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**MINUTES OF THE**

**SANTA FE COUNTY**

**DEVELOPMENT REVIEW COMMITTEE**

Santa Fe, New Mexico

November 18, 2010



This meeting of the Santa Fe County Development Review Committee (CDRC) was called to order by Chair Jon Paul Romero, on the above-cited date at approximately 4:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

**Members Present:**

Jon Paul Romero, Chairman  
Susan Martin, Vice Chair  
Don Dayton  
Juan José Gonzales  
Charlie Gonzales  
Maria DeAnda

**Member(s) Excused:**

Jim Salazar

**Staff Present:**

Jack Kolkmeier, Land Use Administrator  
Shelley Cobau, Review Division Director  
Jose Larrañaga, Development Review Specialist  
Steve Ross, County Attorney  
Vicki Lucero, Review Team Leader  
John Michael Salazar, Development Review Specialist  
Wayne Dalton, Development Review

**III. APPROVAL OF AGENDA**

Shelley Cobau said there were no changes beyond those on the updated agenda.

Member Martin moved approval and Member DeAnda seconded. The agenda was unanimously approved.

**IV. APPROVAL OF MINUTES: October 21, 2010**

Member C. Gonzales moved to approve. His motion was seconded by Member Martin and passed by unanimous voice vote.

**V. CONSENT CALENDAR: Final Orders**

There were no items.

**VI. OLD BUSINESS**

- A. CDRC CASE # V 10-5430 Ray Armenta Variance.** Ray Armenta, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow for five, 5-acre tracts and one ten-acre tract, to be divided below the maximum allowable lot size, as a family transfer. The property is located on Hidden Valley Road, within Sections 4 & 5, Township 16 North, Range 10 East, Commission District 4

Mr. Larrañaga identified the exhibits attached to the case report which included previous CDRC minutes on this case, Code excerpts and information on small lot inheritance and family transfer. He provided the report as follows:

“On September 16, 2010, the CDRC met and acted on this case. The recommendation of the CDRC was to table the case so that the Applicant could meet with staff and discuss alternative options to resolve the Applicant’s request.

“Staff has reviewed this application and has found the facts presented not to support this application: a lot that is created, which has not established compliance with Code requirements, may not be eligible for application for a variance to the buildable area standards per Article III, Section 2.3.2d; the Applicant has not demonstrated the existence of a buildable area on each lot for structures and support facilities; the existing lots may require variances to establish buildable sites and to exceed the grade allowed for access roads to the sites; the property is located within the Mountain Hydrologic Zone where the minimum allowable lot size is 20 acres; staff’s analysis of the Applicants’ interpretation of the variance criteria does not justify the approval of this application; strict compliance with the requirements of the Code would not result in extraordinary hardship to the Applicant; to allow these lots to be reduced further below the density requirements allowed by the Code, the purpose of the Code would be nullified; the Applicant has not justified a hardship which is contemplated by the Code. The variance requested by the Applicant is not considered a minimal easing of the requirements of the Code therefore staff recommends denial of the Applicants request.”

Chair Romero noted the provided slope analysis map appears different than the previous one and shows buildable sites. Mr. Larrañaga referred to a slope analysis produced by County's GIS department. He said a few of the lots have slopes between 30 percent and 40+ percent with difficult access and buildable spots. Two and possible three of the 5-acre lots do have a buildable sites.

Mr. Larrañaga clarified that the existing lots contain buildable sites. Referring to a map of the property [*Exhibit VI-1*], he said the lot in the northeast corner is difficult to access and even with variances it would be complicated to locate a building site.

Duly sworn, the applicants, Ray and Loretta Armenta, appeared before the CDRC.

Ms. Armenta thanked County staff for working with them on their request. She said they compiled additional information to assist the CDRC in making a favorable decision regarding their case: a roster of assessed lot owners of Los Llanitos Owners Association; grant of easement dated 3/18/00 to lot owners of Los Llanitos, and a series of emails between BK Roberts and County Commissioner Holian.

Mr. Armenta displayed a series of photos to demonstrate access and buildable sites. To support his position on the buildability on the lots, Mr. Armenta mentioned Dr. Palestine's home was built on a more severe slope than any slopes within his proposal.

Mr. Armenta confirmed that he would be splitting the 10-acre tract into two 5-acre tracts. Member JJ Gonzales asked whether the applicant would seek to further split the lots down making four 2.5-acre tracts. Mr. Armenta responded that he wanted to make sure his children, grandchildren and sister obtained some of the property. He said he was willing to agree to no further lot splits on the property.

Referring to Tract 5 where only one building site was identified, Mr. Armenta agreed to limit it to one dwelling.

Mr. Larrañaga said he conducted a site visit and verified that tracts 2, 3, and 4 had buildable areas. Other sites had access problems. The 10-acre site has buildable sites and challenges regarding access. Tracts 2, 3, and 4 have two buildable sites; tracts 5 and 1 are not suitable for two building sites and the 10-acre tract has access problems.

Member JJ Gonzales asked if staff advised the applicant to apply for a family transfer for some of the tracts. Mr. Larrañaga said the lack of buildable site(s) and access problems are but two of the reasons that staff is recommending denial. The principal reason is that the splits do not meet density requirement. Minimum lot size in the area is 20 acres and family transfer would permit 10 acres.

Member DeAnda asked whether the existing lots are restricted to .25 acre-feet of water. Mr. Larrañaga said there are no water restrictions recorded with the plat and they could build on the legal lots of record. Mr. Dalton said water restrictions are imposed at

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the time a lot is created, not when a building permit is issued. If the property was replatted a water restriction would be imposed.

Mr. Larrañaga confirmed that the Armentas could sell or deed the existing lots.

Chair Romero asked whether there was precedent for the CDRC approving lots which were not developable. Ms. Cobau said not in her tenure with the County have lots been approved without a buildable area and adequate access. She suggested the Armentas' 1980 plat is an example of lots being created without adequate access.

Stating she understood the applicant's desire to gift property to family members, Member DeAnda asked whether creating an easement for access was the appropriate first step. Mr. Armenta said he is seeking approval of the lots before he begins cutting roads and creating easements. He mentioned he was working on an easement agreement with a neighbor.

Mr. Armenta said water is not an issue and mentioned a natural well and Robbie Day's large tank.

There were no other speakers regarding this case.

Mr. Armenta thanked the CDRC for the opportunity to work with staff and come back before them. He said he was a part of the community's culture and was proud to have his ancestral land to pass on to his family.

Member C Gonzales said he was not prepared to support the request because the following issues were not adequately addressed: buildable area, the separation of septic and wells, rock-out croppings, and access.

Member C. Gonzales moved to deny CDRC Case V 10-5430. His motion Member Martin and passed by majority [5-1] voice vote with Chair Romero voting against the motion.

## **VII. NEW BUSINESS**

- A. **CDRC Case #V 10-5530 James Sturrock**, Applicant, requests approval of three variances of Article VII, Section 3 (Terrain Management) and Article III, Section 2.3 (Site Planning Standards for Residential Use) of the Land Development Code: 1) to allow the height of a residence to exceed 18 feet and to allow the overall height (from highest parapet to lowest natural or finished cut grade) to exceed 30 feet; 2) to allow disturbance of slopes of 30 percent and greater; and 3) to allow disturbance of rock outcroppings. The property is located at 120 Camino del Canyon in Cundiyo, within Section 21, Township 20 North, Range 10 East, Commission District 1

Ms. Lucero read the case caption and reviewed the case summary as follows:

“The subject property is an existing 2.849-acre legal lot. There is currently an existing barn, an equipment bay and a tack room located on the property, which were constructed by a previous owner. The Applicant is proposing to construct a 3,750 square foot 3-story residence which includes a basement with a building footprint of approximately 1,617 square feet.

“The Rio Frijoles runs through the northern portion of the property. The remaining parcel consists primarily of difficult terrain with some small areas of 0 percent to 20 percent, and 20 percent to 30 percent; but the majority of slopes on site exceed 30 percent.

“Article VII, Section 3.4.1.c.1.c of the County Land Development Code states that natural slopes of 30 percent or greater are no build areas and shall be set aside from use for development. The proposed lot contains some scattered areas that are less than 30 percent slopes. The Applicants are requesting a variance to allow disturbance of 30 percent slopes in order to construct a residence and to install a septic tank and drain field.

“Article III, Section 2.3.6.b.1 of the Code states that the height of any dwelling or residential accessory structure located on land which has a natural slope of 15 percent or greater shall not exceed 18’ and that the vertical distance between the highest point of a building and the lowest point of a building at natural grade or finished cut grade, whichever is lower, shall not exceed 30’. The Applicants are proposing a maximum building height of 34’-9” and an overall building height of 34’-9.” The Applicants state that since the area available to build upon is very limited it was necessary to use multiple stories to achieve the desired square footage and therefore, a height variance is needed.

“Article VII, Section 3.4.1.c.1.a of the Code states that areas of rock outcropping are no-build areas and shall be set aside from use for development. The applicant states that there are no apparent rock outcroppings on the surface, however, rock outcroppings have been found on neighboring properties during excavation and therefore, taking a conservative approach the applicant is requesting a variance.

“Article II, Section 3.1 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 non-self-inflicted conditions or that these conditions would result in inhibiting in achievement of the purposes of the Code, an applicant may file a written request for a variance.’”

Ms. Lucero said the Applicant is proposing a 3,750 square feet multi-level residence. The subject property is a legal lot of record. The lot is limited by excessively steep terrain which makes it difficult to construct a residence that meets County Code

requirements. Land Use staff has conducted a site visit, reviewed the slope analysis and has determined that there is no other buildable area on the site.

It is staff's position that the variances requested are unavoidable due to the rugged terrain and small buildable area on the property. Strict compliance with the requirements of the Code could result in extraordinary hardship to the applicant as stated in Article II, Section 3.1 of the Code. Therefore, staff recommends approval of the variances of Article VII, Section 3.

Ms. Lucero noted that the Applicant is also seeking a height variance according to the site visit staff determined that the structure would not be visible from minor arterial roads. If the Applicant were required to reduce the height of the structure they would have to increase the footprint of the residence which would result in more disturbance of 30 percent slopes. Therefore, staff recommends approval of the requested variances of Article III, Section 2.3 (Site Planning) to allow the height of the residence to exceed 18' and an overall height of 30' subject to the following conditions:

1. No grading or disturbance of ground beyond grading limits shown shall occur. Except for developable areas for building envelopes, roads, or driveways, disturbance of natural vegetation shall be prohibited. Cleared or graded areas, or cut and fill areas shall be re-vegetated to the approximate original density and type of vegetation existing prior to disturbance.
2. The well shall be relocated outside of the existing access/utility easement. If the required 100-foot separation from well to septic cannot be achieved due to the steep terrain an advanced liquid waste disposal system will be required in accordance with NMED requirements.
3. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted with application for building permit.

Ms. Lucero clarified that the area is not a designated flood plain and identified that the Rio Frijoles runs through the area.

Ms. Lucero said the height variance does not restrict visibility from other residences. She said the old Extraterritorial Zoning Ordinance required no visibility of the structure from major arterials. Member JJ Gonzales said his concern was precedent setting regarding the height.

Ms. Lucero confirmed that the site is very difficult and the applicant has chosen the best available location on the site.

Duly sworn, James Sturrock, applicant, said the property is very beautiful. He has known his neighbors for years and wants to build his retirement home there. He appreciated the challenges presented by the slope but was prepared to do so. The road is accessible to emergency vehicles.

Mr. Sturrock affirmed for Member Dayton that the well would be at least 100 feet from the septic system.

Member DeAnda said she was curious why the property contained a few accessory structures without a residence. Mr. Sturrock said there was a house where a gentleman lived for 30 years. He has since built a house and moved onto a higher lot.

Member DeAnda asked the applicant whether he considered building a smaller house and he said no, mentioning that he requires bedrooms for his family.

Duly sworn, Robert Canderian said he created the properties through the original three titles he owned and rearranged the boundaries to create three equal sized properties. A resident of the area for over 30 years, Mr. Canderian said the rock is mostly decomposed granite and creates great stability. The height variance is necessary for solar gain in the winter.

There were no other speakers.

Member Dayton moved to approve CDRC case V 10-5330 with the staff-imposed conditions. Member Martin seconded and the motion passed by unanimous [6-0] voice vote.

- B. CDRC CASE # V10-5510 Rob Turner Variance:** Rob Turner, Applicant, Linda Tigges, Agent, request a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Land Division of 9.1 acres into two lots. The property is located at 32 Timberwick Road, within Sections 19, 20, 29, and 32, Township 16 North, Range 10 East, Commission District 4.

Mr. Salazar provided the staff report as follows:

“The Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Land Division of 9.11 acres into two lots. The subject property is located within the Metro-Mountain Hydrologic Zone. Article III, Section 10 states the minimum lot size in this area is 20 acres per dwelling unit. Lot size can be further reduced to 5 acres per dwelling if the property is served by community water. The subject property currently has one dwelling unit with a conventional septic system and two water meter hook-ups to the Sunlit Hills Water Utility Company, one of which is utilized by the existing dwelling while the other hook-up remains unused.

“The Applicant requests the variance for a Land Division due to a divorce decree requiring the sale of the property. The Applicant would like to retain a portion of the property in order to transfer it to his son while the remaining portion would be sold off.

“Article II Section 3 (Variances) of the County Code states that “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.”

Mr. Salazar said staff recommends that the request for a variance be denied; Article III, Section 10 states that the minimum lot size in this area is 20 acres unless the property is served with community water in which case the minimum lot size can be reduced to 5 acres per dwelling unit.

Chair Gonzales asked whether there were other lots in the area that were under 5 acres. Mr. Salazar confirmed there were lots from 2 acres up to 9 acres.

Member C. Gonzales asked about a flood plain and Mr. Salazar said while there is a house on the property there is not a flood plain. He said the applicant is requesting an access off 9-Mile Road.

The applicant, Rob Turner, and his agent, Linda Tigges, were duly sworn.

Ms. Tigges located the property in relation to the area and 9 Mile Road. She said the applicant has met all notice requirements and met with a few of the neighbors. She distributed a letter from Dr. Robert Sacks [*Exhibit VIIB-1*].

Ms. Tigges identified a buildable area off 9 Mile Road. She said the property has two water connections from Sunlit Hills and she referred to a letter from Robert Vale of Sunlit Hills confirming that fact. The lots' sizes will be compatible with other lots in the area. Referring to visibility, Ms. Tigges said from 9-Mile Road and/or I-25 a building is barely detectable and distributed photos evidencing her claim [*Exhibit VIIB-2*].

Ms. Tigges said the applicant wants to impose the following conditions on the vacant lot: structure height limited to 15 feet and to be screened by trees.

Ms. Tigges said the lot split is requested to satisfy a divorce settlement.

Rob Turner read a letter [*Exhibit VIIB-3*] that he sent to his neighbors. The letter set out that he has lived in his home for over 20 years and is forced to divide the lot rather than lose everything he has worked for. The letter discussed his love for the area and what protections he would take to protect the arroyo, views and land. He added that he'd like to leave property for his 22-year-old son.

Member C Gonzales recommended the application review any setbacks established by the area homeowners association.

Responding to Member JJ Gonzales, Mr. Turner said he needs to sell his current home within the immediate future. He said he has to sell the house regardless of the success of the lot split.



Member JJ Gonzales said the additional tap with Sunlit Hills will require an expenditure for the infrastructure, connection fee and the work to get it across 9 Mile Road. Mr. Turner said he was aware of that and has talked to Mr. Vale.

Regarding the timeline for building a new home, Mr. Turner said there was no urgency. He hoped to work on it over the years and eventually leave it to his son. He identified there was about an acre of buildable area on the proposed lot.

Duly sworn, Mary Ann Shaening said she lives next door to the applicant on a 3.55-acre lot. She said Mr. Turner has been an extraordinary neighbor and the proposed lot division does causes no impairment. She said she and her husband support the division.

Member JJ Gonzales moved to approve V 10-5510 with conditions (structure height limited to 15 feet and to be screened by trees) and that the applicant get a water meter in place as soon as possible. Member C. Gonzales seconded and the motion passed by unanimous [6-0] voice vote.

