historic Preservation Division (SHPD). [NBB-55].

81. The SHPD reviewed the EIR, in accordance with Section 4.4.1.4 of the SLDC, as evidenced by the Letter from Andy Wakefield, Archaeologist, dated October 5, 2017. [NBB-168]
82. The SHPD determined that the cultural resource survey resulted in the identification of no previously or newly discovered cultural resources; that the project will not affect cultural resources; that no further cultural resource work is required for this project; and that the project is in compliance with County Ordinance and State law and regulation pertaining to cultural resources. *Id.*
83. Based upon the EIR and the SHPD determination, the BCC finds that no archeological resources are verified to exist on the property.
84. The BCC further finds that no treatment and mitigation plans are necessary for the protection of cultural resources and that the Application complies with Section 7.16.5 of the SLDC.
85. The EIR concluded that impacts associated with environmental resources are anticipated to be minor, temporary, and short term in nature. The EIR states that a small increase of emissions of particulate matter (PM₁₀) may occur as a result of soil disturbance associated with the construction of the proposed Pilot Travel Center. According to the EIR, the use of water or other practices during construction and the subsequent foundation and paving will mitigate the potential emissions. The effect of vehicle emissions on the site are expected to be negligible due to its location between two major freeways. EIR, pp 10-11.
86. The BCC finds that the Applicants' proposal to use water and other standard techniques complies with Section 7.21.2 of the SLDC. *Id.*

87. The EIR also evaluated the installation of underground storage tanks (USTs) at the proposed site. The EIR concludes that environmental impacts associated with the USTs are negligible, as long as the proposed development is in compliance with the protective measures and secondary containment requirements set forth by the NMED.

Id.

88. The EIR demonstrates that predicted noise level will comply with the noise level standards set forth in the SLDC. *Id.*

89. The Applicants also submitted a Noise Impact Study, which demonstrates that there are no noise sensitive units within 1,000 feet of the proposed Pilot Travel Center; the predicted future peak-hour traffic noise levels for the 2019 no-build and project-build alternatives at 15 offsite receivers are less than the NMDOT residential noise abatement criteria of 67 decibel; the predicted future noise levels for the 2019 project-build alternatives are either the same as the no-build alternative or 1-decibel higher than the no-build alternative (an insignificant increase); the proposed development will have a large building, berms, masonry walls, an enclosed dumpster area with a solid door and trees that would shield and mitigate noise; and the noise level will comply with the Santa Fe County noise limit of 10-decible increase above ambient level during daytime and 75 decibel limit for a commercial facility and the nighttime limit of 5-decibel increase above level or 60 decibel. Noise Impact Study, pp. 3-4.

90. The BCC finds that the projected measurements of noise for the proposed project are 75 dBA or 10 dBA above ambient during the day and 60 dBA, or 5dBA above ambient during the nighttime.

91. The BCC finds, that because the decibel limits for daytime and nighttime do not exceed the limits for Industrial and Commercial Zoning Districts set forth in Table 7-21 of the SLDC, the Application complies with Sections 7.21.4 and 7.21.2 of the SLDC.
92. The EIR states that an Air Quality Assessment was prepared by Trinity Consultants for the Application. EIR, p. 10.
93. The Air Quality Assessment demonstrates that the proposed siting of the development is well below the National Ambient Air Quality Standards or New Mexico Ambient Air Quality Standard and would not be harmful to public health or the environment as defined by the US Environmental Protection Agency. Air Quality Assessment p. 7-18.
94. An air quality permit for the proposed travel center is not required by the NMED. EIR, p. 10.
95. The BCC finds, for the purpose of conceptual plan approval, that the Application complies with Section 7.21 of the SLDC.
96. The BCC finds that environmental effects and impacts identified in the EIR are avoided or appropriately mitigated because the use of water or other standard practices during construction will mitigate potential emissions, that environmental impacts from USTs constructed and operated in accordance with all applicable federal and state standards will be negligible, and that the predicted noise levels do not exceed the limits set forth in the SLDC.
97. The BCC finds that the Application complies with 6.3.10 of the SLDC because environmental impacts and mitigation measures are adequately identified.

