

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: December 2, 2014

TO: Board of County Commissioners

FROM: Miguel "Mike" Romero

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

REF: Case No. PCEV 14-5120 Heather McCrea Vacation of Easement. Heather McCrea, Applicant, Requests Approval to Vacate a Platted Twenty Foot (20') Wide Private Ingress/Egress and Utility Easement on One Lot Totaling 2.50 Acres. The Easement Will Be Relocated On-Site. The Property is Located in the Traditional Community of Chupadero at 64A Paseo Encantado NE, within Section 6, Township 18 North, Range 10 East, (Commission District 1). Miquel "Mike" Romero, Case Manager. (Public Comment Limited to Applicant's Request to Withdraw the Application.)

- a. Order Approving Applicant's Request to Withdraw Application.
- b. Order Approving Applicant's Request to Vacate Easement.

ISSUE:

Heather McCrea, Applicant, requests to withdraw an application to vacate a platted easement.

SUMMARY:

On May 13, 2014 the Board of County Commissioners heard an Application by Heather McCrea to vacate and re-locate a platted twenty foot (20') wide private ingress/egress and utility easement on 2.5 acres. The Applicant proposed to relocate the twenty foot (20") easement 50-115 feet to the east of its current location, with the entire relocated portion of the easement remaining on Applicant's lot. As proposed in the Application the easement would have entered the adjoining property at a different location than is currently platted.

The decision of the BCC was to approve the easement vacation subject to conditions

- a. The Applicant shall file the portion of the Final Plat (Lot 1) affected by the vacated easement with the County Clerk's Office.
- b. Only that portion of the easement that runs through the portion of the residence should be relocated.

On November 14, 2014, the Applicant and James MacCreight recorded a document titled Request to Withdraw Application with the Santa Fe County Clerk, which document is recorded as Instrument 1750826. The document provides that "[t]his is a request to withdraw our application regarding our property that is located in the Traditional Community of Chupadero at 64A Paseo Encantado NE, within Section 6, Township 18 North, Range 10 East (Commission District 1). . . . After much deliberation we have come to the decision that we want to formally withdraw our application." The Applicant's request for withdrawal rested in part on the fact that the Applicant's Application was not granted in its entirety.

Staff notified Alanna Burke and William Berra, the owners of the only property that would be effected by the easement vacation, of the applicant's request to withdraw the application, and that the Board would be considering the withdrawal at its December 9, 2014 meeting. Ms. Burke and Mr. Berra submitted a letter which is attached as Exhibit E. In it they state that the discussion during the case has raised concerns about a grant of easement that they have. This grant of easement has not been part of the discussion by the Board.

Staff has prepared Orders to either approve the Applicant's request to withdraw the application or to act on the May 13, 2014 approval.

RECOMMENDATION:

Staff recommends that the Board adopt one of the attached Orders.

EXHIBITS:

- Exhibit A – Order Approving Applicant's Request to Withdraw Application.
- Exhibit B – Order Approving Applicant's Request to Vacate Easement.
- Exhibit C – May 13, 2014 BCC minutes.
- Exhibit D – Letter requesting withdrawal
- Exhibit E – Letter from adjacent property owner.

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



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Commissioner, District 4

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County Manager

CASE NO. PCEV 14-5120

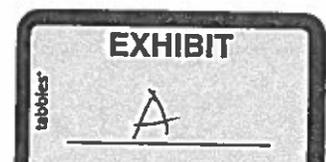
MISCELLANEOUS

HEATHER McCREA, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on May 13, 2014 on the Application of Heather McCrea (hereinafter referred to as "the Applicant") for approval to vacate and re-locate a platted twenty foot (20') wide private ingress/egress and utility easement on 2.5 acres. The BCC, having reviewed the Application and supplemental materials, having conducted a public hearing on the application at the conclusion of which the BCC approved the Application subject to certain conditions on this matter on May 13, 2014, having failed to adopt a final order reflecting that action, and thereafter having received a Request to Withdraw Application recorded by Applicant on November 14, 2014, finds that the Notice of Withdrawal is well taken and should be granted, and this matter should be dismissed. The BCC makes the following findings of fact and conclusions of law:

1. The Applicant requested approval to vacate and re-locate a platted twenty foot (20') wide private ingress/egress and utility easement on one lot identified as 64A Paseo Encantado NE, Santa Fe, New Mexico (hereinafter referred to as Lot 1). The Applicant proposed to relocate the twenty foot (20") easement 50-115 feet to the east of its current



location, with the entire relocated portion of the easement remaining on Applicant's lot. As proposed in the Application the easement would have entered the adjoining property at a different location than is currently platted.

2. 64B Paseo Encantado (hereinafter referred to as Lot 2) is the property which adjoins Lot 1. According to the plat upon which the subject easement is depicted, the easement provides access to Lot 2. The owner of Lot 2 objected to the request to vacate the access and utility easement.

3. Staff did not support the Application as submitted, but supported a modified vacation and replat which lessened the proposed modification to the platted easement so that the easement was relocated to the West of the residence rather than running through the residence, but otherwise remained true to the existing platted easement, subject to the following conditions:

a. The Applicant shall file the portion of the Final Plat (Lot 1) affected by the vacated easement with the County Clerk's Office.

b. Only that portion of the easement that runs through the portion of the residence should be relocated.

c. The adjacent property owners affected by the vacation and relocation of the private ingress/egress utility easement shall sign the final plat prior to recordation to signify agreement to vacation and relocation of the easement.

4. Undisputed evidence presented to the BCC at the May 13, 2014 public hearing on the Application, established that Lot 1 has a residence located on the property. The

twenty foot (20") wide platted private ingress/egress and utility easement, which serves as an access easement for Lot 2, does run through a portion of the residence.

5. During the public hearing, Attorney Cullen Hallmark, speaking on behalf of the owners of Lot 2, advocated against the Application, and advised that the BCC had no jurisdiction to vacate the platted easement because it was a private easement and not part of a subdivision.

6. Ordinance 1996-10, Article V, Section 5.7.2 (the Land Development Code hereinafter referred to as the Code) states that "[i]n approving the vacation of all or part of a final plat, the Board shall decide whether the vacation will adversely affect interests of persons on contiguous land or persons within the subdivision being vacated." That provision comports with the New Mexico Subdivision Act, NMSA 1978, Section 47-6-1 et seq., and specifically Section 47-6-7 pertaining to vacation of plats, which grants the BCC authority to vacate plats filed with the county clerk.

7. At the May 13, 2014 public hearing, the BCC determined that the vacation and relocation of that portion of the platted easement which currently runs through Applicant's residence, only to the extent supported by staff based on their proposed conditions of approval, would not adversely affect the interests of persons on contiguous land or persons within the subdivision being vacated.

8. Also at the May 13, 2014 public hearing, Commissioner Anaya moved to approve the Application subject to the first two conditions proposed by staff, and Commissioner Mayfield seconded that motion. The motion passed by a 3-1 vote, with Commissioners Anaya,

Mayfield and Chavez voting in favor of the motion, and Commissioner Stefanics opposing the motion. Commissioner Holian was not present during the Public Hearing.

9. A final order reflecting the action of the BCC was presented to the BCC at a public meeting on September 30, 2014. James MacCreight on behalf of the Applicant, as well as the owner of Lot 2, attended that hearing and objected to the proposed form of order. The BCC did not adopt the order.

10. On November 14, 2014, the Applicant and James MacCreight recorded a document titled *Request to Withdraw Application* with the Santa Fe County Clerk, which document is recorded as Instrument 1750826. The document provides that “[t]his is a request to withdraw our application regarding our property that is located in the Traditional Community of Chupadero at 64A Paseo Encantado NE, within Section 6, Township 18 North, Range 10 East (Commission District 1). . . . After much deliberation we have come to the decision that we want to formally withdraw our application.” Applicant’s Request for Withdrawal rested in part on the fact that Applicant’s Application was not granted in its entirety.

11. Alanna C. Burke and William Berra, owners of Lot 2, were given notice of the *Request to Withdraw Application* and of the fact that the request would be heard at the BCC meeting of December 9, 2014. On December 1, 2014, Ms. Burke and Mr. Berra submitted written confirmation that they were advised of the Request to Withdraw Application. The letter stated that “the validity of our easement has been called into question publicly.” Ms. Burke and Mr. Berra provided a copy of a Grant of Easement recorded with the Santa Fe County Clerk in 2001 at Book 2044, page 870, and requested that the BCC make a statement to controvert the impression that the Grant of Easement was invalid.

12. The Grant of Easement recorded with the Santa Fe County Clerk at Book 2044, page 870, is not and was not an issue before the BCC in this case. The BCC has not previously and does not at this time take a position with respect to the validity of the Grant of Easement.

13. Based on the fact that the Applicant has requested to withdraw the Application despite the action of the BCC on May 13, 2014, and the request from the owner of Lot 2 that the BCC deny the request to vacate the easement, the BCC now grants the Applicant's request to dismiss this application.

14. No further action shall be taken on this matter.

WHEREFORE, the Board of County Commissioners of Santa Fe County hereby grants Applicant's Request to Withdraw Application. This constitutes a final order of the BCC on this matter, appealable pursuant to Rule 1-074 NMRA and NMSA 1978, Section 39-3-1.1.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this ___ day of _____, 2014.

By: _____
Daniel W. Mayfield, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

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. PCEV 14-5120

MISCELLANEOUS

HEATHER McCREA, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on May 13, 2014 on the Application of Heather McCrea (hereinafter referred to as "the Applicant") for approval to vacate and re-locate a platted twenty foot (20') wide private ingress/egress and utility easement on 2.5 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 only if amended as proposed by staff, was well taken and should be granted, such that the relocated easement would go around the existing residence and would otherwise remain as originally platted. The BCC makes the following findings of fact and conclusions of law:

1. The Applicant requested approval to vacate and re-locate a platted twenty foot (20') wide private ingress/egress and utility easement on one lot identified as 64A Paseo Encantado NE, Santa Fe, New Mexico (hereinafter referred to as Lot 1). The total acreage of the subject lot is 2.5 acres. The Applicant proposed to relocate the twenty foot (20") easement 50-115 feet to the east of its current location, with the entire relocated



portion of the easement remaining on Applicant's lot. As proposed in the Application the easement would enter the adjoining property at a different location than currently platted.

2. In advance of a hearing on the Application, James MacCreight 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 May 12, 2014. Additionally, notice of the hearing was published in the legal notice section of the Santa Fe New Mexican on April 22, 2014, as evidenced 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, including the owners of 64B Paseo Encantado (hereinafter referred to as Lot 2).

3. The plat upon which the easement proposed for vacation and replat initially appeared was a 1998 Plat of Survey showing Family Transfer Land Division approved by the Santa Fe County Land Use Administrator and recorded at Book 389, page 045 of the records of Santa Fe County. The plat reflects a twenty foot (20') wide private ingress egress & utility easement on Lot 1, providing Lot 2 with access to Paseo Encantado. The Family Transfer Land Division is not a subdivision.

4. The Applicant is the owner of Lot 1. The Applicant demonstrated ownership of Lot 1 by presenting a warranty deed recorded as Instrument 1665410 in the Office of the County Clerk of Santa Fe County on April 4, 2012.

5. Testimony and aerial photographs presented to the BCC established that Lot 1 has a residence located on the property. The twenty foot (20") wide platted private

ingress/egress and utility easement, which serves as an access easement for Lot 2, runs through a portion of the residence.

6. The owner of Lot 2 objects to the Application.

7. The location proposed within the Application for relocation of the platted easement is completely within Applicant's lot, but connects to Lot 2 in a different location than the platted easement.

8. Applicant submitted a written statement requesting that the plat be partially amended to modify the easement so that it no longer runs through Applicant's house.

9. Staff did not support the Application as submitted, but supported a modified vacation and replat which lessened the proposed modification to the platted easement so that the easement moved around rather than through the residence and otherwise remained true to the existing platted easement, subject to the following conditions:

a. The Applicant shall file the portion of the Final Plat (Lot 1) affected by the vacated easement with the County Clerk's Office.

b. Only that portion of the easement that runs through the portion of the residence should be relocated.

c. The adjacent property owners affected by the vacation and relocation of the private ingress/egress utility easement shall sign the final plat prior to recordation to signify agreement to vacation and relocation of the easement.

Condition c was added to Staff's recommendation on the day of the public hearing after staff considered the objections to the Application raised by the owner of Lot 2 (64B Paseo Encantado), the adjoining property which may utilize the easement for access to Lot 2.

10. James MacCreight, speaking on behalf of the Applicant was not in agreement with the third condition proposed by Staff. In objecting to the third condition, the Applicant contended that by imposing a requirement to secure the agreement of the contiguous property owner to vacate and relocate the easement, the BCC would in effect be denying the Application because the adjoining property owner was opposed to the Application.

11. The owners of Lot 2 wrote to the Land Use Administrator prior to the hearing, and within that letter confirmed that they had received written notice of the public hearing seventeen business days prior to the hearing, but opined that seventeen business days was not sufficient notice. The letter also advised that a deed had been recorded in 2001 in book 2044, page 870, which they understood to relocate the subject easement to the west of Applicant's home by agreement of the then owners of Lot 1 and Lot 2. The document recorded at the aforementioned book and page is titled a Grant of Easement, and is between Frank J. Lucero and Ramon M. Romero. The Grant of Easement provides that the owner of Lot 1 and the owner of Lot 2 "desire to identify the location of the ingress and egress and utility easement described in the Romero Family Transfer Land Division Plat, as relocated, as shown on Exhibit A attached hereto . . ."

12. The owners of Lot 2 also appeared at the BCC hearing and one of the owners spoke in opposition to the Application. The owner testified that there was a grant of easement created and recorded on November 30, 2001, intended to address the problem with the platted easement. She advised that the grant of easement was drafted by a licensed surveyor and should remain the easement for use in accessing her land rather than the platted easement. By her testimony the owner established that she did not intend

to utilize the platted easement proposed for vacation and relocation, having agreed to utilize the deeded easement in lieu of the platted easement, and therefore may have relinquished any interest in the platted easement.

13. A letter from a surveyor verifying that he drafted the deeded easement referred to by the owners of Lot 2 was entered into the record at the hearing.

14. James MacCreight, who testified that he and the Applicant purchased Lot 1 after construction of the residence within the platted easement, noted that the easement created by deed did not appear to have been surveyed by a licensed surveyor and ran through old pine trees and would be visible to all residents to the west. He also testified that the easement contained errors which made it impossible to locate on the ground, although he confirmed a general understanding of where the deeded easement was supposed to be. Mr. MacCreight confirmed that the proposed easement would be to the east of the deeded easement. He also advised that the owners of Lot 2 would benefit from the realignment of the platted easement because they would have a better grade for their ingress and egress and that the replatted easement provides a proper turn for the fire department.

15. Attorney Cullen Hallmark, speaking on behalf of the owners of Lot 2, advocated against the Application, and advised that the BCC had no jurisdiction to vacate the platted easement because it is a private easement and not part of a subdivision.

16. Oralynn Guerrerortiz, who did not claim to own property in the vicinity of the Applicant's property, questioned the BCC's jurisdiction over easement vacations which were not part of a subdivision. She has previously testified before the BCC that requests

to vacate or amend private platted easements should be handled administratively if uncontested.

17. Ordinance 1996-10, Article V, Section 5.7.2 (the Land Development Code hereinafter referred to as the Code) states that “[i]n approving the vacation of all or part of a final plat, the Board shall decide whether the vacation will adversely affect interests of persons on contiguous land or persons within the subdivision being vacated”. That provision comports with the New Mexico Subdivision Act, NMSA 1978, Section 47-6-1 et seq., and specifically Section 47-6-7 pertaining to vacation of plats, which grants the BCC authority to vacate plats filed with the county clerk.

18. Article V, Section 5.7.1 of the Code provides as follows:

“Any final plat filed in the office of the County Clerk may be vacated or a portion of the final plat may be vacated if:

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

19. Article 5, Section 5.7.3 of the Code provides that “[t]he approved statement declaring the vacation of a portion or all of a final plat shall be filed in the office of the County Clerk.”

20. Article V, Section 5.7 of the Code may only pertain to vacation of subdivision plats. To the extent that vacation and relocation of a platted easement on a lot outside of

a subdivision is not governed by the aforementioned Code provisions, the plat amendment still requires County authorization prior to vacation or relocation.

21. Under the Code, the Land Use Administrator is tasked with review of submissions related to Family Transfer land divisions such as the one that created Lots 1 and 2, by Article II, Section 2.3.1(a)(ii)(h), a review which includes consideration of proposed easements. Article III, Section 2.4.2(a)(1) addresses the requirement that land be divided by plat, and Section 2.4.2(b) sets forth the submittal and review requirements, including the requirement that the plat graphically show all public and private rights-of-way or easements reviewed by the County. Article III, Section 2.4.2(b)(3) sets forth the road and access requirements for the plats associated with land divisions, and requires “all lots created under this Section shall be provided with adequate access for ingress and egress, utility service, fire protection, and emergency services . . .” Additionally, Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) provides 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 or creation of a lot where the site is absent all weather access.

22. The authority to initially approve a plat includes the authority to approve modifications. Given that the County must evaluate the easements as part of the land division approval process, it is incumbent upon the owner of the property to seek County authorization before altering the plat establishing the easements. To read the Code as allowing plat modifications without County approval after a land division has been approved by the County, would render meaningless the requirement that property owners secure County approval of the land division. This would undermine the public welfare,

by allowing private parties to nullify requirements designed to protect public health and safety.

23. In addition to administrative platting processes, the CDRC, through Article II, Section 1.2.2 of the Code, is vested with general authority over platting separate and apart from its authority over subdivisions, and that authority includes platting of family transfer land divisions, further supporting the County's practice of deciding cases pertaining to plat amendments, including amendments to vacate easements, for property outside of a subdivision.

24. Further evidence of the need for County approval of the vacation and relocation of a platted road easement can be found at Article II, Section 2.3.1(a)(v) of the Code, which grants the Land Use Administrator explicit authority to take action regarding plat amendments, separate and apart from the authority she has over Type III subdivisions containing five or fewer parcels. Plat amendments are defined at Article III, Section 2.4.2(a)(6) as "a minor change or correction to a plat, prepared by a licensed surveyor or engineer, which does not constitute a division of land, lot line adjustment, family transfer, or consolidation." Under the Code, the administrative process provides less stringent noticing requirements than a public hearing before the BCC, a distinction which creates some reluctance to process plat amendments involving vacation of easements benefitting neighboring properties through the administrative process.

25. Finally, pursuant to Article III, Section 2.3.9(b)(2), any application for a development permit must meet the Code requirements pertaining to utilities, including the requirement that "utility trenches shall be placed within easements in or adjacent to

road or driveway easements or rights-of-way except where alternate locations are required for gravity flow of water or sewer or where a significant reduction in line length and terrain disturbance would be achieved by cross country easements and trenching.” Given the importance of the placement of utility easements, it follows that once platted, a utility easement cannot be relocated or vacated absent County approval.

26. While pursuant to Article II, Section 2.3.1.a(v), this Application might represent a minor change to a plat which the Land Use Administrator has discretion to resolve rather than forwarding to the BCC, the Land Use Administrator would have been making the same determination as the BCC, which is whether the Application complies with the requirements set forth in the Code. That determination would have been subject to appeal to the CDRC pursuant to Article II, Section 2.3.4.b. Any decision regarding the Application made by the CDRC would have been appealable to the BCC pursuant to Article II, Section 2.3.4.c. Given that the matter could ultimately have been decided by the BCC, the decision of the Land Use Administrator to decline to exercise her discretionary review authority and instead forward this matter directly to the BCC is authorized by the Code. Moreover, the BCC hearing was a more rigorous process because of the more extensive noticing requirements for matters taken before the BCC and because of the opportunity for public input on the application.

27. The New Mexico Subdivision Act, NMSA 1978, Section 47-6-1 et seq., and specifically the aforementioned Section 47-6-7 pertaining to vacation of plats, grants the BCC authority which it has utilized in the past to vacate plats filed with the county clerk, and that grant of authority is not limited to plats of subdivisions. Santa Fe County has established a framework within which to vacate subdivision plats by virtue of and Article

V, Section 5.7 of the Code and has additional provisions within the Code authorizing amendments and vacation of plats. None of these provisions pertains to the deeded and unplatted easement which the owners of Lot 2 have indicated they intend to utilize in lieu of the platted easement. The deeded easement is also not the subject of the Application before the BCC. Therefore, the BCC will not address the legal sufficiency of that easement.

28. The New Mexico Subdivision Act makes no distinction between private easements and other easements when granting authority to the BCC to vacate all or a portion of a plat. The Code makes no distinction between private easements and other easements when authorizing the BCC to vacate all or a portion of a plat. The plat which is proposed for partial vacation in these proceedings was approved by Oralynn Guerrerortiz on behalf of Santa Fe County at a time when she was the Santa Fe County Land Use Administrator. A plat approved by Santa Fe County is subject to vacation or partial vacation by the BCC.

29. Vacation and relocation of this platted easement, if subject to the first two conditions proposed by staff which ensures that the only portion of the easement being vacated is that which runs through the residence, with the majority of the easement, including the portion that connects to the adjoining lot, remaining as originally platted, will not adversely affect interests of persons on contiguous land or persons within any subdivision. The owners of Lot 2 will still have a platted easement for ingress, egress and utilities across the Applicant's property which connects to Lot 2 in the location of the platted easement. The platted easement generally, and after replat, will be to the west of the residence.

30. The vacation and relocation of that portion of the platted easement which currently runs through Applicant's residence, only to the extent supported by staff based on their proposed conditions of approval, will not adversely affect the interests of persons on contiguous land or persons within the subdivision being vacated.

31. To the extent questions of the adequacy of notice of the hearing on this matter were raised by the owners of Lot 2, given their written confirmation of notice seventeen days prior to the hearing, their active participation in the hearing, and other evidence of compliance with noticing in the record, the BCC concludes that adequate notice and an opportunity to be heard were afforded to the owners of Lot 2 and more generally to the interested public entitled to notice.

