

REC'D CLERK RECORDED 2/21/2013

**MINUTES OF THE
SANTA FE COUNTY
DEVELOPMENT REVIEW COMMITTEE**

Santa Fe, New Mexico

February 21, 2013

This meeting of the Santa Fe County Development Review Committee (CDRC) was called to order by Juan José Gonzales, on the above-cited date at approximately 4:10 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:

Juan José Gonzales, Chair
Susan Martin, Vice Chair
Phil Anaya
Maria DeAnda
Dan Drobnis
Frank Katz

Member(s) Excused:

[One vacancy]

Staff Present:

Steve Ross, County Attorney
Rachel Brown, Deputy County Attorney
Vicki Lucero, Building & Development Services Manager
Wayne Dalton, Building & Development Services Supervisor
Jose Larrañaga, Development Review Specialist
John Lovato, Development Review Specialist
Buster Patty, Fire Marshal
Karen Torres, County Hydrologist
Penny Ellis-Green, Land Use Administrator

IV. APPROVAL OF THE AGENDA

Vicki Lucero said there were no changes from staff.

Member Martin moved to approve the agenda as amended. Her motion was seconded by Member Katz and passed by unanimous [6-0] voice vote.

V. APPROVAL OF THE MINUTES: January 17, 2013

Chairman Gonzales stated he found a few typos, which were corrected by the recorder.

Member Martin moved to approve the minutes. His motion was seconded by Member Katz and passed by unanimous [5-0] voice vote with Member DeAnda abstaining.

VI. APPROVAL OF CONSENT CALENDAR

A. Final Orders

- 1. CDRC CASE # ACCS 12-5390 Leeto Raivo & Holly Alsobrook Accessory Structure. Leeto Raivo and Holly Alsobrook, Applicants, Requested Approval of a 2,400 Square Foot Accessory Structure to be Utilized as a Barn on 5.0 Acres. The Property is Located At 61A Hillside Road in Edgewood, Within Section 19, Township 10 North, Range 7 East, (Commission District 3). Approved 6-0, John Lovato

Member Katz moved approval and Member Martin seconded. The motion passed unanimously. [6-0]

- VI. A. 2. CDRC CASE # MIS 12-5440 Perla Rascon. Perla Rascon, Applicant, Requested the Recognition of a 0.95-Acre Parcel as a Legal Lot of Record. The Property is Located At 65B Loma Vista Road, in the Vicinity of La Puebla, Within Section 4, Township 20 North, Range 9 East (Commission District 1) Approved 6-0 John Lovato

Upon motion by Member Martin and second by Member Katz this final order was unanimously [6-0] approved.

VII. OLD BUSINESS

- A. CDRC CASE # Z/S 08-5440 Tierra Bello Subdivision. Joseph Miller, Applicant, Danny Martinez, Agent, Requests Master Plan Zoning Approval for a 73-Lot Residential Subdivision on 263.769 Acres + and Preliminary and Final Plat and Development Plan Approval for Phase 1, Which Will Consist of Nine Lots. The Property is Located at the Northeast Intersection of Avenida de Compadres and Spur Ranch Road, South of Avenida Eldorado in Eldorado, within Sections 24 And 25, Township 15 North, Range 9 East (Commission District 5)

Vicki Lucero read the caption and gave the staff report as follows:

“On January 17, 2013, the CDRC met and acted on this case. The decision of the CDRC was to table the request to allow the community to review and discuss the most current information as submitted by the Applicant, and to allow the Applicant and mediator to meet with members of the community in regards to the proposed development. A meeting was held on February 5th between the Applicant and members of the community. Robert Rambo, who is a court mediator and facilitated the meeting is here to address any questions regarding that meeting.

“The Applicant is requesting Master Plan Zoning approval for a 73-lot residential subdivision which will be completed in eight phases. He is also requesting Preliminary and Final Plat and Development Plan Approval for Phase 1, which will consist of nine lots.”

Ms. Lucero stated staff was recommending Approval of the request for Master Plan Zoning for a 73-lot residential subdivision and Preliminary and Final Plat and Development Plan Approval for Phase 1, which will consist of 9 lots subject to the following staff conditions:

1. The Applicant shall comply with all review agency comments and conditions, Article V, Section 7.1.3.c.
2. Conditions as stated in the memo from the Public Works Department shall be addressed prior to this case being heard by the BCC.
3. Master Plan and Final Plat and Development Plan, with appropriate signatures, and subdivision covenants and final disclosure statement shall be recorded with the County Clerk, as per Article V, Section 5.2.5 and Section 5.4.5.
4. The Applicant shall submit a financial guarantee, in a sufficient amount to assure completion of all required improvements. The financial guarantee shall be based on a county approved engineering cost estimate for the completion of required improvements as approved by staff prior to Final Plat recordation. All improvements shall be installed and ready for acceptance within eighteen months

Chairman Gonzales noted that the public requested tabling at the last meeting and he asked Ann Bitter to give a recap of what had happened in the intervening month.

Duly sworn, Ann Bitter from the board of the Tierra Colinas Homeowners Association thanked the committee for the extra time. She said Jim Garland from Spur Ranch Road had a meeting with Mr. Martinez regarding maintenance of that road. There was a two-hour meeting with Mr. Rambo, Mr. Miller and Mr. Martinez to go over issues. She characterized it as a productive meeting.

Member Drobnis asked if the community members had time to go over the CC&Rs. Ms. Bitter indicated a revised set of revised covenants was formulated by Mr. Martinez.

Jim Garland, under oath, said he represented the Spur Ranch Road Corporation comprised of four subdivisions with 71 residences and 51 vacant lots. The dues range from \$200 to \$275 for residences and \$100 for vacant lots. This organization is serving as a coordinating body for community concerns. He was pleased that mobile homes were not allowed and that a homeowners association would be formed. However, issues of road maintenance and minimum square footage were not addressed.

He showed an area map, noting that Tierra Bello is comparable in size to the other subdivisions but is much denser. This will constitute a great burden on police, fire and water services in the area.

Turning to the new CC&Rs, Mr. Garland said there are problems on every page. *[Exhibit 1]* For instance the minimum square footage was changed to 1,800 square feet, but includes the garage, which brings it back to the originally proffered square footage. He called this a “deceptive move.” The lengthy new covenants became available only last week. He said given Mr. Miller’s history the community needs to go over the new document with a fine-tooth comb.

Mr. Garland said he understood that Mr. Miller feels he has an agreement for water delivery, but the Eldorado Area Water and Sanitation District (EAWSD) still does not have a backup water source at this point.

Regarding Spur Ranch Road, Mr. Garland speculated that the residents of Tierra Bello would prefer to use this road and should share maintenance expense. He noted Mr. Miller plans to improve some roads as development proceeds. The status of connectors between Tierra Colinas and Tierra Bello remains to be determined. There are drainage problems and on occasion some of the roads become impassable. He said Mr. Miller should be responsible for bringing the roads up to standard.

Mr. Garland asked that the project be tabled again to give the community a chance to review the new covenants, which he described as poorly organized, confusing and ambiguous.

Member DeAnda asked how Spur Ranch Road was currently maintained. Mr. Garland said the association maintains it through voluntary dues.

Duly sworn, Duncan Sibley, a PhD geologist from Eldorado stressed it was not known how much groundwater was actually available in the area. EAWSD is motivated to sell all the water they can to cover bond expenses. The County is building a pipeline to Canoncito but there is no agreement with Eldorado. At this point it is not a renewable resource. He said it would be prudent to get an alternate source of water before allowing new subdivisions. He urged a delay of several years.

Under oath, Jerry Cooper, the director of EAWSD said the previous speaker’s remarks were only opinions. They are working to add more production and are coming to agreement on the County pipeline. They are drawing less water than they are entitled to by water rights. They are able to meet current needs except at times of peak demand. He said they have 800 afy capacity and consume around 550 afy.

In response to questions from Member DeAnda, Ms. Lucero said staff still has not received comments from the State Engineer’s Office. As with the Spirit Wind

Subdivision, County Hydrologist Karen Torres gave a positive report on the water availability. Member DeAnda asked if it was possible to contravene the review comments given the ready, willing and able letter from the EAWSD and the County Hydrologist. Ms. Lucero said they are to be taken on their face.

Member Anaya asked how many more houses could be served by the EAWSD, based on .5 afy. Mr. Cooper pointed out that the maximum allotment is .25 afy per residence and Eldorado residents only use 70 to 80 percent of that, encouraged by the graduated rate structure.

Disclosing that he lived in the Eldorado area and was served by the EAWSD, Member Drobnis asked about the possible future agreement with the County. Mr. Cooper said the MOU has to do with accepting the will-serve letters; it is not about water. However, they are working with the County about purchasing bulk water from the new pipeline. The discussions are active.

Mr. Garland mentioned that he is a member of the water district. Scientific disagreement is possible about the 100-year justification and different people come to different opinions about the reliability. He said it was necessary to rely on the experts.

Duly sworn, Henry Lanman recalled that recently there was a moratorium on building due to water shortage. Now there seems to be plenty of water in Eldorado although drought conditions prevail. He said most sources of water seem to be down, and everyone's property will become worthless if the water is gone. He noted many of the wells in La Cienega are going dry. He asked them to keep water in mind when they are considering developments.

Counsel for the applicant, Ron VanAmberg referred to the MOU [*Exhibit 2*] which refers to the ten-year moratorium. Analysis proved there was sufficient water. The memorandum acknowledges that and the County's negotiations regarding future water supplies from the Buckman Direct Diversion. Further, it says that the County will accept EAWSD's will-serve letters for the next three years without further technical review. He said there is a considerable cushion in the water supply. Tierra Bello will require 19+ afy.