98. A storm water management program will be implemented during construction to prevent discharge of debris and sediment and after completion of the proposed development to prevent debris and potential fuel spills from the completed facility. EIR, p. 18.
99. Two 36 inch culverts under State Road 14 drain the south side of the Property and some storm water from State Road 14. The drainage captured on the uphill side of these culverts is carried under SR 14 and discharged into an open ditch adjacent to the northbound lane on Rancho Viejo Boulevard. Beyond the intersection with Dinosaur Trail the storm water enters two culverts and is carried to the Arroyo Hondo. There is also a single 24 inch culvert at a short driveway on the east end of SR 14. *Id.*
100. The Applicants submitted a Topography, Slope and Drainage Plan demonstrating a slope analysis of 0-15% slope and 15-30% slope on the proposed development site and the direction of natural drainage toward the existing culverts. [NBB-93].
101. The BCC finds that there are no slopes greater than 30% on the property based on the Topography, Slope, and Drainage Plan and therefore, the Application complies with Section 7.17 of the SLDC.
102. The BCC finds that the Applicants have adequately established the general layout of available storm water conveyance systems, such as the two 36 inch culverts, that are downstream from potential storm water sources and therefore, the Application complies with Section 7.17 of the SLDC. However, the BCC does not make findings regarding the capacity of these storm water conveyance systems or erosion

control, as these and other drainage issues will be evaluated during review of future applications for actual development on the Property.

103. The Property does not lie within a designated 100-year flood plain. [NBB-36; NBB-91].

104. The BCC finds that Section 7.18 of the SLDC does not apply, because the Property is not located within a designated Special Flood Hazard Area. SLDC § 7.18.4.1.

105. The Applicants propose to capture storm water with cisterns designed to capture 1.5 gallons of rainwater per square foot of roof area. The Applicants propose to install a pump to irrigate the landscape with the captured rainwater. [NBB-46; NBB-100].

106. The BCC finds that the rainwater-capture system, which is designed to capture rainwater from all roofed areas, complies with Section 7.13.11.7.3.b.

Identification of Lots and Open Space

107. The BCC finds that the Conceptual Plan designates buildable area on the three proposed lots (Area 9-B West, Area 9-A, and Area 9-B East) [NBB-94; NBB-27], and therefore, the Application complies with Section 7.17.3.

108. Applicants propose to designate open space as follows: 3.31 acres in Area 9-A; 1.17 acres in Area 9-B West; and 3.91 in Area 9-B East, for a total of 8.39 acres. [NBB-94].

109. Applicants state that the requirement for 50 percent open space severely limits the amount of buildable area on the property, because the roadways and setback requirements consume 10-15 percent of the area. The Applicants propose off-site open space designated on a figure titled, "Density Transfer Open Space Plan/The

Village at Rancho Viejo,” and a figure titled, “Rancho Viejo Open Space Concept Plan.” [NBB-58; NBB-59].

110. The County Planning Division reviewed the Application in accordance with Section 4.4.1.4 of the SLDC.

111. The Planning Division determined that a total of 13.23 acres of open space are required (50% of the total land area for development. [NBB-173]

112. The Planning Division could not determine based on the Applicants’ submissions whether the Conceptual Plan demonstrates compliance with the open space requirements of the SLDC. The Planning Division therefore recommended the following conditions:

- a. The applicant [should] clarify which figure will be used for the off-site open space acreage and provide a clear map or exhibit to illustrate the location of the off-site open space and demonstrate how their proposal for dedication of open space on property not contiguous to the area for which the applicant is seeking subdivision approval is in compliance with Section 8.10.3.7.
- b. The applicant [should] clearly demonstrate[] how the Plaza/Open Space will be developed per the requirements of Section 8.10.3.7.6 as a community gathering area including seating, walks, shade trees and landscaping.
- c. The applicant [should] clearly demonstrate[] how the “local” trail shown will meet the requirements of Section 8.10.3.13.3 and how the project will provide trail connectivity to the rest of the CCD trail networks.
- d. The applicant [should] clearly demonstrate[] how the Conceptual Plan will provide pedestrian walkway connections and trail connections per requirements of Section 8.10.3.13.

[NBB-174].

113. The BCC finds that the Conceptual Plan identifies open space and buildable areas for each lot.

114. The BCC finds that the Application sufficiently defines the general configuration of open space on-site. However, the BCC further finds that the additional information requested by the Planning Division is necessary to determine the configuration of off-site open space and to establish the general trail network for the proposed development.
115. The BCC finds that the Conceptual Plan complies with Section 7.15.1 of the SLDC, for the purposes of conceptual plan approval, because the Plan identifies open space on each lot and proposes off-site open space, provided Applicants comply with the conditions recommendations by the Planning Division.

Uses

116. The Conceptual Plan describes the phases of development as follows:
- a. Phase 1 (Area 9-A) – Gas Station, *truck terminal*, convenience store, and three fast food restaurants, including one restaurant with a drive-thru.
 - b. Phase 2 (Area 9-B East) – Two hotels containing 100 rooms each.
 - c. Phase 3 (Area 9-B West) – Full service sit down restaurant, retail shops, warehouse, manufacturing/light industrial.

