

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

ORDINANCE NO. 2023- 03

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AN ORDINANCE  
AMENDING ORDINANCE NOS. 1996-16, 2004-1, 2006-12, AND 2008-18 BY REVISING  
THE BOUNDARY OF THE VILLAGE OF AGUA FRIA TRADITIONAL HISTORIC  
COMMUNITY AND DECLARING A PORTION OF "AREA 1B" TO BE INCLUDED  
WITHIN THE VILLAGE OF AGUA FRIA TRADITIONAL HISTORIC COMMUNITY

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**WHEREAS**, the Board of County Commissioners ("Board") of Santa Fe County ("County") is authorized by Sections 3-7-1.1 and 3-21-1 NMSA 1978 to declare a Traditional Historic Community ("THC"); and

**WHEREAS**, in 1995, Agua Fria Village was declared a THC as designated by the Board in accordance with state law (Ordinance No. 1995-8); and

**WHEREAS**, Ordinance Nos. 1996-16, 2004-1, 2006-12, and 2008-18 amended the boundaries of the Village of Agua Fria THC; and

**WHEREAS**, Ordinance No. 2004-1 provided that property owners outside of, but contiguous to, the Village of Agua Fria THC could request inclusion in the Village of Agua Fria THC; and

**WHEREAS**, in 2008, the County and the City of Santa Fe and other parties entered into a Settlement Agreement pertaining to certain lands of the County to be annexed by the City (the "Settlement Agreement"), among other things; and

**WHEREAS**, the Settlement Agreement provides the following exception to such annexation: "Residents of Area 1 shall be permitted to submit a petition or petitions with the Board to include portions of Area 1 in the Agua Fria Traditional Historic Community prior to annexation"; and

**WHEREAS**, in 2009, the County and the City of Santa Fe executed an Annexation Phasing Agreement, dividing the annexation into three phases, encompassing 18 distinct areas; and

**WHEREAS**, Amendment No. 1 to the Annexation Phasing Agreement, executed in 2013, altered the annexation, such that "Area 1" was divided into two components, a portion of which was included in annexation Phase II and a portion which was slated for annexation in Phase III,

known as the “remainder of Area 1” or “Area 1B”, north of West Alameda Street to the Highway 599 Bypass; and

**WHEREAS**, as of the date this Ordinance, the City of Santa Fe has not yet annexed Area 1B; and

**WHEREAS**, on April 5, 2023, the Board accepted for consideration a community petition requesting the inclusion of the “Phase III, Area 1B”, hereinafter referred to as “Area 1B”, within the Village of Agua Fria THC; and

**WHEREAS**, supplemental petitions were filed with the County Clerk on April 25 and May 1, 2023, who independently confirmed that the supplemental petitions contained signatures of more than twenty-five percent of the qualified electors of the territory to be included; and

**WHEREAS**, the Board held a public hearing at a special and regular meeting on May 1, 2023, and May 30, 2023, respectively, at which all interested persons were allowed to testify and present evidence for and against the potential inclusion of Area 1B in the Village of Agua Fria THC, notice of which initial and continued public hearing was published in the Albuquerque Journal on April 12 and 19, 2023, for the May 1<sup>st</sup> meeting and on May 15 and 22, 2023, for the May 30<sup>th</sup> meeting; and

**WHEREAS**, at the May 30, 2023, meeting, certain landowners of undeveloped lands in Area 1B, including Homewise, Inc., Big Sky Santa Fe, LLC, and Buckman Development, LLC, put forth a proposal whereby undeveloped land within Area 1B would largely be excluded from the Village of Agua Fria THC and remain within the so-called “Presumptive City Limits” as that term is defined in the Settlement Agreement; and

**WHEREAS**, the Board directed County staff to: (1) develop a map that would effectuate the so-called carve out proposal, which is attached hereto as Exhibit A and (2) notify landowners in the proposed carve out area and solicit their preference as between remaining within the Presumptive City Limits or becoming a part of the Village of Agua Fria THC; and

**WHEREAS**, the Board postponed final action on the proposed ordinance until June 13, 2023; and

**WHEREAS**, notifications to landowners in the proposed carve out area and any response from such landowners were made part of the record concerning this ordinance at the Board’s June 13, 2023, meeting; and

**WHEREAS**, the Board has examined the land proposed for inclusion in the Village of Agua Fria THC as shown on Exhibit A as “Addition to Agua Fria Village THC” and has determined that the property is appropriate for inclusion, as Area 1B was previously designated by the Board in the original issuance of the Agua Fria Traditional Historic Community Ordinance