[The CDRC recessed for five minutes]

**E. CDRC CASE # MP/PDP/DP 10-5400 Mine Shaft Tavern: Mine Shaft Properties, LLC, Applicant, Santa Fe Planning Group (Scott Hoefft), Agent, request Master Plan Zoning for an existing non-conforming use, Preliminary and Final Development Plan approval of Phase I for an expansion of a non-conforming structure and outdoor entertainment. The property is located at 2840 Hwy. 14, within the Traditional Community of Madrid, within Section 36, Township 14 North, Range 7 East, Commission District 3**

Mr. Larrañaga presented the staff report as follows:

“On May 27, 2010, Mine Shaft Properties LLC was granted an extension of the submittal deadline requirement for Master Plan application by the County Development Review Committee. The Applicant submitted the application for Master Plan on July 30, 2010. Staff has deemed the submittal, for Master Plan of the non-conforming property and Development Plan for Phase I, administratively complete.

“Currently there are thirteen structures on the 4.84 acre site. Twelve of the structures were constructed prior to 1981, therefore, the Code acknowledges the structures and the current use of the structures as non-conforming.

“Article II, Section 4.5 Non-Conformities states: ‘existing uses of land and structures including signs constructed prior to the adoption of the Code, as amended, but which may not be in conformance with the Code, as amended, or are prohibited or restricted under the current provisions of the Code, including the

provisions of any amendments thereto, are considered to be non-conforming uses.’

“The Applicant”s intent is to maintain the historical use of the property. The Applicant requests Master Plan Commercial Zoning as a Neighborhood or Small Scale Commercial District. The purpose of the Master Plan is to record the existing structures and existing use as they are currently and historically been utilized. The Mine Shaft Property has been in continuous operation as a non-conforming commercial property for over 100 years. The Master Plan will document the significant attributes of the property while allowing the expansion or re-use of the property through the Development Plan process.

“The Mine Shaft Property has attracted tourists and locals for food, beverage, and entertainment for the past 50 years. The Tavern has been in continuous use since 1947, the Engine House Theater has been active since 1985, and the Old Coal Mine Museum has been open to the public for tours since 1960.

“Article II, Section 4.5.2 (Re-use or Expansion of Non-conforming Use) states: ‘except as otherwise provided in this Section, any non-conforming use of land or structure may be continued so long as it remains otherwise lawful.’

“Article II, Section 4.5.3 (Submittals and Reviews) states: ‘re-use or expansion of non-conforming uses are subject to the submittals and review requirements set forth in the Code for the category of use which is proposed.’

“Ordinance No. 2002-1 (Madrid Community Planning District), Section 4.7 (Commercial Uses) states: ‘mixed use businesses and commercial uses within the planning area shall be permitted only on property that is directly adjacent to New Mexico State Highway 14 and within the Planning Area.’

“Section 4.11 (Legal Non-conforming Uses) of Ordinance No. 2002-1 (Madrid Community Planning District) states: ‘non-conforming, legal commercial establishments (Grandfathered Uses) and mixed-use establishments in operation at the date of adoption of this ordinance shall be allowed to continue operations with both existing and or new owners so long as the establishment maintains a similar intensity of use.’

“Article III, Section 4.2.1 (Types and Locations of Commercial or Industrial Districts) states: ‘neighborhood or small scale center districts, which are or may be located at intersections of local roads or in traditional community areas. Uses similar to those which may be established in local or village center districts may be established. A non-residential use district may be established within a traditional community at a qualifying intersection or at an area which is pursuant to the criteria set forth in Sub-section 4.2.2.’

“Sub-section 4.2.2 (Traditional Community Districts) states: ‘traditional Community districts established by the Code are intended to accommodate a mixture of uses such as agriculture, residential, large scale residential, community service, institutional, non-residential or recreational uses anywhere inclusive of the boundaries of the village, provided the performance standards and criteria set forth by the Code are met.’

“Article V, Section 5.2.1.b states: ‘master plan is comprehensive in establishing the scope of a project, yet is less detailed than a development plan. It provides a means for the County Development Review Committee and the Board to review projects and the sub-divider to obtain concept approval for proposed development without the necessity of expending large sums of money for the submittals required for a preliminary and final plat approval.’

“The Applicant is also requesting Preliminary and Final Development Plan approval for Phase I. The Development of Phase I includes the deck attached to the Old West Saloon, the use of the deck for outdoor entertainment, outdoor amphitheater grounds and outdoor entertainment within the amphitheater. The area defined as the amphitheater is approximately 5,000 square feet and the deck is approximately 550 square feet.

“The deck was expanded upon and the amphitheater was created by terracing an area with railroad ties. These improvements constitute an expansion of the non-conforming property. The improvements enabled the Applicant to use these areas for outdoor entertainment and extend the area where liquor could be served, therefore expanding on the non-conforming use of the site. The alteration of these specific areas on the site constitutes a Master Plan for the non-conforming property and Development Plan for the intensification of use and modification of the deck and amphitheater area.

“Article V, Section 7.1 (Development Plan Requirements) states: ‘A preliminary development plan may be only a phase or portion of the area covered by an approved master plan, so long as the preliminary development plan substantially conforms to the approved master plan.’

“Article V, Section 7.2. (Final Development Plan) states: ‘The final development plan shall be submitted to the County Development Review Committee accompanied by a staff report. The County Development Review Committee shall review the plan and make a determination as to its compliance with the County General Plan and Code. The County Development Review Committee may recommend changes or additions to the plan as conditions of its approval. The final development plan as approved by the County Development Review Committee shall be filed with the County Clerk. The approved final development plan becomes the basis of development permits and for acceptance of public dedications. Any changes in the plan must be approved by the County Development Review Committee.’”

Mr. Larrañaga said the Applicant addressed the criteria in the development report that included existing conditions, adjacent properties, parking, access, outdoor lighting, signage, water, fire protection, liquid waste, topography, and landscaping. Regarding noise mitigation, Mr. Larrañaga said the Applicant will comply with Santa Fe County Ordinance 2009-11, an Ordinance to prohibit excessive, unnecessary and unreasonable noise and public nuisance. The Applicant will self monitor sound emitting from property by using an approved noise meter as specified in Section 5 of Ordinance 2009-11. The Applicant consulted a noise expert in the mitigation process.

Mr. Larrañaga said staff has reviewed this application and has found the following facts to support this submittal: the existing structures were constructed prior to the adoption of the Code; the Code acknowledges the structures and the current use of the structures as non-conforming; the submittal complies with the commercial criteria set forth in the Madrid Ordinance; the purpose of the Master Plan is to record the existing structures and existing use as they are currently and historically been utilized; a Small Scale Commercial District is allowed within a Traditional Community; the proposed Master Plan is comprehensive in establishing the scope of the project; the Preliminary Development Plan conforms to the proposed Master Plan; the proposed Final Development Plan complies with Code requirements.

The Building and Development Services and Reviewing Agencies have reviewed this application and have made comments in accordance to the Code. The non-conformities of the structures and use on the site were not taken into consideration when assessing code compliance. Staff's interpretation of Article II, Section 4.5 (Non-Conformities), Article II, Section 4.5.2 (Re-use or Expansion of Non-conforming Use) and Article II, Section 4.5.3 (Submittals and Reviews) has established findings that this Application is in compliance with Ordinance No. 2002-1, Section 4.7 (Commercial Uses), Ordinance No. 2002-1, Section 4.11 (Legal Non-conforming Uses), Article V, Section 5.2 (Master Plan Procedures), Article V, Section 7.1 (Development Plan Requirements) and Article V, Section 7.2. (Final Development Plan) of the Land Development Code.

Based on staff's review they recommend approval of Master Plan Zoning, as a Small Scale Commercial District, to allow the existing structures and existing use on the property as they are currently and historically utilized. Staff also recommends approval of Phase I Preliminary and Final Development Plan to allow for the intensification of use and modification of the deck and amphitheater area, subject to the following conditions:

1. All Staff redlines shall be addressed. Original redlines will be returned with final plans for Master Plan and Final Development Plan.
2. Master Plan with appropriate signatures shall be recorded with the County Clerk.
3. Final Development Plan with appropriate signatures shall be recorded with the County Clerk.

Agent for the Applicant, Scott Hoelt was placed under oath and said the past year was spent developing a master plan. He said staff's report demonstrated that the Applicant is meeting Code. Meetings were held with Joseph Karnes, counsel for the opposition, County staff and a neighbors meeting in Madrid. Three main issues were

cited at the neighborhood meeting: demonstrating satisfactory emergency access – and the applicant has addressed that; noise the applicant has developed a mitigation strategy; and satisfactory parking which was developed based on the County’s Code.

Mr. Hoeft said a noise consultant was hired and a meeting at Joseph Karnes’ office was held to discuss mitigation. Noise has been a major point of contention with the area residents and Mr. Hoeft said six points were developed: Compliance with the Ordinance; self-monitoring with regular readings; Mine Shaft contact person regarding noise; Owner will make every attempt to keep doors and windows closed when music is played; the outdoor deck will have appropriate sound buffering with the speakers positioned to back of the building rather than the roadway; limit hours of operation and develop schedule for deck use. The program proposed for the amphitheater will be defined. Each amphitheater event will require a special use permit from the County Land Use.

Member C. Gonzales asked whether the Applicant was considering gray water harvesting. Mr. Hoeft said they were not at this time.

Member JJ Gonzales requested clarification on the parking issue. Mr. Hoeft said the master plan defines parking spaces along the roadway as well as special event parking within the interior areas of the site and defined access.

Mr. Hoeft said the hours of operation were proposed for the Tavern no later than 2 a.m. Typically events end at midnight; the outdoor deck will honor the County requirements; live music on the deck will never exceed 10 p.m.

Member DeAnda referred to a memo from the OSE which indicated the project lacks a water budget and has not proposed any conservation measures. Mr. Hoeft said the master plan reflects historic water use on the property by analyzing the meter readings over one year.

Member DeAnda asked whether there was intent to create a water budget. Mr. Hoeft said the Applicant provided the actual use which arguably could be deemed more valuable than estimates provided for a water budget.

Member DeAnda asked about the self-monitoring and how often the decibels would be recorded. Mr. Hoeft said when there is an event in the porch area or amphitheater Mine Shaft staff will monitor.

Noting the applicant offers to make every attempt to keep the doors and windows closed during an event, Member DeAnda asked if there was a reason why they couldn’t be kept closed. Mr. Hoeft said there was concern that if the AC was not working and it was hot, someone may open a window. Member DeAnda said the Applicant’s language leaves too much leeway in keep the windows and/or doors open. She recommended the applicant tighten the language to include “unless there is a mechanical malfunction” the windows and doors will be closed.

Mr. Hoeft said the Mine Shaft rented a stage specifically designed to buffer the sound. He said he believed the events that have occurred in the amphitheater were within the acceptable sound limits of the Santa Fe County Noise Ordinance.

Those wishing to speak were administered the oath of honesty as a group.

Under oath, Lisa Interlandi a 30-year Madrid resident and business owner said she supports all of the businesses in Madrid. She urged the CDRC not to approve the master plan before absolute assurances that there is a plan for noise mitigation that is enforceable and clear. She said over the past three years she has had extensive conversations and correspondence with the County which has produced confusing responses to further exacerbate the problem.

Ms. Interlandi said the County has been complicit in creating a nuisance and devaluing her property and business. She offered a personal note about her 26-year-old son who will not stay at her house during the weekends because of the Mine Shaft noise and instead prefers staying in an office at the intersection of Cerrillos and St. Francis. Ms. Interlandi said the noise from the Mine Shaft rumbles her being.

Duly sworn, Gavin Strathdee, a 37-year Madrid resident, has been involved with the creation of the Landowners Association, the writing of the town covenants, the traditional community plan, the Water Cooperative, and volunteer fire department. He discussed his employment in Madrid which included bartending at the Mine Shaft.

Mr. Strathdee mentioned an incident in 1978 where he was attacked and beaten unconscious on the porch of the Mine Shaft and as a result the bar was closed from 1978 and reopened as a restaurant without liquor sales or outside entertainment in 1980 through to 1982. He provided a history of the property which included the Engine House Theatre and the old photography studio/museum. He emphasized that up until the current management there was no outdoor entertainment in the museum and no Old West Saloon.

Mr. Strathdee said the current manager of the Mine Shaft introduced the outdoor music without input from the community or County and lacked appropriate permits. He cited the County noise ordinance and said the six points of noise mitigation offered by the applicant were not sufficient, and the master plan application makes stipulations to facts that are not correct: outdoor entertainment, Old West Saloon and the amphitheater did not exist until the current management. The amphitheater was built within the site that previously served as a mining museum.

Mr. Strathdee said the applicant statements that they will "make every effort to" lessen the noise was insufficient and he mentioned past incidents to bolster that assertion.

Mr. Strathdee said there was the water matter that has not been adequately addressed. The Tavern indicates they use 1,000 gallons per day which is over an acre-foot per year. He said the liquid waste is a problem and last month there was liquid waste flowing out of the septic tank across the parking lot into the storm drain and into the County greenbelt.

Mr. Strathdee repeated that the applicant's claim that they will "make every effort to" doesn't mean it is going to happen. He said over the past three years the Tavern's management has done whatever they want to do without community input. He said it was inappropriate for the CDRC to approve a development plan for increased intensity of

usage. "The liquid waste disposal is inadequate at the present use." The tank was installed in 1976 and the data to support the 1976 permit is not available.

Acknowledging that the Mine Shaft was within a business commercial location, Mr. Strathdee said it was not an appropriate use because of its proximity to residential units.

Gerald Wawrek, 2841 Hwy 14, a Madrid resident since 1985, under oath, stated he has been involved in most Madrid projects since that time and distributed a letter, plat of the Madrid community, notice of insurance non renewal to the Mine Shaft and photographs [*Exhibit VII E-1*].

Mr. Wawrek said he was present asking the CDRC to deny the request before them. He said the porch was illegally built and the noise level emanating from the illegal porch regularly exceeds the standards of the County's noise ordinance. He doubted the noise buffering outlined by the applicant's agent would be initiated.

Mr. Wawrek mentioned the Santa Fe Brewing Co. and their efforts to meet the County's noise ordinance, noting the residents were 600 feet away from that establishment compared to 100 feet from the Mine Shaft. He said neither the Mine Shaft nor the County Sheriff understand the details of the noise ordinance and the equipment to monitor.

Mr. Wawrek said the applicant's agent failed to mention that the neighborhood meeting at the lawyer's office was greatly disturbed by a Tavern co-owner. He said those opposing the request are residents of Madrid.

Duly sworn, Steve Shepherd, 12-year resident of Madrid, volunteer firefighter, and licensed EMT. Mr. Shepherd said he was the president of the Madrid Cultural Projects, a non-profit 501(c) (3).

Mr. Shepherd said he supports the approval of the Mine Shaft Tavern master plan noting it is consistent with Madrid's history. He supported the Applicant's right to fully use her property. Speaking as a member of the fire district, he said the Applicant has been a good neighbor keeping the fire lane clear of obstructions, placing a defibrillator in the tavern and training a number of people. Security at events is good. He acknowledged a townwide party problem noting the Applicant has offered parking on her property.

Duly sworn, Linda Dunnill an 18-year a resident of Madrid, said she lives a few doors from the Mine Shaft porch and has had two businesses in Madrid. She said she too was involved in the master plan for Madrid. Without the Mine Shaft, its energy and beautiful music, Madrid would be lacking. She said the outdoor programs end early, they are mostly local musicians and it brings joy to the area and revenue to the state.

Ms. Dunnill said the Mine Shaft keeps the community alive.

Duly sworn, Rebecca Nafey of Cerrillos said Madrid has been her town for 24 years. She said she runs a small business, owns a home in Madrid and has served on the Madrid Landowners Association Board and the Water Co-op Board.

Ms. Nafey said Madrid has become a town of young people who are musicians, artists, and gallery owners. Madrid has an unusual amount of talent. She said these

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young people have the right to party just as the elders did when they were young. The master plan for the Mine Shaft Tavern is a result of complaints from a handful of older community members. The master plan will make the Mine Shaft legal and allow the community to “heal” from divisiveness. She mentioned that the notion music should only occur at the ballpark fails to address that there are residences near the ballpark. Ms. Nafey said it was time for Madrid to deal with the future – this is a small town that needs all the help it can get. Live music is a money-maker for many people, not just the Mine Shaft Tavern.

Ms. Nafey requested that the CDRC approve the master plan.

This concluded the public hearing and Chair Romero invited the applicant to rebut and provide closing comments.

Mr. Hoeft said the liquid waste issue is being handled in conjunction with NMED. New documentation was forwarded to the OSE demonstrating up to 3 acre-feet of water for the site.

Regarding the language that the applicant would make every attempt to keep the doors and windows closed, Mr. Hoeft offered that “the owner will keep the windows and doors closed in the tavern when music is played, unless there are mechanical errors.” Regarding the positioning of the amplifier, Mr. Hoeft offered to substitute the language from “will make every attempt” to the “owner will position the amplifier in the correct location.”