32. The written statement submitted by Applicant, coupled with the proposed plat and the requirement to record a plat in conformance with this Order, suffices to meet the requirement that the Applicant submit an acknowledgment statement, declaring the Final Plat or a portion of the Final Plat to be vacated.

33. Commissioner Anaya, in moving to approve the Application subject to the first two conditions proposed by staff, advised that he was not in support of the third condition, and asked the Applicant and the owners of Lot 2 to work together to resolve any remaining dispute between themselves pertaining to easements on their properties, and if unable to resolve their differences to take their dispute to court. Commissioner Mayfield seconded that motion. The motion passed by a 3-1 vote, with Commissioners Anaya, Mayfield and Chavez voting in favor of the motion, and Commissioner Stefanics opposing the motion.

Commissioner Holian was not present during the Public Hearing.

WHEREFORE, the Board of County Commissioners of Santa Fe County hereby approves in part Applicant's request, subject to the conditions recommended by staff, as amended, allowing amendment of the plat to vacate and relocate a minimum portion of the platted twenty foot (20') wide private ingress/egress utility easement on Lot 1 so that the easement will run to the West of the residence rather than through the residence, but will otherwise and to the maximum extent feasible, remain true to the original platted easement and therefore will connect to Lot 2 in the currently platted location, and this grant is subject to conditions a and b set forth in Paragraph 9 above. The vacation of the platted easement shall be effective upon recordation of an amended plat approved by the Land Use Administrator.

IT IS SO ORDERED

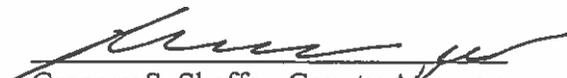
This Order was approved by the Board of County Commissioners of Santa Fe County on this ___ day of _____, 2014.

By: _____
Daniel W. Mayfield, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:


Gregory S. Shaffer, County Attorney

The motion passed by unanimous [4-0] voice vote. [Commissioner Holian was not present for this action.]

VIII. B. 3. **BCC CASE # PCEV 14-5120 Heather McCrea Vacation of Easement. Heather McCrea, Applicant, Request Approval to Vacate a Platted Twenty Foot (20') Wide Private Ingress/Egress and Utility Easement on One Lot Totaling 2.50 Acres. The Easement Will Be Relocated on-Site. The Property is Located in the Traditional Community of Chupadero at 64A Paseo Encantado NE, within Section 6, Township 18 North, Range 10 East (Commission District 1)**

MR. ROMERO: The subject property is a legal lot of record, which was created through a Family Transfer/Land Division in July of 1998. There is currently a residence on the subject property which was constructed in 2000, Permit 00-235, by a previous property owner. The residence was constructed on the private ingress/egress and utility easement, which gives access to 64B Paseo Encantado NE which is Lot 2 causing the easement to run through a portion of the residence. The Applicant wishes to vacate the twenty foot wide private ingress/egress and utility easement that runs north to south on the property and relocate the easement 50-115 feet to the east of its current location.

The neighbors have expressed concern, and object to the relocation of the easement. Staff recommends that the portion of the easement that runs through the residence be vacated and relocated around the residence and tie back into the existing easement, causing minimal change to the private ingress/egress and utility easement. This does not remove access; it relocates the easement and would ensure that the easement continued onto the objecting neighbor's property in exactly the same location as currently platted.

Staff recommendations: Denial to vacate and relocate the entire platted twenty foot wide private ingress/egress and utility easement on one lot totaling 2.50 acres. Staff supports the relocation of the easement around the existing structure without any alteration of the remainder of the easement, subject to the following conditions:

1. The Applicant shall file the portion of the Final Plat (Lot 1) affected by the vacated easement with the County Clerk's Office (As per Article V § 5.7.3).
2. Staff recommends Approval to vacate and relocate the portion of the ingress/egress and utility easement that runs through the portion of the residence.

If I may, after discussion with our Legal Department, staff recommends that an additional condition be imposed, which would be:

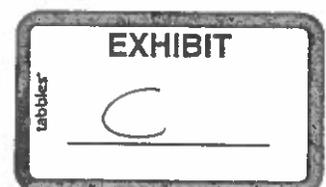
3. The adjacent property owners affected by the vacation and relocation of the private ingress/egress utility easement shall sign the final plat prior to recordation to signify their agreement to vacation and relocation of the easement.

I stand for any questions.

CHAIR MAYFIELD: Mr. Romero, maybe in my packet I just don't have #3 in here.

COMMISSIONER CHAVEZ: The third was added.

CHAIR MAYFIELD: It was just added? So can you repeat that again.



please?

MR. ROMERO: Staff recommends an additional condition to be imposed which would be:

3. The adjacent property owners affected by the vacation and relocation of the private ingress/egress utility easement shall sign the final plat prior to recordation to signify their agreement to vacation and relocation of the easement.

CHAIR MAYFIELD: Thank you. Commissioner Stefanics.

COMMISSIONER STEFANICS: Mr. Chair, is the applicant agreeable to everything?

CHAIR MAYFIELD: Let's go ahead and go to the public hearing. We have the applicant here. Is that okay? So we'll go to the public hearing portion, if we can have – oh, sorry. We'll go to the applicant first and then the public hearing. So whoever's here to comment. I don't know. Please come forward, but let's go to the applicant really quick.

[Duly sworn, James MacCreight testified as follows:]

JAMES MACCREIGHT: James MacCreight. Mr. Chair, I actually have another document I'd like to give you in place of that one because someone made a copy because I was given some additional conditions once we arrived this evening. *[Exhibits 9 & 10]*

CHAIR MAYFIELD: Mr. Romero, could you grab these documents and hand them out, please? Really quick, can these documents be explained to us, Mr. Romero?

MR. ROMERO: Mr. Chair, Commissioners, the paperwork that I just handed out is a request by the applicant. This documentation was presented and given to staff prior to our public hearing a few hours ago and we were requested to hand these out to the Commission, to the Attorney.

CHAIR MAYFIELD: These documents have been recorded downstairs?

MR. ROMERO: I don't believe they have been.

CHAIR MAYFIELD: Okay. Thank you. Mr. MacCreight.

MR. MACCREIGHT: Mr. Chair, we purchased the property at 64A Paseo Encantada. It's in Santa Fe County and as the owner of this property we're faced with a somewhat unusual situation. When we purchased this land, due to an existing easement coming through our property we realized that we were going to be the owners of what is legally deemed as a servient estate owner. So servient estate or servient tenement is a person that has the actual easement running through their property. The person who receives it is the dominant estate or dominant tenement. We were going to have to allow a neighbor to the north to drive through our property over a pre-existing easement to their property which is considered by law the dominant estate.

We have no issue with the easement whatsoever in the sense as far as their access to their property. It's in no way our intention to inhibit them from utilizing that easement. Prior to our purchase we were made aware that there was another easement that pre-dated and supposedly it was a legal easement that we felt was now in place. Upon further investigation we came to realize that the attempt to create a new easement was not performed according to law and that the old easement that inadvertently goes right through our house was still active.

So now what we have is a situation where it could be deemed that we have two easements going through our property. It is our intention to legally vacate the old easement going through our home and have the BCC declare, or whatever process you would find fair, the newer one because it was not created legally. Now, the reason that I say that it wasn't created legally was [inaudible] the law since 1978 and it's in the documents that I submitted there, and what it is is any kind of survey work has to be done by a legal surveyor upon the request of the people who receive the easement the dominant estate, they said that they didn't remember who it was.

So when we did the survey work for the easement we found that that survey could not physically be placed in the easement, meaning that the numbers did not make sense, although we had a general idea of where it was.

So my surveyor also recognized that there was no surveyor stamp on the document. There was no process to vacate the old one and there's a County rule that you have to. There was no public meeting held to do that, so we're now faced with we have two different easements going through our property. So in addition to the lack of County procedure which is recorded on document page 1306062 under Vacation of Plat, Section 5.7.2, action must be taken in place at a public hearing. This was not requested by the original owner nor was it performed in accordance with the law.

In addition, it's required by New Mexico state law, and this is what I was mentioning previously, that if you use a surveyor they must be licensed, considering that the coordinates could not be applied to the physical ground our surveyor realized no real surveyor did the work. When we tried to inquire as to who performed the work it was to no avail.

The creation of a new easement was done haphazardly. It goes through an area of old pine trees. If placed there it would be an eyesore to all the residents to the west when driving by the site. If we placed it 50 feet to the east it would be completely out of sight for those driving by. It would also diminish an unnecessary traffic eyesore to the neighbor to the west. It also goes right in front of the area where anyone would logically build in the future, because our lot is in the traditional community of Chupadero, we have the right to place two other homes on that lot. We respectfully request to move a section of the easement to the east and in moving the easement to the east it actually assists the owner of the dominant estate – the person receiving the easement – by providing a better grade for their ingress and egress. It will also assist them in providing the proper turn for the fire department that is required by law.

Chairman Mayfield, Commissioners, we had a very difficult time with this application. I did a pre-submittal and I've been back about 16 times and I've been asked to do things that were not in the original package. I was asked to get a letter saying that PNM had no [inaudible] going through there. PNM has a woman that works there as a contractor. She comes in one day a week and when you go see here she then makes an appointment when you can come and see her. Then they have to send out a field representative with two weeks advance and you have to pay a fee in order to get that done. And there were many other complications, including the one on the last page of the document I gave you which I got tonight and that is that the adjacent property owners affected by the vacation and relocation of the private ingress/egress utility easement shall sign the final plat prior to recordation to signify their agreement to vacation and

relocation of the easement.

Now, if I had known that, one of the other things that I was asked after their lawyer sent a pretty heavy-handed letter in, and I don't know if someone was intimidated by it or not but we originally were told we were going to be granted the approval, and it mentions in the lawyer's letter that he says the same thing and he wanted to know why that was happening. My point is is that in the midst of this we were then asked, because the people in the dominant estate, the recipients of the easement, requested that we show them where it's going to be. Now, we had an approximation but now we were told we had to do a survey. So that cost me another \$800.

Then, to let you know, I would have never done it. I would have probably proceeded to court because once this was – I was given this third condition here and the condition is, and if you think about it's like tying our hands, and that is we're here to ask the Commission to vote on our situation, but yet the wording of this is that we have to get their approval, even if we get your approval. And the reason for that is, and there's a lot of confusion about easements and the moving of easements. On the third page from the end in yellow you'll see there's a case in South Carolina and this document came from a document that was drawn up by Mr. Kent for the surveyors of New Mexico, and you are allowed to move an easement without the other person's consent as long as it is reasonable – we have an easement running through our home – or for development. And where that easement goes goes right across the front of where we would put two additional homes.

So by this request, what we did put on here is it says the adjacent property owners affected by the vacation and relocation of the private ingress/egress utility easement shall sign the final plat prior to recordation to signify their agreement to vacation and relocation of the easement. Well, what you're telling me is is we're denied due process, because we can't come here and get anything resolved due to this thing that was added on one hour before we were due to come in tonight.

Because if you say, okay, we're going to grant you this new easement or anything else, this is saying, this is conditional that they have to agree. Well, they wouldn't be here in the first place if they agreed. So what we've written here is, or in lieu of signatures by the adjacent property owners, the applicant shall obtain a final, non-appealable order from a court of competent jurisdiction allowing the relocation of the easement shown hereon.

So what I would like to ask Mr. Shaffer if he's in agreement with that.

CHAIR MAYFIELD: Let's stay up here with me, please.

MR. MACCREIGHT: Yes, sir.

CHAIR MAYFIELD: Just stay with me. Let's not go to Mr. Shaffer.

Thank you. So is that all you have, Mr. MacCreight on that?

MR. MACCREIGHT: No, it's not, sir.

CHAIR MAYFIELD: Okay.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR MAYFIELD: Vice Chairman Anaya.

COMMISSIONER ANAYA: I'm going to interrupt you just for a minute and I'm going to ask for some help. I've been on this Commission for a few years now and I've been puzzled at times and I've been confused at time. I've had to ask for

clarification, but I've got to tell you, I'm lost. I am completely lost with where we're at. So I'm going to back up. I'm going to ask you, and Mr. Chair, if you'll indulge me.

MR. MACCREIGHT: Commissioner Anaya, can I present a sketch that you'll see?

COMMISSIONER ANAYA: In just a second. If you'd indulge me, Mr. Chair. I'd like to have staff come back up and I want you to help me again understand what – who are the parties that we're dealing with and what specifically are we talking about. We're getting – I'm lost and I want to try and help you help me and maybe my colleagues aren't but I want to see if we can get this back to ground zero and figure it out so we don't spend the rest of the night wondering what's going on, because I'm being honest with you. So I want you to help me. Can you resummarize? Don't talk to the memo. Just kind of look at me and help me summarize what are we talking about doing here and what is staff recommending and let's see if we can get it back to ground zero and simplify it for me. Okay?

MR. ROMERO: Okay.

COMMISSIONER ANAYA: It's been a long day and I know you guys have all been waiting. Everybody's been waiting, but help me to summarize what's happening.

MR. ROMERO: Okay, Mr. Chair, Commissioner Anaya, I may have to refer back to my memo so I apologize. To go back, the document that Mr. MacCreight asked me to hand out to the Commission, I believe Commissioner Mayfield had asked me if these documents were recorded and I stated no. Actually, they are. The first three documents that I did hand out to you is a grant of easement which was recorded by the County Clerk's Office. Okay? So to go back on that. And that's what Mr. MacCreight was trying to touch on was this documentation that I handed out.

What we're going forward here is a platted private ingress/egress utility easement that is located on Mr. MacCreight's property, Heather McCrea's property.

COMMISSIONER ANAYA: Two of them, right? We've got one that's existing that we're vacating and then a proposed new one. Right?

MR. ROMERO: Correct. So he's proposing to vacate and relocate the easement that's on the property. So currently there is a platted easement which is part of the exhibit. You'll see that on the plat, that runs through a portion of his house. He's requesting to vacate that easement and relocate that easement 50 to 115 feet east of his property and there's also, I believe behind that plat is an exhibit, is his proposed plat which will show the proposed location of what he's proposing to relocate.

COMMISSIONER ANAYA: So if I have an easement through my house I'm probably going to want to vacate that easement. So for starters –

MR. ROMERO: Probably.

COMMISSIONER ANAYA: Okay.

CHAIR MAYFIELD: Mr. Chair, if I just may has, you're talking about Exhibit 4 in front of us, correct?

COMMISSIONER ANAYA: Okay.

MR. ROMERO: I'm going to refer back to my report.

COMMISSIONER ANAYA: And while you're looking at it, there's disagreement as to the proposed route between the applicant, Mr. MacCreight, and his

neighbors?

MR. ROMERO: Correct.

COMMISSIONER ANAYA: Okay. All right. I'm getting there.

MR. ROMERO: So the Exhibit 4 is the proposed plat that shows the existing easement that runs through the portion of the house, and then the proposed relocation of that 20-foot easement. And behind that is the plat, the recorded plat that shows the existing easement that has been platted. Again, to summarize, the neighbors which own Lot 2 are in opposition of this vacation and relocation of the easement that is coming forward to you for your decision.

COMMISSIONER ANAYA: Okay. They're in opposition to vacate the existing easement that goes through their house? His house?

MR. ROMERO: Correct.

COMMISSIONER ANAYA: Okay.

MR. ROMERO: My understanding, that is correct.

COMMISSIONER ANAYA: Okay. I'll listen and we'll see where that goes. So if you don't get the vacation on the easement through your house then you obviously can't relocate it somewhere else. In a nutshell?

MR. ROMERO: Pretty much.

COMMISSIONER ANAYA: Okay. Okay, Mr. MacCreight, just based on that, if you could help us and be real succinct with your comments and the map so that we can go to the rest of the public hearing and hear both sides.

MR. MACCREIGHT: Chairman Mayfield, Commissioner Anaya, I can do it in about less than a minute. What we have here is the original easement that came through. What happened was that the owner of this property owned this lot and this lot. He gave this property or sold it to his daughter. The daughter came in, dropped a house in the easement. They created, on page 3, the recorded document here, they created this new easement. But in the creation of it they never vacated the old easement which is still running through the house. And again, just to make a point, this was created without a public hearing. Not that you need a public hearing for an easement but you do need a legal surveyor which it wasn't, and the numbers don't add up.

So we're now faced with, and I just want to correct – you asked the question of Mr. Romero a moment ago and that was so we got an easement and we have the other one. Now we have two easements on our property right now. And we want to vacate both of them and create a third one because if a title company was to look at this they would say, well, it was never done right, we could clear out our title. So what we want to do is join this in but we want to move it over a little bit, so if you'll just bear with me a second –

COMMISSIONER ANAYA: And while you're looking at that, I heard you say earlier you want to have another easement, if I could, Mr. Chair, I apologize. That affords you the opportunity to do other things with the property that you own.

MR. MACCREIGHT: That's correct. This is a very thin line, Commissioner. So this is the original easement as you can see, which was this easement here. Going there, is going right through the house and comes over here. This is on the edge of the property. There's a house that sits right here and it's facing this. Now, what we want to do is bring it in here, and this was actually the second one that they did and

joined it in to that one. So what they did is circumvented this, moved it over there. But these lines in here do not work physically. You cannot lay them out. So what we have done is – we're looking to take the original and bring this easement in and bring it around here. And what that comes to is this moving it over here.

So you can see the width of the house, 1,700 square feet. We're looking to move it over here. So it's not a major thing. So when I approached the people of the dominant estate or tenement, or the people receiving the easement, they asked me, they said they would get back to me and when they did they gave me a list of things that they wanted, which is in those documents, such as survey of a new easement. I have no issue with that. They asked for a County permit for a new easement. No issue. New plat indicating the easement over 64A and its entry into 64B. We have no issue with that. We have a 20-foot driveway finished to 64B proper line with proper drainage. That's negotiable.

The recipient, the dominant estate, has made it clear that they do not want to contribute in any way, shape or form to the road itself, although, it's what's known as a non-exclusive easement. Non-exclusive that both people can use it but if we never do they're fully responsible for creating it and for maintaining it. So they want a phone, of course. They want the building set back 50 feet. They want covenants indicating the buildings on 64A will not have pitched roofs. They want power for four homes from PNM. I don't know if you're up to the latest date on what that kind of move would entail but it's easily \$40,000 to \$60,000 to draw a line in there, just to move the thing over.

So in their letter that was sent by their attorney, he claims that they have had a use of this property for ten years of that easement, so when we went out with our surveyor, they said that the easement was at a certain place and once the surveyor did what part of that easement that works, he realized that it was over further. So their attorney's claiming that they have a prescriptive right. And I can tell you, if anybody knows anything about prescriptive rights it's a boondoggle. It's like a spider web. It goes back to 1189. And there's really no clearly defined issues on prescriptive rights. There is lots of case law, but there's so many different variables and our land happens to be open land. So anybody that crosses over our land, they really don't allow those kinds of prescriptive easement. It doesn't matter how many years it's been.

The other thing is that their lawyer claimed that they've been making ingress and egress, and as you can see, in both of those easements all these trees, no one has ever driven in there. We took down some trees to get in there for our construction site. They may have walked on it but they weren't walking on what they originally thought was the easement. So there's a lot of complications involved with this. We started this back in 2012. They said they were going to get back to me and when they gave me that list that was ridiculous so I just decided to come forward and explain what's going on.

So it's a strange situation in the sense that there is no case law in the state of New Mexico but yet this document was prepared by an easement expert and one of the things that he states is, and it's probably on page 5, is that if the geographic extent of location of an easement is not described in the document creating it – now this was described, but it's inaccurate, so the owner of the servient estate, that's the person who has the easement running through their property, has the right to designate its location.

And the other case law, which is what's known as a restatement of the law. A restatement of law is the work done by the brightest minds in that particular area of law

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in order to define the law, so that it can be implemented properly, and what they say is unless expressly denied by the terms of an easement the owner of the servient estate is entitled to make reasonable changes in the location or dimensions of an easement at the servient owner's expense to permit normal use or development of the servient estate, but only if the changes do not significantly lessen the utility of the easement, increase the burdens on the owner of the easement and its use and enjoyment. It says also to frustrate the purpose for which the easement was created. We have no intention to do that.

So, what we're asking for is the Commission to look at this. I know it seems a little bit complicated but we have two easements, one of which is running through our house right now. We'd like to get rid of that, and the other one and create an easement that works for everybody, whether or not the recipient, the dominant estate agrees with that is another thing. Thank you very much.

CHAIR MAYFIELD: Thank you. Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. [inaudible] is a senior easement similar to a senior water right?

MR. SHAFFER: Mr. Chair, Commissioner Stefanics, I'm not sure that the concepts are exactly analogous in terms of a priority water right. I think that the issue is more of the party's intent with respect to creations of easements but I think the issue before the Board now is the fact that you have an easement that was on a plat approved by the Board and that that's now being requested to be vacated after a private party purchased the lot that's benefited by the easement.

COMMISSIONER STEFANICS: [inaudible] the question is whether or not we have to deal with the first easement before we deal with the second one. [inaudible] I agree with Commissioner Anaya. It is a confusing issue. [inaudible]

MR. SHAFFER: Mr. Chair, Commissioner Stefanics, the easement that the Board approved is on the plat that the Board approved. As far as I'm aware, and staff will correct me if I'm wrong, the Board had no hand in the creation of some additional easement by private agreement of the parties. So the only thing that the Board has approved is the easement that's reflected on the plat that was recorded to effectuate the lot split. I hope that -

COMMISSIONER STEFANICS: Sorry, my mike wasn't on for the public.

MR. SHAFFER: The Land Use Administrator corrected me. The lot split was approved administratively, so that was the action approved by the County or was the plat that created the first easement. And I think that's the only matter that's in front of the Board, based on this application.

COMMISSIONER STEFANICS: Thank you for now.