[NBB-30 (emphasis added)]

117. The Applicants state that, “[t]he use list would include the permitted and conditional uses in an Employment Center Subdistrict as shown on Table 8.4.4 CCD use table (2016) provided intensity of use for traffic generation, water and wastewater do no exceed selected uses. The Applicants recognize that the gas station/fueling station is a conditional use, but believe that the Board of County Commissioners should be specifically apprised that a gas station/fueling station is proposed and that a conditional use approval will be sought.” [NBB-33]

118. The Applicants represented that the following uses under the Industrial, Manufacturing and Wholesale category of Table 8.44 SLDC are not contemplated or proposed:

- a. Mill-type factory structures;
- b. Manufacturing plants;
- c. Industrial Parks;
- d. Assembly and construction-type plans;
- e. Process plants (metals, chemicals asphalt, concrete, etc.)
- f. Heavy construction;
- g. Machinery related;
- h. Demolition, building and structure business; and
- i. Tank farms.

[NBB-462-A2 – 463-b2].

119. The Planning Division reviewed the Conceptual Plan with regard to uses and stated the following:

- a. Convenience stores are permitted uses in the CCD-EC;
- b. Restaurants are Permitted Uses in the CCD-EC;
- c. Hotels are Permitted Uses in the CCD-EC;
- d. Retail Shops are Permitted Uses in the CCD-EC;
- e. Warehouses may be a Permitted or Conditional Use in the CCD-EC;
- f. Manufacturing/light industrial uses are a Permitted Use in the CCD-EC.
- g. Gas Stations are a Conditional Use for the CCD-EC. "The Conceptual Plan identifies one of the proposed uses as a 'Truck terminal-fueling station.' The proposed Use is more intensive than a typical gasoline station and is intended to be a Truck Stop. This is not identified in the Use Table."

[NBB-176-177]

120. Staff stated that the Land Use Administrator looked at all of the individual uses that make up the proposed truck stop, compared these to those listed in the Use Table, and reviewed the Land Base Classification System (LBCS) and the North American Industry Classification System (LAICS) in order to make a determination as to whether or not the proposed truck stop is allowed in this district. [NBB-3]

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121. Staff states “truck stop” is not a land use listed in the CCD Use Table, and that “truck stop” is actually comprised of several uses. The Administrator looked at all of the individual uses that make up the proposed truck stop, compared these to those listed in the Use Table, and reviewed the LBCS and the NAICS in order to make a determination as to whether or not the proposed truck stop is allowed in this district. [NBB-3]

122. The Administrator found no reference to “truck stops” in the LBCS. [NBB-3]

123. Staff discovered that “truck stops” are listed as an example under the NAICS Code # 447190 (“Other Gasoline Stations”). “Other Gasoline Stations” is described as, “an industry comprised of establishments known as gasoline stations (except those with convenience stores) primarily engaged in retailing automotive fuels (e.g., diesel fuel, gasohol, gasoline, alternative fuels) or retailing these fuels in combination with activities, such as providing repair services, selling automotive oils, replacement parts, and accessories, and/or providing food services.” [NBB-3; 462-e2; *see also* Minutes for BCC Regular Meeting of May 8, 2018, p. 35]

124. The Applicants refer to Table 7-6 (Parking) of the SLDC, which sets out the minimum number of parking spaces required for certain specific land uses, including “truck stops”. [Minutes for BCC Regular Meeting of May 8, 2018, p. 35]
The SLDC includes no other reference to “truck stops.”

125. Staff stated that truck stop “is not defined in the NAICS and may vary widely in their scale and types of services offered.” [NBB-4]

126. The BCC finds that “truck terminal” is not defined or referenced in the SLDC, the Sustainable Growth Management Plan (SGMP), or the CCD Plan (CCDP).

127. The BCC finds that "truck terminal" is not an adequate or correct description of the proposed Phase 1 land development, which all parties have generically referred to as a "truck stop."
128. The BCC finds that "truck stop" is not defined in the SLDC, the SGMP, or the CCDP. The BCC takes notice of Merriam-Webster's Online Dictionary definition of "truck stop" as "a facility for truckers that is usually by a highway and that includes a diner, fuel pumps, and a garage."
129. The BCC finds that Table 7-6 (Parking) of the SLDC is the only reference to "truck stop" in the SLDC. The purpose of Table 7-6 is to define the "minimum # of spaces required" for various land uses. Although Table 7-6 includes "truck stop" within the "warehouse and freight movement" subcategory of general "industrial use categories," the purpose of Table 7-6 is not to define allowable land uses or otherwise authorize land uses.
130. The BCC finds that "truck stop" is the correct description of the proposed Phase 1 development on Lot 9-A, but also finds that trucks stops vary substantially in scale and the number and types of services provided. Therefore, whether an application for conceptual plan involving a truck stop should be approved or denied must be decided on a case-by-case basis, taking into consideration the specific uses comprising the proposed truck stop at issue.
131. The BCC finds that in addition to the gasoline station, convenience store, and restaurants, the "truck stop" proposed in Phase 1 consists generally of the following land use elements: (a) 75-lot tractor-trailer truck parking area; (b) truck weigh

station; (c) truck fueling stations; and (d) travel center housing shower facilities in addition to the proposed restaurants and stores.