Member DeAnda said it was important that the issues be addressed because the business will continue and the residences will remain there. She referred to the County’s Public Works Department who said the submittal was incomplete and they were unable to provide an opinion without additional information.

Member DeAnda said she would prefer there be a positive recommendation from the OSE and the County’s Public Works before acting on this case. Also, the self-monitoring is an issue; she said it was preferable that a third-party serve as the monitor.

Member DeAnda remarked that the fact residents continually come before the CDRC to say the noise issue has not been addressed is troubling.

Member Dayton asked the applicant if they were willing to keep a written log/record of the times, dates and reading of noise level tests and forward a copy to the County. Mr. Hoeft responded “absolutely.”

In response to Member C. Gonzales’ question regarding acoustic or electric music, Mr. Hoeft said there will be both on the deck.

Chair Romero noted that the CDRC’s action on this case will be forwarded to the BCC for the final action.

Member C. Gonzales asked how Land Use staff could work with the Sheriff’s Department to educate them about the Noise Ordinance. Mr. Kolkmeier said his staff



has met with the Sheriff, the Under Sheriff and a number of deputies shortly after the ordinance passed. He said he and Ms. Cobau have gone to the Mine Shaft and taken sound readings. Plain clothed code enforcement personnel have gone out and conducted sound readings also. The difficulty has been enforcement and when the ordinance was rewritten the Sheriff's Department was charged that task.

Member Dayton moved to approve CDRC Case MP/PDP/DP 10-5400, Mine Shaft Tavern. Member C. Gonzales seconded. The motion passed by majority [5-1] vote with Member DeAnda voting against.

F. **CDRC Case #MP/PDP 09-5300 UDV Temple.** UDV Temple, Applicant, James Siebert, Agent, request Master Plan Zoning and Preliminary Development Plan approval for a community service facility as defined in Article III. Section 7 of the Land Development Code, as Amended,. The proposal consists of a 4,500 square foot structure to be used as a temple with a 2,000 square foot covered portal type structure to be enclosed for inclusion to the Temple as part of a subsequent phase, a 706 square foot yurt, a 225 square foot utility room, and a 225 square foot storage building on 2.52 acres. The property is located west of US 84/285 at the southwest corner of the intersection of County Road 58/Arroyo Hondo Road and County Road 58C/Brass Horse Road at 5 Brass Horse Road, within Section13, Township 16 North, Range 9 East, and Commission District 4

*Exhibit 1: State ED memo to C. Graeser, 11/5/10 Re: Liquid Waste Permit*

*Exhibit 2: Santa Fe County Ordinance 2010-13*

*Exhibit 3: Letter - Lucy Moore; support of review and treatment of UDV*

*Exhibit 4: Letter – Freedman Boyd Hollander Goldberg Ives & Duncan, PA to Steve Roos re: RLUIPA*

*Exhibit 5: Mustafa D. Chudnoff – Hydrologist; Potential for Groundwater Contamination... July 29, 2010 revised November 9, 2010*

*Exhibit 6: Mustafa D. Chudnoff – Hydrologist; Analysis of Water Use and Availability By UDV ... November 9, 2010*

*Exhibit 7: Letter to NMED Secretary Ron Curry and NMED Hearing Officer SallyWorthington – Re: Notice of Appeal of Department Action*  
*Exhibit 8: Christopher Richard Fletcher, MD, copy of license Board of Pharmacy*

*Exhibit 9: Recommendations by Oralynn Guerrerortiz, PE as read by Linda Spier*

*Packet material on file with Land Use Division*

Chair Romero requested a show of hands for those people desiring to speak. He requested that people speaking avoid repeating what another individual has stated and

said he would limit speakers to two or three minutes. He asked that the participants respect the process and advised the audience that the Sheriff was present.

Ms. Cobau provided the staff report as follows:

“ Centro Espírita Beneficente União do Vegetal, UDV Temple, applicant, James Siebert, agent, request master plan and preliminary development plan approval for a community service facility as defined in Article III, Section 7 of the Land Development Code, as amended.. The code was amended by Ordinance 2010-13, which defines a community service facility as one which provides service to a local community organization. These may include governmental services such as police and fire stations, elementary and secondary day care centers, schools and community centers, and churches.

“The two-phase proposal consists of a 4,500 square foot structure to be used as a temple with a 2,600 square foot covered portal type structure to be enclosed for inclusion to the temple as part of a subsequent phase for a total 7,100 square feet), a 706 square foot yurt which was existing and then taken down and they’re proposing to replace, a 225 square foot utility room, and a 225 square foot storage building on 2.52 acres. The property is located at the southwest corner of the intersection of Arroyo Hondo Road, which is County Road 58) and Brass Horse Road, which is County Road 58C, at 5 Brass Horse Road, within Section 13, Township 16 North, Range 9 East, within Commission District 4. And there’s a vicinity map and numerous other maps in your packet.

“The applicant requests master plan and preliminary development plan approval for a new religious institution or community service facility) at 5 Brass Horse Road.. The applicant further requests that the final development plan for the project be reviewed and approved by staff, as an administrative action.

“The UDV Temple master plan and preliminary plan report prepared by James Siebert and Associates dated July 10, 2009, and architectural renderings prepared by Paula Baker LaPorte, master plan and preliminary development plans, the water resources report prepared by Corbin Consulting, and traffic impact analysis prepared by Craig Watts, P.E., have been reviewed for technical accuracy and compliance with the Santa Fe County Land Development Code. Supplemental information includes an analysis of building sites in Arroyo Hondo, a report regarding the impact of churches on residential real estate values and declarations by physicians retained by the applicant regarding the effects of hoasca in the context of religious practice. I also would like to point out that I have brought the entire box of information that was submitted by the applicant in numerous volumes, numerous studies that have been conducted and I also sent each of you a note along with your packet which was delivered last week stating that you could come and review that information if you had wished to, and that will remain available for review by you and by the County Commission members should they wish to see it. We made an effort to include any portions of that information that

was submitted that I felt was pertinent to your decision making process, but thought it was too much for you to go through for you in a week.

“UDV is a nonprofit corporation organized under the laws of New Mexico; the UDV is a tax-exempt religious organization. Ordinance 2010-13 provides that community service facilities are allowed anywhere in the county provided that all requirements of the code are met, if it is determined that the proposed facilities are necessary in order that community services may be provided for in the County; the use is compatible with existing development in the area and is compatible with development permitted under the Code; and a master plan and preliminary and final development plan for the proposed development is approved.

“The ordinance goes on to specify that submittal and review requirements are those provided for in Article III, Section 4.4, and Article V, Sections 5.2 and Section 7. The proposed temple will contain a space for religious services, a nursery, a common room, a dining room, a kitchen, two bathrooms and attic storage. The yurt will be re-erected and will be used for religious and storage purposes. Overall lot coverage, including parking, is approximately 7.5%.

“The applicant indicated in the submitted materials that the congregation at full build-out is estimated to be approximately 100 parishioners, and that currently there are 64 parishioners. Services are to be held two Saturdays per month from 8 p.m. to 12 p.m., with two additional services each month on weekend afternoon or evenings. No private school or daycare activities are proposed. A nursery is included in the temple floor plan, which will operate only during the services at the times stated above.

“During religious services, sacramental consumption of hoasca tea is an integral part of the religious ritual. Hoasca is mildly hallucinogenic. The applicant has submitted affidavits from physicians regarding the short-term hallucinogenic effects of the hoasca tea on parishioners. The affidavits indicate that, and I quote, “the effects of hoasca last for approximately four hours during which time the individuals who take the sacrament remain oriented and aware of their surroundings” and the affidavits describe in detail anticipated reactions of individual participants. Those affidavits are included as Exhibit H in your packet. The UDV has stated that careful measures are taken during and after services to ensure that no one exits the property until the effects associated with the consumption of the hoasca tea have subsided. The information regarding the use and influence of hoasca was provided in an effort to quell the concerns of neighbors and to address staff concerns regarding public health, safety and welfare that exist if persons drive after consuming hallucinogens.

“The applicant further states in the development plan report that the project will be submitted in two phases. Phase One is the infrastructure, 450 square feet of storage area in two separate structures, the yurt, a 24-foot high, a 4500 square foot temple, and a 2000 square foot timber frame covered gazebo type structure. This

initial phase is slated for completion within 18 months of permit issuance. Phase Two would include the enclosure of existing 2600 square foot portal type area into the temple structure.”

Ms. Cobau said the application was reviewed for existing conditions and the applicant has done an extensive analysis of the existing conditions on the property and an archaeological report was completed although not required. She noted the applicant conducted substantial analysis regarding the adjacent properties. She noted a map was included to show all the adjacent parcels that contribute to the intersections of the Old Las Vegas Highway and Arroyo Hondo. Meetings were held with the Highway Department because staff was concerned about that intersection, and the Highway Department has indicated as well as the TIA that that intersection is functioning at an acceptable level of surface and no improvements would be required as a results of adding 100 parishioners at the UDV Church.

Ms. Cobau said staff reviewed access, parking, security, signage, architectural standards, water, fire protection, liquid and solid waste, terrain and stormwater management, landscaping and archaeology. She pointed out that the liquid waste permit was rescinded by the NMED but it has recently been reinstated.

Ms. Cobau said staff has the following recommendation:

“Staff reviewed the application and found that the following facts presented support the application: community service facilities are allowed anywhere in the county; the code recognizes a church as a community service facility; the use is apparently compatible with existing development; the application is comprehensive in establishing the scope of the project; the application satisfies the submittal requirements set forth in Article V, Section 5.2.2 of the code and meets the new ordinance regarding community service facilities; the preliminary development plan substantially conforms to the master plan; the application satisfies the submittal requirements set forth in Article V, Section 7 for development plans of the code.

“The review comments from State Agencies and Building and Development Review Services has established findings that this application is in compliance with Article V, Section 5 regarding master plan procedures and Article 5, Section 7 for development plan requirements of the Land Development Code.

“Therefore staff recommends master plan zoning and preliminary development plan approval, with final development plan to be processed administratively, for the Centro Espírita Beneficente União do Vegetal – I had to get that in there one more time, UDV Temple, to allow a 4,500 square foot structure to be used as a temple with a 2600 square foot covered portal type structure, to be enclosed for inclusion to the temple as part of a subsequent phase for a total temple area of 7100 square feet, a 706 square foot yurt, a 225 square foot utility room, and a 225 square foot storage building on their 2.52 acres, subject to the following conditions.

1. All staff redlines shall be addressed, original redlines will be returned with final plans for master plan.
2. The applicant shall comply with all requirements of the New Mexico Environment Department, the State Historic Preservation Division, County Fire Marshal, Public Works and County Utilities Department, which includes the following:
  - a. Permits for Advanced Liquid Water Systems must be reviewed and approved by the NMED
  - b. Kitchen facilities must be approved by the NMED and appropriate food service permits must be obtained.
  - c. Automatic fire suppression is required
  - d. Site address shall be clearly posted
  - e. 28' radius curb returns must be provided
  - f. Site triangles (30') must be maintained at both entrances
  - g. A Road Construction/Road Cut Permit must be obtained from the Department of Public Works
  - h. The secondary access from Arroyo Hondo road must be paved with 3" of plant mix bituminous pavement
  - i. No parking signs shall be placed on Arroyo Hondo Road as required by Public Works
3. Master Plan and Preliminary Development Plan, with appropriate signatures, shall be recorded with the County Clerk.
4. It shall be noted on the Master Plan and on the Final Development plan that the nursery will only be utilized during services.
5. The Landscape, Lighting and Signing Plan indicates placement of flag poles near the temple entrance, flag poles may not exceed 24' in height, and the banners placed on these flagpoles may be considered signage and must comply to the square footage restrictions for signage and placement of signage outlined in Article VIII of the Code. A separate sign permit will be required for all signage on this parcel.
6. The proposed trash enclosure must be fully screened with a 6' opaque enclosure and gated. The location as proposed does not provide adequate access for trash removal vehicles and the enclosure must be relocated on the Final Development Plan.
7. Additional comments made by staff or other agencies, if any, must be addressed at the time of Final Development Plan submittal.

Member C. Gonzales asked about the septic permit. Ms. Cobau indicated that there was some issue regarding the presence of showers in the facility and the amount of water associated with the showering and there were concerns regarding groundwater contamination from the septic field, all of which have been addressed by the applicant. It's not something that County staff reviews; the County relies on the State NMED.

Regarding amended ordinance 2010-13, Member JJ Gonzales noted that the temple was not necessarily going to serve that local community. Ms. Cobau responded

that there are facilities countywide where the people that utilize them don't necessarily live within five miles or ten miles of the facility.

Member JJ Gonzales asked how staff interpreted compatibility with the development in the surrounding area. Ms. Cobau said staff looked at that extensively, and the applicant did an extensive study regarding surrounding coverage of houses, surrounding lot sizes and certainly the size of this temple is in accordance with the size of other structures in the Arroyo Hondo area. She mentioned Seton Castle and the Zen center that's in close proximity. Staff believes that architecturally it's compatible with surrounding uses, stated Ms. Cobau.

Member Martin asked about the actual amendment language to the ordinance and Ms. Cobau responded 7.1.3 was added, which states, a master plan and preliminary and final plan for the proposed development are approved

Member DeAnda asked about the greenhouse and Ms. Cobau indicated that both the greenhouse and the caretaker's residence have been removed from the application. She said it was her understanding that the hoasca will be stored in a secure location within the temple itself.

Ron Van Amberg addressed the Committee stating he represents many of the residents that are in the Arroyo Hondo area, adding several hundred of them signed petitions against this church. He said the case included some complex legal issues; complex water and wastewater issues; complex use issues and there's issues relating to the nature of the drug that is being used in their ceremonies that is being stored on their premises.

Mr. Van Amberg said this case was "incredibly important" for the homeowners and he felt it was inappropriate to set a two minute limit. He indicated that they had a prepared presentation and he may have cross-examination for the proponents' witnesses.

Chair Romero responded that this hearing was not in a court of law, and he was not prepared to permit cross-examination of any of the testimony. He said he would grant time for the opponent's presentation. Mr. Graeser was invited to the podium.

Chris Graeser, counsel for the Applicant said they would be sensitive to the time and estimated that they needed a half hour.

Under oath, Jim Siebert, agent for the applicant, emphasized that what was before the CDRC was the consideration of a community service facility, a church being a use within that category of community service facilities. Along with that is a master plan and preliminary development plan. Mr. Siebert asked that the final development plan be considered as an administrative action.

Mr. Siebert indicated that a traffic study was prepared by Craig Watts, a professional engineer; wastewater by Earth Rights Design; a hydrologic evaluation by Jim Corbin and reports prepared by Sierbert & Associates to address wastewater, water

conservation, the water budget, utilities, access, solid waste collection and disposal, signs, building use and schedule of religious activities. Baker-LaPorte is the architect.

Using a series of slides, Mr. Siebert located the building and outlined the proposed phases of development. He noted the parking, wastewater facility which is a SludgeHammer facility, treatment facility, which is an advanced treatment system. The effluent will be reused and used for irrigation purposes for the vegetation.

Mr. Siebert said they have addressed issues with Public Works staff which had to do with emergency entry, which is off of Arroyo Hondo Road, approximately halfway down the property. It will be improved as an asphalt roadway and it will have a Knox lock gate for entry by the Fire. It will be used only for emergency purposes. The main access is directly off Brass Horse Road. The Brass Horse Road, currently it is a County road; however, it is underdesigned at 14 feet in width. The temple will widen the road to 20 feet and adding approximately 6 feet of basecourse to that roadway to the north end of the property.

Mr. Siebert reviewed the elevations of the project the relationships of the buildings to the roadway and the closest neighbor. He showed a section of what the temple wall will look like, with a technique that is formed in place 12" clay and straw filled walls. And one of the advantages of this technique is it is an excellent noise attenuator. He mentioned that the Temple has been there for 15 years using a canvas yurt and there have been no complaints. In terms of the architectural style, structure will be Santa Fe in style. He the Academy for the Love of Learning off Seaton Village Road, and the fact it is 15,000 square feet and the size of the UDV Church is a little over 7,000 square feet.

Mr. Siebert summarized that there is minimal traffic impact associated with this project, the Temple's activities are quiet, the architecture is consistent with the area, there is no light pollution, and the philosophy of the Church is to protect the environment.

Chair Romero asked how many public meetings were held in the neighborhood or surrounding area. Mr. Siebert said there two public meetings held.