CHAIR MAYFIELD: Commissioner Anaya first, then Commissioner Chavez. Commissioner Anaya, please.

COMMISSIONER ANAYA: Just a general comment. As a Commissioner, having dealt with land use cases before, if somebody has an easement and they want to vacate that easement on the property but still afford an easement for another individual to get to their property, I don't think that's unreasonable. I'm not saying I agree with this case. I want to hear the comment. But the other thing I would say is that if this individual or anyone else had a case that came before us and they said they

wanted to vacate an easement and then they wanted to send the individual that's going to utilize the new easement through a mountainous ridge or through an inoperable road or through an area they couldn't access – and I'd ask the Fire Department to come forward. I'd ask Public Works staff to evaluate that easement and say is it reasonable? Is it a reasonable change of use to afford this easement from one point to another. So I don't have a problem having discussion and deliberation as we have in the past about vacation of easement, but what I will say is you brought up a lot of other things that I absolutely wouldn't want to get involved in, additional electrical meters and other conditions. That's where I would concur with our attorney that those might be – those are legal issues that you would have to take up with your neighbors in a court of law or they would have to take those up with you, but associated with land use and our responsibility to make determinations on land use, I see no problem evaluating whether or not an easement is in place that should be vacated if it goes through a house, and that we evaluate whether or not another easement makes sense or not, and its location. So I would say that across the board, for this case or any other case. Because that's a land use functional item that's platted that we approve as County Commissioners.

MR. MACCREIGHT: Chairman Mayfield, Commissioner Anaya –

CHAIR MAYFIELD: Commissioner Chavez.

COMMISSIONER CHAVEZ: I'll yield.

CHAIR MAYFIELD: Thank you. Mr. MacCreight, please.

MR. MACCREIGHT: Yes, sir. That's why this law, it's case law that was quoted by this Mr. Kent who is an expert and who did a complete report for the New Mexico surveyors. It mentions in there, there's things like, to give you an example, let's say you have an easement and somebody wants to change it but what they change it to is 20 feet down the road they make a 90 degree turn and then in another 20 feet they make another 90 degree turn. And the owner, the guy that's receiving that, has a tractor-trailer. Well, that would be inhibiting his easement. We're not doing that. We had the Fire Department out there and the Fire Department agreed with us. I had three visits from Land Use and they all agreed that it made sense. So we're not putting – and just to let you know, on this topo, the average slope analysis – now, it has to be under 30 percent by County rules. It's mostly, it's all but I think three or four feet is 12.2 percent. All you would have to do is to reduce it to 11 percent.

When you do a fire turnaround that has to be two percent or less. So we have to consider all that in what we're doing and we weren't going to create a survey that would inhibit them in any way, shape or form, because it would just cost us, in this case, it was \$800 for that portion. The rest of it was like \$3,000.

CHAIR MAYFIELD: Thank you. Right now, I'm going to go to the public hearing.

MR. MACCREIGHT: Chairman Mayfield, I just request that I could make a comment at the end if I -

CHAIR MAYFIELD: We'll come back to that.

MR. MACCREIGHT: Thank you very much.

CHAIR MAYFIELD: At this time we're going to go to the public hearing. Who would from the public care to comment on this case? Sir, please come forth. And if you're not an attorney you need to be sworn in.

CULLEN HALLMARK: I am an attorney.

CHAIR MAYFIELD: Okay. Could you still say your name first?

MR. HALLMARK: Commissioner, members of the Commission, my name is Cullen Hallmark. I represent William Berra and Alanna Burke. My clients own the easement that Mr. MacCreight has asked you to vacate and we oppose the application. To put it charitably, some of the statements that were made to you a moment ago, based on the facts and on the law were inaccurate. No one is talking about running an easement through his house. Mr. MacCreight and his wife bought a property that was known to have some recorded easements on it. They now don't like it. They want to vacate it over our objections without addressing our concerns.

I think that a couple of – Mr. Romero made a couple of comments that I think you need to keep in mind here. This is a private easement. There is no subdivision that's going on. The division of the two lots was originally created by a family transfer. As a result, it is exempt from the SDLC. It is also exempt from the Subdivision Act, and as a result, the Commission needs to be considering whether it even has the jurisdiction to be dealing with this, and I think that Commissioner Anaya, you actually had your finger right on the pulse just a moment ago. This is the wrong forum for this dispute. This is something that belongs in a court of law.

If Mr. MacCreight and his wife believe that the easement is defective in some way they are free to go in front of a court of law and make their case. I believe that there is an easement by necessity? There was an express easement, contrary to what he represented, the platted easements were done by a licensed surveyor. I think that there is a prescriptive easement. I think that Mr. MacCreight, while he may have read lots of books his statements regarding the law in New Mexico on prescriptive easements is inaccurate.

I think that the County does have the right in some situations to vacate easements. I think the Subdivision Act and the SLDC clearly give it that right but this is not that case. You don't have a situation here that involves a public easement. You don't have a situation which involves a subdivision. It's specifically exempt. And so I think that this body does not have the power to act on this matter. What he is really asking you to do is to take my clients' property right.

Now the constitution of the United States, the constitution of New Mexico both prohibit that unless there has been a compensation or there has been due process. There has been neither one here. So what Mr. MacCreight and his wife are asking you to do, essentially, is to get into a lawsuit.

It's really – what he essentially is doing, you can look at it like this: if you had a couple of people that were involved in a contract dispute, would you have any inkling that you had the jurisdiction to decide that? I don't think you would. You'd say that belongs over at the district courthouse. That's the same thing here. You have the jurisdiction in certain situations but not here.

The district court deals with these things all the time. They can look and see whether there was in fact a licensed surveyor that did this, whether there was in fact prescriptive use for ten years or more, they can deal with whether there's a use by necessity. They are familiar with the law. They deal with that stuff. You guys are not equipped to deal with that and I think that what you should do – I commend Mr. Romero

and to the County attorneys for trying to find a solution to this but I think there's a preliminary problem and that is I don't think you guys should even be involved in this problem. You should kick this out and you should refer it over to the district court.

Mr. Anaya, you had asked for a little bit more information about the layouts and how everything was laid out, and I wanted to ask you in particular do you have any questions? Have all of your questions been answered?

COMMISSIONER ANAYA: Mr. Chair and sir, respectfully, if I have some additional questions –

MR. HALLMARK: All right.

CHAIR MAYFIELD: Mr. Chair, we also have some protocol here so please come through the chair to go to other Commissioners.

MR. HALLMARK: Sure. Anything else?

CHAIR MAYFIELD: This is a public hearing. Is there anybody else wishing to comment on this case? Ms. Guerrerortiz, please.

[Duly sworn, Oralynn Guerrerortiz testified as follows:]

ORALYNN GUERRERORTIZ: Thank you, Commissioners, I spoke on a case similar to this, I think it was about two months ago. And Karl Sommer joined me, and he actually states what is happening tonight. He said you're doing – you're looking at easements that you don't have jurisdiction on, and potentially you're going to get caught in a situation and a civil suit that you really shouldn't be involved in. We have a new County Attorney. I'm hoping that you'll give him the opportunity to review the case law and to examine whether or not land divisions and projects that are not subdivisions should be coming before the BCC for easement vacations.

Again, you're the only jurisdiction that I've ever worked in that is doing this and I think it's going to cause you some problems and I hope you see that tonight. Thank you.

CHAIR MAYFIELD: Thank you. Please come forward.

[Duly sworn, Alanna Burke testified as follows:]

ALANNA BURKE: My name is Alanna Burke. Hello, Commissioners. I'm one of the landowners, the 64B people who have the easement and I'm speaking for myself and my husband, William Berra. I just wanted to clear up a few things that Mr. MacCreight said that I would take issue with and the first is the easement that took care – when we bought this property in 2001 we worked with Mr. Romero who had made the original division of the property and his daughter is the person who had 64A and had put the house very close to the easement. And so before we bought the property we asked to put together that grant of easement document that you have there [Exhibit 11] to relocate that portion of the easement that was interfering with the house.

John Noble of Southwest Title and Escrow and Sandra Brink, a lawyer in town, wrote the text and Paul A. Armijo, who is a licensed surveyor in New Mexico did the Exhibit A there. So Mr. MacCreight was saying that that work was done illegally but it was done by a legal surveyor and I have a document from him that I received yesterday that attests to the fact that he did that work. With the current easement we've had Victoria DeVargas came to our house on March 24th and she works for the Fire Department and she verified with the current easement there is fine ingress and egress for fire trucks, and there's enough room for a hammerhead turnaround. That's fine.

We've had people look at the pitch. Builders who have done slope analysis to

confirm that the entrance and exit would work with County fire regulations. When we asked Mr. MacCreight to meet with us to discuss what we could do with the easement we gave him a list of topics that we wished to discuss. They were not demands for electricity for four houses, etc. We wanted to discuss a variety of things with him. He looked at the list and said, I'm out of here. I'm not going to discuss this. So that's how that went.

And basically, there is absolutely no reason to even be talking about this because this is a manufactured problem. The granted easement that we recorded at the County on November 30, 2001 took care of any problem with easement going too close to the house. That document was drawn up by very – the best educated people to draw it up. It was insured by Southwestern Title and Escrow. The underwriting insurance company, Old Republic Title Insurance, has no idea why the County of Santa Fe is not recognizing that document and in essence there is no problem with the easement over this property. Thanks very much.

CHAIR MAYFIELD: Thank you. Do we have anybody else from the public wishing to comment on this case? Seeing none, this portion of our public hearing is closed. Mr. MacCreight, we'll go back to the applicant, please.

MR. MACCREIGHT: Chairman Mayfield, Commissioners, this is the first time I've heard anything about a licensed survey. I requested that, put that up on numerous occasions and the letter that I gave you of demands was submitted to me as demands; it wasn't about negotiation, anything, so of course I walked away from it because I wasn't interested in doing something like that just to move an easement. The thing about this easement is we already have a permit to put our road in for our home and if we put the road where the current easement is, when we go down four feet or something you're going to see literally a gouge going across the edge of the property, because it's right on the edge of an arroyo. That's the platted easement, the one that they created after the other easement – after it was recognized that the other easement goes through the home.

So we're still faced with the same issue. We have two easements on our property, one going through the house another one circumventing the house but going out over an edge, which is not unreasonable for us to request that we want to move it. We appreciate whatever it is that you find. Thank you.

CHAIR MAYFIELD: Thank you, Mr. MacCreight. Just let me ask staff really quick, Vice Chairman Anaya. Mr. Romero, and I apologize, I think it was Mrs. Berra that was speaking – I may have that wrong, but do we have a copy of that recorded survey that she mentioned?

MR. ROMERO: You do, and that's part of the documentation, Mr. Chair, Commissioners, that we made copies of that Mr. MacCreight requested that hand out to you, the grant of easement.

CHAIR MAYFIELD: Thank you. Could you hand one also to Karen. Thank you. Guys, we got a lot of the same paper here so we have it then so we don't need to waste all this paper. If you speak you go to the mike then really quick and I will ask you that. Okay, I see it.

MS. BURKE: The copy that I handed out to you, on the last page is a letter from Paul A. Armijo, who is the surveyor who did the work for that grant of

easement. And he's verifying when he did the work, etc. So that's the extra piece there that I don't think was handed to you.

CHAIR MAYFIELD: Thank you. Mr. MacCreight has a copy of this also please? Thank you. I'm going to go to Vice Chairman Anaya, please.

COMMISSIONER ANAYA: Mr. Chair, Commissioners, staff, I'm going to make a motion based on the feedback we received and based on staff's recommendation, to approve staff's recommendation dealing with the easement around the property, vacating the portion that goes through the house and the segment, as staff reads it. I'll just read it. Staff supports the relocation of the easement around the existing structure without any alteration of the remainder of the easement, subject to the following conditions:

1. The Applicant shall file the portion of the final plat affected by the vacated easement with the County Clerk's Office; and
2. Staff recommends approval to vacate and relocate the portion of the ingress/egress and utility easement that runs through the portion of the residence.

This being said, do we have any approvals on the road construction and building permits for either the applicants of the adjacent property owner? Have they applied for permits?

MR. ROMERO: The applicant has, correct. The existing home that's on the property was permitted and the applicant has also submitted for an application I believe for an addition to the residence.

COMMISSIONER ANAYA: For the existing residence?

MR. ROMERO: For the existing residence that the easement runs through.

COMMISSIONER ANAYA: Not a new residence on a different part of the property?

MR. ROMERO: Lot #2 that Ms. Burke spoke of is vacant. The only lot that has a structure on it, which is a residence, is the one that is owned by the applicant, which is lawful.

COMMISSIONER ANAYA: So any additional construction – Mr. Chair, I apologize – Mr. Chair, staff, if we – they've got to come in and apply for a permit to do anything on the other lot, as well as the adjacent property owner, correct?

MR. ROMERO: Mr. Chair, Commissioner Anaya, that's correct.

COMMISSIONER ANAYA: That's going to take into consideration the driveway that they'll have and the access therein for either of the subject properties, correct?

MR. ROMERO: Mr. Chair, Commissioner Anaya, that's correct.

COMMISSIONER ANAYA: So that being said, I would ask, respectfully, of the applicant as well as the adjacent property owner to continue their dialogue, to continue whatever other process they can, hopefully to come up with an amicable solution, but for us here now today I would just move, as I said, staff's recommendation as read it. Thank you.

COMMISSIONER STEFANICS: Mr. Chair, I think there's a third –

COMMISSIONER ANAYA: What was the third? Did you have a third one? I apologize.

MR. ROMERO: Mr. Chair, Commissioner Anaya, that is correct. We did add another recommendation and I will read it again. The adjacent property owners

affected by the vacation and relocation of the private ingress/egress utility easement shall sign the final plat prior to recordation to signify their agreement to vacation and relocation of the easement.

COMMISSIONER ANAYA: On the motion I have relative to the easement going in and around the area of the residence, I don't agree with the third condition. I don't in my motion. I'm asking the applicant as well as the neighboring property owner to work through – hopefully they can work through some of their concerns and differences and they may very well need to go to court to do it, but relative to my recommendation, I'm going with the recommendation we have in our book, items 1 and 2. That's why my motion is.

CHAIR MAYFIELD: And I'll second that. I'm going to go to discussion to our County Attorney. So, Mr. Shaffer, we heard from the applicant, again, public comment and also even some past cases that you're not totally aware of. I know Ms. Ellis-Green is. But do we have authority or jurisdiction over this? Santa Fe County?

MR. SHAFFER: Mr. Chair, I think that's a matter that would warrant further research, both with respect to the statutes and case law but also how that's been interpreted by the County over the years. So as I understand it from Land Use staff this issue has come up in the past and I'd want to make sure I was fully informed as to what that best practice was before I offered advice. But I also note that the Board always has the option, if it's uncertain and wants to have additional analysis, legal or otherwise, of tabling the matter and taking it up again at the next land use meeting, either to receive additional public input or additional legal advice in executive session where you could deliberate there as well.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR MAYFIELD: Vice Chairman Anaya.

COMMISSIONER ANAYA: Mr. Chair, I'm going to say this respectfully because our Commissioner Stefanics said this earlier. I expressed some concerns early on as did Commissioner Stefanics. I don't want to get into a series of debating our County Attorney or the legality of a particular item. I also don't want to get us in a mind. We need to do more due diligence so we're not in these positions. So I'm pretty frustrated at the moment but we'll just deal with and move on. Mr. Chair, what do you want to do with your second, and based on what we just heard from our County Attorney, do you think we should modify and table the discussion or what do you want to do? This is your district. I defer to you.

CHAIR MAYFIELD: I appreciate that and I appreciate the comments. I know it's been a long night but I still have a couple questions. So as far as Exhibit A [Exhibit 10, page 4] that I'm looking at on one of the three sheets of paper that were handed to me tonight. Is there a utility line going through there and is there a second utility line?

MR. ROMERO: From my understanding, according to the applicant there is not.

CHAIR MAYFIELD: Okay. And there is a current – ma'am, you'd have to come up to comment, but hopefully, you just talk to staff and staff can provide that. So the house – the original easement. The house is already constructed, correct?

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

CHAIR MAYFIELD: Will you defer with the other party, Mr. Romero and ask about that utility issue? I'm going to ask you to go through staff, please.

MR. ROMERO: Mr. Chair, Commissioners, again, to answer your question, we deliberated. To go back to your question, my answer stands. There is no utilities in that easement.

CHAIR MAYFIELD: Thank you. Commissioners, there's a motion and a second on the floor in front of us. Do you want to restate that motion, Commissioner?

COMMISSIONER ANAYA: Mr. Chair, based on what we just heard from our attorney, do you want to go forward with a motion or do you want to give them a chance to review the item as Commissioner Stefanics suggested earlier and bring it back later?

CHAIR MAYFIELD: Well, and I guess I appreciate the Attorney's statement but this Commission has made decisions on these such cases in the past and I know maybe we're just not at the liberty of having our former County Attorney here, but we've kind of – or I will ask if we set any precedents and how we've already proceeded in past cases.

MR. ROMERO: Mr. Chair, I'm not speaking for the County Attorney but there is an exhibit, Exhibit 2 which is in our Land Development Code, a 5.7 Vacation of Plats, and I don't know if that helps but there is some language in there that does mention, action shall be taken in a public meeting in approving and vacation of all or part of a final plat. The Board shall decide whether the vacation will adversely affect the interests of persons on contiguous land or the persons within the subdivision being vacated. There's language in there. I don't know if that helps. Just thought I'd throw that out there.

CHAIR MAYFIELD: Thank you. We have a motion and a second on the floor.

The motion passed by majority [3-1] voice vote with Commissioner Stefanics voting against the motion. [Commissioner Holian was not present for this action.]

CHAIR MAYFIELD: Mr. Shaffer, though I would ask that hopefully you do some consulting with our Land Use staff and we can get this issue resolved for future cases of such in front of us, please. Thank you.

VIII. B. 4. **CDRC CASE # V 14-5070 Judith Moore Variance. Judith Moore, Applicant, Requests a Variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to Allow a Family Transfer Land Division of 3.44 Acres Into Two (2) Lots That Do Not Meet All-Weather Access Requirements. The Property is Located at 22 Santa Cruz Dam Road, in the Vicinity of Chimayo, within Section 7, Township 20 North, Range 10 East (Commission District 1)**

JOHN LOVATO (Case Review Manager): Thank you, Mr. Chair, Commissioners. On April 17, 2014 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the variance request. Access to the subject lot would be

Request to Withdraw Application
(3 pages)

This is a request to withdraw our application regarding our property that is located in the Traditional Community of Chupadero at 64A Paseo Encantado NE, within Section 6, Township 18 North, Range 10 East (Commission District 1).

The hearing for our application was held on May 13, 2014, case number "HCC CASE# PCEV 14-5120."

The reason we are formally submitting this affidavit to the Santa Fe County Legal Department on this day November 14, 2014, is to protest the egregious manner in which our application was handled both by the head of the Santa Fe County Land use Department and the County Legal Department.

Our application stated that we wanted to vacate an easement that was running through our current home and establish the fact that an alternative easement that was created to remedy the easement going through our home was improperly executed, therefore deeming it illegal. We offered a new easement that would not encumber the dominant estate (our neighbor) their legal right to clear and free ingress or egress over our land (the subservient estate) to their vacant land.

{Please keep in mind this is vacant land, our neighbor has never driven over it to this day. }

The failure to perform this procedure properly has created a cloud on the newer easement and has left us with an unresolved issue concerning the one running through our home.

During the process we were in close contact with the Land Use Dept., and we were told that our new easement and its location was acceptable and reasonable. They initially stated that they were going to recommend it for approval. Acting upon this information, *we ordered and paid for a survey* so that there would be no confusion as to where we were going to relocate the new easement through our property.

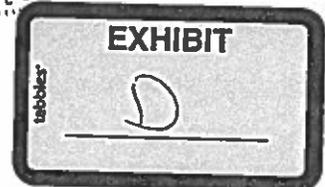
Prior to our scheduled meeting before the BCC, we were told that the head of the Land Use Dept. was not recommending our proposed application.

I went to the County and was given the runaround. I returned three days in a row to no avail. Each visit I was told By Rachel Brown that Penny Ellis Green would call me that day. I never received a call regarding any of those visits, and when I confronted Penny Ellis Green after the May 13 hearing as to why I wasn't contacted, she denied ever telling Rachel Brown that she would do so.

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
WITDRAWAL
PAGES: 4

I Hereby Certify That This Instrument Was Filed for Record On The 14TH Day Of November, 2014 at 04:43:51 PM And Was Duly Recorded as Instrument # 1750826 Of The Records Of Santa Fe County

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



Upon arrival for the scheduled BCC meeting I learned that I was now going to be subjected to further conditions. These last minute conditions, as stated below from the minutes of that meeting, clearly demonstrate that we were being denied a fair and impartial hearing.

From the minutes of the initial BCC meeting May 13 2014:

Page (1)

#3). The adjacent property owners affected by the vacation and relocation of the private ingress/egress utility easement shall sign the final plat prior to recordation to signify their agreement to vacation and relocation of the easement.

This last-minute condition made our application pointless. No applicant would pay a fee to the County and do all the accompanied requirements such as mailing a notification to neighbors, posting a sign, paying to have it advertised in the newspaper, if they knew that they would be required to have their neighbor (who is adamantly opposed to the application in the first place) signature of approval, before the easement and plat could be legally recorded.

The purpose of the hearing was to consider our request that we stated in our application. If the BCC denied our application, we had the right to further pursue our intent through the courts. Instead the BCC acted on an arbitrary decision made by Penny Ellis Green. It was voted on without anyone asking us for our input.

Four months later, I received a phone call stating that later that same day the BCC was going to impose a time limit on when we had to record the decision that we were not in agreement with.

I stated that I could not be there with such short notice; I was told the meeting was going to take place regardless. Later that day I received a call stating the BCC was in session and that I was requested to come in if I could. I arrived and stated that I had no idea that this meeting was to take place and requested that I needed further time to consider any appropriate actions.