Member DeAnda asked what will happen after the three years referred to in the MOU. Mr. VanAmberg said apart of the recognition of sufficient water there is mention of the good faith negotiations regarding the pipeline as backup. After three years the County can review acceptance of the will-serve letters.

Under oath, agent Danny Martinez pointed out the community meetings yielded eight pages of notes from Mr. Rambo for suggestions in improving the CC&Rs. The new covenants are drastically improved in an attempt to satisfy the neighbors' concerns. They were 10 pages and they are now 26 pages long. There is plenty of time to work with the neighbors but it is the responsibility and right of the developer to put the covenants in place. There are strong architectural standards, but they are working to develop homes that are affordable in today's economy.

He noted there are 63 acres of common open space which is above the amount required. The average lot is around three acres. They are more than willing to continue to work on the CC&Rs but there has to be compromise on both sides.

Regarding road maintenance, they will be developing a maintenance agreement for Avenida de Compadres. They are not asking for Tierra Colinas to contribute to maintaining that road, although residents of Tierra Colinas will be using it. He said they have met their commitment to build the necessary roads. Negotiations are underway with the Fire Department about Knox locks on roads between Tierra Colinas and Tierra Bello. He disagreed with Mr. Garland's contention that new residents would be using Spur Ranch Road. He reiterated they are open to negotiations but there has to be compromise.

Mr. Martinez said a tabling was not necessary; dialogue can continue.

Saying he appreciated the efforts to work with the neighbors, Member Katz said it did not appear there was sufficient time for the neighbors to review the covenants. Mr. Martinez said making such radical changes took more time than anticipated. They are open to making changes.

Member Drobni asked to what degree covenants are reviewed by the County. Ms. Brown said they are reviewed only to ensure there are no conflicts with code provisions. Ms. Lucero noted staff received the covenants the day before so they haven't had the time to review them in their entirety but they should be able to do so before the case goes to the BCC.

Member DeAnda asked if the project goes forward meetings would continue in which they could work on the CC&Rs. Mr. Martinez said they are open to that. However, they are constrained in the amount they can change the size of the homes that would take them out of their price range.

Member Anaya moved to approve CDRC Case #Z 08-5440 per staff recommendation. Member DeAnda seconded.

Member Katz said he would prefer a tabling to allow staff time to review the new covenants. Member Drobni agreed saying well organized, easily understood covenants are essential.

The motion tied 3-3 with Chairman Gonzales, Member DeAnda and Member Anaya voting in favor and Member Martin, Member Katz and Member Drobni voting against.

Ms. Brown said the case will come back to the next meeting, March 21st when the seventh member will be present.

VIII. NEW BUSINESS

A. Henry Sanchez, Applicant, James McCreight, Agent, request a variance of Article III, Section 2.3.6b2 (Height Restrictions For Dwellings Or Residential Accessory Structures) to allow an existing 1,000 square foot accessory structure to exceed 18 feet in height on 2.5 acres. The property is located at 35 Heather Lane, within the vicinity of Chupadero, within Section 5, Township 18 North, Range 10 East (Commission District 1) [Exhibit 3: Letter of Opposition]

John Lovato read the caption and gave the staff report as follows:

“The Applicant requests a variance of Article III, Section 2.3.6b.2 (Height Restrictions for Dwellings or Residential Accessory Structures) to allow an existing 1,000 square foot Accessory Structure (Garage) to exceed 18 feet in height. The structure was originally permitted through Santa Fe County under permit #11-522, and the structure is near completion. After receiving a complaint regarding the structure and the roof reflectivity, staff conducted an inspection and found the structure exceeded height for what was permitted and the roof did not meet code standards for light reflective value of forty. The structure was approved at a height of 18’ but was constructed at 19’-2”.

“The Structure exceeds height requirements for ridgetops. The Maximum allowable height for ridgetops is 18 feet for a pitched roof and 14 feet for a flat roof. The Applicant states, a variance is needed due to the expense it would cost to bring the structure into compliance with the approved permit and to comply with height requirements for ridgetops. The Applicant further states the Accessory structure was constructed and human errors are to blame for exceeding height requirements.

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

Mr. Lovato stated staff was recommending denial of a variance Article III, § 2.3.6b.2 (Height Restrictions for Dwellings or Residential Accessory Structures) of the Land Development Code. If the decision of the CDRC is to recommend approval of the Applicant’s request, staff recommends imposition of the following conditions:

1. The Applicant shall screen the structure to protect and enhance the visual appearance of natural hillsides. (As per Article III, § 2.3.10a.3)
2. The structure and roof shall be constructed in non-reflective earth tone colors (As per Article III, § 2.3.8a.2).
3. The Applicant must update the approved development permit from the Building and Development Services Department to reflect the correct height of the accessory structure (As per Article II, § 2).

Member DeAnda asked if the maximum height was stated anywhere on the permit. Mr. Lovato said the permit is granted based on the plans presented to staff, and responding to questions from Member Drobnis, he said the building permit is stamped and the plans and elevations go on to Construction Industries Division. Materials are not specified.

Duly sworn, James McCreight, agent, stated they were unaware the property was in a hilltop zone. The Sanchez family has owned the property for 60 years, well before establishment of the Vista Redonda neighborhood, and it was due to irresponsible actions by people building in that development that the laws concerning ridgetops were passed. The difference in height is only 14". The additional height was an honest mistake in construction.

Mr. McCreight pointed out that of the ten lots in the Tesuque Villas Subdivision this is the only one in the ridgetop zone, although it is the lowest in elevation. The intent was to leave the roof unpainted so that it would look rustic in time. He stated their willingness to paint the roof to decrease reflectivity.

Mr. McCreight noted the neighbors waited until the structure was completed, then trespassed onto the land to measure the height, and further outlined a number of instances of criminal, vandalism and theft by the neighbors, saying, "It's not about the 14"; it's a vendetta." He said the garage was not visible from most directions and he was willing to provide screening. Mr. McCreight provided photographs of other properties in the area with more egregious visual impacts.

Member DeAnda asked how the lot could be subject to ridgetop regulations if it was the lowest. Mr. McCreight explained that ridgetop designation stems from area percentage of 30 percent grade, etc. She asked staff how someone would know if they were subject to ridgetop conditions and Mr. Dalton said it can be determined from a topo map or, if requested, staff can make a courtesy site inspection. In this case the plans appeared adequate.

Member Drobnis got confirmation that the garage was permitted.

Member Anaya asked what changed between the time the plans were drawn and the time the roof was completed. Mr. McCreight said the work was done by inexperienced construction workers.

Mr. Lovato stated he would check the plans in the files and have them scaled off to determine the original height. The plans were marked as 8 in 12 pitch.

Legal counsel for the Vista Redonda neighborhood, Gary Friedman distributed a packet of material. [A copy was not made available for the record.] He said the information included a letter from the architectural committee and a picture of the garage from the Larsen residence. He recognized the existence of bad blood between the parties, but said the mudslinging was immaterial to the question at hand. He characterized Mr. McCreight as an experienced developer who should have known better. Reading from the

code, he said there was no unusual topography that would justify a variance, nor was this a non-self-inflicted condition. He said the roof was highly visible. He asked the approximately ten Vista Redonda residents in the audience to stand.

Member Anaya asked Mr. Friedman if he had verified the “heavy complaints” in the letter from the architectural committee. Mr. Friedman said he had not but trusted the sincerity of his clients.

Under oath, area resident Harvey Simon said he was not worried about incidents in the past; he was worried about the future. To allow this variance would set a bad precedent and there should be no forgiveness for not following the rules.

Myron Roomkin, duly sworn, noted it was hard to hear of criminal complaints but told of an incident of the petitioner trespassing onto his property. Permitted projects should be built to specifications.

Mr. Lovato said his research showed the scaled plans come out to a height of 21 feet.

There was no further input from the public.

Member Anaya moved to deny CDRC Case #12-5360 per staff recommendation. Member Martin seconded and the motion passed by unanimous 5-0 voice vote. [Member Katz was not present for this action.]

VIII. B. CDRC Case #V 12-5111 William Frederick Wagner Variance. William Frederick Wagner, Applicant, (Sommer, Karnes & Associates, LLP), Joseph Karnes, Agent, request a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Family Transfer Land Division of 31.824 acres into two lots; one lot consisting of 20.990 acres and one lot consisting of 10.834 acres. The property is located at 45 La Barbaria Trail, within Section 9, Township 16 North, Range 10 East, (Commission District 4)

Wayne Dalton gave the staff report as follows:

“This case was originally reviewed under Section 9.8 (Mountain Special Review District Standards) of the Extraterritorial Zoning Ordinance. The Application was denied by the Land Use Administrator and the Applicant appealed that decision to the CDRC. On July 19, 2012, the CDRC met and acted on the case. The decision of the CDRC was to uphold the Land Use Administrator’s decision and denied the appeal. After further review of Ordinance No. 2009-1, the Legal Department and staff have determined that Section 9.8 of the EZO is no longer in effect and the Application is governed by the County Land Development Code.

“The Applicant now requests a variance of Article III, § 10 of the Land Development Code to allow a Family Transfer Land Division of 31.824 acres into two lots. The subject lot was created in 1978, and is currently vacant.

“Article III, § 10 of the Land Development Code allows lot size to be reduced to twenty acres or more with signed and recorded water restrictions and for lots created through Family Transfer, subdivision or land division. A Family Transfer under the Land Development Code is permitted from husband to wife. An immediate family member as defined in the Code is a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, step grandson, granddaughter, step granddaughter, nephew, niece, whether related by natural birth or adoption.

“The Applicant intends to gift one of the two proposed lots to his wife. The Applicant states he is unable to have natural children of his own and desires to maintain the property for personal use and for his extended family and desires to create two lots. The Applicant also states, the proposed lot sizes are substantially larger than existing adjacent lots in the immediate vicinity.