Duly sworn, Tai Bixby, 2200 West Alameda Street, said he's lived in Santa Fe for 26 years, is married with three children. He said he's the president of the local congregation of the UDV and the vice president of our national organization overseeing five other centers in this county and also mestre of the UDV which is the equivalent of a minister or a teacher in our tradition. Mr. Bixby indicated that he has participated in approximately 500 ceremonies of the UDV. He indicated that he was baptized in the UDV on the land in Arroyo Hondo and also married within the UDV.

Speaking from his direct personal knowledge of the subject matter, Mr. Bixby offered the following:

"The UDV is a Christian religion that preaches to love God above all things and to love others as we love ourselves following the teachings of Jesus. The UDV is a sincere, respectful, caring and family-oriented religion. Our membership encompasses the full spectrum of economic, racial, education and class



backgrounds and that's just in Santa Fe. That spectrum exists in all the different areas and we don't discriminate according to economic condition, economic class, race. We preach against the use of tobacco, drugs and alcohol. The UDV teaches that nature is a manifestation of the divine holy spirit and for this reason the UDV seeks to build its temples, both in Brazil and in this country in quiet, rural locations where nature is visible, such as Arroyo Hondo."

"We're not a cult and we're not fanatics as some people have said recently in different social events that I've been present at where they didn't know who I was. We do not proselytize but rather we are a discreet religion that grows at the request of those who wish to join us, and ordinarily we avoid the kind of attention that this land use case has drawn. However, we are firmly committed to pursuing our right to develop a temple on our land in Arroyo Hondo. So we respectfully come before County authorities in a public hearing to ask for a development permit. We are quite serious about what we do and we don't have any plans to leave Santa Fe County.

"Central to our religious practice is our communion with a sacramental tea called hoasca, which we drink for the effect of mental concentration. The word hoasca, which is not the same word as ayahuasca, refers to a preparation. Hoasca is made from only two plants, which are botanically identified as *Banisteriopsis caapi* and *Psychotria viridis*, which are prepared in water by a highly trained mestre of UDV in a way that maximizes the capacity of hoasca tea to induce a lucid state of consciousness conducive to enhanced mental concentration and deep introspection... We find it more accurate to say that the effect of hoasca tea is de-hallucinogenic. A UDV session with hoasca tea typically lasts four hours. I'm going to give you a little background as to what it looks like inside of a session and I also want to just take a moment to let you know that as government authorities it's our tradition that any of you who would want to come and observe or participate in a session are welcome to do so."

Mr. Bixby outlined a UDV session with hoasca tea which typically lasts four hours and includes readings of the tenets, prayer and acapella sings. He emphasized that during the sessions participants are coherent and lucid. He said that for the safety of the participants it is UDV's policy that people may not leave the property during sessions and the parking area gate is closed during sessions to keep unauthorized people off the property. Participants in our sessions do not become out of control, or dangerous, or unreasonable during sessions. After four hours the effect of the tea is diminished and the session concludes. After the session participants typically stay for a few more hours eating and talking and socializing before going home.

Mr. Bixby pointed out that members of the UDV have been driving home after sessions with hoasca tea since 1992 in Santa Fe County and there has never been an automobile accident resulting from impairment by hoasca tea.

The religious use of hoasca tea was the subject of an 11-year litigation in the federal courts in which the legitimacy of the religion, the safety of hoasca tea, and the unlikelihood of its diversion was affirmed by the Tenth Circuit Court of New Mexico, the



Appeals Court of the Tenth Circuit of New Mexico, the Appeals Court of the Tenth Circuit sitting in bond which means all 13 appeals court judges ruled on our particular case. The case was unanimously affirmed by the Supreme Court of the United States. Mr. Bixby said to his knowledge no other religion has ever been scrutinized as closely by the federal government nor affirmed at so high a level by the federal courts. The question in the case was a controlled substance called dimethyltryptamine, or DMT for short, that exists in small quantities in hoasca tea. EMT is a Schedule I controlled substance. The submitted opinions of top medical experts in the field during the case, is that hoasca tea that is used in the UDV ritual is not harmful, and in fact there is strong evidence that it is beneficial. The United States Supreme Court has agreed with this evidence.

As a result of the litigation, Mr. Bixby said the US Department of Justice and the Drug Enforcement Administration addressed in the settlement almost every aspect of the safe importation, handling, storage, distribution and disposal of hoasca tea. He provided excerpts from the DEA requirements.

Mr. Bixby disagreed with an allegation that the UDV has no public service presence in Santa Fe County. He said they have a community service branch that conducts charitable works – food and clothing drives for local public schools and volunteer work with local non-profits to stabilize erosion along the Santa Fe River. UDV sends volunteers to work at the community farm to provide food for low income families. The UDV also provides services outside of the US.

Mr. Bixby remarked that the Internet does not provide accurate information about the UDV. For the records he clarified that the UDV does not distribute ayahuasca tea. The term ayahuasca is a broad term that can refer to myriad concoctions containing dozens of different licit and illicit plants including deadly nightshade, datura, Jimson weed, phalaris grass, tobacco, cubensis mushrooms, japonga, and *Mimosa hostilis* to name a few. Members of the UDV make use of hoasca tea exclusively. Hoasca, is made from two plants, *Banisteriopsis caapi* and *Psychotria viridis*, carefully and conscientiously prepared by a highly trained mestre of the UDV for the specific purpose of serving the good. Neither the UDV nor any religious group or institution needs government permission or permission from neighbors to peaceably assemble and to practice its religion if that religion is sincere and legitimate, stated Mr. Bixby.

Mr. Bixby said a chief scientist from NMED, Dennis McQuillan, sent monitoring crews to locations around New Mexico that were likely to have pharmaceutical drugs contaminating in the groundwater supplies, areas where there were fractured granite structures, areas near hospitals, near wastewater treatment plants, and in no case did he find any pharmaceuticals in the groundwater.

In closing, Mr. Bixby said, the “UDV has been conducting itself quietly and peacefully for 18 years in temporary locations in Santa Fe County without a permanent home and we’re here with the simple request to build a permanent home for our peaceful, safe and sincere religious practice.”

Mr. Bixby said there were approximately 70 members in Santa Fe County and in southern Colorado. There are 250 members in the US.

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Regarding meetings with the neighbors, Mr. Bixby said at the first meeting there were five people and the public meetings have had up to 40 people.

Member Dayton asked about restrictions for the local community people to become members and participate in the church and Mr. Bixby responded that people who are interested in coming to know the tea, who have a sincere interest in knowing the UDV as a spiritual path, are invited. He welcomed anyone to speak with him or the person who has the highest spiritual authority in the church and ask for permission to come.

Member DeAnda asked how many members resided in New Mexico and Mr. Bixby said about 65 people in New Mexico. Almost all of them in Santa Fe County.

Member DeAnda asked about the storage of the hoasca tea and Mr. Bixby said they were obligated under a settlement agreement with the federal government to comply with all the conditions of the settlement agreement regarding the storage and preparation of the tea.

Member DeAnda asked whether the Church was considering growing the plants and Mr. Bixby responded that they have no intention of growing the plant.

Member DeAnda asked about the frequency of meetings and Mr. Bixby said there were two gatherings on the first and third Saturday. He noted the packet contained a detailed list of the number of sessions and the days which is approximately 66 events per year.

Responding to Member C. Gonzales' question regarding children and tea consumption, Mr. Bixby children who have authorization from their parents, from both parents, are allowed to take it.

Member JJ Gonzales said he found it unusual that a religious service would extend into the late evening. Mr. Bixby responded that the Church follows the traditions from Brazil.

Member JJ Gonzales said it concerned him that someone would be leaving the Arroyo Hondo church after midnight. Mr. Bixby said there was no record of hoasca related fatalities. He assured the CDRC that parishioners were sober.

Ms. Cobau clarified that the site will be considered a community service facility. She added that if this is approved the site will be utilized as a community service facility and it would be zoned as a community service facility. She said even if the County wants to build a facility we have to come in and be recognized as a community service facility.

Responding to Member Martin, Ms. Cobau said the Academy for the Love of Learning was an existing legal non-conforming business. It was the Boy Scout headquarters for about 50 years. Zen Center in the area was zoned as a community service facility. She said the most recent community service facility the CDRC has heard, is the Boys and Girls Ranch down in Edgewood.

Mr. Graeser pointed out that this is master plan and preliminary development plan – there are no variances. The applicant has complied with everything staff asked of. Staff has said all along that this application is facing the same review that other community service facilities have. He noted they have been working on this project for 16 months for the submittal of a 6,000 square foot building.

Mr. Graeser said staff confirms that this complies with the code and they recommended approval because it does comply with the code. Community service facilities are allowed anywhere in the county. The fact is the church is a community service facility and that use is allowed anywhere in the county and that includes residential areas. As far as the need for the facility, Mr. Graeser said they had been meeting in a marginally heated yurt, canvas-walled yurt in the winter, during that entire time when they were fighting for the right to practice their religion. They won and now it's time for them to build a permanent home. This is a property that is being donated to the church specifically for this purpose.

Mr. Graeser noted that Mr. Siebert discussed compatibility with the neighborhood. "It's absolutely compatible. And churches do tend to be in residential neighborhoods." As far as the tea, he said it is highly controlled. A declaration from Dr. Nichols was submitted who talks about the low likelihood for abuse. We submitted a declaration from Dr. Barker who talks about the concerns about the potential effect on the environment. Throughout this process the neighbors have raised concerns – about safety, about groundwater, crime, quiet rural atmosphere and the applicant has addressed each of those concerns with facts. Mr. Graeser said "We tried to educate; we tried to assuage the neighbors' concerns and it was really a frustrating process because through the two noticed public meetings and the one more private meeting they simply didn't want to listen. They absolutely refused to negotiate. There was a letter that went around that I think was in your packet that said no negotiation. No way."

Mr. Graeser said this is the site of the Arroyo Hondo Pueblo and there were dozens of ceremonial kivas. There was intensive ceremonial use in this area, absolutely a part of the history of this area. He noted there are 65+ businesses in the Arroyo Hondo area, academies and churches.

Mr. Graeser noted there were no restrictive covenants on this property that would prohibit this use, as there are in many residential neighborhoods. The bottom line is this application meets the code. It meets the County ordinance that's also federal law. It's the constitution and the Religious Land Use and Institutionalized Persons Act.

Mr. Graeser said the supporters of the UDV were asked not to come tonight because this has become a very public, very acrimonious process.

Responding to questions of the Chair, Mr. Bixby said the temple maintain the grounds themselves and during week when there are no religious activities, the gates will be locked and the alarm on.

Chair Romero asked those that wish to speak, to stand and take the oath affirming their testimony was the truth.

Following are excerpts from Evalyn Bemis' testimony.

"My name is Evalyn Bemis. I have lived in the Arroyo Hondo neighborhood since 1983. I am president of the Arroyo Hondo Land Trust, which was established in 1991 to preserve trails, open space and the rural residential character of the area. I'm here tonight representing the 240 neighbors, approximately 90 percent of all Arroyo Hondo residents who signed a petition opposing the zone change requested by UDV.

"My first awareness of the UDV proposal came in a phone call from Tai Bixby. He said he was representing a group that wanted to build a temple in Arroyo Hondo on land owned by church founder Jeffrey Bronfman...UDV held two public informational meetings in August 2009. We were told they were applying to use the property as a community service facility. Thus we were surprised to learn that the temple would not be open to the public, that is what they explained to us, that services would last until the middle of the night, and members would decide for themselves when they had recovered enough from the hallucinogenic tea and all its effects to safely drive home.

"What had been described as a temple designed to blend into the residential neighborhood was in fact a two-story pitched roof structure of over 7,100 square feet with two kitchens...a nursery, a 96 feet dining hall, offices, and an open space that might be used as a dormitory...Tonight is the first I've heard of the addition of a 2,000 square foot timber frame gazebo structure. I don't even know what the purpose of that is or where it's going to go because I didn't see it on the slides.

"UDV officials at those meetings told us they had the right to use the property for their church based on the fact that some of them had used the existing yurt for a number of years until they outgrew it and moved their services to La Cienega in 2005. It didn't matter to them that the yurt had been placed on the property without permit and that Mr. Bronfman told the neighbors it was used by his wife due to her allergies. When asked why they never sought permission for their activities, Tai answered, in the beginning our legal status was unclear, so we were quiet because we were concerned about legality. If you only admit to stealing the rope but not the cow attached to the end of the rope does that make it okay? They say the property is sacred to them because they met there for many years. It is not their concern that we feel the proposed use is completely incompatible with



quality of groundwater, no municipal waste treatment to handle drug residues and other waste generated by UDV activities, and most importantly the loss of the peaceful enjoyment of our homes and land. If all these reasons don't add up to demonstrating that the proposed use is incompatible in this location then there seems to be no reason for having a code or holding this hearing. We call you to deny the application. And I would say if you aren't ready to deny at the very least we would ask that you table it because we have not seen the packets."

Ms. Cobau said the public has been able to examine the UDV files since it was originally submitted. Any time things are submitted to the County it immediately becomes public information.

Member DeAnda asked whether the Trust has restrictive covenants in place and Ms. Bemis responded that its mission statement is to preserve trails, open space, and the rural residential character of the neighborhood. She said she was unable to confirm whether there were covenants on the church's property.

Ms. Cobau said the property was not part of a subdivision and there are no restrictive covenants associated with it. It's a single lot, stands alone, not part of a subdivision.

The following is presented in verbatim format.

MR. VAN AMBERG: Thank you, Mr. Chair. I'm Ron Van Amberg on behalf of a number of the Arroyo Hondo residents. I have just a couple of questions of Mr. Bixby, just for clarification.

CHAIRMAN ROMERO: And excuse me, Ron. This is not a court of law. You can ask the questions – how should we handle this? Should he respond right away? Or can he do it in his closing like we typically do? I guess it's my purview as the chair but I'd like to get legal advice from our County Attorney.

MR. ROSS: Mr. Chair, are these cross-examination questions, Ron?

MR. VAN AMBERG: I guess you could call them that, or just informational questions. If you want I could just pose them and see if anyone wants to ask them.

MR. ROSS: Ron, what typically happens here is, except for cross examination is the questions are posed to the Board and then they're posed by the Board to the witness, unless you'd –

MR. VAN AMBERG: Well, this would I guess be cross examination.

MR. ROSS: Well, the witnesses have been excused so I'd suggest maybe you want to approach it in a different way and ask the questions and then the chair can deal with getting the information for you.

CHAIRMAN ROMERO: Yes. Ron, let's do it that way. You ask me the question or you ask the committee the question and I'll have the appropriate staff or the appropriate agent or the individual or the applicant answer that question. Like, say you have a question with regard to the traffic impact analysis as prepared by the professional engineer, Mr. Craig Watts, I would have him answer that question. Okay?

MR. VAN AMBERG: Okay. Thank you, Mr. Chair. I basically have two questions. One is whether the Supreme Court decision that Mr. Bixby referred to removes the drug, the DMT drug which is found in hoasca from the Schedule I drug list of the Controlled Substance Act, And my understanding of it is that it did not but I would like confirmation.

CHAIRMAN ROMERO: Okay. That question went over my head.

MR. VAN AMBERG: Let me – there are schedules of drugs that are listed under the Controlled Substance Act. One of them is the drug found in the hoasca tea, and it's in the same category as heroin, cocaine – it's that serious. And what I was asking was whether or not anything that the UDV did before the US Supreme Court or the Court of Appeals resulted in the removal of the drug found in their tea from this Schedule I.

CHAIRMAN ROMERO: That's a good question, Ron. I'm going to have to defer that to Mr. Bixby. Tai, or Chris probably can answer that and he is an attorney.

MR. GRAESER: I am an attorney under oath. Removing it from the schedule? I don't think so. I don't think we could do that. There was extensive litigation that went all the way to the US Supreme Court. They fought it all the way and won. There's a settlement agreement with the DEA. I think it's been provided to you. If not, it's in the packet and it's very, very detailed about how hoasca is in fact regulated. So it absolutely is regulated. If that's the question.

CHAIRMAN ROMERO: Okay. Did that answer your question?

MR. VAN AMBERG: Yes. Thank you, Mr. Chair. And the other question, related to the 66 times a year that they hold their services, and whether or not those additional services are also four hours in length, involve the tea and are conducted about the same hours of the day and morning.

CHAIRMAN ROMERO: Tai or Chris, maybe you can answer that.

MR. BIXBY: Mr. Chair, the information regarding the number of sessions and their duration is included in the packet that was submitted. It's been a matter of public record for the last 16 months. I would direct anyone who's interested in an answer to that question to the written material that we've already submitted.