During this September 30th meeting the BCC upon hearing the facts decided to table this issue. Immediately following the meeting on Sept. 30th, I met with Land Use representatives, and I told them that December's BCC meeting would work for us to continue the process before the BCC.

On Thursday Nov 13, 2014 we received the following email from Miguel Romero:

Mr. McCreight and Ms. McCrea, I have been directed to proceed forward with submitting the Final Order to the Administrative BCC scheduled for November 25, 2014. The Administrative BCC is not a Public Hearing and from my understanding will not be open for discussion pertaining to the final orders. If you are not in agreement with the decision that the BCC made, there is an appeal process that you can apply for at District Court.

The BCC tabled this issue on Sept 30th, so that I be given time to address the issue. Now we receive this communication stating that instead of having me attend December's BCC meeting to have us clearly state our opposition that has been arbitrarily thrown upon us, the decision has been made that the BCC will not allow any public input. Who is making these decisions, and why has the date been changed? If we're not allowed to make a statement, why did the BCC call me to the first meeting if they did not want to hear what I had to say?

After much deliberation we have come to the decision that we want to formally withdraw our application.

Sincerely yours,

James MacCreight



November 14, 2014

Heather McCrea



November 14, 2014

ACKNOWLEDGMENT

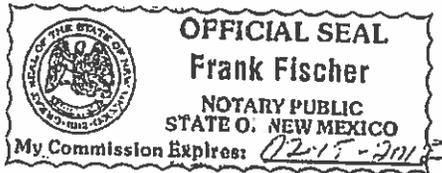
STATE OF NEW MEXICO)
)SS
COUNTY OF SANTA FE)

This instrument was acknowledged before me on 14 by November

James MacCright & Heather McCreag

Frank Fischer
NOTARY PUBLIC

My Commission Expires: 02-15-2015



86A Paseo Encantado NE
Santa Fe, NM 87506
December 1, 2014

Santa Fe Board of County Commissioners
Chair Daniel Mayfield, Commissioner Robert A. Anaya, Commissioner Liz Stefanics,
Commissioner Kathy Holian, Commissioner Miguel M. Chavez
102 Grant Avenue
Santa Fe, NM 87501-2061

Dear Santa Fe Board of County Commissioners,
Penny Ellis-Green called today to tell us that James MacCreight is withdrawing his wife Heather McCrea's application to the Board of County Commissioners (BCC CASE #PCEV 14-5120) to vacate the easement to our property at 64B Paseo Encantado NE. Our easement passes over Ms. McCrea's property at 64A Paseo Encantado NE. Ms. McCrea's case states that the easement as drawn on a 1998 plat goes through a house on 64A and so must be vacated by the County.

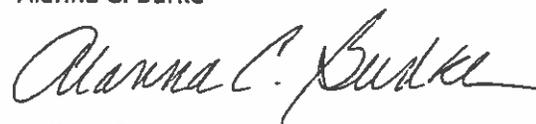
As I explained at the Board of County Commissioners public hearing on May 13, 2014 and as recorded in the minutes and video of that hearing, we opposed the request because the problem of the easement's proximity to the house on 64A had been solved by a Grant of Easement recorded at Santa Fe County on November 30, 2001 in Book 2044, page 870. The Grant of Easement is insured by the Old Republic National Title Insurance Company via Southwestern Title and Escrow, Inc.

Prior to BCC CASE #PCEV 14-5120, neither Mr. MacCreight nor Ms. McCrea had spoken to us about the easement going through their house. Mr. MacCreight had, however, tried to persuade us to move the remainder of the easement to facilitate his building two houses up on a ridge rather than on the building sites available to him. BCC CASE #PCEV 14-5120 has been an effort to force the relocation of the entire easement against our will. However, County staff recommended relocation of the easement around the existing structure on 64A without any alteration to the remainder of the easement. Since the May 13 Board of County Commissioners' vote to accept that recommendation, we have been waiting for the Board to restore the value of our property by finalizing the case.

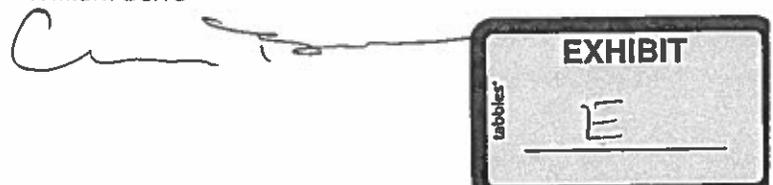
With the withdrawal of the application, we are not back where we started. The validity of our easement has been called into question publicly. By entertaining BCC CASE #PCEV 14-5120, by voting to vacate the easement, and by posting on the internet a copy of the Final Order to vacate the easement, the Board of County Commissioners has created the impression that our easement is invalid. If the Board of County Commissioners withdraws this case, can the Board make a statement to controvert that impression? When we try to sell our property, potential buyers will see this negative information in the public record and believe, because of the actions of the Board of County Commissioners, that there is something wrong with our easement.

Thank you very much for taking the time to read this and for considering our concerns.

Sincerely,
Alanna C. Burke



William Berra





Daniel "Danny" Mayfield

Commissioner, District 1

Miguel M. Chavez

Commissioner, District 2

Robert A. Anaya

Commissioner, District 3



Kathy Holian

Commissioner, District 4

Liz Stefanics

Commissioner, District 5

Katherine Miller

County Manager

DATE: November 25, 2014

TO: Board of County Commissioners

FROM: John M. Salazar, Development Review Specialist *JMS*

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

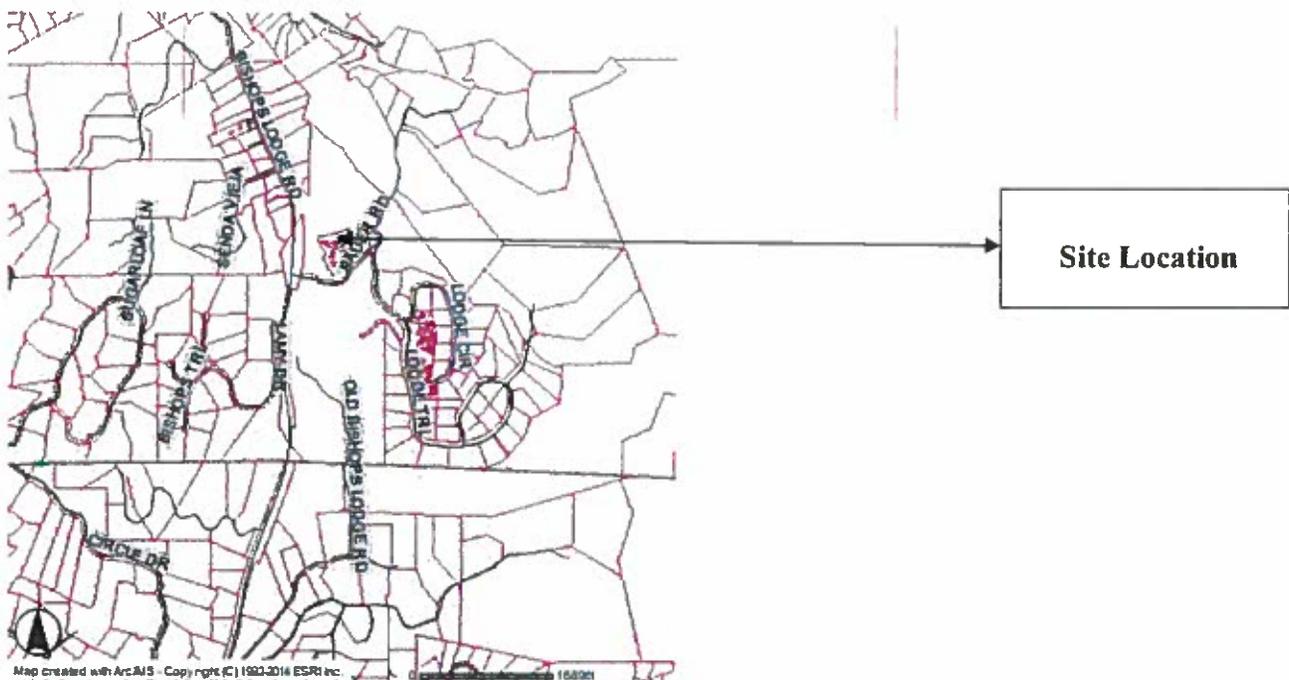
FILE REF.: BCC CASE # MIS 14-5460 BL Santa Fe, LLC, Liquor License

ISSUE:

BL Santa Fe, LLC, D/B/A Bishop's Lodge, Applicant, Linda Aikin, Agent, requests approval for a transfer of ownership of Liquor License No. 0469.

The property is located at 1297 Bishops Lodge Road, within Section 4, Township 17 North, Range 10 East (Commission District 1).

Vicinity Map:



SUMMARY:

The Applicant requests approval to transfer the ownership of an existing liquor license. The liquor license will remain on-site however the ownership is changing from Bishop's Lodge-VEF Beverage Management, LLC to BL Santa Fe, LLC.

On February 9, 2000, the County Development Review Committee granted Final Development Plan approval for the The Bishop's Lodge. The approval allows a restaurant and bar as a use within the development.

The State Alcohol and Gaming Division granted preliminary approval of this request in accordance with NMSA 1978 Section 60-6B-4 of the Liquor Control Act. Legal notice of this request has been published in the newspaper. The Board of County Commissioners is required to conduct a public hearing on the request to grant a Restaurant Beer and Wine Liquor License at this location.

This Application was submitted on October 30, 2014.

Growth Management staff has reviewed this project for compliance with pertinent Code requirements and finds the following facts to support this submittal: Article V, Section 7.2 designates this Final Development Plan which allows restaurants serving liquor as a permitted use; the County Development Review Committee approved the Final Development Plan for the Bishop's Lodge which allows a hotel, restaurant and lounge as a permitted use; Liquor License No. 0469 is an existing liquor license already in place; the Applicant has met the State of New Mexico requirements for noticing and distance from schools and churches.

APPROVAL SOUGHT: Transfer of Ownership for Liquor License No. 0469.

GROWTH MANAGEMENT AREA: El Centro, SDA-2

AGENCY REVIEW:	<u>Agency</u> NM Alcohol & Gaming	<u>Recommendation</u> Preliminary Approval
	Distance from nearest Church – 2 miles School – 2.4 miles	

STAFF RECOMMENDATION: Transfer of Ownership Approval for Liquor License No. 0469 to be located at 1297 Bishops Lodge Road.

EXHIBITS:

- 1- Letter of Intent
- 2- Site Plan
- 3- Alcohol and Gaming Division Letter of Preliminary Approval
- 4- Aerial of Site
- 5- County Business License
- 6- NMED Permit

LINDA L. AIKIN
LAWYER
530B HARKLE ROAD
SANTA FE, NEW MEXICO 87505
(505) 982-6224
FAX: (505) 992-8378
E-Mail lla@cybermesa.com

October 30, 2014

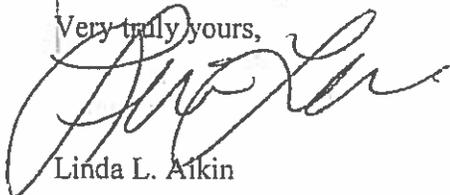
Mr. John Salazar
Santa Fe County
102 Grant
Santa Fe, New Mexico 87501

Re: Liquor License Application; Bishop's Lodge

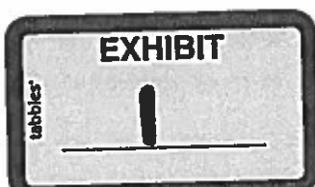
Dear Mr. Salazar:

I represent BL Santa Fe, LLC ("Bishop's Lodge"). Bishop's Lodge has applied for transfer of ownership of Liquor License No. 0469 for continued use at 1297 Bishops Lodge Road, Santa Fe, New Mexico. Bishop's Lodge will continue to operate as a hotel and resort. Liquor License No. 0469 is a dispenser license which allows for a full bar, restaurant, lounge, and room service. Liquor will be available from 11:00 a.m. until 9:00 p.m. seven days a week. Please call me if you have any questions.

Very truly yours,



Linda L. Aikin





New Mexico Regulation and Licensing Department
ALCOHOL AND GAMING DIVISION

Toney Anaya Building • 2550 Cerrillos Road • Santa Fe, New Mexico 87505
(505) 476-4875 • Fax (505) 476-4595 • www.rid.state.nm.us

October 7, 2014

Certified Mail No.: 7009 2250 0000 9386 8782

Susana Martinez
GOVERNOR

Robert "Mike" Unthank
SUPERINTENDENT

James C. McKay
CHIEF GENERAL
COUNSEL

Mary Kay Root
DIRECTOR

Jose E. Larrañaga
Commercial Development Case Manager
Building and Development Services
Santa Fe County
102 Grant Avenue
Santa Fe, NM, 87504

Re: License No. / Appl. No.: License No. 0469 / Appl. No. 921802
Applicant Name: BL Santa Fe, LLC
Doing Business As: Bishop's Lodge
Proposed Location: 1297 Bishop's Lodge Road
Santa Fe, NM 87506

ATTENTION: Department or person responsible for conducting or preparing the public hearing for liquor license transfers or issuance of new liquor licenses.

Greetings:

The Director of the Alcohol and Gaming Division has reviewed the referenced Application and granted Preliminary Approval; it is being forwarded to you in accordance with Section 60-6B-4 NMSA of the Liquor Control Act.

Within forty-five (45) days after receipt of a Notice from the Alcohol and Gaming Division, the governing body shall hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer. Notice of the Public Hearing required by the Liquor Control Act shall be given by the governing body by publishing a notice of the date, time, and place of the hearing at least once a week for two consecutive weeks in a newspaper of general circulation within the territorial limits of the governing body, which requires that two weeks of publication must be satisfied before a hearing can be conducted. The notice shall include: (A) Name and address of the Applicant/Licensee; (B) The action proposed to be taken by the Alcohol and Gaming Division; and (C) The location of the licensed premises. The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. A record shall be made of the hearing.

THE APPLICANT IS SEEKING TRANSFER OF OWNERSHIP OF LIQUOR LICENSE NO. 0469 WITH ON PREMISE CONSUMPTION AND PACKAGE SALES.



- Alcohol and Gaming Division
(505) 476-4875
- Boards and Commissions Division
(505) 476-4600
- Construction Industries Division
(505) 476-4700
- Financial Institutions Division
(505) 476-4885
- Manufactured Housing Division
(505) 476-4770
- Securities Division
(505) 476-4580
- Administrative Services Division
(505) 476-4800

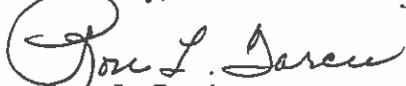
The governing body may disapprove the issuance or transfer of the license if:

- 1) The proposed location is within an area where the sale of alcoholic beverages is prohibited by the laws of New Mexico. (The governing body may disapprove if the proposed location is within 300 feet of a church or school unless the license has been located at this location prior to 1981 or unless the Applicant/Licensee has obtained a waiver from the Local Option District governing body for the proposed licensed premises).
- 2) The issuance or transfer would be in violation of a zoning or other ordinance of the governing body. The governing body may disapprove if the proposed location is not properly zoned. Because this office is in receipt of a Zoning Statement from the governing body, this is not a basis for disapproval.
- 3) The issuance would be detrimental to the public health, safety, or morals of the residents of the Local Option District. Disapproval by the governing body on public health, safety, or morals must be based on and supported by substantial evidence pertaining to the specific prospective transferee or location and a copy of the record must be submitted to the Alcohol and Gaming Division.

Within thirty (30) days after the Public Hearing, the governing body shall notify the Alcohol and Gaming Division as to whether the local governing body has approved or disapproved the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notice of publication(s). **If the governing body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director will give Final Approval to the issuance or transfer of the license.**

If the governing body disapproves the issuance or transfer of the license, it shall notify the Alcohol and Gaming Division within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to the Alcohol and Gaming Division with the notice of disapproval (Page 1 of the Application page noting disapproval).

Sincerely,



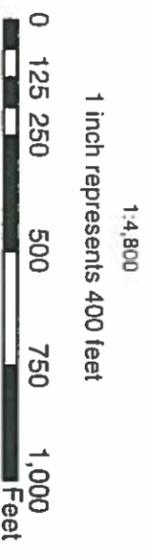
Rose L. Garcia
Hearing Officer
NM Regulation & Licensing Dept.
Alcohol & Gaming Division
Phone: 505-476-4552
Fax: 505-476-4595
Email: rosel.garcia@state.nm.us

Enclosures: Original Page 1 of Application
Copy of Page 2 of Application
Zoning Statement



Legend

-  ROADS
-  DRIVEWAYS
-  PARCELS



2008 Imagery
2 FOOT CONTOURS

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.



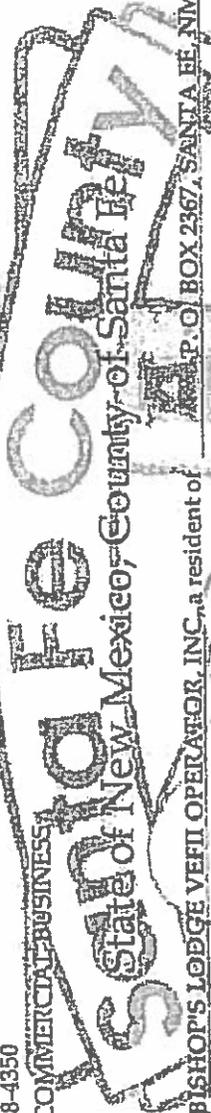
November 25, 2014

COMMERCIAL BUSINESS Registration

Registration No: 10025

Permit No: 98-4350

Permit Type: COMMERCIAL BUSINESS



WHEREAS BISHOP'S LODGE VEFII OPERATOR, INC., a resident of P.O. BOX 2367, SANTA FE, NM 87504

County and State aforesaid, and one of the members of the firm known as

BISHOP'S LODGE

has made application for registration as COMMERCIAL BUSINESS; therefore

Registration Has Been Granted

to the said BISHOP'S LODGE to carry on said business at

4 BAUBER ROAD, SANTA FE, NM 87501

in said County and State for a period of 12 months, commencing on the 1 day of January, 2014

and ending on the 31 day of December, 2014 under the provisions of the law in such cases made and provided.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Treasurer of Santa Fe, N.M., this 1 day of January 2014



[Signature]
SANTA FE COUNTY TREASURER

17395





State of New Mexico

FOOD ESTABLISHMENT PERMIT

Environment Department

This is to certify that Bishops Lodge Vef Li Beverage Mgmt. Co. L.L.C.

Owner of: The Bishops Lodge Restaurant

Is hereby granted a permit to operate a food establishment

At: 1297 Bishops Lodge Road; Santa Fe, NM 87501

Type of Establishment: Food Service - Restaurant

Limitations or Restrictions: _____

Failure to maintain and operate the establishment in compliance with the Regulations (7.6.2 NMAC) may result in suspension or revocation of this permit by an authorized representative of this Department. This permit shall be renewed annually.

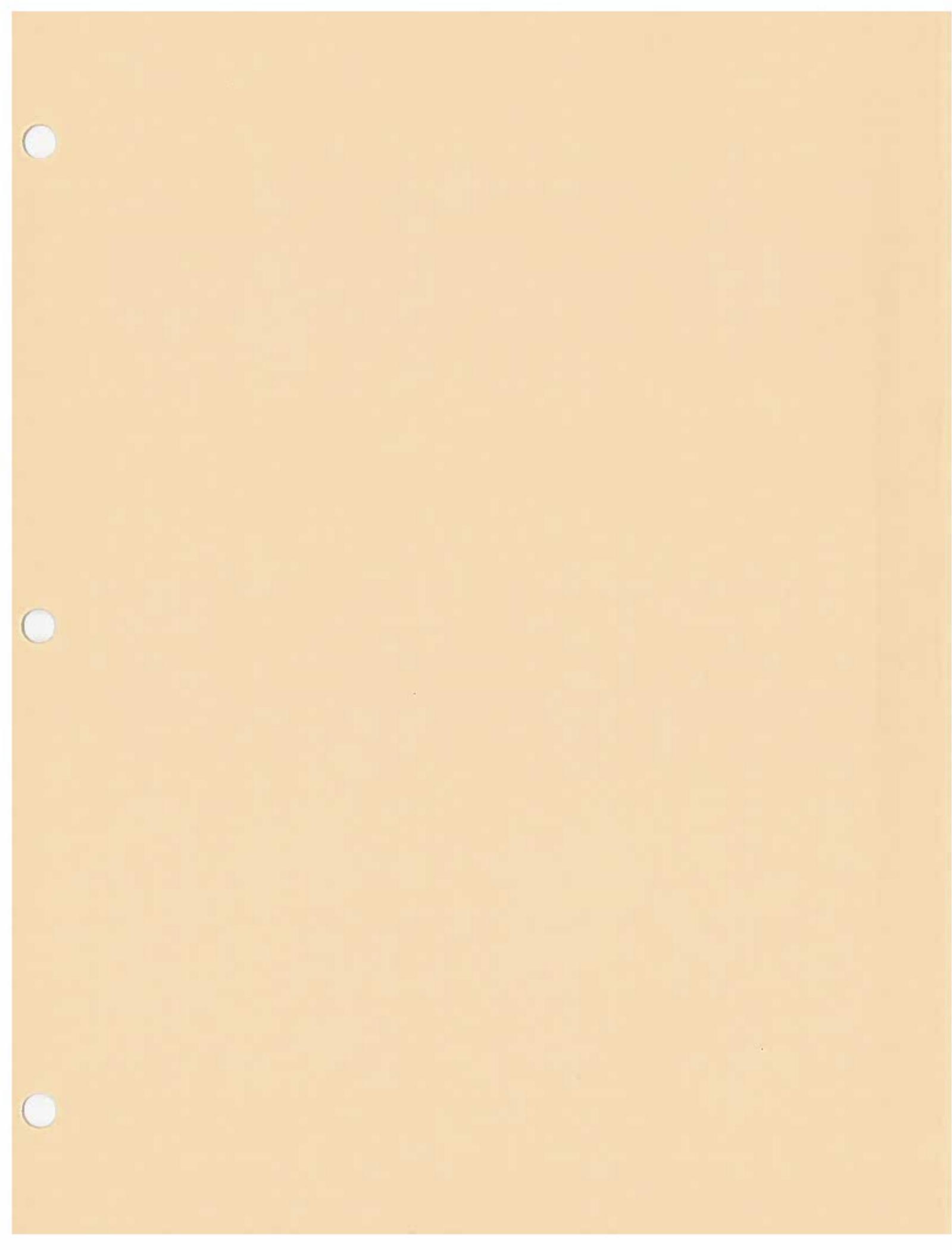
Date Issued: 31-MAR-14 Permit Number: 17196 - PRF20140001

Expiration Date: 31-MAR-15 Authorizing Official: [Signature]

This permit is not transferable to another individual, establishment, or location.