(Ordinance No. 1995-8), to be part of an identifiable village that was documented as being in existence for more than 100 years, was an unincorporated area of Santa Fe County, included structures or landmarks associated with the identity of the area traditionally known as the Village of Agua Fria, and was an area with a distinctive character and/or traditional quality that could be distinguished from surrounding areas or new development in the vicinity; and

**WHEREAS**, evidence admitted at the public hearing on May 1 and May 30, 2023, confirms the previous findings of the Board with regard to the land identified on Exhibit A as “Addition to Agua Fria Village THC”; and

**WHEREAS**, Area 1B is within the “Presumptive City Limits” as defined by the Settlement Agreement, pursuant to which the County delegated zoning authority to the City for that area based upon the understanding that the City would timely annex Area 1B prior to a THC petition being presented to the Board for consideration; and

**WHEREAS**, by the terms of Section 2(c) of the Settlement Agreement, the City is to respect the “rural residential zoning prevalent in the area” following annexation and urban densities were not to be established during the term of the Agreement; and

**WHEREAS**, pursuant to Section 3-21-1 NMSA 1978, “[a]ny village, community, neighborhood or district that is declared a traditional historic community shall be excluded from the extraterritorial zone and extraterritorial zoning authority of any municipality whose extraterritorial zoning authority extends to include all or a portion of the traditional historic community and shall be subject to the zoning jurisdiction of the county in which the greatest portion of the traditional historic community lies”; and

**WHEREAS**, exclusion of land within Area 1B from the zoning jurisdiction of the City by including such land in the Agua Fria THC constitutes a substantial change in circumstances justifying a temporary change in zoning to such land while the County develops comprehensive zoning for the area or land is rezoned on a case-by-case basis.

**NOW, THEREFORE, BE IT ORDAINED**, that the Board accepts the supplemental petitions filed with the County Clerk on April 25 and May 1, 2023, for consideration.

**FURTHER, BE IT ORDAINED**, that, as of the effective date of this Ordinance, the Board hereby finds, declares, and determines that those portions of Area 1B as shown on Exhibit A as “Addition to Agua Fria Village THC” be a part of the Village of Agua Fria THC for the following reasons:

1. The Board declared Area 1B to be part of the original Village of Agua Fria THC in Ordinance No. 1995-8.
2. Although a subsequent ordinance excluded Area 1B from the Village of Agua Fria THC, Ordinance No. 2004-1 provides that areas contiguous to the THC could request inclusion.

3. Subsequently, land has been added to the Village of Agua Fria THC due to its contiguous nature pursuant to Ordinance Nos. 2006-12 and 2008-18.
4. The Board finds that the portion of Area 1B shown on Exhibit A as “Addition to Agua Fria Village THC” are now contiguous to the Village of Agua Fria THC.
5. Separately, and as an alternative basis for adoption of this Ordinance, the Board finds that the portion of Area 1B shown on Exhibit A as “Addition to Agua Fria Village THC” independently meets the criteria set forth in Section 3-7-1.1(A) NMSA 1978, as it:
  - a. Is an unincorporated area of the County, since, while Area 1B is within the “Presumptive City Limits” under the relevant annexation agreements with the City of Santa Fe, the City has not annexed Area 1B under state law;
  - b. Is an identifiable village, community, neighborhood or district that is documented as being in existence for more than 100 years based on maps and historical records from as early as the 1800s, as well as testimony from competent witnesses;
  - c. Includes structures or landmarks associated with the identity of the area traditionally known as the Village of Agua Fria, such as the Jirón Home/Trading Post; the Baca/Borrogo Compound and Acequia, the Ortega/Gee Homestead, and the Gallegos/Cassidy Mill, and historical pueblo sites; and
  - d. Is an area with a distinctive character and/or traditional quality that can be distinguished from surrounding areas or new development in the vicinity, such as the agricultural, ranching, wildlife, irrigational, ecological, demographical, and topographical nature of the community that distinguishes it from surrounding areas within the City of Santa Fe.

**FURTHER, BE IT ORDAINED**, that Ordinance Nos. 1996-16, 2004-1, 2006-12, and 2008-18 are hereby amended to reflect the changed boundaries of the Village of Agua Fria THC as follows:

As of the effective date of this Ordinance, the boundary of the Village of Agua Fria Traditional Historic Community is hereby amended to include the portion of Area 1B shown on Exhibit A as “Addition to Agua Fria Village THC”, with the following notes concerning the boundaries of the Addition to Agua Fria Village THC:

1. Parcel Nos. included on Exhibit A correspond to the County Assessor’s records as of May 31, 2023.
2. Boundaries of the Addition to Agua Fria Village THC that cross parcels are described as follows:
  - a. The northern boundary of Parcel No. 910011039 (as described by Deed Book 239, Page 304, Instrument #293595) was extended westward approximately 250’ across Parcel No. 54058880 (Parcel A as shown on Plat Book 893, Page 29, Instrument #1994003) to the boundary of Parcel No. 54025359 (Tract B as referenced by Deed

- Instrument #1483655 and shown on Plat Book 331, Page 1, Instrument #940900).
- b. A straight line was drawn across the 66' wide road and utility easement described in Book 377 Pages 323, 324, and 325 that runs along easterly side of Parcel No. 58400749 (as referenced by Deed Instrument #1901807 and shown on Plat Book 430, Page 13, Instrument #1099047) from the northeast corner of Parcel No. 58310132 (Lot 33 of the Cielo Lumbre Subdivision, Unit II; as referenced by Deed Instrument #1959682 and shown on Plat Book 231, Page 13, Instrument #759461) to the northwest corner of Parcel No. 58400734 (Lot 2 of the Elfido & Dora Gallegos Subdivision as referenced by Deed #1671602 and shown on Plat Book 111, Page 33, Instrument #492463).
  - c. The northern boundary of Parcel No. 59001338 (Lot 22 of the Cielo Lumbre Subdivision as referenced by Deed Book 1259, Page 962, Instrument #941528 and shown on Plat Book 204, Page 12, Instrument #692655) was extended across the 50' wide road and utility easement described in Book 377 Pages 323, 324, and 325 that runs along westerly side of Parcel No. 58400749 (Deed Instrument #1901807 and shown on Plat Book 430, Page 13, Instrument #1099047).
  - d. The Addition to Agua Fria Village THC that crosses 5405880 (Parcel A as shown on Plat Book 893, Page 29, Instrument #1994003), 99308151 (State Land Parcel, 2023 Assessor tax account recording notes refer to US Patent 26998), 54006912 (as described in Exhibit A of Deed Instrument #1836193 and shown on Plat Book 211, Page 3, Instrument #709602), and 54032000 (as referenced by Deed Instrument #1901806 and shown on Plat Book 849, Page 39, Instrument #1887135) corresponds to the area designated as an Official Zone A Flood Zone on those parcels by the 2012 FEMA Flood Insurance Study."

**FURTHER, BE IT ORDAINED**, that consistent with Ordinance 2004-1, owners of property outside of, but contiguous to, the Village of Agua Fria THC boundary, as amended herein, may request inclusion into the Village of Agua Fria THC.

**FURTHER, BE IT ORDAINED**, that, while the change or mistake rule does not apply to this situation, the substantial change in circumstances referenced above necessitates a change in the zoning for those portions of Area 1B shown on Exhibit A as "Addition to Agua Fria Village THC". While the County undertakes a comprehensive, community planning and zoning process default zoning shall be Agricultural/Ranching (A/R) as provided in the Sustainable Land Development Code. Such comprehensive planning and zoning shall address construction and other standards for roads or trails running through and between the portions of Area 1B included

within the Village of Agua Fria THC and the portions of Area 1B within the Presumptive City Limits.

**FURTHER, BE IT ORDAINED**, that permits and approvals granted by an applicable zoning authority for those portions of Area 1B shown on Exhibit A as "Addition to Agua Fria Village THC" prior to the effective date of this Ordinance and for which rights have vested shall be recognized by the County, as shall all legal lots of record created prior to the effective date of this Ordinance.

**SEVERABILITY.** If a provision of this Ordinance or its application to any person or circumstance is held by a court of competent jurisdiction to be invalid, the invalidity does not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of the Ordinance are severable.

**EFFECTIVE DATE.** The effective date of this Ordinance shall be thirty (30) days after it is recorded by the County Clerk.

**PASSED, ADOPTED AND APPROVED** this 13<sup>th</sup> day of June, 2023, by the Board of County Commissioners of Santa Fe County.

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By: *Anna C Hansen*  
Anna C. Hansen, Chair