CHAIRMAN ROMERO: Okay. I think Mr. Van Amberg's trying to get a clarification. Say you guys have a wedding. Is that going to be a four-hour wedding, a six-hour wedding? Is the tea going to be served at the wedding? I think that's kind of the lines you're asking.

MR. VAN AMBERG: Well, these are the services that didn't include the weddings. The total 66.

CHAIRMAN ROMERO: Oh, just the services. Okay.

MR. BIXBY: Mr. Chair, just as a point of clarification, I think I said 66 events because I think eight or those as we listed in our application are what we consider to be work days. But there are 66 events total. The sessions, the distribution of the hoasca tea last for four hours, and the hoasca tea is not served at weddings or social events that people have there.

CHAIRMAN ROMERO: Okay. Mr. Van Amberg?

MR. VAN AMBERG: That's fine. We are here on what is a zoning action. That is the way that this is being conducted, and what the UDV seeks is approval to have the property that it owns rezoned for – as a community service facility, and to permit the variety of activities that have been described that will take place on that property. Being a



rezoning this is not a right; it is an opportunity or a privilege because there is no entitlement to rezonings. Your ordinance is very specific to that.

What this – the consideration should not involve in determining whether this should be a community service facility as to who the applicant is and what the intent is behind their activities. The question is what is the impact of the structures and facilities that are being proposed? What is the impact of the activities that take place there? And this is suppose to be an even-handed analysis which would occur whether this were a church or whether this was some other type of activity. And in order to obtain this designation and zoning change this committee is guided and instructed by the community service facility ordinance. And if you look at it there are a number of requirements that have to be met before an applicant is entitled to this zoning change.

It provides community service facilities are facilities which provide service to a local community service organization. What we have heard tonight is that these are facilities that are closed to the community. These are services that are closed to the community. The standards that have to be reviewed and determined is that these activities are allowed and the rezoning is allowed to take place only if certain conditions are met.

Now, the statement has been made that churches are allowed anywhere in the county and therefore there's some sort of an entitlement to this zoning change, and I would refer to the ordinance that says these community service facilities may include – and I emphasize may include and then it's a list of things like fire stations, elementary, secondary, daycare centers, schools, community centers, and churches. So this is not – the reference to churches in the ordinance only means that they may stand on line along with anybody else and try to apply for a zoning change for their activities. It's not an entitlement it's just a specific recognition by the County that they're welcome to apply. And they are.

Now, they are allowed anywhere in the county, and then the ordinance says provided all requirements of the code are met and if it is determined that – and one of the determinations is the proposed facilities are necessary in order that community services may be provided in the county. And I would suggest that what we've heard here tonight is a use which is anything but necessary. It's inclusive, it's isolated and it involves the use of a Schedule I drug.

The next and probably most important requirement is that the use is compatible with existing development in the area and is compatible with development permitted under the code, and that is the primary emphasis that we will be addressing tonight, and that is the compatibility issue where they are, where the UDV is seeking to place their activities and their facilities in the middle of a rural residential community.

I was somewhat surprised by the recommendation of staff, because I don't know if you noticed it but the recommendation was that the preliminary, that the master plan and preliminary application for the development plan of the UDV take place in a public hearing such as we have here, but that the final development plan be run only administratively without the ability of public input. As I say we find that rather surprising, that at the most important stage of the process we are denied public hearings and it goes to the back rooms of administration.

CHAIRMAN ROMERO: Ron, real quick. Could I interrupt you real quick?

MR. VAN AMBERG: Sure.



CHAIRMAN ROMERO: That's what staff is recommending. I don't know if we're going to move on that recommendation or not but I have seen before where we have gone with that recommendation to do final plat administratively, and there's been times with certain cases that we ask that staff brings back the final plat to CDRC so individuals can make sure that anything that they have concerns about didn't slip through the cracks, per se.

MR. VAN AMBERG: Right. And I understand the plat concept but here it's a little more important because we're talking about the final development plan. Mr. Graeser talks about a lot of pressure and I agree that these proceedings are pressure-packed. We have a lot of residents who are – don't want to see this happen in their residential community because of the unique nature of the activities and the structures that are being proposed. But we also have pressure from the other side. And what is being and has been thrown up again to the administration is this issue or RLUIPA, the Religious Land Use and Institutionalized Persons Act, and we received a letter today from the UDV attorneys, not Mr. Graeser but their Albuquerque attorneys which spell out the threat that's being made, and they state, As a threshold matter, as explained in more detail below, while UDV has submitted a zoning change application at the County's direction, the County's zoning ordinance already explicitly permits churches anywhere in the county. As a consequence, the UDV believes that under the County ordinance no zone change is called for and that the County's requirement that UDV request a zone change to build its church may itself result in a RLUIPA violation.

Their position, and I guess they're prepared to defend it, is that since they are able to qualify as a church all they have to do is walk into Land Use and demand a building permit and they can build their church whatever they want. And it doesn't matter what their activities are. We believe that not to be the case. I have submitted a memorandum, which I believe has made its way into your packet which deals with the RLUIPA case and the holdings of our Tenth Circuit, and the RLUIPA issue simply is not involved here. The RLUIPA analysis is pretty simple. You cannot discriminate against a use or an activity because it involves religion, but the fact that the applicant comes before you which is a church or is involved in a religious activity does not result in them being privileged.

Everybody is on the same playing field and it's level, as long as there is a neutral zoning law that applies to churches and others equally there is no RLUIPA problem and there is no RLUIPA problem here. The fear we have is that given the resources and the tenacity of the UDV Church that there is a certain amount of bullying that may be taking place through these threats and we would hope that this committee judges this application on its merits and not under the pall of threatened litigation or RLUIPA claims or anything like that.

The UDV is entitled to fair treatment and to full examination of its activities under the ordinance and the residents are entitled to the same respect and entitlement. We would – I would just summarize by saying that I encourage you and request that you look at the impact of this activity on this neighborhood and this will now be addressed by the residents and professionals that will now be speaking. If there are no questions, I thank you very much.

CHAIRMAN ROMERO: Thank you, Ron.

MUSTAFA CHUDNOFF: Mr. Chair, members of the Commission, staff, my name is Mustafa Chudnoff. I'm a consulting hydrologist. My place of business is 1421 Calle Luisa here in Santa Fe. I have 29 years of experience in hydrology and water resources development. I've testified as an expert witness before the State Engineer at district court hearings as well as land development proceedings before this body and in other counties. I've also worked on a number of projects in Santa Fe that had a significant water component where the matter or calculating water budget, determining sufficiency of water rights, adequacy of groundwater was a significant element of those projects. For example, Rancho Encantado, Sunrise Springs, Ojo Caliente Mineral Springs project, and Taos County.

My testimony before you today is based – first of all I was retained by concerned neighbors who asked me to review the technical reports prepared in support of the application, including the master plan, development plan, prepared by Siebert and Associates, other documents submitted by the UDV in support of their application including the various expert reports that they either voluntarily submitted to you or were required to submit as part of their County submittal. I prepared two technical reports, one addressing the nature of the water availability and the adequacy of the technical report prepared by Mr. Corbin on behalf of the applicant, and their water budget. It's my understanding – I did submit that report or tried to submit that report to the County in time to make it into your packet but there were some problems with the emails, perhaps because of some of the attachments, so I did not get that in a timely fashion in your packets but a copy of that has been submitted to you today and a few days ago was submitted to staff.

There's a second report that I prepared addressing the potential for contamination from effluent discharges that was or is in your packet, towards the back I believe, as one of the expert reports. And I'll go back in a minute here and spend a little time going through the reports and hopefully save you the pain of having to read it word for word, page by page. But I'd like first to make the point that we need to understand this is a unique project. And by unique, from my perspective as a hydrologist, as a water resource specialist who is familiar with conditions in Santa Fe County and in the environs, I am familiar with the preparation of water budgets that there are unique elements to this project that were not addressed by any of the applicant's experts. And I will highlight to you those deficiencies and I will present to you alternative calculations which in my opinion are more realistic of what will be taking place here.

And I'd also like to say that when taken together, what I'm going to be highlighting for you is that taken as a total, yes, you did receive a foot and a half stack of material, some of it very detailed, but in reality they do not address the items that you're concerned with which relate to protection of public safety, ensuring that there's an adequate water supply and that the liquid waste system being proposed is protective of groundwater. And none of those have been adequately or completely addressed by the applicant.

The first report I'd like to bring to your attention is entitled Analysis of Water Use and Water Availability by the Proposed UDV Center, Santa Fe County, CDRC 09-5300. At the very front I highlight my findings and conclusions. I'd like to read those and then just briefly touch on the supporting data that I have or research in support of my findings and conclusions. First of all, the UDV water budget most recently submitted in

September contains a number of inconsistencies and conflicting estimates of projected annual water use by the temple. Number two, the water budget produced by UDV is generic and does not reflect the true nature of the activities that will take place. Number three, the preparation, disposal and use of the UDV's sacramental hoasca tea requires significant amounts of water that are not included in the water budget. Ingestion of hoasca tea results in gastrointestinal distress to most users including vomiting and diarrhea. Significant amounts of water will be required for personal hygiene and cleaning the facilities after every event. This is not included in the water budget. The budget submitted by UDV significantly understates the annual amount of water that will be required to meet the temple's water use at full occupancy. They are suggesting that the water budget at full development will be approximately 0.15 acre-foot a year. It is my opinion that a more reasonable projection of UDV annual water is more than 0.3 acre-feet per year.

Now, this may sound like a very small number, but if you understand your code and the practices of the Planning Department, if the water use is in excess of 0.25 acre-feet a year then a full geohydrology investigation is required. This was not done. The amount of water used by UDV exceeds the County maximum annual limit. A full geohydrologic investigation demonstrating 100-year water availability is required. This was not done. The Corbin report that was submitted to you as part of your packet, even by admission of County staff does not meet any standard that the County has for any report.

Even assuming a minimal annual water budget of 0.25 acre-feet would require the UDV to demonstrate that the underlying aquifer has a saturated thickness of I believe 600 feet. This is their own expert's opinion. However, there is absolutely no data from any geohydrologic report any of the wells drilled in the immediate vicinity of the project that the aquifer has such a saturated thickness. Furthermore, and this is a conclusion that is not in your report but I'll state it now, that any use of water for the manufacture of hoasca tea will require a special permit from the Office of the State Engineer. And I'll get into the basis for why we believe that there'll be manufacturing of hoasca tea on site. And I should add that in terms of my credentials, I'm a former nine-year employee of the Office of the State Engineer. I'm recognized as an expert in water rights matters.

And finally, and I've mentioned this before again, that it cannot be demonstrated with the data submitted by the applicant and the burden is with the applicant, that there is a 100-year supply availability.

At the heart of the difference of opinion that I have with the staff and the application is the water budget. The water budget is central to the work and documents submitted by the applicant. It's also central and key to the analysis that staff is required to perform. They need to demonstrate and the burden is on them to demonstrate that their water budget does not cross that .25 acre-foot threshold.

While no narrative is provided by the UDV to explain the nature of its water uses it is very apparent that the water budget submitted by the UDV does not accurately reflect the full extent of their uses, nor is it consistent with other documents that they have submitted to the County in support of their application. More importantly, the water budget submitted by the UDV does not reflect the unique and critical water demands created by the preparation and the use of their sacramental hoasca tea.

With respect to the preparation of hoasca, page 3 of the UDV master plan/preliminary plan report states that the temple will include a kitchen for the preparation of a religious sacrament. The report doesn't explain what the sacrament is but we've heard testimony today that that sacrament is hoasca tea and there's no dispute in that regard. Finally, also in there, according to their final settlement agreement with the United States, a copy of which is attached to my report and I believe the applicant has also submitted that to you, that agreement states that the UDV will be repackaging, decanting, combining, boiling and disposing of batches of tea. That's paragraph 34, 37 and 41 of the settlement agreement. All of these activities are required for maintaining the quality and safety of the tea, and all of these activities require water for preparation or cleanup. And it's clear that the second kitchen included in the plan, which is not mentioned in the staff report, and I assume that's just an innocent oversight, but nevertheless the report submitted indicates that there is a second kitchen dedicated to the preparation of hoasca tea. And furthermore there's also an indication in the settlement agreement with the United States, and I believe that you can also read that between the lines in the reports and testimony provided by the UDV that hoasca tea will be brewed on site for both local use and distribution to other centers around the country. The agreement between the United States and UDV allows the UDV to manufacture hoasca tea at their Arroyo Hondo location.

Now, we've not heard directly from the representatives of the UDV of how much water it takes to produce a serving of hoasca tea, and we've also heard them speak as to the unreliability of information you find on the website but nevertheless there's quite a bit of information on the web from sources very friendly to the UDV Church and the ingestion of hoasca tea that indicates that to produce a liter of tea, or if you will, a quart of tea, requires 50 gallons of water. That is not included in the water budget.

Now with respect to the use of hoasca and its aftereffects, the experts cited by the applicant and the documents that they reference, the friends of the court submittals that they provide on their website and they also reference in their submissions to Santa Fe County indicate that the ingestion of hoasca tea, "often induces gastrointestinal distress". That is their expert's statement. These effects specifically include vomiting and diarrhea. The water budget submitted by the UDV does not fully address the need for water for personal hygiene and cleanup that will attend every UDV event and involves the ingestion of hoasca tea, 66 events per year as reported by the applicant.

For example, the facility's bathrooms will be provided with dual flush toilets. These toilets use 0.9 gallons a flush for liquid waste and 1.6 gallons for solids. The UDV's water budget use assumes that most toilet use during events involving the consumption of hoasca tea will be for the elimination of liquid waste only. However, the clearly established purgative effects that would affect most attendees indicate that most toilet use will be used for flushing solid waste. Anyone who's experienced multiple or prolonged bouts of gastrointestinal distress knows that multiple flushes are often used to fully eliminate the fine suspended solids in the toilet bowl.

Similarly, the water budget submitted by UDV does not reflect initial hand-cleaning and final dishwasher needed to clean the vomitus containers used by the attendees or washing machine use to clean clothing racks, towels, linens, etc. soiled during the course of any event. Other ignored areas of water use – we heard mention of a nursery. There's no nursery water use included in the water budget. We've heard

testimony from Mr. Bixby that there could be ten children, perhaps even more attending some of these nursery – that will be taken care of in the nursery. That water budget needs to be incorporated.

Finally, in support of their water budget, the UDV argues in their master plan submittal that it is appropriate to use comparable data from other religious facilities around Santa Fe, Santa Fe County. That may be true up to a point if the comparable is made with other institutions or facilities where water may play a key role in what’s going on. And I’d like to focus specifically on the use by UDV of – on the list of six institutions, none of which by the way having a water use exceeding more than .25. One of the institutions they identify as a comparable water user is the Ibn Asheer facility, that’s the local mosque here in Santa Fe. I happen to have been involved with that mosque, still involved with that mosque. They report – the UDV reports a 2007-2008 water budget of 0.15 acre-feet. Well, it just so happens that that mosque has activities once a week, 52 times a years. Perhaps there are 20 people who attend that activity. Some of them perform ablution using water in preparation of the prayer. If you want to compare that to what the UDV is doing and bump up the Ibn Asheer numbers, the mosque’s numbers to an equivalent number of activities with an equivalent number of people, up to 100 with the UDV, then the water budget now becomes 0.5 acre-feet. And if the UDV would like to use comparables then perhaps 0.5 is a more reasonable estimate.

But I’m not going to leave it at that. I decided based on my experience and the data provided by the experts, the data provided by the applicant that I can create a detailed budget that addresses the gaps that I’ve identified. I’ve gone through that process. In my report you’ll find that on page 7 and basically, it’s my conclusion that their water use for both indoor and outdoor water use will be 0.31 acre-feet at full development. So that’s taking account for the greater need for hygiene, greater use of washing machines and dishwashers, again for hygiene.

While the 0.31 really doesn’t address the elephant in the room, and that’s to the extent that the manufacture of hoasca tea will take place. UDV has made it very clear. They made it very clear in their settlement agreement with the United States government in conformance with the decision of the US Supreme Court that they reserve the right to manufacture hoasca tea at this site in Santa Fe and to distribute that product nationwide. That’s a legal activity; that’s fine. Just include that activity in your water budget. I’ll defer to the attorneys here and the land use experts whether or not the manufacture of hoasca tea on the scale that they’re proposing is a manufacturing activity that should be allowed in a residential site.