This permit must be displayed in a conspicuous place.





Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: November 20, 2014

TO: Board of County Commissioners

FROM: Miguel "Mike" Romero, Senior Development Review Specialist 

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 # PCEV 14-5420 Ernest Chavez Vacation of Plat

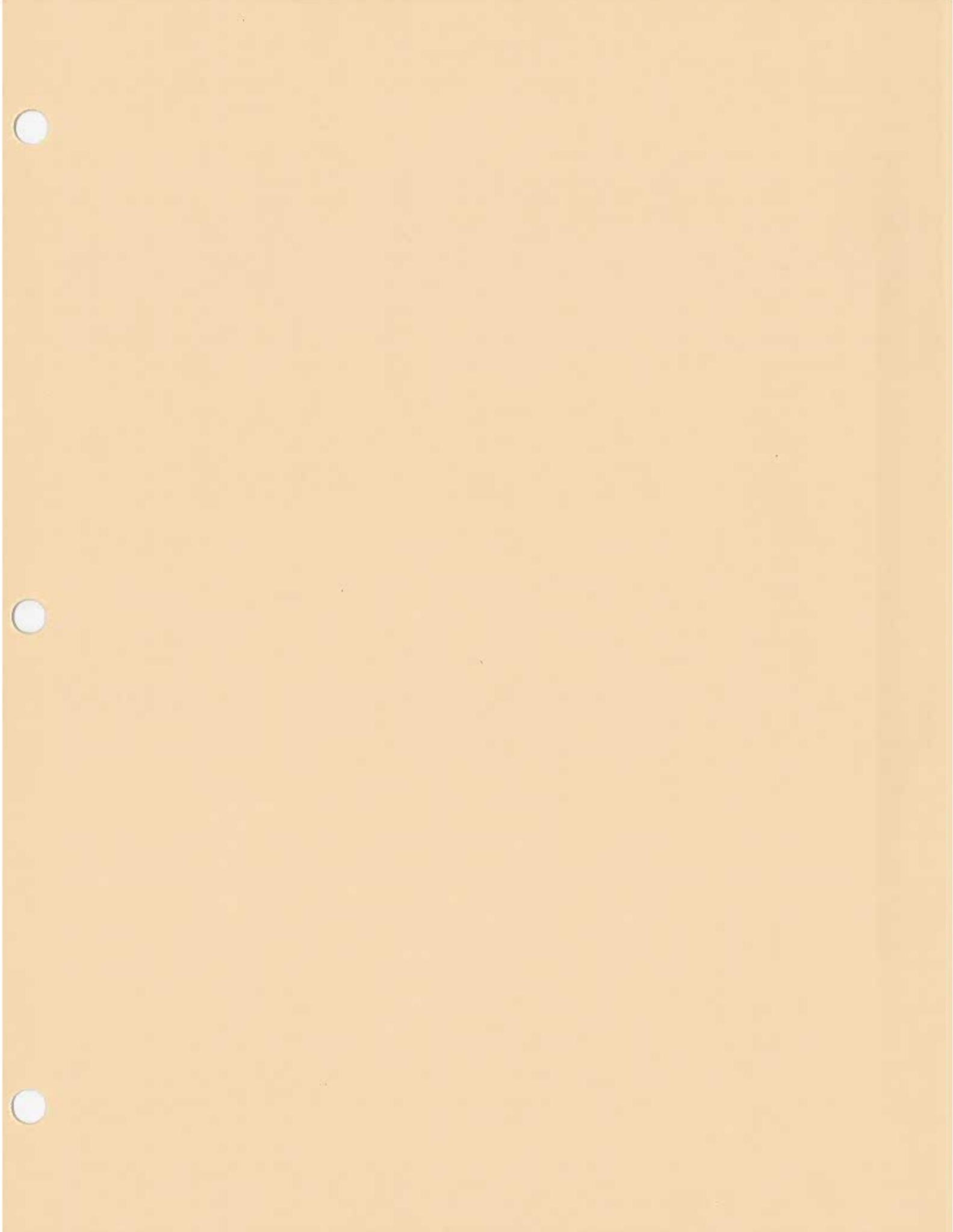
ISSUE:

Ernest Chavez, Applicant, (Sommer, Karnes & Assoc, LLP) Joseph Karnes, Agent, Request Approval To Vacate A Recorded Lot Line Adjustment Survey Plat which reconfigured 2 existing lots that became known as Tract 1-R consisting of 25 acres and Tract 2-R consisting of 11.58 acres, on a total of 36.38 Acres.

The Property Is Located At 210 Entranosa Rd., Within Section 28, Township 11 North, Range 7 East, (Commission District 3).

Summary:

This case is tabled due to insufficient noticing.



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: November 20, 2014

TO: Board of County Commissioners

FROM: Miguel "Mike" Romero, Senior Development Review Specialist *(MP)*

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

FILE REF: BCC CASE # PCEV 14-5450 Kelly Wilson Vacation and Relocation of Easement

ISSUE:

Kelly Wilson, Applicant, (Paramount Surveys, Inc.) Paul Rodriguez, Agent, Request Approval To Vacate and Re-locate A Thirty-Eight Foot (38') Wide Private Access And Utility Easement On One Lot Totaling 2.50 Acres.

The Property Is Located At 177B Los Pinos Rd., Within Section 28, Township 16 North, Range 8 East, (Commission District 3).

Summary:

This case is tabled due to an incomplete application.



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: November 20, 2014

TO: Board of County Commissioners

FROM: Miguel "Mike" Romero, Senior Development Review Specialist *MR*

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

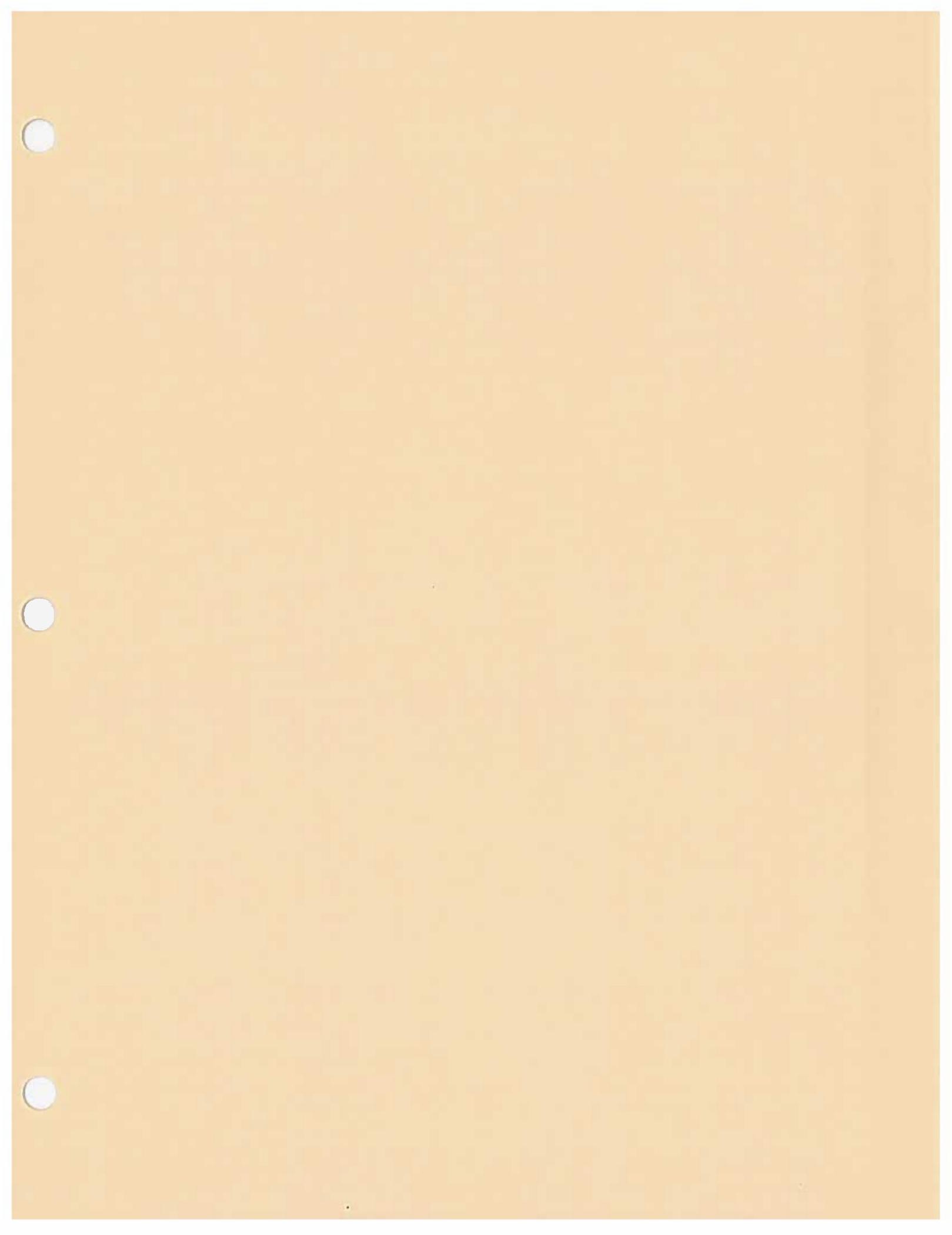
FILE REF: BCC CASE # PCEV 14-5410 Richard Berman Vacation of Relocation of Drainage Easement

ISSUE:

Richard Berman, Applicant, (Paramount Surveys, Inc.) Paul Rodriguez, Agent, Request Approval To Vacate Three (3) Platted Drainage Easement On One Lot Totaling 1.397 Acres. The Property Is Located At 35 Blue Canyon Way, Within Section 20, Township 17 North, Range 9 East, (Commission District 2).

Summary:

This case is tabled due to an incomplete application.



SUMMARY:

The subject lot was created in April 2005, by way of Family Transfer and is recognized as a legal lot of record. The Applicant has owned the property since March 18, 2014. Since the Applicant has only owned the property for a five month period, the property is not eligible for a Small Lot Family Transfer. The property is currently vacant.

Article II, § 4.3.3bii (Small Lot Family Transfers) of the Land Development Code states proof that the land has been in the lawful possession of the Family Proper for no less than five years and that the recipient is an adult or emancipated minor is required

The Applicant is requesting a variance of Article II, § 4.3.3bii (Small Lot Family Transfers), of the Land Development Code to allow a Small Lot Family Transfer of 2.79 acres into two lots prior to possessing the property for a five year period. The Applicant states a variance is needed in order to give property to his grandchildren. The Applicant purchased the property with the intent of giving his oldest granddaughters a piece of property of their own. This would allow his grandchildren to reside next to and support each other after the passing of their mother.

Article II, § 3 (Variances) of the County Land Development Code states: Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the Board and the Board may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking or property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. In arriving at its determination, the Development Review Committee and the Board shall carefully consider the opinions of any agency requested to review and comment on the variance request. In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified. **The variance criteria does not consider financial or medical reasons as extraordinary hardships**

This Application was submitted on July 8, 2014.

On August 21, 2014, the County Development Review Committee (CDRC) met and acted on this case, the decision of the CDRC was to recommend approval of the Applicant's request with staff conditions by a 3-2 voice vote (Minutes Attached as Exhibit 1).

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

APPROVAL SOUGHT:

Approval of a variance of Article II, § 4.3.3.b.ii (Small Lot Family Transfers), of the Land Development Code to allow a Small lot Family Transfer of 2.79 acres into two lots prior

to being in possession of the Family Proper for a five year period.

GROWTH MANAGEMENT AREA: SDA-2

HYDROLOGIC ZONE: Basin Zone, minimum lot size per Code is 10 acres per dwelling unit. Lot size can be reduced to 2.5 acres per dwelling with signed and recorded water restrictions. Lot size can be further reduced to 1.25 acres per dwelling via Small Lot Family Transfer. Currently the lot is restricted to 0.25 acre feet per year.

FIRE PROTECTION: Agua Fria.

WATER SUPPLY: Domestic Well, only one well shall be permitted to serve this lot. The well shall be subject to a shared well agreement.

LIQUID WASTE: Conventional Septic System

VARIANCES: Yes

AGENCY REVIEW:	<u>Agency:</u> Fire Prevention	<u>Recommendation:</u> Comments not received
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STAFF RECOMMENDATION: Denial of a variance of Article II, § 4.3.3.b.ii (Small Lot Family Transfers), of the Land Development Code to allow a Small Lot Family Transfer of 2.79 acres into two lots prior to being in possession of the Family Proper for a five year period.

The decision of the CDRC was to recommend approval of the variance subject to the following conditions:

1. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, § 2.4.2).
3. Future division of either tract is prohibited: this shall be noted on the plat. (As per Article III, § 10).

4. The Applicants shall comply with all Fire Prevention Division requirements at time of Plat Review (As per 1997 Fire Code and NFPA Life Safety Code).

EXHIBITS:

1. August 21, 2014, CDRC Minutes
2. Letter of request
3. Article II, § 4.3.3bii (Small Lot Family Transfers)
4. Article II, § 3 (Variances)
5. Site Photographs
6. Site Plan
7. Aerial of Site and Surrounding Area

1. The Applicant shall comply with all applicable water conservation measures. (As per Ordinance No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit. (As per Article II, § 2).
3. The placement of additional dwelling units is prohibited on the property. (As per Ordinance No. 2007-2 § 10.6).
4. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application (As per 1997 Fire Code and NFPA Life Safety Code).

Member Katz asked if the only thing preventing them from adding the third home was the .038 and Mr. Martinez replied it was.

Member Booth asked for help in visualizing that area and Member Gonzales said the chambers they were in appeared to be approximately 2,000 square feet, or greater area than the discrepancy.

Member Gonzales how many units were on the property and Mr. Martinez said there are currently two units and they are requesting a third.

Duly sworn, Maria Cerquera stating they were requesting a minimal variance. Initially, the property was part of a larger holding belonging to her parents. They hope to have their children, who are currently in college, have a place to live. Before the children return they hope to use it for supplemental income. She explained the original property ran from Agua Fria to Rufina and was divided into equal parcels. She said they are on community water and city sewer and the additional dwelling will hook up to those services as well.

There was no one from the public wishing to provide testimony.

In Case #V 14-5190, Member Katz moved approval with staff conditions, stating it was a de minimus discrepancy. Member Booth seconded and the motion passed by unanimous [5-0] voice vote.

VII. B. CDRC CASE # V 14-5230 Sam Mendoza Variance. Sam Mendoza, Applicant, Requests a Variance of Article II, Section 4.3.3.b.ii (Small Lot Family Transfers), of the Land Development Code to Allow a Small Lot Family Transfer of 2.79 Acres Into Two Lots Prior to Being in Possession of the Family Proper for a Five-Year Period. The Property is Located at 58 Camino Don Fidel, Off the 599 West Frontage Road, within Section 36, Township 17 North, Range 9 East, Commission District 2

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



“The subject lot was created in April 2005, by way of Family Transfer and is recognized as a legal lot of record. The Applicant has owned the property since March 18, 2014. Since the Applicant has only owned the property for a five-month period, the property is not eligible for a small-lot family transfer. The property is currently vacant.

“Article II, Subsection 3.3b.iii, Small-lot Family Transfer of the Land Development Code states proof that the land has been in lawful possession of the family proper for no less than five years and that the recipient is an adult or an emancipated minor is required.

The applicant is requesting a variance of Article II, § 4.3.3.b.ii, of the Land Development Code to allow a Small Lot Family Transfer of 2.79 acres into two lots prior to being in possession of the Family Proper for a five-year period. The applicant states a variance is needed in order to give property to his grandchildren. The applicant purchased the property with the intent of giving his oldest granddaughters a piece of the property of their own. This would allow his grandchildren to reside next to and support each other after the passing of their mother.

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

Mr. Martinez stated staff was recommending denial of a variance of Article II, § 4.3.3.b.ii, Small Lot Family Transfers, of the Land Development Code to allow a Small Lot Family Transfer of 2.79 acres into two lots prior to being in possession of the Family Proper for a five-year period. If the decision of the CDRC is to approve the Applicant’s request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre-feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk’s Office (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, § 2.4.2).
3. Future division of either tract is prohibited: this shall be noted on the plat. (As per Article III, § 10).
4. The Applicants shall comply with all Fire Prevention Division requirements at time of Plat Review (As per 1997 Fire Code and NFPA Life Safety Code).

Member Katz asked how many dwellings could be built on the property without a variance. Mr. Dalton said only one dwelling per 2.5 acres is allowed in this area.

Chairman Drobni asked if the new Sustainable Land Development Code would preclude a family transfer. Mr. Martinez said that is correct, so a family transfer would have to be done prior to adoption of that code.

Member Katz asked if the CDRC had the option of granting a density variance and not the small-lot transfer. Ms. Lucero stated the request was for a family transfer and Ms. Brown indicated it is the County's practice to address the request specified in the application in accord with noticing to neighbors.

Applicant Gloria Mendoza, duly sworn, stated her daughter, a single mother with five children, died and they hope to help provide some stability for their grandchildren. She said there are other small lots in the area and none of the neighbors have voiced opposition.

Member Gonzales asked if the lots she spoke of are on individual wells. Ms. Mendoza said they plan to use a shared well and individual septic systems.

There was no one from the public wishing to speak.

Member Gonzales moved to grant the variance in Case #V 14-5230 with staff conditions. Member Booth seconded and the motion passed by majority[3-2] voice vote with Members Gonzales, Booth and Drobni voting with the motion and Members Martin and Katz voting against.

VI. C. CDRC CASE # V 14-5240 Julie Lopez Variance. Julie Lopez, Applicant, Michael Sandrin, Agent, Request a Variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to Allow a Driveway within a Flood Hazard Area. The Property is Located at 12 Calle Dos Puentes, within the Vicinity of Chimayo, within Section 2, Township 20 North, Range 9 East, Commission District 1

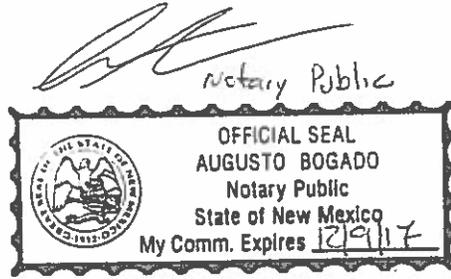
John Lovato read the caption gave the following staff report:

"The subject lot was created in 1968, and is considered a legal lot of record. The property is currently vacant. The Applicant requests a variance of Article 4, § 4.2 of Ordinance No. 2008-10, Flood Damage and Stormwater Management, to allow the construction of a driveway within a FEMA designated Special Flood Hazard Area.

"On June 28, 2014, the Applicant submitted an Application for the construction of a driveway. After review of the Application, staff determined that the proposed driveway was located within a FEMA designated 100-Year Special Flood Hazard Area therefore, the Application was denied. The Applicant intends to develop the lot and place a residence on the property. The Applicant states, "denying the

July 9, 2014

Santa Fe County
Bldg. & Dev. Svcs. Division
Santa Fe, NM



RE: Letter of Intent

In November of 2013, our daughter Marcia Ortiz passed away leaving behind 5 children. We purchased the property at 58 Camino Don Fidel for the purpose of buying it for two of her daughters (Feliz Larranaga and Jaylene Rodriguez) the oldest of 4 of Marcia's daughters. They do not have anyone else in their lives who will help them own a piece of property in order to take care of the younger 2 sisters. We want them to live next door to each other so that they can continue to support each other in the future. That is why we are asking for a variance on this property. It is 3 acres and we believe 1 1/2 acres would suffice for them to build and/or set a mobile home on this property. We would appreciate your consideration on this hardship case for our grandchildren.

Respectfully yours,

Samuel Mendoza
Samuel Mendoza

Gloria Mendoza
Gloria Mendoza

7/8/14
Date

23 Paseo de San Antonio
Address Santa Fe, NM 87507



4.3.2 Definitions

For purposes of this Section, the following definitions will apply:

- 4.3.2a Small Lot Inheritance Transfer - A lot created by an order of a court in probate, but not for the purpose of sale or lease, and which lot does not meet the density requirements of the Code.
- 4.3.2b Small Lot Family Transfer - A lot created as a gift from a grandparent, parent or legal guardian to his or her natural or adopted child or grandchild or legal ward, which lot does not meet the density requirements of the Code. (These relationships are further defined below in "Family Proper".) Any person may receive only one lot through Small Lot Family Transfer.
- 4.3.2c Family Proper - Lineal relations up to and including the third degree, i.e. grandparent, parent, child. Step relationships shall count as natural relationships so long as the step relationship is legally existent at the time of the transfer. Also including legal guardians who have performed the function of grandparent or parent to the person who is receiving the transferred lot.

4.3.3 Requirements for Approval

4.3.3a Small Lot Inheritance Transfers

- i. Deed(s) transferring the parcel(s) to or among the heirs or beneficiaries shall be recorded at the time the plat is filed.