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

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

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

Karl Sommer, legal counsel for the applicant, explained that when the case was heard previously it was believed that some of the regulations of the Mountain Special Review District had not been repealed. Subsequently, Legal staff decided that they had been. Mr. Wagner is now asking for a simple variance under the provisions of the County code. He said it meets all the criteria of the code as established by the Board of County Commissioners and the only thing they are asking for is a density variance from the

minimum lot size of 20 acres for a family transfer. The land, just over 30 acres, is the sole and separate property of Mr. Wagner, who wishes to give part of it to his wife. Three or four years ago the family transfer density requirement was ten acres so a variance would not have been required at that time.

Reading from the code, "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," Mr. Sommer noted that the CDRC regularly recommends denial of variances and the BCC goes on to approve them, such as in the cases of Elia Gonzales, Lawrence Maes and Carla Cavaliere. This achieves the purpose of the code in that it allows someone to transfer property to a family member.

Mr. Sommer said the BCC is approving variances based on "administrative glosses" and applying the code from that.

Appearing as counsel for residents in the La Barbaria Trail neighborhood, Chris Graeser distributed citations from the Land Development Code. [Exhibit 4] He agreed that the original interpretation of the variance request that was denied on the basis of family definition was incorrect and this request comes with higher legal standards. He said the variance request should now be denied because 1) it is a bad idea to increase density in an area with problematic access, particularly if there were a fire. While this property is larger than many of the area lots, it's also smaller than many of the lots, which range up to 400 acres. The average lot size on La Barbaria Trail is 49.15 acres.

The second issue is that granting the variance would be illegal under the code and under state statute. He pointed out this is not a "heart-wrenching story" as is sometimes heard; "they just want to be able to divide this lot." The Wagners have two other houses in Santa Fe and one in Albuquerque, thus the spirit of the zoning ordinance is not being observed, nor are the goals and policies of the comprehensive plan, since this area has low suitability for development.

Duly sworn, Jay Shelton [Exhibit 5] stated his property abuts that of the applicant. He stressed that granting the variance would be injurious to health and safety. Due to the fire danger any additional people would have a negative impact and set a bad precedent. There is only one road in and out of the area.

Under oath, Sandra Valley said she has lived in the area since 1997 and has around 30 acres. She moved there because she wanted to be in a rural setting. Water is an issue: her well pumps only one gallon per hour. She and her husband have been willing to put up with the inconveniences of the bad road in order to live in the country. Additionally, she said it is an issue of justice.

Mr. Sommer said there is no claim about the physical condition of the land. "The County Commission has established a standard when applying this section of the code for

variances in family transfers...it relies on that last phrase of the code that says these conditions would result in inhibiting the purposes of the code in family transfers.”

Member DeAnda asked if there was a hardship in this case. Mr. Sommer said the inability to divide the land creates a hardship to the family except where there are extraordinary circumstances that militate against it. He said it was difficult to reconcile the application of the code with the ultimate decisions, but they do constitute a standard. Member DeAnda noted that the use and benefit of the lot is not really being split. Mr. Sommer agreed the issue of hardship is often difficult to discern.

Member Anaya moved to deny the request in CDRC Case #V 12-5111 per staff recommendation. Member Martin seconded and the motion passed by unanimous [5-0] voice vote. [Member Katz was not present for this action.

VIII. C. CDRC CASE # Z/S 12-5450 Cielo Colorado Subdivision. Cielo Colorado, LLC, Applicant, Jim Siebert, Agent, Requests Master Plan Zoning Approval For A 67-Lot Residential Subdivision On 257.16+ Acres within Tract 15A-2 of the Eldorado at Santa Fe Subdivision. The Applicant also Requests Approval to Allow Four Cul-de-Sacs (Dead End Roads) to Exceed 500 Feet in Length. The Property is Located on the East Side of US 285, off Camino Acote, Within Sections 21 & 22, Township 15 North, Range 10 East (Commission District 5)

Jose Larranaga gave the following staff report:

“Tract 15 A-2 was created as part of the Eldorado at Santa Fe Subdivision. A Master Plan for Cielo Colorado was approved by the Board of County Commissioners in 1995. The Master Plan included 91 lots with an average density of 3.79 acres on 344.58 acres. 25 of the 91 proposed lots were platted in 1995. An amended Master Plan, recorded in 2000, eliminated four lots totaling 12.5 acres. In 2002, the Master Plan was vacated to allow the platting of larger lots at the east end of Tract 15A-2. This Application for Master Plan includes the remainder of the property that has not been platted within Tract 15A-2.

“The Applicant requests Master Plan Zoning for a 67-lot residential subdivision with the lot size ranging in size between 2.50 and 7.29 acres on 257.16 acres. The proposed subdivision will be developed in nine phases over a nine-year period with an anticipated start date of 2015.

“The Applicant also requests that the CDRC allow four cul-de-sacs to exceed 500 feet in length. The four dead-end roads range from 602 feet in length to 799 feet in length. The closed end roads will have a cul-de-sac with a minimum driving surface radius of fifty feet.

“Article V, § 8.2.1d (Cul-de-sacs) states: “cul-de-sacs (dead end roads) shall not be longer than five hundred feet. At the closed end there shall be a turn around

having a minimum driving surface radius of at least forty-two feet for roads under 250 feet long and of at least fifty feet for roads 250 feet and longer. A suitable alternative, such as a hammerhead turn around, may be acceptable if approved by the Code Administrator and the Fire Marshal. All turn around areas shall be designed to protect existing vegetation and steep terrain. There shall be a minimum right-of-way diameter at the closed end of one hundred feet. In low density residential areas the length of cul-de-sacs may be adjusted by the County Development Review Committee with the changes consistent with public safety factors. For local roads designated as a lane or place and designed to a twenty foot width, the turn-around area remains the same as specified above.

“Building and Development Services staff has reviewed this project for compliance with pertinent Code requirements and has found that the following facts presented support the request for Master Plan Zoning: the Application is comprehensive in establishing the scope of the project; the review comments from State Agencies and County staff has established that this Application, for Master Plan, is in compliance with State requirements, Ordinance No. 2005-8 (US 285 South Highway Corridor Zoning District) and Article V, § 5, Master Plan Procedures of the Land Development Code.

Mr. Larrañaga stated staff was recommending approval, by the County Development Review Committee, to allow four cul-de-sacs (dead end roads) to exceed 500 feet in length.

- 1. The Applicant shall comply with design standards set forth in Article V, § 8.2.1d.

Conditional approval for Master Plan Zoning for a 67-lot residential subdivision on 257.16 Acres ± within Tract 15A-2 of the Eldorado at Santa Fe Subdivision subject to the following staff condition:

- 1. Master Plan with appropriate signatures shall be recorded with the County Clerk, as per Article V, § 5.2.5.

He called the committee’s attention to a packet of letters of concern. [Exhibit 6] Mr. Siebert also submitted additional supporting material. [Exhibit 7]

Jim Siebert, agent for the project, said this is one of the largest remaining unplatted subdivisions and is on the east side of US 285. He explained that by covenant, everything on the east side has to be five-acre lots and the lots on the west side can be 2.5-acre lots. The area is served by a EAWSD waterline. To the east of the property is the Eldorado Wilderness. He noted changes have been made recently to accommodate neighbors’ concerns, including a reduction of the number of lots from 67 to 63 so that there is lower density at the entrance. An emergency access road has been added that loops around the transfer station. An exchange of easements will be necessary with the County.

Mr. Siebert used a map to show the placement of the subdivision, the increased setbacks and the altered trail alignment.

Favorable comments have been received from all reviewing agencies and a water service agreement is in place. They are requesting no variances.

Member Drobni asked if they were requesting variances for the culs-de-sac. Mr. Siebert said those are not variances per se; with community water the requests only require approval from the Fire Department. He explained that the new trail alignment, stating the residents of this development are not allowed to use the Eldorado Wilderness.

Chairman Gonzales asked how many community meetings were held. Mr. Siebert said the developer, Mr. Dezavallos, met with the board and the association and he had a meeting with the president and ex-president of the Ridges Subdivision. Additionally a meeting was held at the barn south of the property. Approximately 15 people were at that meeting. He said the neighbors consist of the Ridges and Cimarron subdivisions to the north, and large parcels to the south.

Chairman Gonzales asked about the affordable housing agreement. Mr. Siebert indicated the location is not suitable for the lower ranges since there is no public transportation. They will either be paying a fee-in-lieu or have some housing closer in.

Those wishing to speak were placed under oath.

Duly sworn, Damian Gessler said there are currently 45 houses in the neighborhood now and this will increase the number by 150 percent. The current residents pay \$1000 in road maintenance. He asked if the new people will be helping to maintain roads. He said the setbacks for the lots next to Highway 285 should be at least 160 to 200 feet due to the noise levels. This would assure more of a buffer for the current residents. He added if the development is done well it will set a good precedent.

Previously sworn, Ron Whatley, retired architect living in Cimarron said they purchased their houses with the assurance that no houses could be built on the land between the wetland and the highway. Their view is the buffer. He is not against development and will be meeting with the developer. He said notice for the meetings has been inadequate. He does not understand why the floodplain designation was reduced; it should have been expanded.

Michael Champion, under oath, stressed there had not been enough community involvement. Change is inevitable but how it occurs is critical and should be a collaborative process. He said he needs time to review the documents before deciding if he is for or against the project. He questioned placing a park by the transfer station and interstate.

Previously sworn, Wyatt Fenn said he was neither for or against the development. He did not receive notice of the meeting at the barn.