Finally, assuming we can settle on a water budget, can the aquifer support that type of water use. So even assuming a modest budget of .25 acre-feet a year, the report that their expert submits does not support a conclusion that there’s 100-year water availability. [inaudible] I’m basing my numbers off of what they’ve submitted to the County as at full build-out they will have 100 members. Seventy is I understand is what their current membership is but they’re asking County approval to facilitate 100 members participating.

CHAIRMAN ROMERO: Thank you. So you’re saying you got this information from some of the information that they have submitted.

MR. CHUDNOFF: YES.

CHAIRMAN ROMERO: I just needed clarification.

MR. CHUDNOFF: Yes. The 100 comes out of their water budget.

CHAIRMAN ROMERO: Okay. Thank you, Mustafa.

MR. GRAESER: Mr. Chair, that is an accurate estimate.

CHAIRMAN ROMERO: Okay.

MR. CHUDNOFF: If I may then proceed then to the second report which was submitted a number of weeks ago to the County and that has to do with the potential for contamination from effluent discharges by the proposed temple. This one is dated July 29, 2010 revised November 9, 2010. Again, my conclusions are underlying geologic and groundwater conditions along the mountain front and the Sangre de Cristo Mountains are conducive to contamination of the aquifer. Groundwater contamination of nearby areas of the aquifer resulting from leaking gasoline storage tanks is well document.

Effluent discharge from the UDV leachfield will infiltrate the aquifer underlying the UDV property and nearby private residences in the Arroyo Hondo area. Discharges will impact the aquifer within 1.5 years of inception. Effluent discharge from the UDV leachfield will impact nearby drinking water supply wells within two years of initial discharge by the UDV. UDV's experts in psychopharmacology, Nichols, page 8, and the Metabolism of Pharmaceuticals, Barker 2010, page 4, and that's the most recent report that was submitted by UDV and I believe it's the last document in your thick packet agree that the active ingredient, DMT, in the UDV sacrament, as well as other potential contaminants will be entrained in the feces or urinary excretions of UDV members and pass through the liquid waste system into the groundwater.

And really, the rest of the report if you want to get into detail, I document my technical and my scientific hydrologic approach in developing the models and analysis that support my conclusion as to the timing of the effects. The important thing to stress is that nobody knows what the concentration of pharmaceutical type compounds if you will is in the tea. By their own admission in the documents that they've submitted and in their agreement with the DEA, we don't know what the concentration is of the DMT that they're ingesting. They're not required to test it. Yes, it's true that quite a bit of the DMT might be metabolized but none of their experts rule out that some of it will pass through and get into the effluent.

This is a fractured rock environment. We're within approximately 90 feet of groundwater. There's an open pipeline to the aquifer from the leachfield, and then it's an open pathway to the nearest wells, and on the figure you see that the nearest well is approximately 700 feet or less of the UDV leachfield. Thank you. I stand for any questions.

CHAIRMAN ROMERO: Thank you, Mustafa. Commissioner DeAnda.

MEMBER DEANDA: Thank you, Mr. Chair. Just one questions, basically. Did your projection, in terms of the annual water demand include the proposed greenhouse and also the caretaker's residence?

MR. CHUDNOFF: Mr. Chair, member of the Commission, those components were taken out of the revised plan so I did not incorporate those in the water budget.

MEMBER DEANDA: Okay, so your more than three acre-feet –

MR. CHUDNOFF: Point three acre-feet.

MEMBER DEANDA: Point three acre-feet did not take into account or do not take into account the greenhouse and the caretaker.

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MR. CHUDNOFF: That is correct.

MEMBER DEANDA: Okay. Thank you.

CHAIRMAN ROMERO: Charlie.

MEMBER C. GONZALES: I have one question. You said earlier that you have been an expert witness in the past. Have you ever been an expert witness on behalf of NMED before?

MR. CHUDNOFF: No, sir. I've not.

CHAIRMAN ROMERO: Thank you, Charlie. Chris, does your team want to –

MR. GRAESER: I would like a brief rebuttal.

CHAIRMAN ROMERO: We're not in court here. It's not a rebuttal. If you want to clarify some things – I think your consultant wanted to add a few things.

MR. GRAESER: Thank you, Mr. Chair.

CHAIRMAN ROMERO: Because that was specific stuff that we heard on water quality.

MR. GRAESER: And I appreciate that. I think what we're dealing here is, you know, Mr. Chudnoff starts off asking for proof of a lot of things that aren't required by the code. A full geohydro which is not required by the code. The reason we took out the guesthouse and the greenhouse – not the entire reason but a substantial reason because we wanted to make sure to keep that budget under. The reality is we submitted a conservative budget. They're always estimates. There is a requirement that we not going over a quarter acre-foot without proving up additional water. There's a metering requirement. There are going to be conditions of approval. We're bound by that, Mr. Chair.

Mr. Chudnoff paints a picture of a – for lack of a better word – just a huge pooping barfing party and that's not the reality there. Mr. Bixby testified that yes, it does occasionally upset your stomach. There can be results from that, but it's not a regular and widespread occurrence. It's just an artifact of the tea.

As far as all the concern about groundwater contamination, again, as staff has clearly said, the County relies on the New Mexico Environment Department's permitting process. The neighbors have appealed our septic permit at this point and that will go through the Environment and of this will be evidenced in that forum, which is the appropriate forum, as opposed to putting you all in the position of having to decide that.

CHAIRMAN ROMERO: Thank you, Chris.

MR. BIXBY: Mr. Chair, may I make a clarification also?

CHAIRMAN ROMERO: Sure.

MR. BIXBY: Mr. Chudnoff had asserted that we would be – when he read the word manufacturing in our agreement with the DEA that we would be preparing the tea, brewing the plant material to make the hoasca tea. We have no plans to prepare the hoasca tea at this facility. There are two kitchens in the facility. One of them is a food service kitchen. The other kitchen is a kitchen where we prepare the tea for distribution in the sessions. That is to say, we decant the tea from five-gallon stainless steel containers. We have measuring equipment, we have filters that we use to make sure that it's ready to drink. And that's the purpose of that kitchen. We don't brew the tea.

The facility that's needed to prepare the tea, like you said, there's a good amount of water that's needed for each liter of tea that's produced, it's not something that we

have plans to do at this location. That's a whole other structure, typically. And if and when we arrive – we don't even prepare the tea in the United States at this time; it's all imported from Brazil. So if and when we arrive at the point when we would be actually manufacturing the tea with the plant material, it would not be at this location. It does not constitute part of the application that you're considering.

CHAIRMAN ROMERO: Thank you.

LINDA SPIER: It's a privilege to be here tonight. County Legal told us in August of 2009 that Mr. Graeser had written a quite strong letter threatening all residents of Arroyo Hondo.

CHAIRMAN ROMERO: Ma'am, please state your name for the record.

MS. SPIER: Oh, I apologize.

CHAIRMAN ROMERO: I know you're anxious.

MS. SPIER: My name is Linda Spier. My address is 5 Brass Horse Lane. I happen to be the resident whose well will first be impacted by the UDV's waste stream. I'd like to state that I'm not an expert witness. However, Arroyo Hondo's engineering firm, Design Enginuity and Orallynn Gutierrez [sic] she had surgery at the beginning of October and she's away on a vacation to recuperate. And I am incorporating some of her highlights from her report, submitted to the CDRC on November 9<sup>th</sup> and that is in your packet, at the back of your packet. Or – it's been a long evening.

Anyway, it's a privilege to be here and be able to speak openly in a public forum in a transparent and open process. Mr. Graeser threatened all of us with *ex parte* and that is why we have been quiet and learning and observing, and we don't begrudge anybody their right to worship God the way they see fit. But we don't think that this activity is compatible with any residential neighborhood and their density is rather extraordinary on 2.5 acres. Tonight, I've been asked by my neighbors and all the residents in Arroyo Hondo to discuss specifically the septic and graywater systems that the UDV is proposing. The unique nature of the UDV waste and associated disposal issues is not addresses adequately anywhere in their application. We realize that the County staff has been extremely busy but your memo contains incomplete and inaccurate information, especially regarding water and sewage generation.

I'm omitting some things that Evelyn has discussed. And this is from Orallynn's report. Excuse me, this is what I looked at from the site plans submitted to the County by the UDV. The floor plan submitted to you, we see two kitchens, a total of three kitchen sinks, two dishwashers, an additional dining hall sink is mentioned in writing and the men's and women's bathrooms have a total of eight toilets, two urinals, six sinks, four showers, and one more sink and at least one washing machine to be located in the external utility building. There's also a 96-seat dining hall, two upstairs offices, an upstairs activity room, and additional large upstairs area whose use is not defined.

We were informed by the UDV in 2009 that they typically have meals after their sessions. Orallynn states the kitchen plans indicate four eight-burner and six burner stoves which would point to food being prepared onsite. Typical water use for a site with meal preparation is 11 gallons per meal served, and their typical 100-person session would generate 11,000 gallons of wastewater, and not just the 190 gallons indicated by adding food prep and dishwasher. Additionally, the UDV only assumes four-minute showers, which Orallynn tells us would be too short to be realistic. Ten minutes is more realistic and this adds another 300 gallons to the liquid waste system.



All told, Oralynn says, it appears that a more realistic flow to the wastewater system will be about 2,150 gallons for a typical service, a flow rate which requires a groundwater discharge permit to be issued by the NMED. And as Mustafa stated, there's no mention in UDV's application of the amount of water needed even for the brewing of one batch of ceremonial tea.

The UDV central practice is the drinking of hoasca. It is an hallucinogen and as Mr. Bixby and Mr. Van Amberg have discussed the plants that make it up and that it contains N, N-dimethyltryptamine, DMT, which is a Schedule I controlled substance and hoasca also contains other DMT potentiating plant compounds. The hoasca is only permitted within the context of UDV's practice. As a neighborhood, we have real and genuine concerns about the impact upon our public health and welfare should the drugs contained within hoasca and their fecal matter contaminate our water supply and run off onto the land that we're all sharing.

And if you'll look at the exhibit that Mr. Chudnoff gave you you will see that the UDV has located their leachfield in the lowest corner of their lot, directly over the underground flow of our aquifer. We are all topographically downhill from the proposed site and I saw from my immediate neighbors we'll also have contaminated surface runoff if the UDV is allowed to drip irrigate with sewage water that contains also untreated drug residue and fecal matter.

Oralynn says that since there is a possibility of hoasca contaminants will move relatively quickly into the aquifer the CDRC should recommend that the BCC require a groundwater quality impact study to be conducted as per Article III, Section 2.6.11 which states, at the direction of the Board, an applicant for a development permit may be required to analyze the effect of wastewater discharges on groundwater quality over a 100-year timeframe to demonstrate the potable water supply now available to wells within one mile of the development shall not be caused to be unpotable during a 100-year period as the result of the proposed development.

The July 2010 final settlement agreement between the UDV and the Drug Enforcement Agency clearly states, disposal of hoasca is subject to all applicable federal, state and local laws implicated by the disposal of hoasca. And that's located on page 17 of the DEA agreement. Oralynn states, the current application to the NMED and the County contains no information with regard to the planned graywater system. NMED has not issued a graywater permit and has no plans for this on file. Information of the type, sizing, location and suitability to treat the waste stream is not provided and the system is undersized. Therefore the applicant has failed to meet the code requirements providing a liquid waste plan, and therefore the application is incomplete.

Further, from my research their graywater explanation does not address seasonality or the freezing of driplines. GFO is the only drip leachfield product recommended by SludgeHammer. A cold climate drip system configuration study by North American Wet Line Engineering concludes that winters with early cold and no snowfall, such as we are experiencing now create the severest freezing potential for any drip irrigation system and it's my understanding from seeing their permit to NMED that they plan to drip irrigate with effluent within five feet of the lot line.

On page 6 of the County staff memo to the CDRC for today's hearing it states that the correspondence from the New Mexico Environment Department was received on September 23, 2010, which indicated further information is required from the applicant

regarding their liquid and graywater system. An NMED liquid waste permit that they had then was rescinded until the applicant demonstrated compliance with NMED regulation. In fact, the UDV permit was rescinded because it was determined by the department that your submission for a liquid waste permit included incomplete and inaccurate information. And this was a letter sent to, care of Tai Bixby from NMED on September 23<sup>rd</sup>, which is also – well, I don't know if it's in your packet. I apologize.

The staff memo issued today further states that on November 10<sup>th</sup> the permit was reinstated by NMED. In fact, it was on November 5<sup>th</sup>, that NMED reinstated the permit with the express statement that if any information changes from what was submitted in the original permit application, such a change as system design, design flow or load, the permit holder is required to submit an application for a permit modification under 20.7.3.41 NMAC. If this does not occur, the Environmental Health Division can take enforcement action against the permit holder, which can include the revocation or suspension of a permit. And this was sent to Mr. Graeser's law firm on November 5<sup>th</sup>.

It was only on September 14, 2010 that the UDV provided supplemental information with regards to their wastewater system in which they state that they plan to split the wastewater flows between blackwater and graywater. The graywater is allegedly to treat the shower water only. Our engineer informs us that based on the information provided by the applicant to Santa Fe County the elimination of shower water from the waste stream still results in a flow that exceeds the liquid waste permit design flow by a minimum of 20 percent, or 843 gallons, which is still larger than their stated 700 gallons design flow that they submitted to the state. Therefore, the NMED permitted design flow still does not meet the UDV anticipated flows, even using the UDV's understated numbers, and that's a quote from Design Enginuity's November 9<sup>th</sup> letter, page 3.

Furthermore, the SludgeHammer system, the FH-86, is only approved as a secondary advanced wastewater treatment system by NMED and it does not reduce total nitrogen. It is not a tertiary treatment system as Mr. Graeser states in his letter of September 14, 2010 to Rachel Brown. Further, the County has told the UDV that they must prove nitrogen reduction to 14 mg/l as per Article VII, Section 2.7.1. The County is allowed to set higher standards than the state. And I have a quote from the New Mexico Environment Department about secondary and tertiary standard differences if you'd like to hear it, but I will continue.

Mr. Graeser also states that the County, "that the County is not imposed to enforce these requirement for soil typing for any other application on record." However, Oralynn says that the Land Use Code, Article III, Section 2.6.4 requires that the UDV submit a soil investigation study. Oralynn also says that the UDV is trying to avoid a New Mexico Discharge Permit requirement by splitting the waste stream into graywater and blackwater components. But just for the same reason that washing machine effluent from cleaning blankets and other articles of clothing used in sessions, and by the way, the sessions are four hours long. The UDV has told us they start at 8:00 pm. They end around 12:15. Then they prepare a meal. Then there's some more time. Then they start going home. And the time of this – they go home is usually around 2:30 all the way to 4:00 am of the following day. And that makes a service eight to ten hours long and we question if they're also staying over night. We would like the UDV to answer that question, because

that really affects the water and sewage budgets further as well as being a community service facility.

So for the same reason that washing machine effluent, which may include feces and vomit particles may not be directed into a graywater system, and given their shower use would be washing off excrement from their bodies, all these water sources should be treated in a blackwater system. The level of treatment provided in a graywater system does not provide adequate protection for public health.

Oralynn concludes that the UDV wastewater will likely exceed 2,000 gallons during some events and include a non-typical domestic waste and therefore the applicant is required to get a New Mexico Discharge Permit and not an NMED liquid waste residential permit. A discharge permit requires ongoing monitoring which can provide a safety factor necessary when dealing with the treatment of controlled substance. The UDV suggests to us and to the County that dilution will be an adequate means of pollution control. This approach has, as Oralynn put it, failed our society repeatedly. She says all UDV waste should be connected to a County or City-owned wastewater treatment plant in which regular monitoring of the wastewater effluent is analyzed, and if this is not possible, then the UDV must install a closed wastewater system and all waste, including all shower, washing machine, sink and toilet effluent must be collected and hauled to a County or City owned wastewater treatment plant and not be permitted to enter our environment and water wells.

We also request, the residents request that monitoring wells be installed between the UDV and our wells and that the cost of installation and monitoring should be paid for by the UDV. And finally, Oralynn says that we need a backup plan. We propose bonding on every well within a mile radius so that if contaminants show up in the monitoring wells a solution can be implemented prior to the contaminants reaching our drinking water wells.

Arroyo Hondo requests that the UDV be required to place their building structures on concrete slabs, sealed off from the earth to prevent any DMT-laced vomit and/or fecal matter, or from the preparation of hoasca that may be spilled on their floors so that it cannot enter our environment or the environment of any community and residential neighborhood. It is with all this in mind that Arroyo Hondo residents have again appealed, on November 10<sup>th</sup> the New Mexico Environment Department Liquid Waste Septic Permit which was reinstated based on undocumented verbal explanations and documentations in a closed-door session.