**ATTEST:**  
*Katharine E. Clark*  
Katharine E. Clark  
Santa Fe County Clerk



SFC CLERK RECORDED 06/20/2023

**APPROVED AS TO FORM:**

*Jeff Young*  
Jeff Young  
Santa Fe County Attorney

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

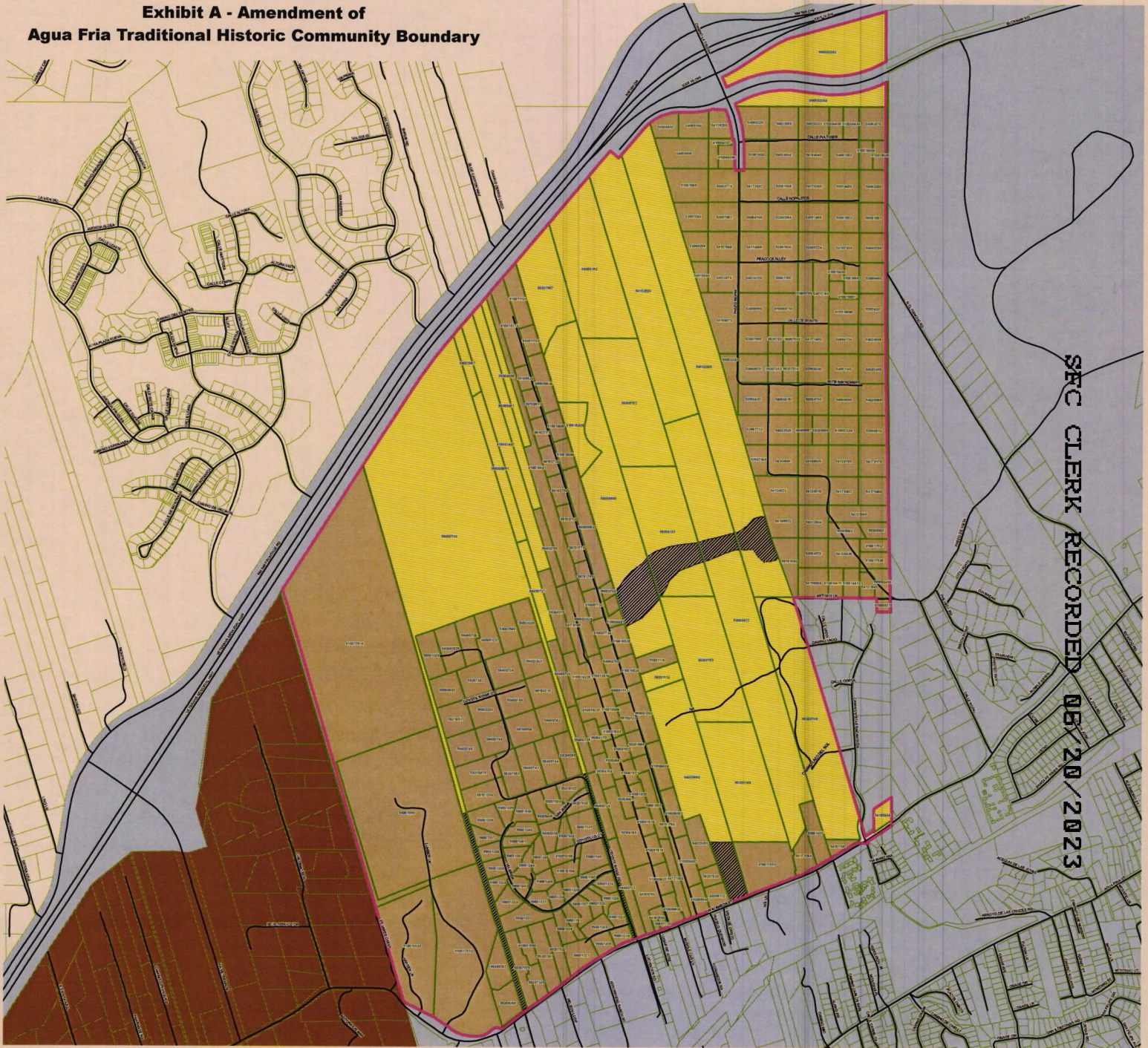
I Hereby Certify That This Instrument Was Filed for Record On The 20TH Day Of June, 2023 at 02:22:09 PM And Was Duly Recorded as Instrument # 2014086 Of The Records Of Santa Fe County

BCC ORDINANCE  
PAGES: 7

Deputy *Dorey Romero* Witness My Hand And Seal Of Office  
Katharine E. Clark  
County Clerk, Santa Fe, NM

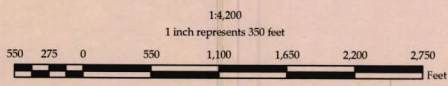


**Exhibit A - Amendment of  
Agua Fria Traditional Historic Community Boundary**



SFC CLERK RECORDED 08/20/2023

- Areas to Remain in Presumptive City Limits
- Addition to Agua Fria Village THC
- Land Bridge Areas (within Addition)
- Agua Fria Village THC (Existing)
- Property Lines with Area 1B
- Annexation Area 1B
- Other Property Lines
- City of Santa Fe - Current
- Roads



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



June 12, 2023