Henry Lanman, previously sworn, reiterated his concerns about the water supply in the area. With a possible 200 new homes the situation could be critical. If there is no water, all the homes will be worthless. He suggested having the developer and the County post a bond.

There was no further input and the public hearing was closed.

Mr. Siebert said they appreciate the residents' concerns and regretted that some may not have received notice. He reiterated that all of the review comments have been favorable. In response to Member Drobni's question he said approximately 50 letters were sent out and around 15 people showed up. He noted the closer the decision the more interest intensifies. Member Drobni asked if he would be amenable to waiting a month to enable more conversation Mr. Siebert said this meeting has galvanized more interest. He added this has not been a secret; Mr. Dezavallos met with the neighbors over a year ago. However, he expressed his willingness for a one-month tabling.

Member Drobni asked if it would be possible to leave the public hearing open for the next meeting. Ms. Brown said that should be specified in the motion.

Member Drobni moved to table CDRC Case #Z/S 12-5450 with the stipulation that the public hearing can be reopened in one month, with the acceptance of the applicant. Member Martin seconded and the motion passed 5-0. [Member Katz was not present for this action.]

VIII. PETITIONS FROM THE FLOOR

None were offered.

IX. COMMUNICATIONS FROM THE COMMITTEE

None were offered.

X. COMMUNICATIONS FROM THE ATTORNEY

None were presented.

XI. COMMUNICATIONS FROM STAFF

Ms. Lucero distributed material requested at the previous meeting regarding water issues and prepared by County Hydrologist Torres. [Exhibit 8]

The next CDRC meeting: March 21, 2013 at 4 p.m.

XII. ADJOURNMENT

Having completed the agenda and with no further business to come before this Committee, Chair Gonzales declared this meeting adjourned at approximately 8:30 p.m.

Approved by:



J.J. Gonzales

J.J. Gonzales, Chair
CDRC

ATTEST TO:
Geraldine Salazar 4/1/2013

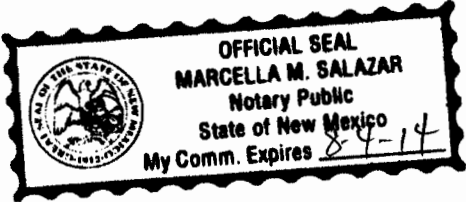
COUNTY CLERK

Before me, this 1 day of April, 2013.

My Commission Expires:
Notary Public

Marcella M. Salazar

Submitted by:
Debbie Doyle
Debbie Doyle, Wordswork



COUNTY OF SANTA FE) CDRC MINUTES
STATE OF NEW MEXICO) ss PAGES: 86

I Hereby Certify That This Instrument Was Filed for Record On The 4TH Day Of April, 2013 at 09:40:08 AM And Was Duly Recorded as Instrument # 1701427 Of The Records Of Santa Fe County



Witness My Hand and Seal Of Office
Marcella Salazar

Deputy County Clerk, Santa Fe, NM

DECLARATION OF RESTRICTIVE COVENANTS

FOR:

TIERRA BELLO SUBDIVISION

(Revised February 13, 2013)

KNOW ALL PERSONS BY THESE PRESENTS:

ARTICLE 1: DECLARATION

The undersigned, Tierra Bello Subdivision. (In care of) Joseph A. Miller and Alma M. Miller, the owners of real property now duly platted as Tierra Bello Subdivision as shown by a plat thereof filed in the office of the County Clerk of Santa Fe County, New Mexico on the _____ day of _____, 2008, in Plat Book _____, Page(s) _____ under Reception No. _____, _____: HEREBY MAKE THE FOLLOWING DECLARATION as limitations, restrictions and use to which the lots or tracts constituting said subdivision may be put. HEREBY SPECIFYING that said declaration shall be constitute covenants to run with all the land, as provided by law, and shall be binding to all parties and all persons claiming under them and for the benefit of and said limitations upon all future homeowners in said subdivision, thus keeping said subdivision desirable, uniform and suitable in architectural design and use as herein specified, whether or not that same are embodied in the covenants or other instrument affecting any portion of Tierra Bello Subdivision identified as, Lot 8A, Eldorado at Santa Fe. This declaration of restriction is intended to protect the visual and environmental integrity; the value and desirability of the subject property.

NOW THEREFORE that the subject property being identified as "Tierra Bello Subdivision" within Lot 8A, Eldorado at Santa Fe and zoned residential use is hereby subject to the restrictions herein set forth below.

ARTICLE 2: DEFINITIONS

- 2.01. "Lot" shall mean each and every lot sold or leased to purchase or held for sale in the subject property.
- 2.02. "The Subdivision" Tierra Bello Subdivision, refers to any lands lying within Lot 8A, Eldorado at Santa Fe, approved by the County Commissioners in year _____ and described on Plat of Survey dated _____ and filed _____ Book _____, Page _____.
- 2.03. "Architectural Review Committee" (the Committee): A committee comprising of three (3) members charged with the authority and duty to review and approve or disapprove proposed plans for development within the property covered by these covenants. The developer and his appointees shall serve as the Architectural Committee until six (6) lots have been sold or leased to purchase. The developer will then appoint a three (3) member interim committee. A vacancy in the committee will be filled by appointment of new members agreed upon by the

remaining committee members. All members of the committee must be owner(s) or lessee(s) of property within Tierra Bello Subdivision.

When a Landowners Association is formed, then all members of the Architectural Committee must be elected by the Landowners Association. All members of Architectural Committee must be notified of any meeting of the Committee at least 5 days before the meetings. Each of the three members of the Committee shall have one equal vote. A quorum of the Committee shall exist when majorities of the members are present at properly called meeting.

- 2.04.** "Manufactured Housing." "Based on New Mexico Statutes and Regulations Article 3-21A "Manufactured Housing and Zoning." Multi section manufactured housing means a manufactured home or modular home that is a single family dwelling with a heated area of at least thirty-six by twenty-four feet and at least eight hundred sixty-four square feet and constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and with the regulations made pursuant thereto relating to permanent foundations.
- 2.05.** "Mobile Home" means a moveable or portable housing structure larger than forty feet in body length, eight feet in width or eleven feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes that is not constructed to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or Uniform Building Code, as amended to the date of the unit's construction or built to the standards of any municipal building code.
- 2.06.** "Board" shall mean the Board of Directors and the governing body for the association.
- 2.07.** "Declarant" shall mean and refer to Cimarron Village LLC. and any of it's successors and assigns who are designated as the successor or assign by Declarant in writing.
- 2.08.** "Owner and Owners" shall mean and refer to the record owner(s) whether one or more persons or entities, of the fee title or an undivided interest therein.
- 2.09.** "Homeowners Association" (The Association): The Homeowners Association will be created when the sixth lot in the subdivision is sold or leased to purchase. The landowners and lessees may approve and form a Landowners Association. Such an association shall be a non-profit corporation for the benefit of Tierra Bello Subdivision. Each legal lot of record within the Subdivision shall be one membership and each membership will have one vote. Said Association shall develop their bylaws and conduct an election to select 3 members to the Architectural Committee. The Bylaws of the Landowners Association must be approved by 2/3 of the landowners voting. The Landowners Association shall have the right and power to assess lot owners and lessees for improvements and

maintenance of roads, facilities and open space for the benefit of the landowners or lease of Tierra Bello Subdivision. The developer of Tierra Bello Subdivision will be responsible for legal lots of record only. The Association shall appoint by plurality of voting members a Chairperson, a Secretary and a Treasurer. The Secretary may also serve as the Treasurer. The Chairperson shall be obligated to conduct the meeting of the Association in accordance with the then current issue of Robert's Rules of Order. The Association must foster the best interest of the Subdivision.

- 2.10. "Household pets" shall mean no more than three (3) dogs, two (2) cats, small rodents that are caged, birds and reptiles that are caged. Farm animals, poultry and livestock are prohibited.

ARTICLE 3: DURATION

- 3.01. These Restrictive Covenants shall run with and bind with the land, as provided for by law and shall be binding on all land owners in Tierra Bello Subdivision, persons claiming under them and to insure upon all future residence in Tierra Bello Subdivision, keeping Tierra Bello Subdivision desirable, uniform and suitable for use as herein specified.
- 3.02. These covenants may be changed or terminated with the approval of 60% of the landowners at full development. Changes or modifications can be made with 2/3 vote for up to one year from the date of the development recordings. Thereafter these covenants will remain in effect for three years before further modifications can be made. Changes will take effect when all instruments stating so are filed with the Clerk of Santa Fe County.

ARTICLE 4: SEVERABILITY

- 4.01. Invalidation of any one or more of these covenants by judgment or court order shall in no way effect any or the remaining provisions, which shall remain in full force and effect.
- 4.02. In the event that any party violates or attempts to violate any of the covenants contained herein it shall be lawful for the Landowners Association or any person owning or leasing real property situated in said subdivision to prosecute any proceedings by law or equity against the person or persons violating or attempting to violate any such covenant in order to prevent them from further violation and to recover damages for such action.

ARTICLE 5: PERMITTED USES

- 5.01. The following are permitted in Tierra Bello Subdivision as zoned by Santa Fe County for residential uses. Single-family dwellings together with such structures and out buildings as are commonly and customarily thereto including but not limited to, one or two car garages, a single out building used as a studio, storage or workshop not to exceed two hundred (200) square feet in size with exterior stucco finishes to match the home finishes, when permitted by Santa Fe County

REC'D CLERK RECORDED 04/04/2013

Development Regulations or permitted under these covenants. Any dwelling may be used for home occupied business provided all the requirements of the Santa Fe County Development Regulations are met.