132. The Planning Division reviewed the Plan with regard to the CCD Plan Principals and stated the following:

This project is within a CCD Plan Employment Center defined as areas to be developed with pedestrian oriented characteristics, such as, recreation amenities, parks, trails, retail, and restaurants accessed by walking, bicycling via a short vehicular journey. Buildings within the Employment Centers shall be oriented to the street and keep the parking and storage areas to the rear and sides of the buildings, to maintain the mixed use intent of the Plan and to create active urban street spaces in the manner of town plazas or traditional main streets. The Application for the proposed development has not demonstrated how the project meets the principals outlined above in the CCD Plan.

[NBB-173]

133. The BCC concurs that the Application does not adequately demonstrate how a truck stop is consistent with the principles in CCD Plan.

VI. Opposition to the Application

134. The record contains over 200 letters of opposition to the Application. [NBB-385 through NBB-963]
135. Dozens of individuals provided testimony in opposition to the Application at the public hearing before the BCC. [Minutes for the BCC Regular Meeting of May 8, 2018, pp. 50-79]
136. Other than the Applicants, there was no testimony in support of the Application at the public hearing before the BCC. [Minutes for the BCC Regular Meeting of May 8, 2018, pp. 50-79]

137. The record contains a petition with approximately 2,135 signatures of individuals opposing the proposed truck stop. [Minutes for the BCC Regular Meeting of May 8, 2018, pg. 65]

138. Testimony in opposition generally included the following concerns:

- a. Concern that a truck stop may increase traffic, particularly traffic from commercial trucks, at the Santa Fe I-25 diamond interchange, at the Turquoise Trail/NM 14, Cerrillos Road;
- b. Concern about the slope of the off-ramp from I-25 to HW 24 and the ability for commercial trucks to slow down;
- c. Concern that a truck stop serves travelers and commercial truck drivers and not the community living in the CCD;
- d. The truck stop is not compatible with the CCD;
- e. The potential negative impact of a truck stop on the aesthetic value of the Turquoise Trail National Scenic Byway;
- f. Concern that the truck stop may negatively impact the aesthetics of Santa Fe County;
- g. Concern about a potential increase in crime associated with truck stops;
- h. Concern about a potential increase in noise, air, light, soil, water, and environmental pollution resulting from the proposed development;
- i. Concern about the availability of water for the proposed development;
- j. Concern about the capacity of the Quill Wastewater Treatment Plant; and
- k. Concern that the truck stop is incompatible with neighboring uses.

[NBB-385 through NBB-963; Minutes for the BCC Regular Meeting of May 8, 2018, pp. 50-79]

139. With regard to generalized concerns regarding traffic on Santa Fe I-25 diamond interchange, at the Turquoise Trail/NM 14, and Cerrillos Road, the slope of the off-ramp from I-25, and other traffic related concerns, the BCC finds that these general concerns were unsupported by substantial evidence, in the form of testimony from individuals qualified to render expert opinion. The BCC finds ample evidence in the record to support the conclusion that the traffic concerns are adequately addressed, for the purposes of conceptual plan approval, by the proposed road improvements, the TIA, and the conditions proposed by NMDOT and Public Works.

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140. With regard to the potential increase in noise, air, light, soil, water, and environmental pollution resulting from the proposed development, the BCC specifically finds that these general concerns are adequately addressed in the EIR, including the proposed mitigation measures, and the standards of the SLDC.
141. The BCC finds RWA letter and comments from Public Works adequately addresses the concerns about water.
142. The BCC finds that the Wastewater Evaluation submitted by the Applicants and the RWA Letter sufficiently demonstrate that the Quill Wastewater Treatment Plan can provide wastewater service to the Development.
143. The BCC finds persuasive the testimony and comments to the effect that the proposed truck stop would provide services catering primarily to interstate truckers who have no connection to the County.
144. The BCC finds persuasive the testimony and comments to the effect that the proposed truck stop provides no sense of identity or community; would be an appendage with no relation to the surrounding community; and is inconsistent with the type of businesses contemplated by the CCD Plan.