4.3.3b Small Lot Family Transfers

- i. Deed(s) transferring the parcel(s) to family members shall be recorded at the time the plat is filed;
- ii. Proof that the land has been in the lawful possession of the family proper for no less than five years and that the recipient is an adult or emancipated minor is required;
- iii. Lots created by family transfer under this Section shall be so noted on the plat; and
- iv. An affidavit showing that notice of the application for approval of a family transfer plat has been mailed by certified mail to owners of property, as shown by the records of the County Assessor, adjacent to and within one hundred (100) feet, excluding public right-of-way, of the proposed family transfer parcel(s).
- v. The person transferring the lot shall file an affidavit with the County Clerk containing the following:
 - (i) A legal description of the property being transferred; and
 - (ii) A statement that he or she has not made a family transfer of any other lot(s) to the person receiving the current lot.

4.3.4 Submittal and Review

The submittal and review requirements in Section 2.3 of this Article and Article III, Section 2.4.2 shall apply to the Small Lot Inheritance and Small Lot Family Transfers created under this Section. However, the Code Administrator retains the authority to refer these divisions directly to the County Development Review Committee or the Board when deemed in the public interest.

2.5 Zoning

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

2.6 Subdivisions

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

2.7 Other Requirements

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

→ **SECTION 3 - VARIANCES**

→ 3.1 Proposed Development

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

3.2 Variation or Modification

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

3.3 Granting Variances and Modifications

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

3.4 Height Variance in Airport Zones

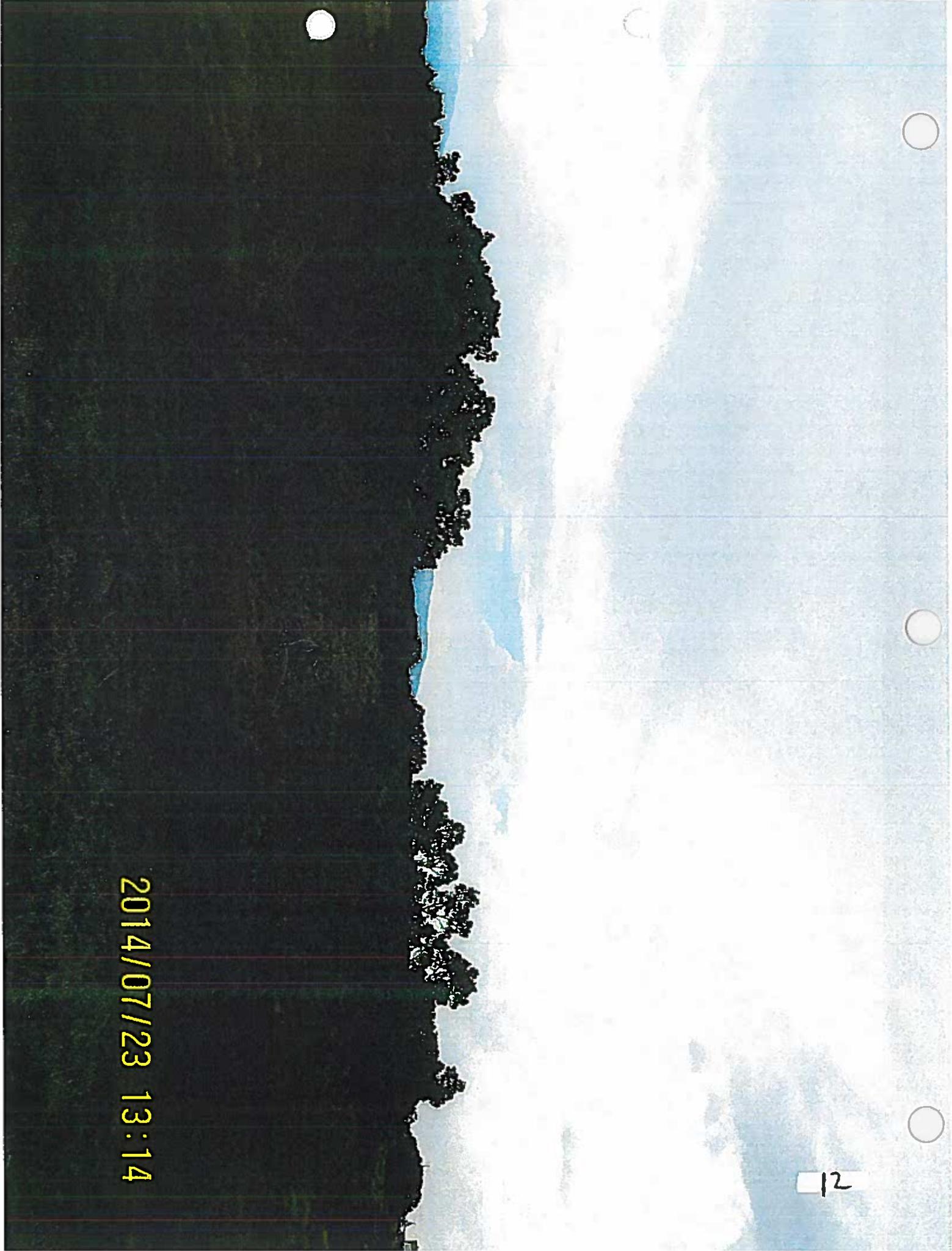
All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied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

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EXHIBIT
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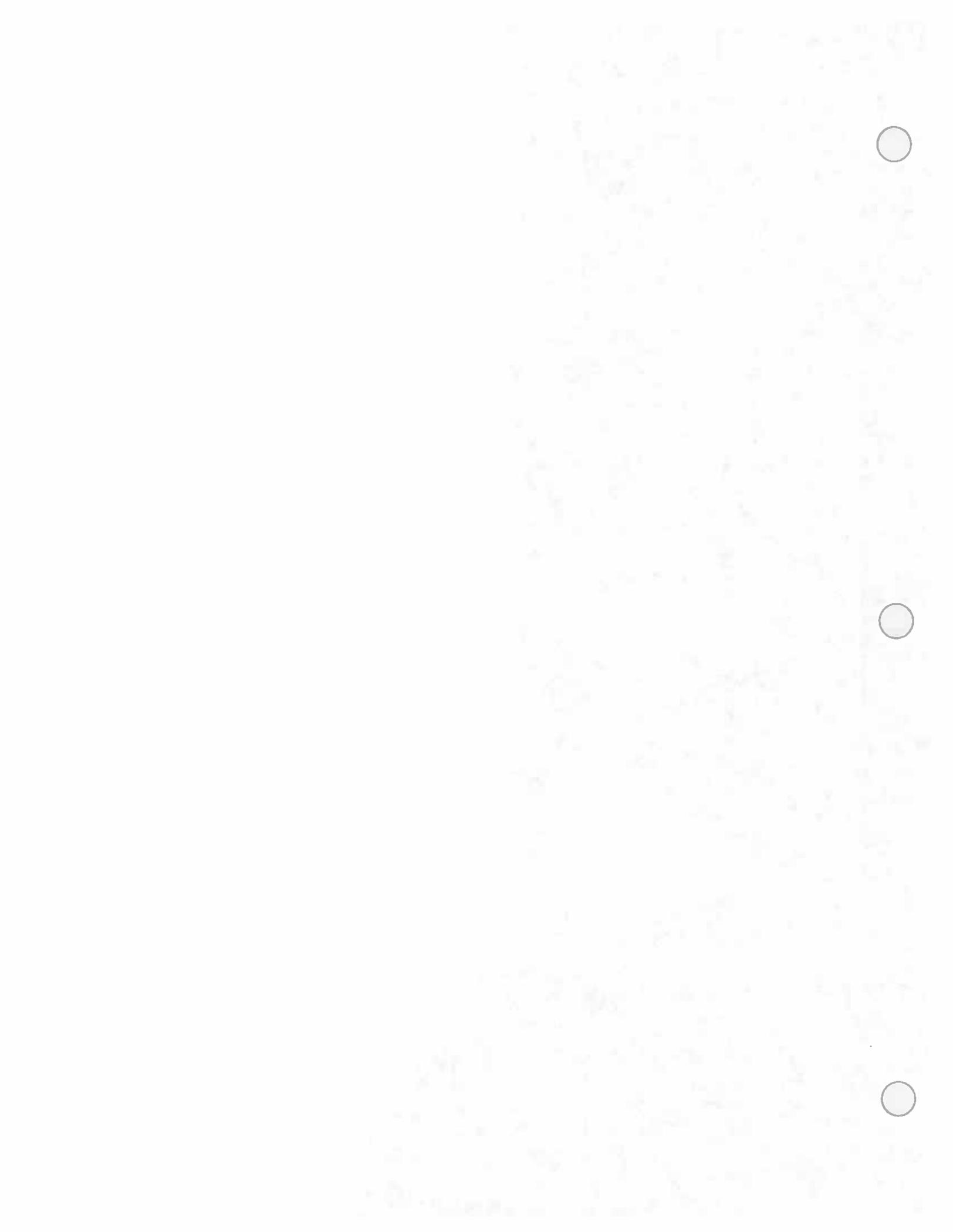
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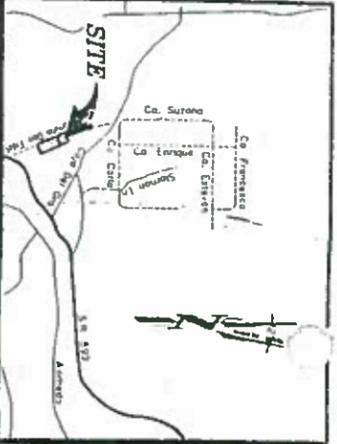
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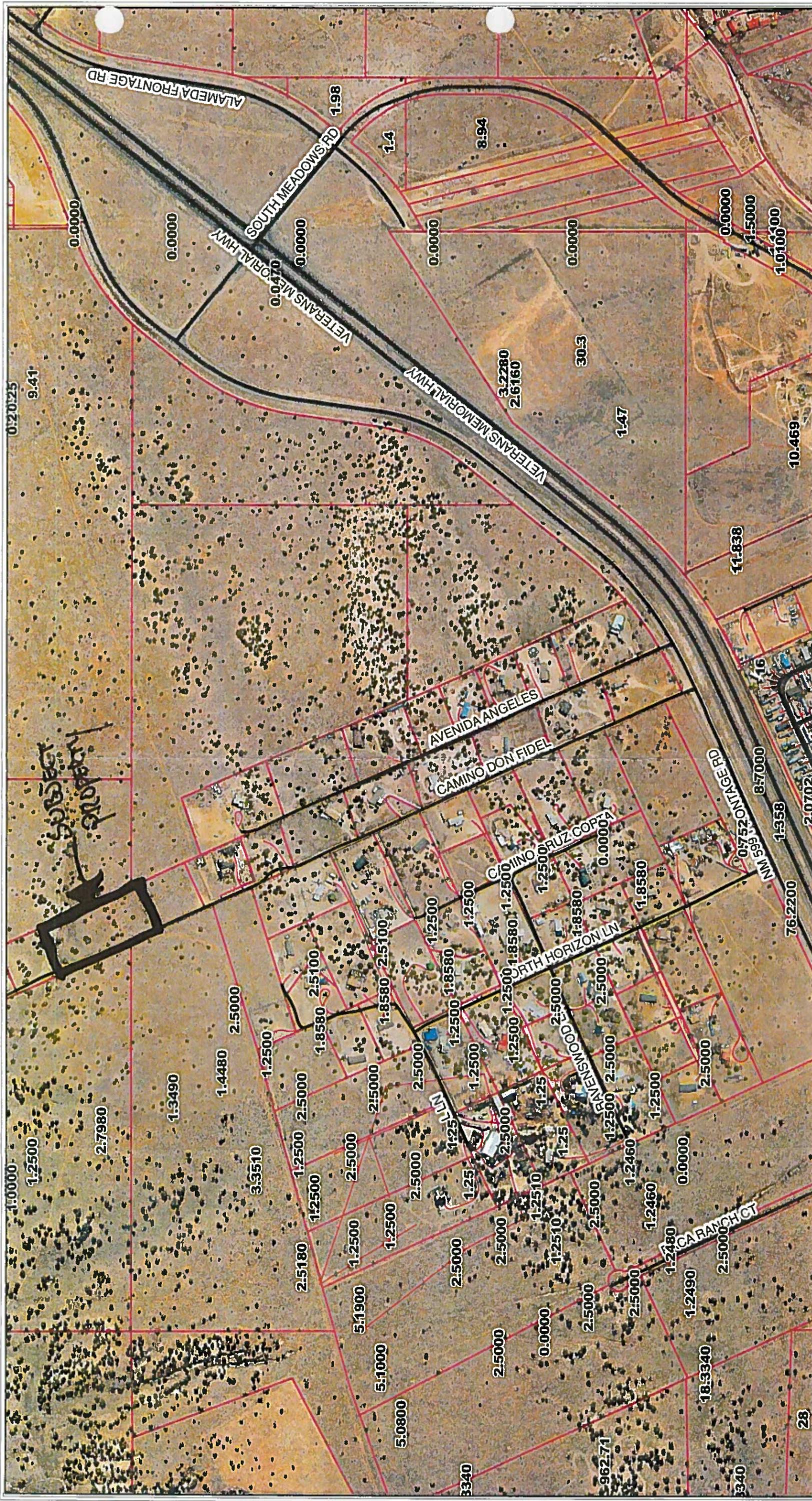




LEGEND / PLAT REFERENCE

- INDICATES POINT FOUND AND USED AS NOTED
- INDICATES BRASS CAP MONUMENT FOUND
- INDICATES SET REBAR WITH CAP, L.S. NO. 15833
- INDICATES CALCULATED POINT NOT SET
- INDICATES UTILITY POLE OR CABLE-LEAD UTILITY LINE
- INDICATES UTILITY RISER
- INDICATES UTILITY BOX
- INDICATES FENCE LINE

BEARINGS ARE BASED ON THAT PLAT TITLED "PLAT OF SANTA FE TRACT 1-C, LOTS 1-4, 5-8, 9-12, 13-16, 17-20, 21-24, 25-28, 29-32, 33-36, 37-40, 41-44, 45-48, 49-52, 53-56, 57-60, 61-64, 65-68, 69-72, 73-76, 77-80, 81-84, 85-88, 89-92, 93-96, 97-100, 101-104, 105-108, 109-112, 113-116, 117-120, 121-124, 125-128, 129-132, 133-136, 137-140, 141-144, 145-148, 149-152, 153-156, 157-160, 161-164, 165-168, 169-172, 173-176, 177-180, 181-184, 185-188, 189-192, 193-196, 197-200, 201-204, 205-208, 209-212, 213-216, 217-220, 221-224, 225-228, 229-232, 233-236, 237-240, 241-244, 245-248, 249-252, 253-256, 257-260, 261-264, 265-268, 269-272, 273-276, 277-280, 281-284, 285-288, 289-292, 293-296, 297-300, 301-304, 305-308, 309-312, 313-316, 317-320, 321-324, 325-328, 329-332, 333-336, 337-340, 341-344, 345-348, 349-352, 353-356, 357-360, 361-364, 365-368, 369-372, 373-376, 377-380, 381-384, 385-388, 389-392, 393-396, 397-400, 401-404, 405-408, 409-412, 413-416, 417-420, 421-424, 425-428, 429-432, 433-436, 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4541-4544, 4545-4548, 4549-4552, 4553-4556, 4557-456



2008 Imagery
2 FOOT CONTOURS

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Legend

-  ROADS
-  DRIVEWAYS
-  PARCELS





Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: November 25, 2014

TO: Board of County Commissioners

FROM: Mathew Martinez, Development Review Specialist *MM*

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

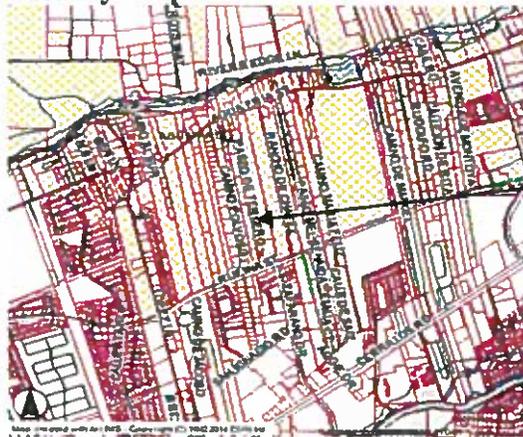
FILE REF.: CDRC CASE # V 14-5190 Pablo & Maria Cerquera Variance

ISSUE:

Pablo & Maria Cerquera, Applicants, request a variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.6 (Density and Dimension Standards), to allow three dwelling units on 0.962 acres.

The property is located within the Traditional Community of Agua Fria, at 2247 Paseo De Tercero within Section 5, Township 16 North, Range 9 East, (Commission District 2).

Vicinity Map:



Site Location

SUMMARY:

The subject lot was created in 1991, by way of Family Transfer and is recognized as a legal lot of record. The Applicants have owned the property since 1994. There are currently two dwelling units on the property. Currently the Applicants and their family reside in one of the existing homes and the other is occupied by tenants. The Applicants have stated the proposed home will also be occupied by tenants until such time their children are of age (adults).

The Applicants request a variance of Ordinance No. 2007-2, (Village of Agua Fria Traditional Community Zoning District), § 10.6 (Density and Dimension Standards), to allow three dwelling units on 0.962 acres. The Applicants state a variance is needed in order to develop the remaining portion of the property. The Applicants intend to place an additional manufactured home on the property to provide them with additional income and for future use for their children. The property is lacking approximately 0.038 acres or 1,152 square feet in order to meet Code requirements for a third dwelling unit on one lot.

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

This Application was submitted on June 25, 2014

On August 21, 2014, the County Development Review Committee (CDRC) met and acted on this case, the decision of the CDRC was to recommend approval of the Applicants request with staff conditions by a 5-0 voice vote with the finding that the amount of acreage they are lacking to meet code requirements is minimal. (Minutes Attached as Exhibit 1).

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

APPROVAL SOUGHT: Approval of a variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), § 10.6 (Density and Dimension Standards), to allow three dwelling units on 0.962 acres. The request does not meet the minimum lot size requirements for this area.

GROWTH MANAGEMENT AREA: SDA-2

HYDROLOGIC ZONE: Traditional Community of Agua Fria, minimum lot size per Code is 0.75 acres per dwelling unit. Lot size can further reduced to 0.33 acres per dwelling unit with Community Water and Community Sewer. The property is served by both Community Water and Sewer.

FIRE PROTECTION: Agua Fria

WATER SUPPLY: Agua Fria Community Water System (AFCWS). The applicants have received a letter of commitment

LIQUID WASTE: City of Santa Fe Sewer System. The applicants have received a letter of commitment

VARIANCES: Yes

AGENCY REVIEW:	<u>Agency:</u> Fire Prevention	<u>Recommendation:</u> Comments not received
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STAFF RECOMMENDATION: Denial of a variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), § 10.6 (Density and Dimension Standards) to allow three dwelling units on 0.962 acres.

The decision of the CDRC was to recommend approval of the variance subject to the following conditions:

1. The Applicant shall comply with all applicable water conservation measures. (As per Ordinance No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit. (As per Article II, § 2).
3. The placement of additional dwelling units is prohibited on the property. (As per Ordinance No. 2007-2 § 10.6).
4. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application (As per 1997 Fire Code and NFPA Life Safety Code).

EXHIBITS:

1. August 21, 2014, CDRC Minutes
2. Letter of request
3. Ordinance No. 2007-2 § 10.6 (Density and Dimension Standards)
4. Article II, § 3 (Variances)
5. Site Plan
6. Site Photographs
7. Aerial of Site and Surrounding Area
8. Letter from Agua Fria Village Association

IV. APPROVAL OF MINUTES: July 17, 2014

Member Martin offered a correction to page 8 clarifying her vote as follows:
"Member Martin said she supports the part of the motion to deny the covenant restriction but in the interests of consistency and the fact that it also lifts the restriction on swimming pools she will oppose the motion as proposed."

With that amendment Member Martin moved to approve the minutes. Member Katz seconded and the motion carried unanimously. [5-0]

VII. NEW BUSINESS

- A. **CDRC CASE # V 14-5190 Pablo & Maria Cerquera Variance. Pablo and Maria Cerquera, Applicants, Request a Variance of Ordinance 2007-2 Village of Agua Fria Zoning District, Section 10.6 (Density and Dimension Standards), to Allow Three Dwelling Units on 0.962 Acres. The Property is Located at 2247 Paseo de Tercero, in the Traditional Community of Agua Fria, within Section 5, Township 16 North, Range 9 East, Commission District 2**

Mathew Martinez read the case caption and gave the staff report as follows:

"The subject lot was created in 1991 by way of Family Transfer and is recognized as a legal lot of record. The Applicants have owned the property since 1994. There are currently two dwelling units on the property. Currently the Applicants and their family reside in one of the existing homes and the other is occupied by tenants. The Applicants have stated the proposed home will also be occupied by tenants until such time their children are of age – adults.

"The Applicants request a variance of Ordinance No. 2007-2, Village of Agua Fria Traditional Community Zoning District, § 10.6, Density and Dimension Standards, to allow three dwelling units on 0.962 acres. The Applicants state a variance is needed in order to develop the remaining portion of the property. The Applicants intend to place an additional manufactured home on the property to provide them with additional income and for future use for their children. The property is lacking approximately 0.038 acres or 1,152 square feet in order to meet code requirements for a third dwelling unit.

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

Mr. Martinez stated staff was recommending denial of a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, § 10.6, Density and Dimension Standards, to allow three dwelling units on 0.962 acres. If the decision of the CDRC is to recommend approval of the Applicants' request, staff recommends imposition of the following conditions:



1. The Applicant shall comply with all applicable water conservation measures. (As per Ordinance No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit. (As per Article II, § 2).
3. The placement of additional dwelling units is prohibited on the property. (As per Ordinance No. 2007-2 § 10.6).
4. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application (As per 1997 Fire Code and NFPA Life Safety Code).