- 5.02.** Accessory uses not listed shall be governed by Santa Fe County Development Code and the Landowners Association.
- 5.03.** On site custom built homes, Offsite Stick built Modular Homes placed on permanent foundations with exterior earth tone color stucco finish approved by the Architectural Board. Detached garages or studio, workshop or storage facilities shall be placed within twenty (20) feet of the main residence. Stick Built Modular homes will be constructed off site and meet five star energy ratings and all standards set forth by the NM Construction Industries Division, and will be required to meet Architectural Committee Approvals.
- 5.04.** Home construction shall be completed within one year. A single construction work trailer will be allowed during construction phase. No onsite living units are allowed during construction.
- 5.05.** Compliance with National Standards for Star Energy Efficient, Green Build Development Planning is encouraged and will be the responsibility of the homeowners/ builders.
- 5.06.** "Minimum square footage"-The main structure, including garage shall be no less than one-thousand six hundred (1,600) square feet for a single story structure. The first floor area of a multi story structure must be at least one thousand four hundred (1,400) square feet and the entire structure must be a minimum of two thousand square feet (2,000) square feet, including garages. Height of structures will be governed the Santa Fe County Development Regulations.
- 5.07.** "Set backs"- No structures shall be placed nearer than twenty-five (25) feet from side lot line, one hundred fifty feet (150) rear lot lines and not closer than one hundred fifty (100) feet from the centerline of a road. No other structures, walls or fencing shall be built closer than twenty-five (25) feet from any sideline. Barbed wire or metal field fencing is prohibited.

ARTICLE 6: PROHIBITIONS

- 6.01.** Single wide, double wide and triple wide manufactured homes of any make or model are prohibited as permanent housing. RV's, camp trailers, boats or other trailer homes are prohibited from being stored on each lot.
- 6.02.** "Types and use"- No campers, tents, shacks, garages, barns or trailers shall at any time be used as a permanent residence.
- 6.03.** "Animals"- Small livestock animals, horses, cows and poultry are prohibited.
- 6.04.** "Oil and Mineral Operations"- No oil drilling, oil development, quarry or mining operations of any kind shall be permitted upon any lot.

- 6.05. "Hunting"- No hunting shall be permitted and no firearms shall be discharged, except in self-defense, in Tierra Bello Subdivision.
- 6.06. "Signage"- No sign, except signs no larger than three (3) by two (2) feet in size, indicating the name, address or residence or as identification for home business purposes shall be permitted without approval of the Architectural Committee. However any owner may without such approval erect one (1) sign not more than four (4) feet by three (3) feet advertising the lot or house for sale or rent.
- 6.07. "Storage"- No storage of any material, except building material during construction, shall be permitted.
- 6.08. "Lighting"- No exterior lighting more than eight (8) feet above ground designed to illuminate an area from dusk to dawn may be placed on a lot unless it is adequately shielded, and not to exceed 75 watts to prevent being a nuisance to surrounding landowners. No flood lights, high resolution lighting will be allowed. Ground lighting for landscaping not to exceed 25 watts will be allowed. Other types of lighting may be approved by the Architectural Committee.
- 6.09. "Tanks"- No above ground storage tanks shall be placed in any manner or use. Below ground storage tanks for rainwater harvesting, septic tanks and leach fields will be allowed, No other commercial, industrial or environmental storage tanks are permitted.
- 6.10. "Nuisance"- No noxious or offensive activity can be carried on in any lot, nor shall any activities be done thereon which may become an annoyance or nuisance to the owners or renters in the approved subdivision. This provision shall be liberally construed to include activities, which are offensive to reasonable persons such as disposal or retention of junk vehicles, carrying on loud activities. Nor the conduct of any activities, which produce interferences to ordinary TV reception such as improperly tuned HAM or CB reception transmission stations, etc. Any activation that interferes with the peace and tranquility of the residence of Tierra Bello Subdivision shall be prohibited.
- 6.11. "Other uses"- No uses inconsistent with the residential character of the Subdivision shall occur, as determined by the Homeowners Association.
- 6.12. "Subdivision of lots"- No lot shall be subdivided as to create an additional lot.
- 6.13. "Access to lots"- All lots will be accessed from interior roads within the subdivision. No lot may be accessed directly onto Spur Ranch Road or Avenida de Compadres Road. No direct access will be allowed into interior roads of neighboring subdivisions. (Tierra Colinas Subdivision)
- 6.14. "Waivers"- Any prohibition may be waived by the Committee when the proposed waiver is not inconsistent with the purpose and intent of these covenants

ARTICLE 7: CONSTRUCTION

- 7.01.** "Approval"- Architectural Committee must approve all plans prior to the construction, or placing of structures built offsite, or exterior modification, or additions to any structure on any lot in Tierra Bello Subdivision. The Architectural Committee shall render its decision relating to the proposed construction within ten (10) days following the date of submission of plans and specifications. If no decision is forth coming within this time the plans and specifications shall be deemed to have been approved. Development applications and permits are required from Santa Fe County and New Mexico Construction Industries Division for on site and off site stick built homes, along with New Mexico Environment Improvement Division for liquid waste disposal systems.
- 7.02.** "Standard" The type of architecture design for on site constructed homes shall be based upon, but not strictly adheres to Santa Fe style, Pueblo style and Northern New Mexico Style. Installation of solar panels and equipment at ground level is required. Reasonable innovative and creative ways are permitted and encouraged for solar energy uses. Construction materials shall be of normal construction standards, with exterior earth tone colors and stucco finishes, no color tones will be allowed that are visually offensive. The only requirement of the decision to approve modifications in the standard is that the committee shall act in good faith for the benefit of all residents of lots in the subdivision.
- 7.03.** All Utilities shall be underground.
- 7.04.** All construction shall be completed within twelve (12) months from the date such work is started.
- 7.05.** One temporary construction trailer is permitted, but must be removed immediately when the home is occupied. During construction the owner or construction contractor of the site must insure the area will be clear of debris and use reasonable efforts to minimize noise, dust and fumes and blow away trash. A temporary trash container may be used for a period not to exceed five working days at a time
- 7.06.** "Construction"- During construction, the lot owner must insure that they or the builder shall be required to refrain from damaging or removing trees and other vegetation except as may be reasonably necessary in clearing the building site or the construction of driveways and parking areas.
- 7.07.** "Solid Waste Disposal"- All lot owners are to dispose of their solid waste in an approved sanitary landfill or to contract for solid waste pick-up service by an approved waste management firm.
- 7.08.** Any property owner, tenants and members of their family, and guest may have use of the common areas. No motorized vehicle of any type shall be operated on any open space or common area.
- 7.09.** Property owners within Tierra Colinas may use open space through Tierra Bello Open Space upon an agreement with the Homeowners Association of Tierra Colinas and Tierra Bello Subdivision.

Failure to enforce any covenant herein shall in no event be deemed as waiver of the right to do so thereafter

Article 8 - Architectural Review Committee

- 8.1 Composition of Architectural Review Committee. An Architectural Review Committee, consisting of three (3) persons, is hereby established for the Subdivision. The initial members of said Committee are:
Position 1: Architect or Owner of Declarant' choice
Position 2: Cathy Miller
Position 3: Danny Martinez

Tierra Bello Subdivision may remove and replace members of the committee any time, at its sole discretion for the first 3 years, or until the sixth Lot has been conveyed to other than a builder developer and the Owners take over the responsibility of managing the Association, whichever is earlier. At any time position 1, 2 or 3 may resign. Upon the expiration of such three (3) years (or sixth Lot conveyance, whichever is earlier), the Board or 68.18% of the Owners shall appoint the three (3) members of the Committee, who shall then serve for the following terms:

- Position 1: Three (3) years
Position 2: Two (2) years
Position 3: One (1) year

Upon the expiration of the term of each of the Committee members initially appointed by the Board, the Board shall appoint a successor to such position, who shall serve for. A period of three (3) years, such that the terms of the Committee members are staggered. A Committee member shall serve until his or her term expires, if the member resigns or is unable to serve, or the member is removed in the manner provided for the removal of members of the Board in the Bylaws of the Association. Any vacancy in the 5 Committee occurring before the end of a term shall be filled by a person appointed by the Board and shall serve only the remainder of the term they are replacing. Until such time that the Board is elected, 68.18% of the Owners will act as the Board. The affirmative vote of a majority of the members of the Committee shall be required for approval of any matter' provided, however, that a majority of the members of the Committee may designate one member to act on behalf of the Committee.

- 8.2. Submittal and Review Requirements. Before anyone shall commence the erection, installation, construction, reconstruction, remodeling, or alteration of, or addition to, any House, improvement or structure of whatsoever nature which affects the outside appearance of the structure, including but not limited to, a fence, wall, entrance gate, sign, roadway, utilities, etc. (structure) and before anyone shall paint, texture, repaint or retexture the exterior surfaces of any such House, improvement or structure, they shall submit for approval to the Architectural Review Committee two complete sets of plans showing all sides, site location, driveway, outside colors, building style and similar information and specifications as required by Committee rules clearly showing the nature of the

work proposed and the location thereof, as shall enable the Architectural Review Committee to evaluate whether the proposed construction, alteration, installation, etc., will comply with terms and provisions of this Declaration.

Regular maintenance of previously approved structures and improvements which do not materially alter the color or appearance of the structures or improvements shall not require Architectural Review Committee approval. No erection, installation, construction, reconstruction, remodeling, or alteration of, or addition to, any House, improvement or structure of whatsoever nature, including, but not limited to a house, garage, studio, fence, wall, entrance gate, sign, roadway, utilities, etc., or any painting, texturing, repainting or retexturing of the exterior surfaces of any house, garage, studio, structure or improvement shall be commenced unless and until the plans and specifications submitted to the Architectural Review Committee shall have received the approval of the Architectural Review Committee. Additionally, no grading, tree cutting or other site disturbance may occur without the prior written approval of the Committee.