VII. Conclusions of Law¹

1. Whether a land use is allowable under the SLDC may be determined in the context of an application for conceptual plan approval.

a. Contrary to the Applicants' argument [Staff Report, Exhibit 20], the BCC concludes that it can and should in this matter determine whether a proposed land use is

¹ Any finding or conclusion of the BCC set forth above that may be construed to constitute a conclusion of law is hereby incorporated into this Section VII.

allowed at the conceptual plan stage. See § 8.10.2.6 (1) (providing, “The uses permitted in a PD district are those designated in the approved conceptual plan”); § 8.10.3.4 (requiring conceptual plans to identify categories of land use); § 8.10.3.5 (requiring conceptual plans to generally comply with Section 8.10, which specifies allowed uses). The general purpose of a conceptual plan is to “obtain conceptual approval of proposed development,” § 4.9.9.1; and Appendix A of the SLDC defines “development” to include “any change of use”. Moreover, by specifying the land uses *not contemplated* in its proposed conceptual plan [Staff Report, Exhibit 20], the Applicants essentially concede that a conceptual plan should identify the uses that *are contemplated*. Indeed, the proposed truck stop is the primary focus of the Application and is described in great detail.

b. In addition, it would be inefficient for the BCC not to resolve the “truck stop use” issue at this stage. The Applicants state that, if its conceptual plan is approved, they will submit an Application to the Planning Commission for a conditional use permit (CUP) to authorize certain aspects of its truck stop, but the Planning Commission has already determined that “truck stops” are not allowed within the CCD-EC. Accordingly, it is a virtual certainty that the Planning Commission will deny the CUP without additional Board input, and that the Applicants would appeal that decision to the BCC. The BCC, therefore, will decide the “allowable use” issue now rather than wait until the same issue returns on appeal from the Planning Commission.

2. Based on SLDC Table 8.44 (CCD Use Table, pages 8-58 through 8-65), and SLDC Appendix B (Use Matrix), most of the land uses comprising the Development are allowable within the CCD-EC.

The following uses comprising the Development are allowable uses within the CCD-EC:

- a. **Gas Station** (subject to CUP approval). The Land-Based Classification Standards (LBCS),² "Structure Dimension with Descriptions" report (LBCS Structure Report), assigns Structure # 2270 to this land use and describes it as follows:

Structures that are specialized for selling gasoline with storage tanks, often underground or hidden. They may have bays for car washes. For convenience stores that sell gasoline, use the convenience store category.

- b. **Gasoline Service** (subject to CUP approval). The LBCS Function Dimension with Descriptions report (LBCS Function Report) assigns this land use Function # 2116 and describes it as follows:

Gas stations are establishments that primarily retail automotive fuels (e.g., diesel fuel, gasohol, gasoline) which may or may not be in combination with convenience stores or food marts. These establishments may further provide services such as automotive repair, automotive oils, replacement parts and accessories, or food and beverage sales.

- c. **Convenience Store and Centers** (permitted use). The LBCS Structure Report assign this land use Structure # 2591 and describes it as follows:

Usually configured as a stand-alone store from the smallest size to a few thousand square feet of space. It is typically anchored by a mini-mart, gas station, or a 24-hour general store.

- d. **Restaurants** (permitted use). Table 8.44 and Appendix B identify three categories of uses relevant to restaurants: (1) Shop or store with drive-through facility, Structure # 2210, (2) Restaurant, with

² The LBCS System of the American Planning Association is described at <https://www.planning.org/lbcs/>. The "Structure Dimension with Descriptions" report is available at: <https://www.planning.org/lbcs/standards/structure.htm>.

incidental consumption of alcoholic beverages, Structure # 2220, and (3) Restaurant, without incidental consumption of alcoholic beverages, Structure # 2230. The LBCS Structure Report describes the uses with these Structure #s as follows:

2210—Shop or store building with drive-through facility. A building with drive-in windows to serve customers in automobiles.

2220—Restaurant building. Restaurant buildings that serve food for customers for consumption on or off premises. These structures may also be characterized by specialized cooking, serving, and health and hygiene equipment.

2230—Standalone store or shop building. A catch-all category for most commercial and retail business structures.

- e. **Hotel** (permitted use). Table 8.44 and Appendix B identify "hotels, motels, and tourist courts," Function # 1330, as an allowed use. The LBCS Function Report describes the land use with the same Function # as follows:

Hotel, motel, or tourist court. These establishments comprise resort hotels that do not have gambling services. They may also offer food services, recreational services, convention hosting services, laundry services, etc. This subcategory includes extended stay hotels.

- 3. **The following land uses comprising the Development are *not* allowable within the CCD-EC: a) the 75-lot semi-truck parking area; b) the semi-truck weigh station; and c) the semi-truck fueling stations (collectively, "Truck Stop Uses" or "Truck Stop").**

- a. The Truck Stop Uses are distinct from the land uses typically characterized as "gasoline station" or "gasoline service." This is evidenced by the fact that the LBCS does not mention "truck stops" in describing these land uses. Moreover, although "gasoline station" and "gasoline service" may sometimes incidentally accommodate

semi-trucks, the common understanding is that these establishments primarily serve cars and small trucks.