We feel that the reinstatement of this permit was arbitrary, capricious and not otherwise in accordance with New Mexico's laws and regulations and it fails to protect public health. The solid waste and liquid waste disposal of hoasca and all associated effluent is a public health and safety issue. It is the duty and obligation of our state and County governments to protect our health, safety and welfare, as well as protect the precious water sources such as the Arroyo Hondo aquifer, a part of the greater Galisteo Basin Watershed, which is the groundwater recharge zone for all of Santa Fe County. The state and County must also protect wildlife and the perennial Arroyo Hondo springs, the Arroyo Hondo intermittent watercourse and migration corridor.

The Arroyo Hondo open space and canyon is also used for hiking and recreation, not only by all of Arroyo Hondo and Old Agua Fria residents but also the general public. In thinking of all of Santa Fe County's residents' health, safety and welfare we also urge

the UDV must agree to seek Santa Fe County approval before growing or manufacturing hoasca anywhere within Santa Fe County and that any manufacturing facility must be hooked up to municipal or regional water and sewage infrastructure.

The UDV acknowledges in its agreement with the DEA that the UDV's right to dictate the use of hoasca ends where the waste stream begins. This 2.5-acre lot in Arroyo Hondo is eminently very unsuitable. It has too much proposed density. It has inappropriate all-night hours of operation that are completely incompatible with any residential neighborhood. It imposes an undue burden upon us. And most importantly, this site is without adequate water for the UDV's needs and without waste treatment facilities available now or in the foreseeable future. We request that the CDRC deny this application. And also, we'd like to suggest to the County that you have a person who will go to the state and make sure that the information given to the County and the information that's turned in at the state are the same. And in that spirit I am turning in tonight our appeal letter that the state has had that a group of affected residents are appealing the current NMED permit. We don't feel that this application should be approved. And I'm requesting also that if you have any technical questions regarding the septic, Orallynn's septic from her letter to please ask her collaborator who is helping all the Arroyo Hondo residents, which is Mustafa Chudnoff. Thank you very much for this opportunity to speak to us.

CHAIRMAN ROMERO: Thank you, Linda. Once question quick. You said that Orallynn had a condition for us? A condition, wanted us to recommend to the BCC? Can you say that again so I can write that down?

MS. SPIER: Yes, sir, Mr. Chair. It was regarding approving the potable water supply that it won't affect [inaudible].

CHAIRMAN ROMERO: It's just funny because usually when we recommend something to the BCC it's after we approve something. That's just kind of contradictory to why you guys are here, but I want to make this point. If you can get this for me and we can get it here for the record. It's in the packet I know but there's so much stuff in my packet.

MS. SPIER: Yes. This is Orallynn's quote right here. It's on page 4, oh, excuse me, page 1 of her letter. You asked about a specific piece of code?

CHAIRMAN ROMERO: No. Orallynn – it's something you read tonight that you – she recommended that we recommended to the BCC some other kinds of tests or some kind of study. Did you catch it? Just tell me the page and I can reference it.

MS. SPIER: Is it all UDV waste must be connected?

CHAIRMAN ROMERO: No. Was it that?

MS. SPIER: To a County or City-owned wastewater treatment plan in which regular monitoring of the wastewater effluent is analyzed. If this is not possible then the UDV must install a closed wastewater system and all waste, including all shower, washing machine, sink and toilet effluent must be collected and haul to a County or City-owned wastewater treatment plant and not be permitted to enter our environment and water wells.

CHAIRMAN ROMERO: Okay, Linda. What page was that on?

MS. SPIER: I believe it's page – excuse me. Sorry I have [inaudible]. It's in the conclusions.

CHAIRMAN ROMERO: Okay. I'll have staff find that.

MS. COBAU: It's in Exhibit N, and it's the last – it's about midway through Exhibit N and it's the last paragraph of the letter from Oralynn.

CHAIRMAN ROMERO: Thank you, Shelley. And thank you, Linda.

MS. SPIER: Thank you, Shelley. Thank you very much for giving me this time.

CHAIRMAN ROMERO: Thank you. Who was the next speaker? Just in the interests of time, we've been here almost six hours. We started at 4:00.

DR. FLETCHER: Stand up and stretch everybody.

CHAIRMAN ROMERO: I'm going to allow five minutes per person from here on out.

CHRISTOPHER FLETCHER: I'm the medical expert, so to speak.

CHAIRMAN ROMERO: Okay.

DR. FLETCHER: And before I start my time, there's an error in the package submitted by UDV. The Appendix H contains references by a physician. There's only physician in there, Dr. Grob, who is a psychiatrist at UCLA. The other guy's a vet and the other guy's a chemist. They're not physicians. So they're – it's mislabeled. The Life Center also has residential.

CHAIRMAN ROMERO: Thank you for stating that. Can you please state your name.

DR. FLETCHER: So I'm Christopher Fletcher.

CHAIRMAN ROMERO: Your name?

DR. FLETCHER: Christopher Fletcher. I've been in Santa Fe since 81. I'm a family physician. I've been here 30 years now and live in Arroyo Hondo since 87. I graduated cum laude in biology and biochemistry from Harvard. I have a big background on this stuff and I've studied with Richard Schultes, the guy who brought DVT, hoasca, to the United States in the 50s. I didn't use it. He had a drug lab every Friday afternoon. He allowed students to do various South American chemistry.

I did my residency in Massachusetts and moved here with the Public Health Service. I live at 216 Two Horse Trail which is a couple of miles away from the entrance to Arroyo Hondo, and I have a well with 15,000 year old archaic water which I do not want even in the most miniscule fashion contaminated by potent biological materials including super-potent hallucinogens and MAO-inhibitors found in hoasca or ayahuasca. I believe there are several important issues in regard to the proposal of UDV that are raised here.

First is the issue of the actual site and size, potential overuse of a small parcel of land and that's been addressed by others. Second is the issue of the community service facility and we don't see that this is serving our community in any fashion and that's been addressed by other speakers. Third is the overarching important question of water use and drug contamination of the shared aquifer. The old engineering mantra of – and this is what engineers would say – the solution to pollution is dilution, has been changed. That was a fallacy and it led to a lot of environmental degradation and the new mantra is the solution to pollution is isolation. So these issues have also been addressed by other speakers. [inaudible] the issue of inspection, control, disposal of the drug and the containers and the waste and that's in dimethyltryptamine, the most potent hallucinogen known, even to the CIA, and MAO-inhibitor compounds which are contained in the [inaudible] and the residues and I've talked to the New Mexico Board of Pharmacy this

week. They were conveniently not apprised of this issue by either the DEA or the UDV. They are the State regulatory agency which does the DEA's work. I've just pulled out my little – here's my DEA license. There's my state drug license and my medical license. So I'm not sure that UDV has any of these.

CHAIRMAN ROMERO: Can you get copies for the record?

DR. FLETCHER: Of what? My licenses?

CHAIRMAN ROMERO: Sure.

DR. FLETCHER: Surely. But the State Board of Pharmacy, Larry Loring is their chief inspector and investigator and he is in the process of beginning the board's investigation of this whole issue because they will be responsible as the DEA state and local agent entity to make sure the disposal is done properly. So it's an issue that nobody's even brought up.

Fifthly and the most importantly to me is the issue of drug impairment of UDV members. I'm a family physician. I deliver babies, I take care of old people. I do it all, and I don't like having to drive down in the middle of Arroyo Hondo on that road at two in the morning to go to St. Vincent's and deliver a baby and then have to run into somebody or have them run into me or anybody else. The ingestion of hallucinogenic tea is longer lasting than they've claimed. All the literature is clearly longer than four hours, whether it's ayahuasca, which is made from a variety of plants as Tai said, or if it's hoasca which is made from a vine and leaves of two specific plants in Brazil and Peru. And [inaudible] I've read extensively about the UDV and ayahuasca and hoasca, the biochemistry of the drugs and as a practicing community physician. Family physician. I'm seriously disturbed that the County is even remotely interested in approving this proposal of theirs. It's called – UDV is called a cult in Brazil and a syncretic Christian church here, which means a fusion of nativistic, shamanistic, South American religions with Christianity. And unlike other types of religious organizations they're very secretive and no outsiders are allowed in and we've had a hard time getting to know them, so to speak. So whatever statements have been made, especially last summer in their meetings, a year ago, we need to take a lot of what they say with a large grain of salt.

For instance, the Native American Church, which uses peyote in ceremonies usually held out in the middle of nowhere, where this church could be, invites people to participate and members to bring friends with them who are not Native American. They're even open, even though they're somewhat secret. Essentially, everything published about hoasca discusses that the dimethyltryptamine, essentially the most powerful hallucinogenic chemical we know and associated hallucinogens in the tea are the reason for the existence of the church and sacramental tea is the sole reason for the existence of the UDV and other similar churches in South America, specifically Brazil. In other words, the tea is the reason for the religion and the religion cannot exist without the tea. According to every report I've read, and I've read a lot, the tea causes intense, often frightening hallucinations, mostly visual, which the tea is known for across the South American indigenous world. According to its users, this is from their literature, the tea is "key to the process of seeking self-knowledge and mental concentration and vegetal, the tea, teaches them through visions and spiritual revelations to be better people in full communication with nature through the tea. The brew or tea is made from the Banisteriopsis vine, which is a source of monoamine oxidase inhibitors – those are things you read about, you hear about on TV drug ads. If you're on an MAO-inhibitor you can't

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take Lyrica for you know, IBS. You might have a hypertensive crisis, you eat cheese and took that drug. So you see that on a lot of drug ads. MAO-inhibitors are old fashioned anti-depressants – boiled with leaves from a large number of potential admixture plants, usually *Psychotria viridis*, the source of the DMT, and contains powerful hallucinogenic alkaloids called harmaline, harmine, detetrohydroharmine, and dimethyltryptamine, which is known as DMT, again, one of the most powerful hallucinogenic compounds ever discovered.

It's been known – it's been synthesized since the thirties. It's been experimented with by the CIA since the fifties. This is not a little joke; this is a major chemical. These compounds have structural similarities to mescaline, which is cactus derived, like peyote, and mushroom derived, that's magic mushrooms for you guys, psilocybin. The brewing of the tea allows for the mixture of DMT and monoamine oxidase inhibitors which prevents the drug from being degraded in the gastrointestinal tract, allowing it to last, or its effects to last for hours, unlike smoking it or injecting it or shooting in IV or snorting it, which lasts for 20 minutes to an hour.

Ayahuasca, or hoasca, the two different names we've heard about, therefore is a powerful psychedelic South American brew containing DMT and MAO-inhibitors. One of the primary effects of the tea is considered to be the vomiting or purging that accompanies the experience and then leads to contaminated vomit, urine, stool, etc. The induced DMT experience can include profound time dilation, visual and auditory illusions and other experiences that by most first-hand accounts defy verbal or visual description. Some users report intense erotic imagery and sensations and utilize the drug in a ritual sexual context. Dr. Rick Strassman of UNM Medical School, a psychiatrist did experiments in the nineties on the drug, noted that users had an experiences with a perceived alien entity. I'm not going to bore you. This is really interesting stuff. Usually the reported entities were experienced as the inhabitants of a perceived independent reality the subjects reported visiting while under the influence of DMT. Several subjects reported contact with other beings, alien-like, insectoid, or reptilian in nature in highly advanced, technological environments. This is real stuff – where the subjects were carried, probed, tested, manipulated, dismembered, taught, loved and even raped by these beings. Those could be the same beings that some of the ancient South American cultures that consume DMT beverages like ayahuasca considered their gods.

Another researcher, Terrence McKenna, encountered – recounted encounters with entities he sometimes described as self-transforming machine elves. Machine elf experiences are said to be shared by many DMT users. As early as the 1950s several researchers found that the effects of DMT on normal volunteer subjects, normal people, were similar to those of LSD and mescaline, visual hallucinations and illusions. One hundred percent of the time, distortions or spatial perception and body image, speech disturbance and euphoria. These were the typical experiences. Sophisticated biochemical studies of Brazilian hoasca drinkers – this is hoasca, not ayahuasca – by Brazilian researchers, a paper title “Cult Hoasca, a Model for Schizophrenia” shows that the experimental psychosis observed after drinking hoasca reproduces the pathologic – it's a theory called transmethylation theory – of schizophrenia first proposed in 1958.

High levels of DMT were found in the urine of usual consumers of hoasca – that's UDV users as well as in the urine of drug-free acute schizophrenics, patients, in the Brazilian studies. Hoasca drinkers reported marked perceptual alterations in the sense of



distortions of true perceptions, mainly visual. All experienced mood changes with unmotivated laughing, which is kind of hilarious when you look at it on Youtube, and subjects were unable to keep attention focused on any outside activities or events, unable to focus, unlike LSD where you spike the hallucinations. In an emergency you can focus. If you have to drive to the hospital, you can do it. But on hoasca, you're out of touch; you're in a different reality for the hours that you're under the influence. Their conclusion was that hoasca represents an experimental psychosis with common features to schizophrenia.

Closer to home, an attorney that was quoted by the *New Mexican* from the *Wall Street Journal* last September states that the tea often induces intense vomiting and diarrhea, causes a significant alteration in consciousness that could be terrifying and the average person would find it somewhat nightmarish. Despite statements in the literature to the contrary, UDV members claim that their tea, which comes from Brazil does not make them hallucinate but amplifies their concentration and facilitates their connection with God. Since it's difficult to believe many of their statements, and there's no substantiation of their claims we can move even closer to home. I have a long-term patient, a businessman in Santa Fe who's half Native American and he has used a number of psychotropic drugs over the years and worked closely with the Native American Church in their peyote ceremonies. Several years ago he experimented in Santa Fe, right here, with hoasca provided by a Peruvian Indian Shaman who gave him the tea on several occasions. He no longer does any drugs of any kind because he said it was too potent. He stated the experience with hoasca was "like getting shot out of a cannon." And then it was much more potent and powerful than if he had combined peyote, cocaine and speed taken together. He also said that peyote, psilocybin – magic mushrooms again – and LSD are a walk in the park compared to hoasca, which gave visceral, immediate and extreme side-effects which lasted for many hours. He said the initial experience during which he was unable to disconnect from his altered state of consciousness lasted a minimum of four to six hours, that the abnormal effects lasted another 12 to 18 hours, during which he was exhausted and slept, and he never felt totally back to normal until 24 to 36 hours after the ingestion. He strongly disagrees with the UDV statement that the tea's effects only last three to four hours and noted that his friends who did it also all had the same experience as he did. He quit using it because it was ultimately too frightening and violent. He stated that the vomiting and purging which occurs, this goes back to the degradation issues. He stated that the vomiting and purging which occurs when one drinks the tea means to the users that one's body has absorbed enough DMT so that you get enough in your to have the expected or religious experience. He states that the experience is thoroughly violent. In psychedelic parlance, the term is called getting off, and that's what makes people imagine – that's his word – that they are in contact with the spirit world. The effects range all the way to severe hallucinations and different realities. The tea is intense stuff. It changes people, and the whole experience is to have a hallucinatory experience done within a ceremonial context.

Unlike LSD which causes hallucinations which can be controlled to a degree, hoasca does not – DMT does not allow that ability to come back to reality and focus while the drug is active. Again, four to six hours, minimum, not three to four. And this goes back to our issue of nighttime use, all night use. Another patient of mine, a Peace



CHAIRMAN ROMERO: Your name again?

MS. FESENMEYER: Kendel Fesenmyer. It – I did not realize this issue or this condition would be imposed right now so I will speak on this –

CHAIRMAN ROMERO: You have to say I've been pretty lenient because I had asked for two minutes.

MS. FESENMEYER: All right. So I live at 106 Arroyo Hondo Trail with my husband Todd Kurth, that's within one mile of this proposed development. I'm the mother of two young children. My little boy, A.J. is seven, and my little girl Emery, is four. They are third generation residents of Arroyo Hondo. By the time my children are middle-aged the Kurth family will have continuously lived in Arroyo Hondo for 100 years. And I have sworn under oath so what I'm about to say is true. On a nearly daily basis my children say to me, I love where we live, or we're so lucky to live in Arroyo Hondo. Why do they say this? Because they see and live the beauty and sanctity of Arroyo Hondo every day of their lives, and because a true sense of place is something that our family has held dear for three generations. They do not need someone to come into town and declare the sanctity of their home and they do not commute to their bedrooms.