The Architectural Review Committee shall approve or disapprove, in writing, the plans and specifications submitted to it within fifteen (15) days after receipt. Approval of such plans and specifications shall be evidenced by the written endorsement of the Architectural Review Committee made on one copy of said plans and specifications with such copy delivered to the Owner or the Owner's agent or representative submitting the same. The other set of plans and specifications shall be retained by the Architectural Review Committee. If the Architectural Review Committee shall fail to approve or disapprove the plans and specifications within fifteen (15) days after receipt of complete plans and specifications, then approval shall be deemed given, provided that any work proposed to be done shall be done in a manner which does not violate any of the terms and provisions of this Declaration.

During construction the Architectural Review Committee shall have the right to periodically review progress of the work to ensure its compliance with the approved plans and specifications. All material changes involving the exterior elements of the planned improvements shall be submitted to the Architectural Review Committee at least ten (10) days prior to construction of any such change. Upon completion of a dwelling, structure or improvements, the plans for which have been approved, the Owner shall notify the Architectural Review Committee in writing that the work is complete.

The Architectural Review Committee will, within ten (10) days of receipt of the notice of completion, inspect the completed work and either: (i) send the Owner a written notice of approval of the work, if the work is in conformity and compliance with the approved plans and specifications, or (ii) send the Owner a notice of disapproval of the work, if the work is not in conformity and compliance with the approved plans and specifications, stating the particular grounds for such disapproval, and the Owner shall be obligated to take such action as may be necessary to effect such compliance and conformity without delay.

At the completion of any necessary corrections; the Architectural Review Committee will then reinspect the work within ten (10) days after written notice of

the completion of such correction work, to again approve or disapprove of the correction work. .If the .Committee does not act in a timely manner they waive their right to review, approve, modify and inspect the phase they have been asked to review.

8.3. Review Fee. In connection with any submission for plan approval, the Committee may require the Owner to pay a review fee sufficient to pay the Committee's costs and expenses incurred in having the materials submitted and examined by a person or firm designated by the Committee. Such fee shall not exceed \$250.00.

8.4. Location of House on Prime Building Site. Unless written approval is otherwise granted by the Committee, for good cause shown, the House for each Lot shall be substantially located. Regardless, the prime building site can be adjusted providing the Architectural Review Committee and the surrounding lot owners that share common lot lines with applicant's consent. It is the applicant's responsibility to obtain the adjoining owners written consent prior to submittal to the Architectural Review Committee. Any variance will be signed off in writing. Prime building sites are restricted to 15,000 square feet and all structures are encouraged to be clustered (i.e. compound) within the prime building envelope.

8.5. Approval Standards. The Committee shall have the right to disapprove any plans and specifications submitted to it for anyone or more of the following reasons:

8.5.1. If the plans and exterior specifications are not in sufficient detail, or are incomplete.

8.5.2 If the plans and specifications are not in compliance with all requirements and provisions of this Declaration.

8.5.3. Architectural Guidelines. The Committee may, but shall be under no obligations to, adopt, re-adopt, or modify, from time to time, guidelines and/or standards for approval of plans submitted to it pursuant to this Article. A copy of the Committee guidelines, as they exist from time to time, shall be kept with the Association's records, and shall be available to the owners, upon request by the Owners. Generally, the guidelines shall promote the following objectives:

8.6 Construction process and site maintenance. The dumping of concrete and other refuse on other Lots, the Common areas or Common Easements is prohibited. During and after construction it shall be the Owner's and contractor's responsibility to leave surrounding areas clean and free from debris. During construction, Owners and/or their contractors shall maintain a dumpster, of adequate size, on the Lot for the dumping of construction debris, and shall arrange for regular pick-up of debris in such dumpster. Evidence of arrangements for the maintaining and dumping of such dumpster shall be provided to the Committee as a requirement for approval of plans by the Committee.

In addition, a clean-out dumpster shall be placed on the Lot at the time of initial excavation, and shall be of a sufficient size to accommodate the retention of all

concrete and plastering debris and clean-outs. All concrete and plaster clean-outs shall occur within the dumpster. The location of a dumpster shall be depicted on the site plan submitted to the Committee for approval. Violation of this Section will result in clean up at the Owner's expense, initially out of the Construction Deposit, and thereafter by special assessment against the offending Owner. It will be the Owner's responsibility to manage his contractor, sub-contractors and employees in a manner consistent with a residential community (i.e. a clean building site, no loud music, and keeping construction traffic off other lots and in compliance with the posted speed limits.)

- 8.7. Liability.** Neither the Committee, the Board or the Declarants shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of:
- 8.7.1.** The approval, conditional approval or disapproval of any plans, drawings, and specifications whether or not defective;
 - 8.7.2** The construction or performance of any work, whether or not pursuant to approved Plans, drawings and specifications.
 - 8.7.3** The development or manner of development of any property within the Subdivision. By the acquisition of title to any Lot in the Subdivision, and in consideration thereof, each Owner thereby waives any right, and agrees not to file suit against the Declarant, the Architectural Review Committee, the Board, or any member thereof, to recover damages in connection with any of the foregoing events.
- 8.8** Variances. When naturally or artificially occurring circumstances or the necessities of reasonable use and enjoyment of a Lot require, the owner of the Lot may apply to the Architectural Review committee for variance approval, and the Architectural Review Committee, upon showing of good cause and necessity therefore without significant possibility of detriment to other Lots and Owners, and by the affirmative vote of a majority of its members, may allow reasonable variances with respect to any provision of this Declaration, on such terms and conditions as the Committee shall specify by written report.

The Committee's authority to grant variances is limited to matters within its jurisdiction under this Declaration and the Bylaws of the Tierra Bello Subdivision Homeowners' Association. If within the discretion of the Committee, the variance might significantly impact neighboring lot owners then no such variance approval shall become effective until fifteen (15) days after the Committee shall have mailed a copy of its written report to each adjoining property owner within the property affected by these amended covenants. If the Owner or Owners of one (1) Lot adjacent to the Lot of the Owner seeking the variance, give written notice of objection to such variance within said fifteen (15) day period, the variance shall not be granted. The applicant for a variance may request in writing a special meeting of the Association be held to vote on the variance request, in which event the Board of Directors shall convene such a special meeting at the earliest practicable time.

- 8.9 Construction Deposit; Remedy for Violation. Following approval by the Committee of plans and specifications for new houses or additions to existing houses, but prior to the start of work described therein; the applicant or their builder shall provide a cash construction deposit to the Association. The amount of the construction deposit shall be \$100.00. The construction deposit shall be held by the Association in a segregated account. If the Committee determines at any time during the course of construction, that the structure is being built in non-compliance with the approved plans and specifications, this Declaration, or any Subdivision Rule, or that the construction has caused damage to Association property or the property of any Owner, the Committee shall provide the offending Owner with written notice of the violations and a date by which they must be remedied, providing a reasonable period of time to be determined by the Committee. If the violations are not cured by that date fixed by the Committee, the Association shall be entitled to draw upon the construction deposit to remedy the violations. The deposit held by the Association shall be released to the Owner when the final inspection has been conducted, and approval given, by the Committee or their designated representative.

- 8.10. Compliance of Other Projects. No Owner or builder shall be permitted to commence construction of a structure, if any other structure or work currently under construction or previously constructed, on any Lot, by or for that owner or builder, does not comply with plans and specifications approved by the Committee for that other structure, or work. In connection with its approval or disapproval of the plans and specifications for the new structure, the Committee shall provide the Owner or builder with written notice of the specific items not in compliance with approved plans, this Declaration and or Subdivision Rules for the prior structure or work by the Owner or builder that is in non-compliance.

- 8.11 Appeal of Committee Action. An Owner may appeal a Committee action to the Board by requesting in writing, delivered to the President of the Association, a hearing before the Board or the Owner. Upon such a request, the Board shall schedule a special meeting, pursuant to the Bylaws of the Association, no later than twenty (20) days from the date of the Board's receipt of such a request. At such special meeting, the Owner's evidence will be heard, and the Board, OT 68.18% of the Owners, will decide whether or not to uphold the Committee's decision.

Article 9 - Common Scheme Restrictions and Requirements

- 9.1 Native Growth Preservation. The native growth of the Subdivision, including but not limited to cacti, live pinon and juniper trees, and chamisa, shall not be destroyed or removed, except as may be necessary for the construction and maintenance of roads, driveways, the House and other approved structures, without the prior written approval of the Architectural Review Committee.

- 9.2 Water Conservation Covenants and restrictions will be filed in the records of the Santa Fe County Clerks Office.

- 9.2.1 Water use will be dictated by the utility company, Santa Fe County water restrictions and the State Engineer's Office.

9.2.2. Owner will be required, at Owner's expense, to install a water meter and pressure regulator.

9.2.3 Catchment of roof waters, stored in underground cisterns is encouraged.

9.3. Landscaping.

9.3.1. There shall be no lawns in excess of four hundred (400) square feet. Lawns of drought resistant grasses are encouraged.

9.3.2. Non-commercial gardens, not exceeding four hundred (400) square feet, are allowed subject to the prior written approval of the Committee as to the garden's location.

9.3.3 Owners shall use vegetation cover consistent with existing vegetation, including pinon, juniper, chamisa and drought resistant grasses.

9.3.4 No Poplars, Cyprus or Elms shall be allowed to be planted or to grow upon any Lot, nor shall any tree be permitted to be planted which exceeds a height of twenty-five (25) feet at maturity, unless in the sole discretion of the Committee, such greater height will not adversely affect the view corridor of any other Lots.

9.4 Height of Landscaping. Notwithstanding Section 4.3 above, no shrub, hedge, tree or other landscaping which interferes with the view or solar access of any Lot. (except as permitted by the Committee) shall be planted, permitted or maintained on any.