Member Katz asked if the only thing preventing them from adding the third home was the .038 and Mr. Martinez replied it was.

Member Booth asked for help in visualizing that area and Member Gonzales said the chambers they were in appeared to be approximately 2,000 square feet, or greater area than the discrepancy.

Member Gonzales how many units were on the property and Mr. Martinez said there are currently two units and they are requesting a third.

Duly sworn, Maria Cerquera stating they were requesting a minimal variance. Initially, the property was part of a larger holding belonging to her parents. They hope to have their children, who are currently in college, have a place to live. Before the children return they hope to use it for supplemental income. She explained the original property ran from Agua Fria to Rufina and was divided into equal parcels. She said they are on community water and city sewer and the additional dwelling will hook up to those services as well.

There was no one from the public wishing to provide testimony.

In Case #V 14-5190, Member Katz moved approval with staff conditions, stating it was a de minimus discrepancy. Member Booth seconded and the motion passed by unanimous [5-0] voice vote.

~~VII B. **CDRC CASE # V 14-5230 Sam Mendoza Variance. Sam Mendoza, Applicant, Requests a Variance of Article II, Section 4.3.3.b.ii (Small Lot Family Transfers), of the Land Development Code to Allow a Small Lot Family Transfer of 2.79 Acres Into Two Lots Prior to Being in Possession of the Family Proper for a Five-Year Period. The Property is Located at 58 Camino Don Fidel, Off the 599 West Frontage Road, within Section 36, Township 17 North, Range 9 East, Commission District 2**~~

~~Mr. Martinez read the case caption and gave the staff report as follows:~~

June 5, 2014

Santa Fe County
P.O. Box 276
Santa Fe, NM87504

To whom it may concern:

It is our intent to ask the County of Santa Fe to allow us a variance for a third unit on our property in the Village of Agua Fria. The regulations require three units per one acre. The piece of property, left to us by our parents, is just shy at .962 acres.

At present, we are residing on 1/3 of this property and have a single wide mobile home on 1/3. We would like to develop the remaining property to place a mobile home for needed income and for future use for our children.

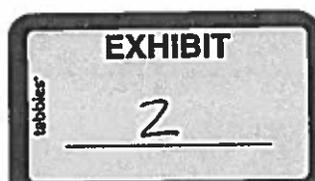
We have access to Agua Fria Community water and City sewer. We ask that you consider this variance being that it would not interfere with our neighbors or community.

Thank you for your consideration to this matter.

Sincerely,



Pablo and Maria Cerquera
Ph: 903-714-6894



10.6 Density and Dimensional Standards

The following table illustrates the dimensional standards that apply in the Village of Agua Fria Zoning District. Measurements and exceptions to the standards of this schedule are listed in the table notes.

Commentary: The density and dimensional standards set forth in this section are not a guarantee that stated development density and intensities can be attained. Other factors—water and other public facility availability, infrastructure capacity, building layout, physical limitations, and parking configuration to name a few—may have the effect of limiting development intensity more than the stated standards.

Village of Agua Fria Zoning District																							
Sub districts	Minimum Lot Area/Principal Use (acres) (1)							Max. Coverage (%)	Max. Height (ft)	Min. Setbacks (ft) (2)													
	Base Density/ Intensity		Water Cons.	Long Term Water	Community Services											Residential Uses	Non- residential Uses	Residential Uses		Non Res Uses	Front & Street Side	Interior Side	Rear
	Res Uses	Non Res Uses			Water	Sewer	Both W&S											SF	MF				
AFTCZD	.75	.75			.75	.75	0.33	40	24	24	24	0	5	5									
AFLDUZ	2.5	2.5			1	1	0.5	20	24	24	24	0	20	20									

Notes:
 (1) Where adequate water is available, minimum lot area may be reduced by employing water conservation measures and reducing water use. Further reductions may be achieved by submitting proof of adequate long term water availability, connecting to community water, community sewer or both (W&S), all in accordance with Article III, Section 10, Lot Size Requirements of the Code or, such additional density bonus and lot size provisions of County Ordinance 2006-02, Affordable Housing.
 (2) Setbacks shall be measured from the property line or from the edge of the road easement where the property line is inside the road easement.

2.5 Zoning

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

2.6 Subdivisions

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

2.7 Other Requirements

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

→ **SECTION 3 - VARIANCES**

3.1 Proposed Development

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

3.2 Variation or Modification

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

3.3 Granting Variances and Modifications

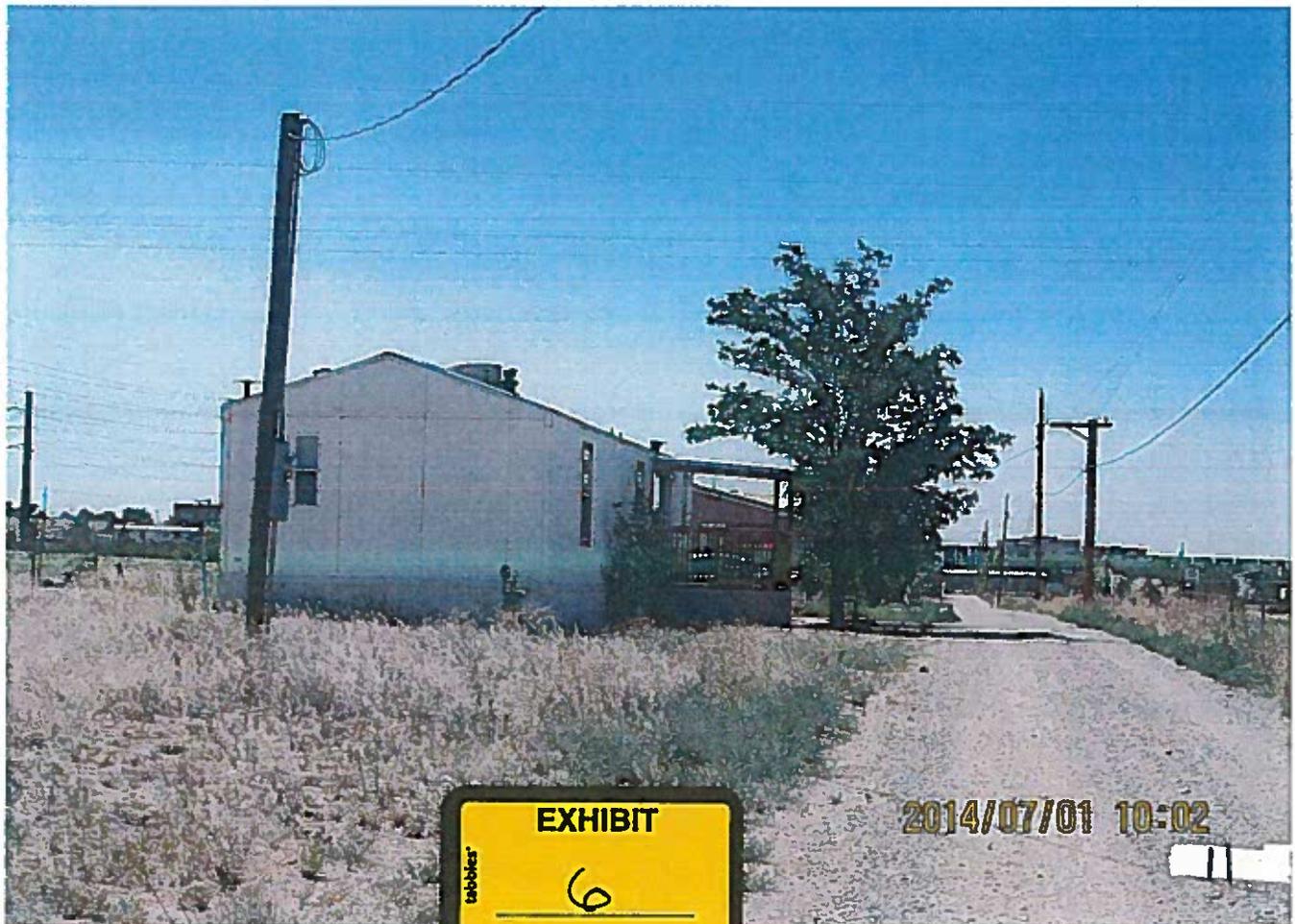
In granting variances, and modifications, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

3.4 Height Variance in Airport Zones

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

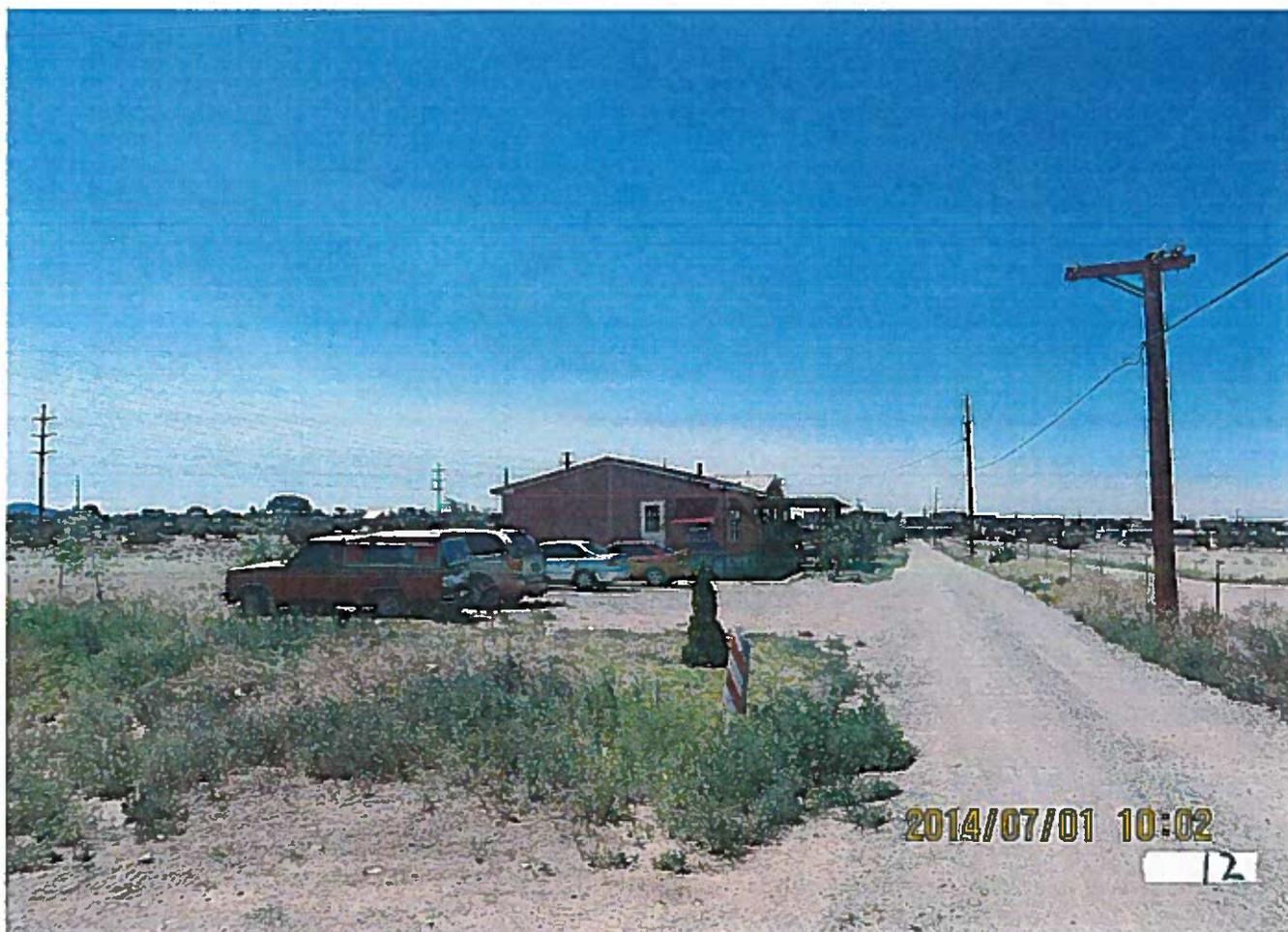


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EXHIBIT
6

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Legend

-  ROADS
-  DRIVEWAYS
-  PARCELS

EXHIBIT

7.



2008 Imagery
2 FOOT CONTOURS

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.

Agua Fria Village Association

073 Camino Samuel Montoya
Santa Fe, NM 87507



Santa Fe County Land Use Administrator
P.O. Box 276
Santa Fe, New Mexico 87504-0276

To Whom it May Concern:

August 22, 2014

The Agua Fria Village Association (AFVA) is the County of Santa Fe-recognized neighborhood association for the Agua Fria Village Traditional Historic Community (THC- <http://www.co.santa-fe.nm.us/userfiles/file/find/2006-12.pdf>) area. The AFVA voted in support of Case # V2014-5190 2247 Paseo de Tercero (Pablo and Maria Tercero Cerquera) at its meeting on Monday, August 4, 2014. The variance request is to allow three dwelling units on 0.962 acres served by community sewer and water; which normally would require 0.99 acres.

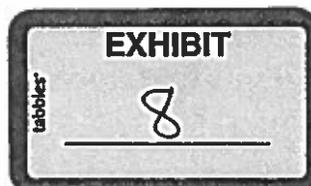
The AFVA participated in the creation of THC's Community Plan adopted by County Ordinance #2006-116 by the Santa Fe Board of County Commissioners on March 13, 2007 (located at website: http://www.santafecounty.org/find/documents/Agua_Fria_Community_Plan_as_adopted_by_Resolution_2006_116.pdf). The Community Plan encourages family transfers as a method of achieving affordable housing and in fulfillment of the traditional method of land division patterns that have existed since 1693 when Maestro de Campo Roque Madrid received a land grant for his service in the Reconquest by Governor-General Don Diego De Vargas.

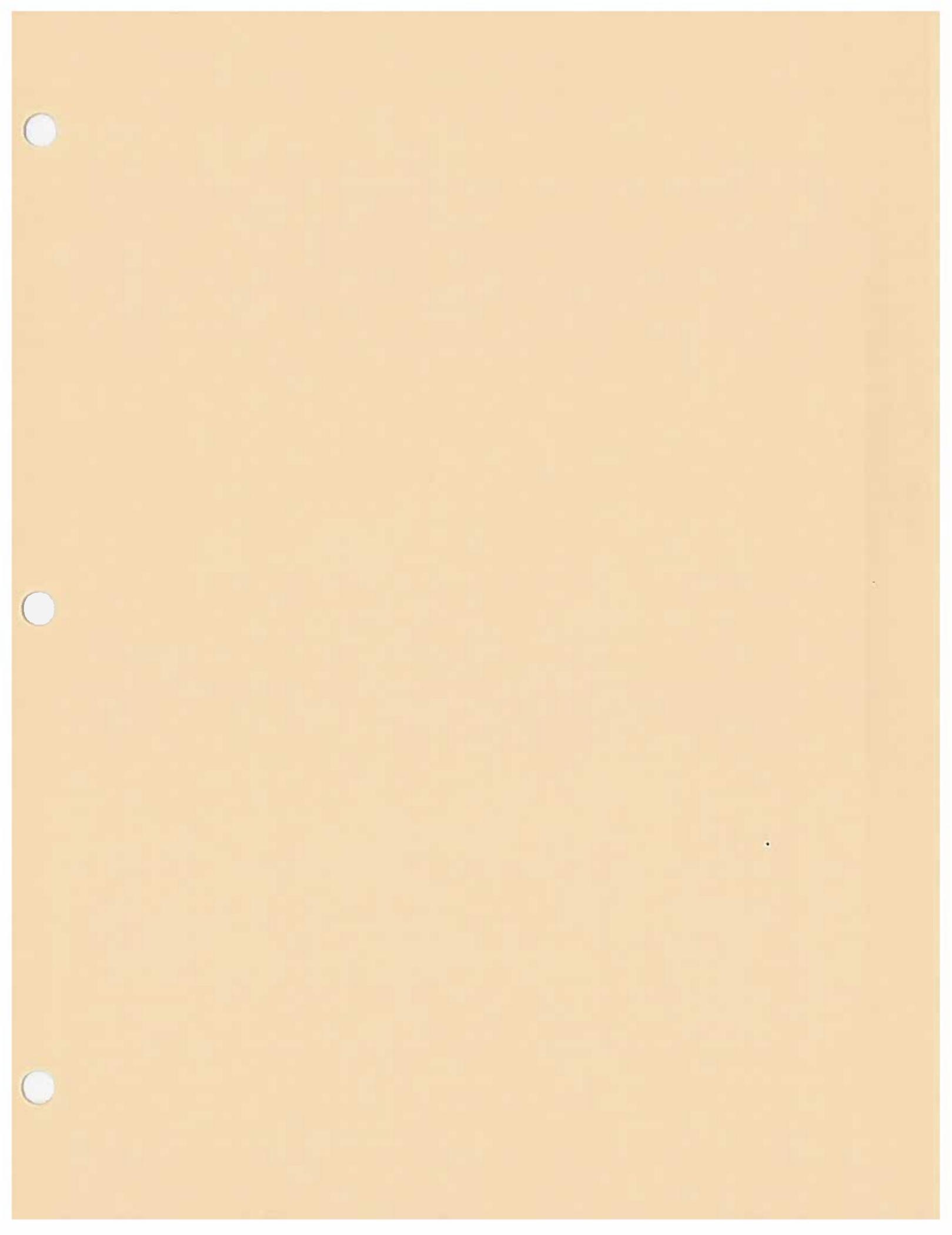
We find the Cerquera family transfer to meet all our criteria in the Community Plan.

Thank you for your consideration.

Sincerely,

William Henry Mee, President AFVA
(505) 473-3160
WilliamHenryMee@aol.com





Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: November 25, 2014

TO: Board of County Commissioners

FROM: John Lovato, Development Review Specialist Senior *JL*

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

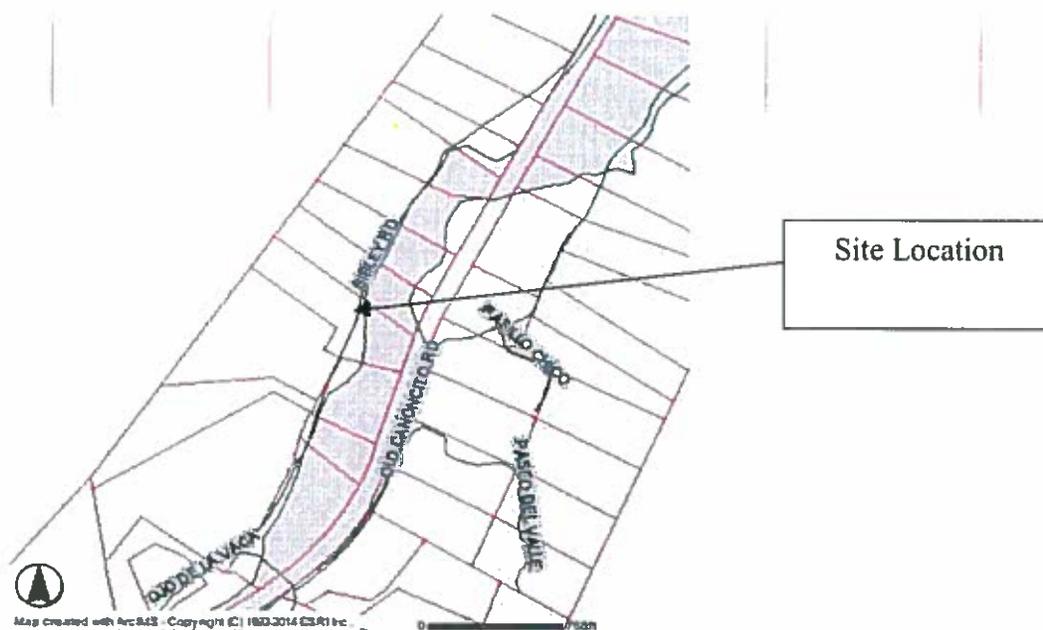
FILE REF.: CDRC CASE # V 14-5270 Madeleine Wells and Mary O'Brien Variance

ISSUE:

Madeline Wells and Mary O'Brien, Applicants, request a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 6.195 acres.

The property is located at 30 Sibley Road, within the vicinity of Canoncito, within Section 13, Township 15 North, Range 10 East, (Commission District 4)

Vicinity Map:



1.

SUMMARY:

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

According to a point diversion summary, the property has a well which was installed in November of 2004, at a depth of 340 feet, and which draws approximately 10 gallons per minute. In 2005, the New Mexico Environment Department Community Services Bureau issued a liquid waste permit to the property for a single family residence served by a septic tank.

The Applicants request a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 6.195 acres. The Applicants state, when they initially purchased the property in 1993, both structures existed. Since the purchase of the property, the structure across the creek has been abandoned and is no longer accessible due to lack of all-weather access and the structure is non-habitable. The proposed structure will not be located across the river and will have all- weather access. The Applicants state they purchased the property together with the intention of constructing a second dwelling so they both have homes they could reside in. Their request is to replace the abandon second dwelling with a habitable dwelling. There are several properties with similar lot sizes and multiple dwellings and accessory structures in the immediate area.

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

This Application was submitted on July 14, 2014.

On October 14, 2014, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend approval of the Applicants request by a 3-1 vote. (Minutes Attached as Exhibit 1).

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

APPROVAL SOUGHT: Approval of a variance of Article III, §10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 6.195 acres.

GROWTH MANAGEMENT AREA: El Centro, SDA-2

HYDROLOGIC ZONE: Homestead Hydrologic Zone. The Minimum lot size per Code is 160 acres per dwelling unit. Lot size can be reduced to 40 acres per dwelling unit with signed and recorded water restrictions. The proposed additional dwelling unit exceeds the number of dwelling units allowed on the subject property.

FIRE PROTECTION: Hondo Fire District.

WATER SUPPLY: Domestic Well

LIQUID WASTE: Conventional Septic System.