b. Neither "truck stop" nor the individual Truck Stop Uses are listed as allowable uses within any County zone, including the CCD-EC. However, multiple sections of the SLDC specify a rule for determining whether a proposed land use not expressly listed in a use table may be regarded as "materially similar" to a use that is listed. *See, e.g.*, § 8.5.3, § 8.10.3.19, § 9.4.6, § 9.7.5, § 9.8.7, § 9.9.5, § 9.10.6, § 9.13.6, § 9.11.4.2, and Appendix B.³ Although the language differs somewhat among these sections, the BCC did not intend to establish different rules for different zones. The same rule applies throughout the SLDC and is best described in the general "Use Regulations" under Section 8.5, as follows:

8.5.3 Uses not specifically enumerated. When a proposed use is not specifically listed in the use matrix, the Administrator may determine that the use is materially similar to an allowed use if:

8.5.2.1. The use is listed as within the same structure or function classification as the use specifically enumerated in the use matrix as determined by the Land-Based Classification Standards (LBCS) of the American Planning Association (APA). See <http://www.planning.org/lbcs/standards/>.

8.5.2.2. If the use cannot be located within one of the LBCS classifications, the Administrator shall refer to the most recent manual of the North American Industry Classification System (NAICS). If the use cannot be located within the NAICS, the Administrator shall make a determination whether the proposed use is materially similar to a use within the same industry classification of the NAICS manual; if so, the Administrator shall approve the use. If not, the Administrator shall deny the use. See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

§ 8.5.3.

³ A "non-listed use" is allowable in the same way that a materially similar "listed use" is allowable.

c. The rule set out in Section 8.5.3 and throughout the SLDC requires the exercise of discretion and judgment and should not be applied mechanistically. On the contrary, it provides that "the Administrator *may* determine that the use is materially similar to an allowed use *if*" the specified conditions exist.

d. "Truck stop" is not mentioned as a distinct use in the LBCS. However, the LBCS does include the following land use descriptions that are allowable (i.e., listed) within the CCD-EC and that may involve trucks to varying degrees:

(S) 5210—Surface parking, open (permitted use). [There is no further description in the LBCS.]

(S) 5400—Truck storage and maintenance facilities (subject to CUP approval). [There is no further description in the LBCS, which describes #5400 as "Bus or truck maintenance facility.]

(F) 4140—Truck and freight transportation services (subject to CUP approval). Establishments in the truck and freight transportation category provide over-the-road transportation of cargo using motor vehicles, such as trucks and tractor trailers. The category is subdivided into general freight trucking and specialized freight trucking. This distinction reflects differences in equipment, type of load, scheduling, terminal, and other networking services. General freight transportation establishments handle a wide variety of commodities, generally palletized, and transported in a container or van trailer. General freight trucking is further subdivided into local and long distance trucking. Specialized freight transportation requires specialized equipment due to the size, weight, shape, or other inherent characteristics of the cargo. Specialized freight trucking is further subdivided into used and non-used freight trucking.

(S) 6930—Highway rest stop and welcome center (permitted use). [There is no further description in the LBCS.]

e. The BCC finds that none of the forgoing LBCS descriptions are materially similar to the Truck Stop Uses. "Truck storage and maintenance facilities" describes

businesses within large structures that store and maintain trucks; “truck and freight transportation services” describes businesses that provide freight hauling and storage services; “surface parking, open” describes pay lots, such as those within downtown areas, where cars (not semi-trucks) are temporarily parked while their owners access services, entertainment, or attend to other matters offsite; and “highway rest stop and welcome center” describes off-highway parking areas that may have restrooms but otherwise offer limited facilities and services, *e.g.*, the rest stop atop La Bajada Hill off I-25. None of these land uses are materially similar to the Truck Stop Uses in structure or function.

f. The next step under Section 8.5.3 is to determine whether the Truck Stop Uses are described under a NAICS classification allowable within the CCD-EC. *See* § 8.5.2.2. “Truck stop” is included as an “illustrative example” under the NAICS category, # 447190—*Other Gasoline Stations*, which is described as follows:

This industry comprises establishments known as gasoline stations (except those with convenience stores) primarily engaged in (1) retailing automotive fuels (e.g., diesel fuel, gasohol, gasoline, alternative fuels) or (2) retailing these fuels in combination with activities, such as providing repair services; selling automotive oils, replacement parts, and accessories, and/or providing food services.

Illustrative Examples:

Gasoline stations without convenience stores

Truck stops

Marine service stations

g. The mere mention of the phrase “truck stop” in the NAICS does not compel the conclusion that all “truck stops” or the Truck Stop Uses here are materially similar to “gasoline stations.” The NAICS does not list “truck stops” as “gasoline

stations,” but includes them under the separate category, “other gasoline stations.” The NAICS does not define “truck stop,” which may vary in scale from a regular gasoline station that incidentally includes one or two oversized bays for semi-truck refueling to the “super” truck stops along I-40 that cater primarily to truckers but also incidentally sell gasoline for cars. The BCC finds that the services and scale of the truck stop proposed here is materially dissimilar to the “gasoline station” land use listed in Table 8.44. It further finds that there is no category in Table 8.44 called “other gasoline stations.”

h. The NAICS also describes category #488490—*Other Support Activities for Road Transportation*, which includes “truck weighing station operation” and “truck terminals, independently operated.” Several land uses under the heading “transportation-related facilities” are listed in Table 8.44, but “Other Support Activities for Road Transportation” is not among them. The BCC finds that “truck weighing station operations” and “truck terminals, independently operated” are not allowed uses within the CCD-EC.

i. Therefore, for the forgoing reasons, the BCC concludes as a matter of law that the Truck Stop Uses are not materially similar to any land use allowed in the CCD-EC.