Lot If the Owner of a Lot allows a shrub, hedge, tree or other landscaping to grow on his Lot which does not comply with the provisions of this Section, then the Committee shall have the right (but not the obligation) upon ten (10) days prior written notice to the offending owner to:

9.4.1 Enter upon the offending Lot; and

9.4.2 Cut back or otherwise trim the offending shrubs, hedge, tree or landscaping; and

9.4.3 Assess the Owners(s) of said Lot for the cost of such activities.

9.5 Setbacks. No portion of any House, studio, garage, or similar structure shall be constructed or located on any Lot nearer than the greater of either twenty-five (25) feet to any boundary line, or the distance of the building setbacks from the Subdivision boundary lines set forth on the Plat, whichever is greater. All structures are encouraged to be set back at least seventy-five (75) feet from any roads.

9.6 Fences and Walls. It is the intent of the Declarant to preserve an open

and unobstructed terrain, free of fences and walls. Accordingly, no fence or wall shall be constructed or allowed to remain on any Lot except as have been approved by the Committee, subject to the following standards.

9.6.1 Owners shall not fence or wall any portion of the perimeter or boundary of a Lot except yard like compound enclosures that are set back from the property lines a minimum of twenty five (25) feet and approved by the Architectural Review Committee. Fences and walls, not exceeding five (5) feet in height shall be allowed to enclose a yard, garden or the like.

9.6.2 Walls shall be either plastered adobe or plastered masonry. Fences shall be "coyote" style and constructed of unpeeled cedar or juniper posts. Slat, bark-faced boards, wire and metal mesh fencing is prohibited; Natural vegetation and screening of all permitted fences is strongly encouraged.

9.7 Driveways. All driveways, which shall not exceed eighteen (18) feet in width, shall be surfaced by the Owners of a Lot(s) with gravel or other material to prevent dust and maintained so as to reduce erosion and eliminate unsightly conditions.

All driveways shall be graded and sloped and adequate culverts installed (where appropriate), for proper drainage, with due consideration for the flow of water so diverted. Adequately sized culverts (at least 14" shall be installed where the driveway meets Tierra Bello Roads. All driveways shall incorporate clear-sight triangles where they intersect the street. No construction or building may occur inside such triangles nor shall any landscaping be planted or maintained inside such triangles that blocks the view of oncoming traffic. The Association reserves the right to prune and/or remove any trees or shrubs inside the clear-sight triangles at each driveway intersection. Costs and expenses for maintenance and repair of any shared driveways shall be shared by the users thereof. Any driveway entrance gates will be set back at least one car length from the road.

9.8 Building Materials. No storage of building materials other than during construction shall be permitted. No storage yard for materials other than those commonly and regularly in -residential use, or for purposes of construction of the infrastructure of the Subdivision, shall be permitted.

9.9 Refuse. No garbage, clippings from trees, shrubs or lawns, trash, ashes or other refuse shall be thrown, dumped or allowed to accumulate within the Subdivision. This does not prevent the construction of composing areas, which are maintained in a neat and orderly manner. All refuse, trash or waste shall be kept in sanitary containers, which containers shall be kept screened and concealed from view at all times (other than when being placed for pickup).

9.10. Nuisance.

9.10.1 No Lot shall be used for the storage of any property or thing that Will cause such Lot to appear in an unclean or untidy condition or that will be visually offensive or obnoxious, toxic, dangerous, or unhealthy, and no substance, thing or article may be kept upon any Lot that will emit foul or

obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any occupants of Lots

- 9.10.2** No devices emitting noise levels exceeding decibel limits set for residential areas shall be permitted in the Subdivision.
- 9.10.3** During or after construction of improvements on any Lot, no concrete slurry shall be left on any Lot or within the Common Easements.
- 9.11** Garages and Parking of Vehicles.
- 9.11.1** A garage of sufficient size to accommodate at least two automobiles shall be constructed and maintained with each House.
- 9.11.2** The garage primarily shall be used for parking of vehicles and not storage. Storage in garages cannot take precedence over the garage's primary function of parking automobiles. No garage shall be used or converted for any use other than parking of vehicles, without the prior or simultaneous construction of a replacement garage.
- 9.11.3** All garages shall be equipped with an automatic opener. All garage doors shall be kept closed except when in actual use.
- 9.11.4.** No commercial vehicles, motorcycles, campers, recreation vehicles, motor homes, boats, trailers, horse trailers or similar vehicles shall be kept or maintained in the Subdivision. Lot owners with these vehicles are encouraged to find offsite storage.
- 9.11.5** No vehicles, parts of vehicles of any type, or large unsightly equipment or machinery shall be permanently or semi-permanently parked in any portion of the Subdivision visible from other Lots, Common Easements and public roads, for purposes of repairs, reconstruction or storage.
- 9.11.6** No vehicle or any type, except maintenance vehicles and machinery, or as otherwise authorized by the Board, shall be operated on any open space depicted on the Plat. No automobiles or other motor vehicles shall be parked in any open space or in any public street within the Subdivision. No vehicles shall be kept or stored on any Common Easement.
- 9.12** Sheds. No sheds shall be permitted without prior written approval of the Architectural Review Committee. Any shed erected on any Lot shall be screened from view from other Lots, the Common Easements and public roads in a manner approved in writing by the Committee before the shed is constructed. If approved, sheds shall be stucco masonry, adobe, or frame structure. Approval shall only be granted if adequate screening is available or provided.
- 9.13** Stored Items. All clothes lines, mechanical and other equipment, wood piles (except fire logs less than (2) cords in size), storage piles, campers, horse trailers, extra automobiles, boat trailers, trailer homes, recreational vehicles and similar vehicles are prohibited. Owners of RV typed vehicles are encouraged to find offsite storage.

- 9.14. Storage Tanks. No types of any kind shall be erected, placed or permitted within the Subdivision, excluding stormwater cisterns and septic tank facilities.
- 9.15 Utilities. All extensions of utilities shall be underground to all structures at all locations. No electrical or telephone lines shall be maintained above ground except during construction. Any disturbance of natural ground cover and vegetation necessitated by the installation of utility service lines on a Lot shall be restored by the Owner of the Lot by replanting. All water and electric meter locations shall be subject to approval by the Committee. All utilities except septic systems shall be installed in or adjacent to the driveway.
- 9.16. Exterior Lights. All exterior lights must be located so as not to be directed toward surrounding Lots, properties or roads. Bright, glaring lights on roof tops and patio walls or elsewhere are prohibited. (Down lighting is encouraged). Exterior lighting shall be shielded with 75 watt lights or less.
- 9.17 Billboards and Signs. No billboards or advertising signs will be permitted on any Lot or on any structure except:
 - 9.17.1 The name plate of the occupant and address of any House having a maximum face area of one square foot in size.
 - 9.17.2 Such signs as may be required by or reasonably necessary for legal proceedings.
 - 9.17.3. During the time of construction of any structure, a job identification sign having a maximum face area of six (6) square feet and of the type usually employed by a contractor or financial institution.
 - 9.17.4 Appropriate safety, directional, and identification and safety signs installed adjacent to the Common Easements or public rights-of-way by Declarants, the County of Santa Fe, the Association, or as required by law.
 - 9.17.5. Not more than one "for sale" or "for rent" sign having a maximum face area of six (6) square feet to be placed on each Lot, except as may be provided in the Subdivision Rules.
 - 9.17.6. Such residential or commercial identification signs, e.g. for sale signs, street names, subdivision signs, etc. as Declarants shall desire.
 - 9.17.7 The Declarant and/or his real estate broker is exempt from these rules.
- 9.18 Antennas, Wind Generators, and Towers.
 - 9.18.1. No exterior antenna of any sort, except television antennas and satellite dishes (not to exceed 15" in diameter), shall be installed or maintained on any Lot, those devices which are erected, installed, will be if at all possible screened from view from other Lots, Common Easements and public roads or which are otherwise specifically authorized by this Declaration or Subdivision

Rules. No radio or television transmission towers shall be erected, placed or permitted in the Subdivision.

9.18.2. No wind-driven machinery shall be permitted within the subdivision.

9.19 Animals. Except as provided herein, no animals of any kind may be kept on any Lot, whether for personal or commercial purposes. Each Lot may have a number of three dogs and/or cats more than sixteen weeks old (exclusive litters of such pets) which must be confined to the Lot. In addition, No animals may be kept or maintained on any Lot in any manner or number which is a nuisance or offensive to the neighboring Lots, whether by reason of noise, habits, odors, or otherwise, anything to the contrary in this Declaration notwithstanding. The owner of any pet or shall be responsible for the immediate removal" and clean-up of any such animals' waste within the Subdivision. The owner of any pet shall at no time allow such animal to run unrestrained on any Common Easement or other part of the Subdivision (except for enclosed yards or patios), and the owner shall at all times have full and complete control over such animal. No animal or pet training or trading as a business shall be carried on, directly or indirectly, on any part of the Subdivision. The Board shall have the right to order the removal of any animals which are kept in violation of this Declaration.

9.20. Home Occupations. No business or commercial activity of any nature shall be conducted upon or from any Lot, except that so-called home occupations shall be permitted if such activity does not disturb Owners of other Lots or increase traffic upon public or private roadways to undesirable levels.

9.21 Solar and Mechanical Devices. No mechanical or other device, including solar panels shall be installed or maintained on the roof or exterior surface of any structure within the Subdivision if such device is visible from any other Lot, or from the private or public streets, unless the device is screened, enclosed or otherwise approved by the Architectural Review Committee.

9.22 Drainage. Surface drainage courses within Lots must be kept free and clear of debris or obstructions which prevent free flow of storm waters. Owners shall, prior to construction of any structure, submit to the Committee, for approval, the design and engineering of appropriate drainage control structures that will retain excess water runoff from the impervious surfaces within said Lot. Owners shall also obtain the approval of the County of Santa Fe for design and engineering of said drainage control structures.