VARIANCES: Yes

AGENCY REVIEW:	Agency Fire Prevention	Recommendation Conditional Approval
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STAFF RECOMMENDATION: Denial of a variance of Article III, §10 (Lot Size Requirements) of the Land Development Code. The decision of the CDRC was to recommend approval of the variance subject to the following conditions:

1. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office at the time of Development Permit (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling. (As per Article II, § 2).
3. The Applicant shall provide an updated liquid waste permit for both homes from the New Mexico Environment Department with the Development Permit Application (As per Article III, § 2.4.1a.1 (a) (iv)).
4. The placement of additional dwelling units or Division of land is prohibited on the property. (As per Article III, § 10).

5. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application (As per 1997 Fire Code and NFPA Life Safety Code).
6. The Applicant shall remove the abandon structure on the property prior to Development Permit issuance. (As per Ordinance No. 2009-11).

EXHIBITS:

1. October 16, 2014 CDRC Minutes
2. Letter of request
3. Article III, §10 (Lot Size Requirements)
4. Article II, § 3 (Variances)
5. Site Photographs
6. Site Plan
7. Aerial of site and surrounding area
8. Fire Prevention Memo

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

Noting progress needs to proceed and change is good, Member Anaya moved to approve CDRC Case #14-5300 with staff conditions and with the additional condition:
5. There will be a shared well agreement in the case one of the wells fails, with water restrictions of 0.25 acre-foot per residence per year. This is to be noted on the plat.

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

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

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

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

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

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

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

replace the abandoned second dwelling with a habitable dwelling. There are several properties with similar lot sizes and multiple dwellings and accessory structures in the immediate area.”

Mr. Dalton stated staff was recommending denial of a variance of Article III, §10 (Lot Size Requirements) of the Land Development Code. If the decision of the CDRC is to recommend approval of the Applicant’s request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk’s Office at the time of Development Permit (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling. (As per Article II, § 2).
3. The Applicant shall provide an updated liquid waste permit for both homes from the New Mexico Environment Department with the Development Permit Application (As per Article III, § 2.4.1a.1 (a) (iv)).
4. The placement of additional dwelling units or Division of land is prohibited on the property. (As per Article III, § 10).
5. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application (As per 1997 Fire Code and NFPA Life Safety Code).
6. The Applicant shall remove the abandon structure on the property prior to Development Permit issuance. (As per Ordinance No. 2009-11).

There were no questions of staff and Madeline Wells was placed under the oath. She indicated that when she purchased half of the property the intent was to improve both dwellings. However, only one was remodeled and the other was abandoned due to FEMA floodplain issues and creek bed erosion. The plan is now to build a second, accessible structure elsewhere on the lot. She pointed out the planned location on the west side of Sibley Road.

Chair Katz asked if anyone had ever lived in the now abandoned structure. Ms. Wells said there was a tenant until 1995 and she lived there until moving away in 2007. Since that time the creek bed has dropped substantially.

There was no one in the audience wishing to provide input.

Member Anaya asked if they were planning to drill another well. Ms. Wells said there is currently a well that produces approximately 10 gpm with a depth to water of 240 feet. Member Anaya asked when the second dwelling was built. Ms. Wells said they couldn’t find any records relating when it was built. Ms. Lucero said research found no permits issued prior to 2005; at that point the County issued a permit for an addition to the main structure.

Member Booth moved to deny. The motion failed for lack of a second.

Member Anaya moved to approve CDRC Case #V 14-5270 with staff conditions and Member Gonzales seconded. The motion carried 3-1 with Member Booth casting the nay vote.

Chair Katz said he was persuaded by the fact that there had been two houses on the property for many years.

- H. **CDRC CASE # PDP/FDP 14-5011 31 Bonanza Creek Road. Leslie Moody and Mitchell Ackerman, Applicants, JenkinsGavin, Agents, request Preliminary and Final Development Plan approval to allow a Bed and Breakfast within an existing residence on 9.94 acres. The property is located on the west side of Highway 14 off Bonanza Creek Road (County Road 45), within § 26, Township 15 North, Range 8 East (Commission District 5)**

Mr. Larrañaga recited the case caption and gave the staff report as follows:

“On May 13, 2014, the Board of County Commissioners approved Master Plan Zoning to allow a bed and breakfast within an existing residence on 9.94 acres. The following conditions of approval were imposed on the Master Plan, by the BCC: The Applicant shall comply with all review agency comments and conditions; The Master Plan with appropriate signatures shall be recorded with the County Clerk; Only two kitchens shall be allowed on the site in keeping with the non-conforming status of the site: The Preliminary and Final Development Plan shall be submitted promptly after 90 days of data collection on actual water use is obtained; The Final Development Plan shall be submitted to the County Development Review Committee accompanied by a staff report; The Applicant shall provide water rights if the proposed water use for the bed and breakfast exceeds 3 acre-feet of water per year.

“The Applicants request Preliminary and Final Development Plan approval to allow an existing 5,580 square foot five-bedroom residence to operate as a bed and breakfast. There are two dwellings on the 9.94-acre site. A 4,561 square foot residence will be utilized by the Applicants as their primary residence and the second residence will be utilized as a five-bedroom bed and breakfast. The Applicants are not proposing any expansion of the existing structures as part of this Application.

“The Applicants have complied with the conditions of approval of the Master Plan: the Applicants have complied with all review agency comments and conditions, as illustrated in the proposed Final Development Plan drawings; the Master Plan was recorded with the County Clerk; the Final Development Plan drawings illustrate two kitchens; the Application for Preliminary and Final Development Plan was submitted in a timely manner; on May 1, 2014, the

34 Sibley Rd.
Santa Fe, NM 87508
July 7, 2014

County Development Review Committee and Board of County Commissioners
102 Grant Ave.
Santa Fe, NM 87501

Mr. Chairman and Members of the Committee and Board:

Madeleine Wells and Mary O'Brien, co-owners of the property at #30 and #34 Sibley Rd., Santa Fe, NM request a variance to the Santa Fe County Land Development Code to allow construction of an accessory structure on their property as described in the accompanying application.

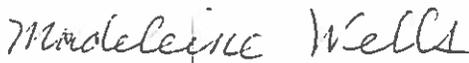
The accessory structure would be a "casita" independent of the main house. It would be occupied by one of the co-owners.

Reasons for the request are as follows: At the time that the present owners bought the property, all-weather vehicle access existed to the habitable structure at the northeast corner of the property. Since then, erosion in the bed of the Galisteo Creek has made vehicle access to that location mostly impossible. In particular, it has not been possible to bring in materials for maintenance and repairs, so the structure is now not habitable. The variance would allow the property owners to replace the now inaccessible and uninhabitable structure with a substantially equivalent structure.

The proposed structure meets the requirements for an accessory structure that would be allowed on the property by the proposed new zoning map.

Thank you for your attention.

Sincerely,



Madeleine Wells



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

- 9.2 Multiple use projects shall calculate cumulative parking needs for each type of use in the project to be developed.
- 9.3 Minimum size of parking space shall be 300 square feet which includes the parking stalls and aisles.
- 9.4 Commercial, industrial, other non-residential and large scale residential uses shall provide for handicap parking.

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

SECTION 10 - LOT SIZE REQUIREMENTS

10.1 Relationship of Lot Sizes to Water Policies

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

EXHIBIT

tabbier

2.

III - 88

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

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

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

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

BASIN FRINGE ZONE: Same as Basin Zone.

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

MOUNTAIN ZONE: Same as Homestead Zone.

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

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

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

10.2 Calculation of Minimum Lot Size

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

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

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

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

Where:

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

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

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

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

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

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

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

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

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

10.2.2 Calculation of Use

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

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

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

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

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

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

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

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

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

10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas

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

a. Standard Values of Water Availability

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

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

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

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

b. Adjustments for Water Conservation

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

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

10.3 Exceptions to Minimum Lot Size Requirements

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

10.3.1 Metropolitan Area - Community Water Systems

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

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

10.3.2 Agricultural Areas

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

10.3.3 Traditional Communities

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

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

10.3.4 Urban Areas

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

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

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

10.4 Density Transfer

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

SECTION 11 - IMPORTING OF WATER

11.1 Location Requirements

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

2.5 Zoning

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

2.6 Subdivisions

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

2.7 Other Requirements

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



SECTION 3 - VARIANCES

3.1 Proposed Development

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

3.2 Variation or Modification

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

3.3 Granting Variances and Modifications

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

3.4 Height Variance in Airport Zones

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



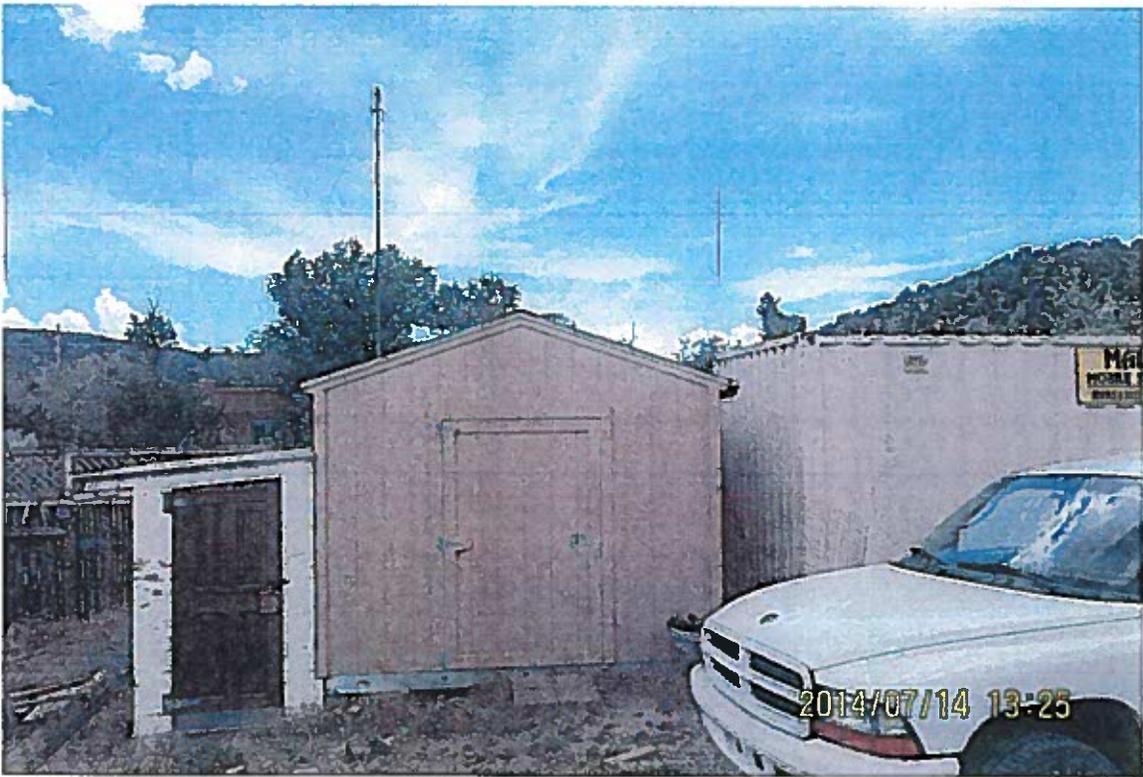
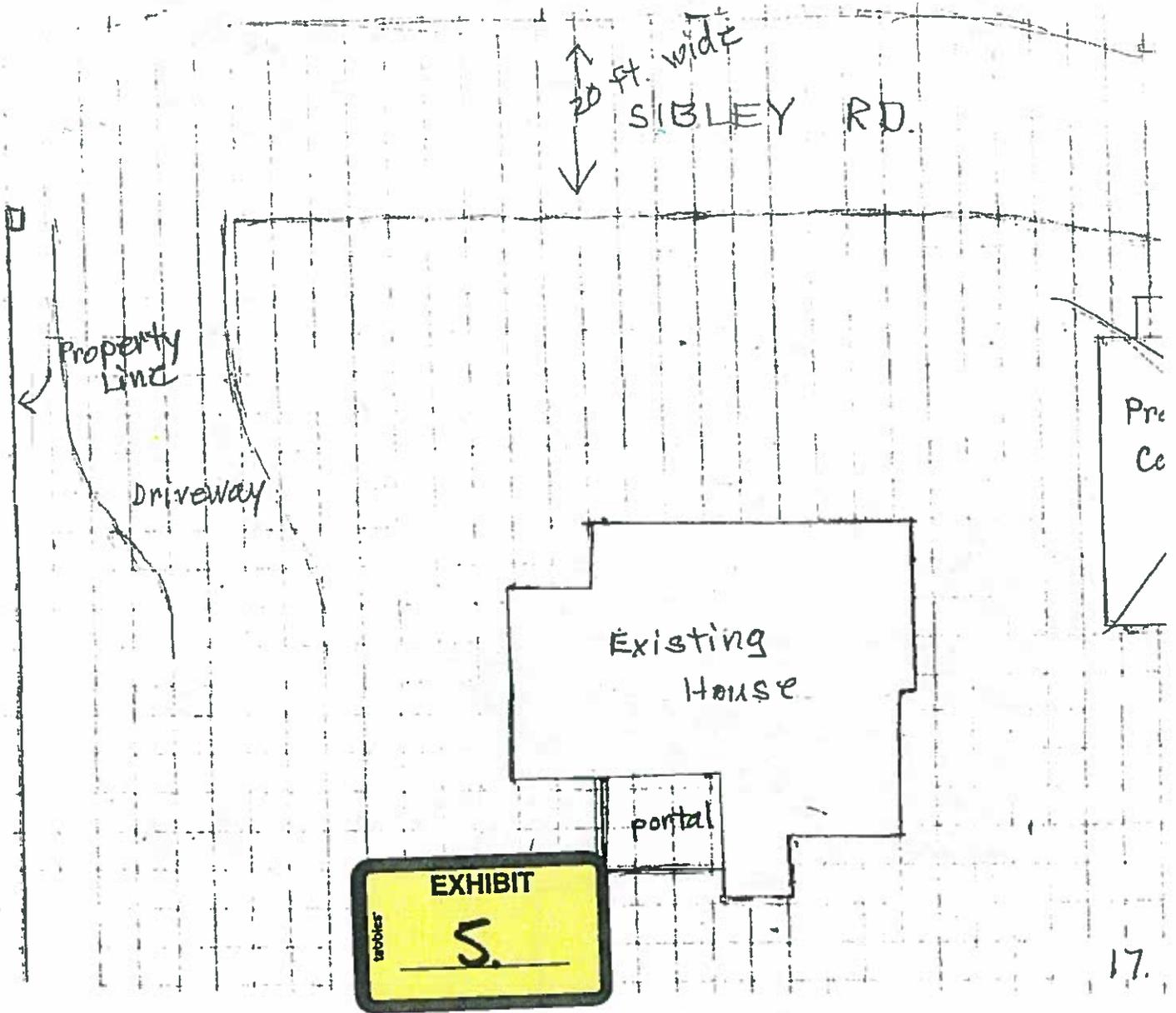
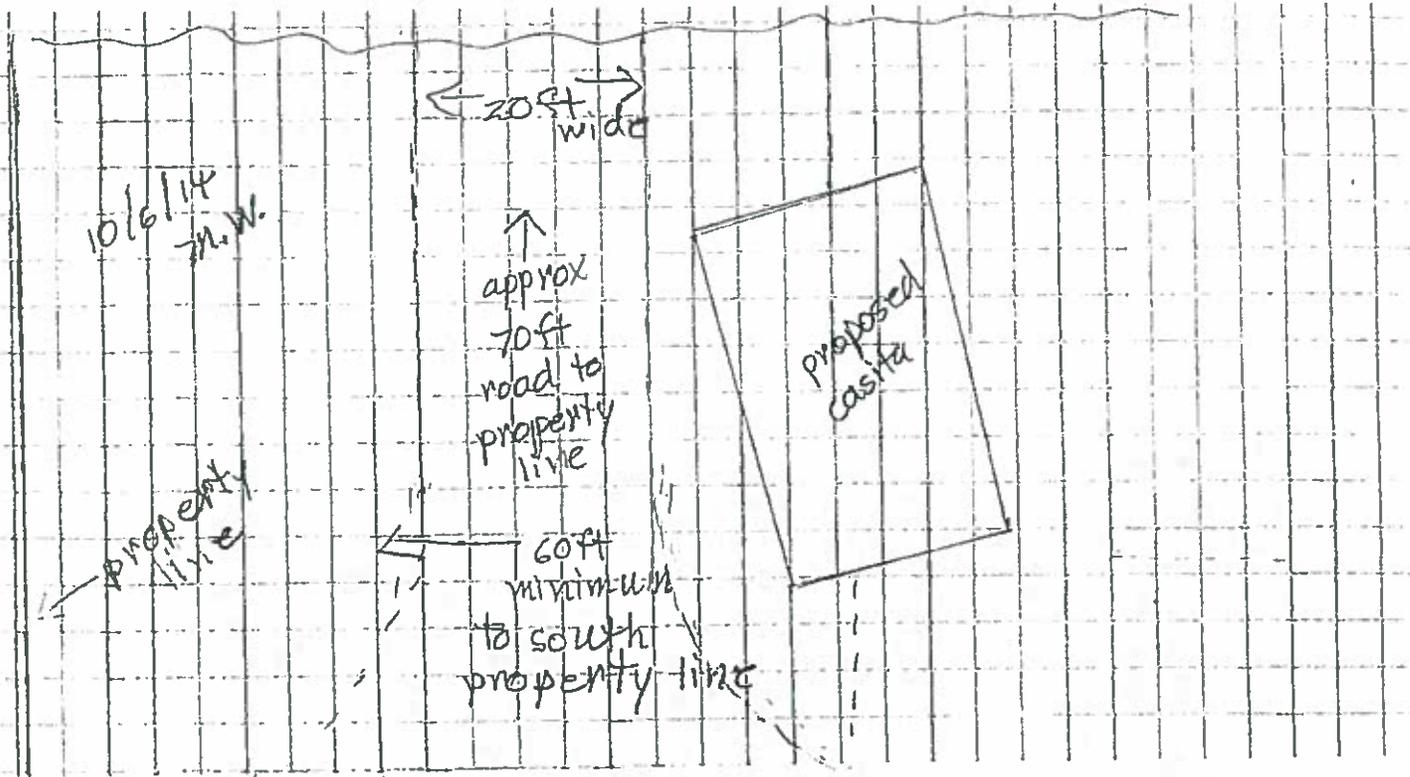


EXHIBIT
4.





Legend

-  ROADS
-  DRIVEWAYS
-  PARCELS

1-1,800

1 inch represents 150 feet



2008 Imagery
2 FOOT CONTOURS

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.



October 8, 2014

tabbles

EXHIBIT

6.

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Santa Fe County Fire Department Fire Prevention Division

Official Development Review

Date	October 6, 2014		
Project Name	Wells, Madeleine		
Project Location	30 Sibley Road T15; R10; S13 "Very High Wildland-Urban Hazard Area"		
Description	Variance for construction of casita (density)	Case Manager	John Lovato
Applicant Name	Madeleine Wells & Mary O'Brien	County Case #	14-5270
Applicant Address	30/34 Sibley Road Santa Fe, NM 87508	Fire District	Hondo
Applicant Phone	505-690-5307		
Review Type:	Commercial <input type="checkbox"/>	Residential <input checked="" type="checkbox"/>	Sprinklers <input type="checkbox"/> Hydrant Acceptance <input type="checkbox"/>
	Master Plan <input type="checkbox"/>	Preliminary <input type="checkbox"/>	Final <input checked="" type="checkbox"/> Inspection <input checked="" type="checkbox"/> Lot Split <input type="checkbox"/>
	Wildland <input checked="" type="checkbox"/>	Variance <input checked="" type="checkbox"/>	
Project Status:	Approved <input type="checkbox"/>	Approved with Conditions <input checked="" type="checkbox"/>	Denial <input type="checkbox"/>

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

Summary of Review

- Roads shall meet the minimum County standards for fire apparatus access roads within this type of proposed development... (page #2)
- Per amended drawing the driveway shall incorporate a hammerhead type turnaround area for emergency vehicle purposes... (page #2)
- This development's location is rated within a "Very High Wildland-Urban Hazard Area" and shall comply with all applicable regulations ... (page #3)
- Prior to acceptance and upon completion of the permitted work, the Contractor/Owner shall call for and submit to a final inspection by this office for confirmation of compliance with the above requirements and applicable Codes. (page #4)



Fire Department Access

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

- **Fire Access Lanes**

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

- **Roadways/Driveways**

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

Roads shall meet the minimum County standards for fire apparatus access roads within this type of proposed development. Driveway, turnouts and turnarounds shall be County approved all-weather driving surface of minimum 6" compacted basecourse or equivalent. Minimum gate and driveway width shall be 20' and an unobstructed vertical clearance of 13'6".

Per amended drawing the driveway shall incorporate a hammerhead type turnaround area for emergency vehicle purposes conforming to the access and turnaround requirements and dimensions of the Santa Fe County Fire Department.

- **Street Signs/Rural Address**

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

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

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

- **Slope/Road Grade**

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

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

- **Restricted Access/Gates/Security Systems**

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

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

Fire Protection Systems

Automatic Fire Protection/Suppression

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

Urban-Wildland Interface

SFC Ordinance 2001-11, Urban Wildland Interface Code

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

- **Building Materials**

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

- **Location/Addressing/Access**

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

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

▪ **Vegetation Management**

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

General Requirements/Comments

▪ **Inspections/Acceptance Tests**

Shall comply with Article 1, Section 103.3.2 - New Construction and Alterations of the 1997 Uniform Fire Code, inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal

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

▪ **Permits**

As required

Final Status

Recommendation for Final Development Plan approval with the above conditions applied.

Tim Gilmore, Inspector


Code Enforcement Official

10-7-14
Date

Through: David Sperling, Chief

File: DevRev/H/Wells/100714

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