Arroyo Hondo is their home. They live it. Every night I pray to God for my children's health and safety and included in that prayer is a plea to God that the current residential zoning in Arroyo Hondo be upheld and that this proposed development at the corner of Brass Horse and Arroyo Hondo Road be denied. Yes, I do pray to God about this. And why do I do that? Because if this development proceeds it will jeopardize my children's health and safety. I'm not an expert, nor, as I like to say, am I an expert maternal witness. I'm just a mom concerned about my children's well being.

I have two issues. First, with regard to their health. Steven Barker, in your packet, professor of veterinary medicine has written this lengthy opinion on behalf of the UDV about potential contamination of water supply. He refers to vaguely my colleagues and methodology from 2009, a study in press, manuscripts on these findings are presently in preparation. I'm sorry, but that is just not good enough for this mom.

No, I don't think my children will be exposed to a full dose of hoasca by drinking water from my well. And by the way I would not be signing on any dotted line to allow that. But what about the long-term exposure to low concentrations of DMT in the water supply? Where are the findings on that? And people have fully, extensively addressed those issues. So when all is said and done the potential for hoasca contaminants to make it into the groundwater absolutely does exist.

Given the age of my children, four and seven, and given our family's history of living in Arroyo Hondo, it's highly likely, even their children will be living in Arroyo Hondo if very close to if now more than the next 100 years. Why should they carry the effects of the contaminated aquifer. Second issue, with regard to their safety, and again I'm not expert, this issue of the possibility of people driving while impaired due to the use of hoasca, the DMT Schedule I drug, the sole evidence that no member has ever been in an accident or accused of being drunk or under the influence of drugs following the UDV ceremony as mentioned in documents you have and on the slide show, well, what does that prove? It proves that no one has been arrested. It does not prove that it did not happen.

We all know that just because a person was not caught does not mean a crime was not committed. Furthermore, there's reference to liquor establishments in Santa Fe County and recently approved wine and beer licenses. Absolutely. Let me ask if a bar that is accountable or a restaurant is accountable cannot prevent the occurrence of someone driving while under the influence of alcohol, which is not a Schedule I drug, then why on earth should we expect that an unregulated organization having any more success with an even more powerful drug?

These facts do not reassure me. As a mother they downright terrify me. Again, why should my children live with this burden? I respectfully ask that the CDRC exercise the precautionary principle, which by the way is a statutory requirement of the European Union, meaning the 26 member countries of the UV legally mandates the precautionary principle. And I ask that you deny this UDV master plan. The precautionary principle states that if an action or policy has a suspected risk of causing harm to the public or to the environment in the absence of scientific consensus, which there clearly is not, the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action. The UDV has not proven this, and as I said there's no scientific consensus that there's no danger to the public health and safety and to my children's health and safety, A.J and Emory.

In a state where as you know all too well measurements of children's well being fall at the bottom of nearly every ranking, do not let this be yet another injustice perpetrated against our young people, against my children. I deeply implore you to deny this application to rezone the Arroyo Hondo neighborhood to anything other than residential use. Please stand and protect the health and safety of my children.

CHAIRMAN ROMERO: Thank you, Kendall.

MEMBER DEANDA: Mr. Chair.

CHAIRMAN ROMERO: Yes.

MEMBER DEANDA: I'm sorry. Since it is 10:15, and I would actually like to hear whatever the participants have to say may we just take a brief recess.

CHAIRMAN ROMERO: We'll take a five-minute break.

MEMBER DEANDA: Five minute break?

CHAIRMAN ROMERO: Five minutes, yes.

MEMBER DEANDA: Yes, because I think we should, you know, let everyone speak that wants to.

[The Committee recessed for 10 minutes]

CHAIRMAN ROMERO: Maybe a little bit of stress got a little bit of blood flowing to our heads. Can I see a show of hands of who still might want to speak? Okay, two. Were you sworn in? Please come forward and state your name for the record. And sir, please, five minutes and please don't talk about the tea or all that stuff – and don't get me wrong. I'm very, very sensitive to all your issues but we've been hearing about the tea from your expert witnesses. You're an expert? No? State your name for the record, your address and let's roll.

GREG DEMENT: Yes. My name's Greg Dement. I live at 19 Jackrabbit Lane in Arroyo Hondo, just down the road from the proposed location here and thank you, Mr. Chair and Commissioners.

CHAIRMAN ROMERO: Talk a little closer to the mike.

MR. DEMENT: Excuse me. How's that?

CHAIRMAN ROMERO: That's better.

MR. DEMENT: Okay. Thank you, and thank you for your suggestion there about speaking things focused on the land use questions. That's exactly what I was thinking because to me that's the essence here and I think there's been a smokescreen here about religious freedoms and the right of people to practice their particular path there and I don't think that has anything to do with this issue here. The code is clear about how a community service facility may be approved if it is compatible with the neighborhood. I think it's absolutely clear from what we've seen that the use is not compatible with the neighborhood whatsoever. I'm astonished that this staff would conclude that it is especially since there's hundreds of people in the neighborhood here who have made it clear that they don't feel that it's compatible with our neighborhood, and to me that's the essential issue here.

We've seen that the services involve up to 70 or 100 people convening at one time on several Saturdays or more, depending on what happens at the facility there. The idea that that's somehow compatible with a pastoral, bucolic residential neighborhood is absurd and I'm just astonished that that isn't found compatible, or is found to be compatible with our neighborhood by staff. So basically that's what I want to say except I feel like I need to address something that Mr. Graeser said earlier there in reference to my neighbors and myself I suppose by extension in terms of suggesting that we were people who weren't amenable to reason or to the facts and that our objections were somehow based on misconceptions and I find that egregious and I find it personally insulting and I know my neighbors pretty well by virtue of being involved in breakfast clubs and the Christmas parties and so on, enjoy immensely living in this neighborhood and we have a wide array of people, brilliant people in this neighborhood and to suggest that somehow their objections are not rooted in fact I think is nonsensical and I wanted to address that.

JOHNNY MICO: Hello, my name is Johnny Micou. My property of residence or on record is 179 County Road 55-A, but also I'm married to Linda Spier and we live at 5 Brass Horse Lane. So I'm speaking both as a citizen at broad and a member of the community. I do want to thank the Board for allowing so much time and wish we could have more time to present other issues because a lot of residents of Arroyo Hondo did leave and never had a chance to come to the microphone.

Just, I'm just going to be very brief. Looking at – I have right in front of me community service facilities, what the standards are. Firstly, it's not been illustrated that there's a need. UDV has been able to meet. They said they've been able to meet. They have a place to meet. It's not as if they have no place to meet. And any other issue that has with need. More importantly, existing development in the area. It is not compatible, especially for this kind of zoning change.

The residents in that area out there, it's dark at night. It's quiet. I'm sure they would enjoy having that too and I don't begrudge them from that, but when you have in the middle of the night, three or four in the morning, whatever it is, headlights coming into the bedroom window, disturbances, peaceful, quiet enjoyment of property. That is not compatible with the existing Arroyo Hondo. And some of these areas that have been described are actually beyond what is described are as the true Arroyo Hondo, and I just wanted to make that clear. The part where we're really talking about, where this facility is proposed, is definitely right smack in the residential area, with nothing else similar to

it. And I just wanted to say that and thank you and I think you need to at this juncture – this is not ready to go to the BCC. Thank you.

CHAIRMAN ROMERO: Thank you, Johnny. The public hearing is now closed. Chris, you have some time to close. I'm going to give you seven minutes and I'm going to time you. You can tie it together. [inaudible]

MR. GRAESER: I can do it in less, Mr. Chair. You know, Ms. Bemis [inaudible] gave us a figure of how many people signed a petition. That petition was attached to a letter, and that letter contained some gross exaggerations, gross inaccuracies about what is really going on with the UDV here, what had been going on for 15 years with no complaint on this property, and I think that's really caused a lot of consternation in the community. That's caused a lot of people to get upset as you see. As we've said, we've really tried to address that opinion concern with fact. Some people can listen; some people can't. You know as far as me threatening folks, I don't know where that comes from, but the reality is there are religious land use law issues associated with this case. They're very serious issues; they're very important issues, and they could have significant effect to the County but that's why you've got your attorney here. And I'm sure if you're going down the wrong path he's going to set you straight. So far he hasn't said anything and I don't think he's needed to.

And the fact is we've made a full submittal and we gave the staff everything that they requested. As Dr. Fletcher said this isn't a little joke. No, it's not. It's really serious. It's fundamental religious practice. It doesn't get much closer to the bone than that and these people – I think some of them are the most sincere, respectful, low-key, family-oriented folks I've ever met. And they have a right to their religious practice. And the fact is, under the code that use is permitted anywhere in the county.

We've given you factual evidence for why this building is compatible with its surroundings. We've given you factual evidence for why it's needed and what you've heard in response is opinion. Now, you've also heard a lot, I think primarily, the bulk of the presentations strayed from Mr. Van Amberg's initial admonition, which was let's just stick to the code. You know, we got into areas of New Mexico Environment Department regulation, the DEA regulations, Supreme Court's prescription for what permitted religious uses are. That's nothing that this board needs to consider because it's not within this board's jurisdiction.

I'm a dad. I understand how important it is to take care of your kids. And I just say you've got to focus on the factual evidence, not fear, irrational concern and opinion. I go back to the fact that staff put this through the wringer and determined that it complies and to the extent that there's disagreement with the water budget, that's addressed. We have a limit on how much we can use. We have a requirement to meter it. We're stuck with that. Tai, do you have anything to add?

MR. BIXBY: Mr. Chair, members of the Committee, I just want to reiterate what our attorney said is the question here is a land use issue. You're charged with evaluating the code and the appropriate development. Our religion is not on trial here. The safety of hoasca tea is not on trial here. Fourteen federal judges and eight Supreme Court justices heard evidence that was a lot more intense than anything that you heard tonight and they ruled regarding the fact that the religion is legitimate, the tea is safe, and that there's no likelihood of diversion. Thank you for your consideration of our request and for hearing what we had to say.



CHAIRMAN ROMERO: Thank you, Tai. The public hearing is closed. Staff, do you have anything to add with respect to anything that was said tonight with regard to the issues, with regard to the process, with regard to the Environment Department permit, the review, the water quality reports, things that have to do with what we're here to make a determination on?

MS. COBAU: Yes, Mr. Chair, and I can do it in less than five minutes.

CHAIRMAN ROMERO: You only get three.

MS. COBAU: Thank you. I'd like to speak to the issues raised regarding the water budget. We have written testimony from Laurie Trevizo that she looked carefully at the most recent submittals by the UDV and their water budget, which she recalculated, they submitted based on two kitchens. That was a typo in my report. Laurie reviewed it for the presence of two kitchens using data from similar uses is what these people use to compute water budgets. They have similar uses that they consider. It's like empirical equations. So recalculated their water budget to be a total of .1736 acre-feet per year. We're requiring –

CHAIRMAN ROMERO: What was that again?

MS. COBAU: 0.1736. Okay. Less than a quarter acre-foot. She recomputed it. We're requiring placement of a water meter on the site. We could impose a condition that the provide quarterly water meter readings and if they exceed a quarter acre-foot then they're going to have to demonstrate 100-year water availability. Jim Corbin, in his report that's in your packet, states that he has done this and that there is half an acre-foot of water availability, minimum. So I don't think we have a water availability issue on this site.

Regarding the wastewater issues, again, as I stated at the beginning of my staff report, the New Mexico Environment Department has a team of engineers who review these type of submittals as their job and the ones I know that work at the NMED, Robert Italiano, he's an old guy. He's been there forever. The guy knows what he's looking at. If the ED says that their wastewater system is permissible this is what the County counts on, are the experts and the New Mexico Environment Department. And Mr. Chair, that's about all I have to add.

CHAIRMAN ROMERO: Okay. Thank you. Before we entertain a motion with respect to this case is there any discussion that we want to have amongst us as a board and the discussion can be collectively amongst us, between us or directed to the staff. I do not want to open it back up to the public hearing portion. So does anybody have any questions? I saw a lot of writing and jotting down of things. Are there any things that you need clarified by our attorney? By our Land Use staff at this time?

MEMBER DAYTON I have a little more question. If this is a public service to the local community or not.

MS. COBAU: Mr. Chair, Committee Member Dayton, it's a community service facility for the county. It's not necessarily for a specific neighborhood. The ordinance specifically states the county. It doesn't say you have to provide a service for people within 100 feet of your business. We've never reviewed any community service facility such as that. Again I'll go – under those circumstances – I'll go back to the Boys and Girls Ranch where they're bringing in kids from around New Mexico to that facility. They weren't just serving kids in the Edgewood area; they were serving kids from around Santa Fe County.



CHAIRMAN ROMERO: Any other questions? Commissioner DeAnda.

MEMBER DEANDA: I have maybe a question but really a comment. You know I know that we're sort of looking at Ordinance No. 2010-13 and that's really sort of the foundation for whatever decision we make tonight, and obviously the packet of information that was submitted and all the testimony given by the people at the meeting here or the hearing here tonight. You know, I think the question I have is the ordinance was recently amended and I'm assuming there was notice of that given to the public. So we're sort of locked into what the ordinance states. If there were concerns about what it says I think then – I'm sorry that more people weren't here when it was heard to suggest changes to it because, at least from my reading of it, it's hard to say that this is not a community service facility which will provide service to a local community because based on everything that was said tonight it in fact has been doing that for 15 years. It's been in existence at the same site for off and on but it has been there and it's hard for me to see it as anything other than a local facility or community organization that has been there and I guess the question, the problem I have is that when we think of local community organizations – it doesn't say church – I think of a local community organization as a non-profit public service organization. But it's clear from the ordinance that churches are included as the community service facilities. And it does say that they are allowed anywhere in the county provided that the requirements of the code are met and it appears that they have been met based on the submittals and reviews that have been submitted to the County. The County has looked at it. The County has recommended approval and the ordinance is clear that the services need not be provided just to that neighborhood but that the services be provided for the residents of the county.

And at least based on testimony tonight it appears that a majority of the members of the UDV temple are Santa Fe County residents. The compatibility issue, I understand. You know, it's not an issue with respect to a residential area for me because most churches are located in residential areas. I understand that you don't want this particular or any, I guess church in Arroyo Hondo. And there are a lot of reasons for it and I understand those as well. But our job is to basically look at this and see whether or not the application meets – allows us, basically, to make a recommendation to the County Commission based on staff's recommendation. From my point of view it does. I don't believe that the entire Commission feels that way but that's just my opinion and I'll vote accordingly.

CHAIRMAN ROMERO: Thank you, Commissioner DeAnda. Charlie.

MEMBER C. GONZALES: Mr. Chair, I'm ready to make a motion.

CHAIRMAN ROMERO: Okay. Before you make a motion I have a few things to say. Depending on which way the motion is, this is for master plan and preliminary development plan, correct?

MS. COBAU: Mr. Chair, the application is for master plan, preliminary development plan and for the final development plan to be reviewed and approved administratively.

CHAIRMAN ROMERO: Okay. Charlie, go ahead and make a motion.

MEMBER C. GONZALES: Mr. Chair, I'm going to support staff and I move for approval of Case #MP/PDP 09-5300, with conditions.

MEMBER MARTIN: Second.



**XI. COMMUNICATIONS FROM STAFF**

None were offered..

**XII. ADJOURNMENT**

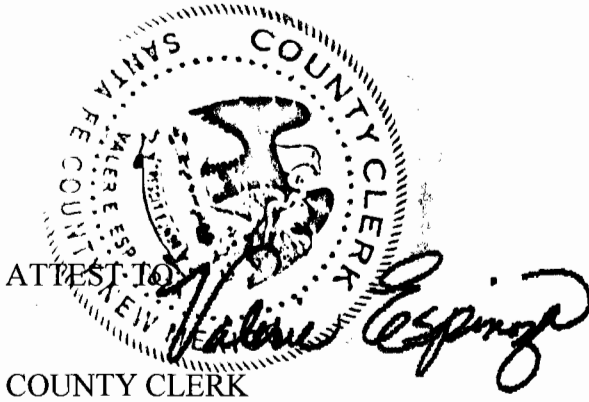
Having completed the agenda and with no further business to come before this Committee, Chair Romero declared this meeting adjourned at approximately 10:50 p.m.

Approved by:



Jon Paul Romero, Chair  
CDRC

12/16/10



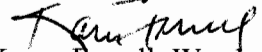
ATTEST TO  
COUNTY CLERK

Before me, this \_\_\_\_ day of \_\_\_\_\_, 2010.

My Commission Expires:

\_\_\_\_\_  
Notary Public

Submitted by:

  
Karen Farrell, Wordswork

SEC CLERK RECORDED 12/20/2010