4. The proposed Truck Stop is inconsistent with and does not conform to the SGMP or the CCDP.

a. The proposed Truck Stop, which would be of generic character and cater primarily to transient interstate truckers, is antithetical to the core values expressed in the SGMP. For example:

The County's prevailing character should express and reflect the highly unique places and their desirable qualities through innovative development patterns and the preservation of existing historic and traditional communities.

Continue to protect and create central, mixed use places in community settings. Real, desired places that have "centeredness" allow for focused economic, institutional, social and functional opportunities.

The elements that contribute most to Santa Fe County's distinctive character are respect for place, efficient development patterns and local and regional traditions.

SGMP at pg. 17. The BCC finds that nothing about the proposed Truck Stop is innovative, unique, historic, or traditional. The same generic "super" truck stop occurs throughout the interstate system. It conveys no sense of "place" or "centeredness."

b. The sections on industrial land uses in the SGMP assume that such uses will primarily serve the local community and the surrounding County region. SGMP at 34-35. The SGMP also describes the following "Activity Centers":

Regional Centers—Larger, regional scale shopping centers, which may be anchored by department or home improvement stores or other large-scale anchors, and employment centers. Intended to be designed and integrated as part of mixed use / planned development.

Opportunity Centers-- Unique, site- or purpose-specific uses, not likely to be replicated in other locations, benefiting from locational attributes, such as wind, natural resources, view sheds or recreational/environmental amenities. Nonresidential uses range from energy, to ecotourism, to supporting other economic development activities.

SGMP at 47. The proposed Truck Stop, in contrast to these provisions of the SGMP, would provide services that cater primarily to interstate truckers who have no connection to the County.

c. The SGMP lists several desirable "target industries," SGMP at 63, none of which are materially similar to the proposed Truck Stop.

d. The proposed Truck Stop would be at the gateway of the Turquoise Trail National Scenic Byway, *i.e.*, State Road 14. The SGMP states:

Maintaining the integrity of view sheds and scenic byways as a resource, is a priority with regard to tourism, the arts, and the movie industry. Heavy industrial traffic and through truck traffic should be routed away from scenic byways.

SGMP at pg. 98. The proposed Truck Stop would do just the opposite, *i.e.*, it would concentrate semi-trucks at the gateway of a scenic byway.

e. The proposed Truck Stop is inconsistent with the values expressed in the CCDP. For example:

A fundamental principle of the [CCDP] is to establish a community development pattern that is an alternative to suburban sprawl. Suburban sprawl is characterized by: low density, high land consumption; high infrastructure costs; lack of identity; lack of community; total reliance on the automobile; inefficient use of natural resources; and the destruction of natural land features and habitat.

CCDP at 9. These values are repeated in the SLDC:

The CCD Plan calls for New Community Centers, Neighborhood Centers and Employment Centers. These centers should be active places with identities and ambiance that attract people. They shall have a mixture of uses that keep them active and the heart of commerce and community activities in the District. Centers should be designed to principles that are different than typical strip commercial. Buildings, plazas, walks, parking and the landscape

shall be designed to create centers that will be the focus of community life described in the CCD Plan.

SLDC § 8.10.3.1. The proposed Truck Stop offers no sense of identity or community, nor would it be "the heart of commerce and community activities in the District." On the contrary, it would be an incongruous appendage with no relation to the surrounding community.

f. The proposed Truck Stop is also inconsistent with the "Employment Centers" contemplated in the CCDP:

Employment Centers are to develop in relation to and coordinated and phased with New Community Centers to accommodate commercial and light industrial uses which are not appropriate in the New Community Centers. Employment Centers will connect directly to New Community Centers via primary roads, trails and walkways. Commercial and light industrial uses such as offices, business incubators, research, product development, light assembly and manufacturing, testing, showroom and distribution may be provided in a concentrated, planned, multi-use environment within Employment Centers.

CCDP at pg. 27. The proposed Truck Stop is inconsistent with the described businesses, and interconnecting it with "New Community Centers" via "trails and walkways" would be ill-advised given the heavy volume of semi-truck traffic.

Moreover,

It is the intent of the [CCDP] that this area [at SR 14 and I-25] continue to develop and redevelop following the principles of the District. This provides an opportunity to improve the relationship of buildings to the streetscape of SR 14 and to connect this development to the New Community Center located at Vista del Monte.

Id. The proposed Truck Stop would not “develop ... following the principles of the District,” or “improve the relationship of buildings to the streetscape of SR 14, or connect well to the New Community Center at Vista del Monte.

g. The proposed Truck Stop conflicts with the CCDP because it will not primarily serve the district or the Santa Fe region. *See* CCDP at 28 (“Employment Centers should serve the District and greater Santa Fe community”; CCDP at 50 (“The [CCD] Economic Development Plan seeks to enhance the quality of life for its present and future residents and position the district within the greater regional economy of which it is a part”).

h. For all of the forgoing reasons, the BCC concludes as a matter of law that the proposed truck stop is inconsistent with and fails to conform to the SGMP and CCDP.

5. The proposed Conceptual Plan can be approved if the disallowed Truck Stop Uses are severed from it.

j. The BCC has determined that the Truck Stop Uses are not allowed within the CCD-EC and are inconsistent with the SGMP and CCD, namely: a) the 75-lot tractor-trailer truck parking area; (b) the truck weigh station; and (c) truck fueling stations. This raises the question of whether these disallowed uses can be severed from the Conceptual Plan, allowing the BCC to approve it without the disallowed Truck Stop Uses.

k. The BCC finds that the disallowed Truck Stop Uses can be severed from Phase 1 and that, after such severance, Phase 1 would consist of a gas station or gasoline service (as these uses are described in the LBCS), the convenience store, and three fast food restaurants (one with a drive-thru).

1. The BCC finds that Phases 2 and 3 are not affected by the severance of the disallowed Truck Stop Uses from Phase 1.

6. After severance of the disallowed Truck Stop Uses, the Conceptual Plan generally meets the approval criteria set out in Section 8.10.3.5.

a. As used hereinafter, "Conceptual Plan" shall refer only to the conceptual plan *without* the disallowed Truck Stop Uses, i.e., a) the 75-lot semi-truck parking area; b) the semi-truck weight station; and c) the semi-truck fueling stations.

b. Pursuant to SLDC § 8.10.3.5(1), the Conceptual Plan is generally consistent with the SGMP and CCDP. In addition to serving travelers on the interstate, it will also serve residents within the CCD and the general County region as well as tourists. SGMP at 34-35, 47. In addition, it will provide "employment opportunities" within an existing Employment Center of the CCD for residents of the District and greater Santa Fe County region. SGMP at §1.4.3.2(3); SGMP at § 2.2.3.3 (recognizing that all industrial-zoned land is within employment centers within the CCD); SGMP at 2.2.4.3 (recognizing importance of "employment options"); CCDP at 9 (recognizing importance of developed employment centers); CCDP at 27 (recognizing much of the area around I-25 and SR 14 is already developed or approved for commercial use).

c. Pursuant to SLDC § 8.10.3.5(2), the BCC finds that each of the proposed phases described in the Conceptual Plan (without the disallowed Truck Stop Uses) is capable of functioning as an independent development.

d. Pursuant to SLDC § 8.10.3.5(3), the BCC finds that the proposed conceptual plan substantially conforms to Section 8.10 and other applicable law and ordinances; *provided*, however, that the Administrator and the Planning Commissioner, as applicable,

ORDER

shall as a condition of granting any subsequent development permit or order, require compliance with all SLDC requirements applicable to the proposed development and the application at issue.

NOW, THEREFORE, based on the forgoing findings and conclusions, the Application is hereby denied, in part, and granted, in part, as follows:

- A. The part of the Application proposing the Truck Stop Uses in Phase 1, namely: a) the 75-lot semi-truck parking area; b) the semi-truck weigh station; and c) the semi-truck fueling stations is denied.
- B. The remaining parts of the Application, namely the portion of Phase 1 excluding the Truck Stop Uses and all of Phases 2 and 3, are granted, subject to the following conditions:
 - a. The Conceptual Plan showing the site layout, excluding the Truck Stop Uses and details, and conditions of approval shall be recorded at the expense of the Applicants in the office of the County Clerk in accordance with Section 4.9.9.9.
 - b. In implementing the Conceptual Plan, the Applicants' shall comply with all of the suggestions and comments of all reviewing agencies, including but not necessarily limited to NMED, NMDOT, Public Works, SFCU, and the Planning Division.
 - c. Nothing in this Order shall be construed as a determination by the BCC that the SRAs submitted with the Application are sufficient to meet the SRA requirements applicable to any subsequent application for a development permit or order.

IT IS SO ORDERED.

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

THE SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Anna Hansen, Chair

ATTEST.

Geraldine Salazar, County Clerk

Approved as to form:



R. Bruce Frederick, County Attorney

NOTICE OF RIGHT OF APPEAL

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