Prior approval of both the County of Santa Fe and the Committee are required, as conditions for construction. Drainage control devices may include yard ponding, grading, landscaping, French drains and other appropriate structures or devices which shall be located inside the courtyard walls or otherwise screened so as not be visible from other Lots or the Common Easements. Notwithstanding the foregoing Committee and County approval, the responsibility for on-Lot drainage control is and shall be that of the Lot Owner and no one else.

- 9.23 Hunting and Firearms. No hunting or discharge of firearms shall be permitted within the Subdivision.
- 9.24 Mining and Drilling. In no event shall the Subdivision be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.
- 9.25 Rate of Insurance Increase. No portion of the Subdivision shall be used for any purpose or in any manner which would increase the rate at which insurance against loss or damage by fire and the perils covered by extended coverage, bodily injury, or property damage liability insurance covering any other House may be obtained, or which would cause any other House to be uninsurable or to have such insurance canceled or suspended.
- 9.26. Lot Splitting and Consolidation. No Lot within the Subdivision shall be split, except subject to the Board's written consent and Santa Fe County's approval.
- 9.27 No Access to Adjoining Properties; Retained Easement. Except as permitted by existing easements, no Lot Owner shall grant an access and utility, easement to, or permit access by, the owners of property outside the Subdivision without the Declarants' written permission.

Declarants reserve for Declarants, an easement and right-of-way in, through, over, under, across, and upon all portions of the Subdivision, including all Lots, for the purpose of commencing, conducting, and completing Declarants' development and improvement work on the Subdivision and any other property to be added to this Declaration. Declarant reserves the right to grant easements and rights-of-ways in, through, under, over, across, and upon all portions of the Subdivision, including all Lots, for the installation, construction, operation, maintenance, inspection, repair, and replacement of lines and appurtenances for public or private water, sewer, drainage, telephone, cable television, gas, power, or other utilities and for other materials or services necessary for the completion of said development and improvement work.

Declarants reserve the right, to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers, and drainage lines which may from time to time be in or along the Subdivision. Notwithstanding any other provisions in this Declaration to the contrary, this Section may not be amended without the prior written consent of Declarants. Any of the easements and rights reserved by Declarant in this Section may be assigned to Declarants' successors in interest and may be exercised by Declarants' agents, officers, employees, and representatives.

- 9.28. No Inconsistent Uses. No uses are permitted that are or would be inconsistent with the single-family, residential character of the Subdivision.
- 9.29 Plat and Final Development Plan. Owners shall also be bound by the conditions set forth on the Plat and Final Development Plan, as recorded. In the event of any inconsistency between this Declaration, the Plat, and the Final Development Plan, the Owner shall be bound by the condition that is more restrictive,

regardless of whether it appears on the Plat, Final Development Plan or in this Declaration.

- 9.30.** Waiver of Provision. Any of the prohibitions or requirements set forth in this Article 4 may be waived by the Committee where the proposed waiver is not inconsistent with the purpose and intent of this Declaration, and said waiver is granted pursuant to Section 3.7, dealing with variances.

Article 10 - Common Easements: Uses; Restrictions

- 10.1.** Common Easements. The' Common Easements shall be maintained by the" Association for the benefit of all Owners, and, in the case of the Tierra Bello Subdivisions Roads, the public, pursuant to this Declaration to enhance the value and desirability of the, Subdivision, subject, however, to the following limitations and restrictions:
- 10.1.1.** The area designated on the Plat as open space and/or drainage easements shall not be open to public use, but shall be available only to all Owners, and their tenants, guests and invitees. No motorized vehicles are allowed.
- 10.1.2** Use of the Common Easements shall be subject to the Subdivision Rules as they may be adopted from time to time.
- 10.1.3** The Common Easements shall be subject to the following:
- 10.1.3.1.** Such rights and easements as may have been or may hereafter be offered by Declarants or the Association for dedication to public use; with approval of 68.18% of the Owners.
- 10.1.3.2** Such easements as may have been reserved by Declarants;
- 10.1.3.3.** Such easements or other interests as may from time to time be taken under power of eminent domain;
- 10.1.3.4.** The right of the Association to suspend the right of an Owner (and his licensees, invitees and tenants) to use the Common Easements, for any period during which any assessment levied by the Association against the Owner's Lot remains unpaid, or for a reasonable period for any infraction of the Bylaws, Rules, or this Declaration, as amended from time to time;
- 10.1.3.5.** The right of the Association to limit or permit the use of Common Easements by non-members, as the Association deems appropriate, and the right of the Association to limit the number of guests of Owners using open space; and
- 10.1.3.6.** Such other easements as may from time to time be granted or conveyed by the Association pursuant to the Declaration.
- 10.1.4.** There shall be no improving, landscaping, decorating, or repairing of any Common Easement except either with the prior written consent of the Association or by the Association in conjunction with its maintenance of Common

Easements, and except for the installation of underground utilities and driveways to individual Lots.

10.1.5. The Association shall have the right of reasonable access over and across the Lots where necessary to perform the Association's maintenance responsibilities under Article 9. The Association shall have the right to control access to the Common Easements; however, the Association shall not have the right to impair the Owners' right of access to their Lots.

10.1.6. Each Owner shall be liable to the Association for all damage to the Common Easements, or improvements or facilities situated thereon, caused by such Owner, his invitees, licensees or tenants.

10.1.7. The ownership and access rights of the Association and the Owners to the Common Easements also shall be subject to the following easement and encroachment rights:

10.1.7 .1. Each Owner of a Lot, served by utility connections, lines or facilities, including, but not limited to, those for water (meter at Owner's expense), telephone, and electric services, shall have the right, and is hereby granted a nonexclusive easement, to the full extent necessary therefore, to enter upon the Common Easements and/or to have utility companies and/or County of Santa Fe personnel enter upon the Common Easements where such connections, lines or facilities or any portion thereof may lie, to repair, replace and generally maintain the same.

Whenever utility connections, lines or facilities installed within the Subdivision serve more than one Lot the Owner of each Lot served hereby shall be entitled to the full use and enjoyment of the portions thereof which service his Lot. Declarants hereby reserve to itself easements over, under, through the Common Easements for installation of such utility connections, lines or facilities for the benefit of the Subdivision or as may otherwise be needed for the development of the Subdivision together with the right, as Declarants deem necessary or appropriate, to grant and transfer such easements to the Association, utility companies or governmental agencies, or authorities within whose jurisdiction the Subdivision lies, and other appropriate entities and individuals.

10.1.7.2. There is hereby reserved to Declarants, non-exclusive easements over the Common Easements and the facilities located thereon for all construction and sale activities relating to their development of the Subdivision. It is anticipated that said construction and sale activities shall relate to individual projects developed from time to time on portions of the Subdivision and to the promotion or enhancement of either all or a portion of the Subdivision by Declarants. Declarants reserve the right to use space in the Common Easements or within the building setbacks along the roads.

10.2 Decorative Feature Easements. The Declarants and the Association shall have a blanket easement within the building set back lines on the corner of Lot 2 and 3 at the entry of Tierra Bello Roads into the Subdivision, for purposes of the location, construction, maintenance and repair of a decorative entrance feature to

the Subdivision, common post office boxes or other receptacles for the delivery to the United States mail to Lots, and similar improvements.

- 10.3.** Declarants' Reservation of Easements. Declarants reserve an easement and right-of-way in, through, over, under and across all portions of the Subdivision for the purpose of completing its development and improvement work on the Subdivision, and towards this end, Declarants reserve the right to grant easements and rights-of-ways in, through, under, over, on and across the Subdivision, for the installation, maintenance and inspection of lines and appurtenances for public or private water, drainage, cable television, gas or other utilities and for any other materials or services necessary for the completion of said development and improvement work.

Declarants reserve the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the streets and roads located within the Subdivision. In addition, Declarants reserve the right to continue to use the Subdivision and any sales offices, model homes, signs and parking spaces located on the Subdivision in its effort to develop and market portions of the Subdivision. This Section may not be amended without the prior written consent of Declarants. Any of the easements and rights reserved by Declarants in this section may be assigned to others and may be exercised by Declarants' agents, employees and representatives.

- 10.4.** Easement to Inspect. The Association and its duly authorized agents are granted the right to enter Lots and Houses to ascertain the extent of compliance with the Bylaws, Rules and this Declaration, and to correct defaults if necessary. Prior notice of said inspection shall be given to the occupant, except in cases of emergency.
- 10.5** Easement for Governmental Personnel. There is hereby established a right of entry for public officials, police, fire, rescue, and other personnel to come upon the Subdivision for the sole purpose of carrying out and enforcing their official duties.
- 10.6.** Declarants' Right to Dedicate. Nothing contained in this Declaration shall be deemed to restrict or otherwise impede Declarants, or the Association, at any time and from time to time, from dedicating portions of the Common Easements to any public or private agencies, authorities or utilities.

Article 11 - The Association

- 11.1.** At such time that the Declarant has conveyed six (6) lots, the Owners, at their option, may form an Association, elect the Board of Directors, adopt and the Bylaws, Articles of Incorporation, and levy annual lot assessments. However, the Declarant will be exempt from any assessment or modifications to the Covenants the Association may deem necessary. Until such time that the Board is elected 68.18%, of the Owners will act as the Board.
- 11.2** The Association. The Association may be duly incorporated and organized

According to the New Mexico law pursuant to the Articles of Incorporation and Bylaws on file with the New Mexico State Corporation Commission (the "articles" and the "Bylaws"). The membership of the Association, powers and duties of members, and power and duties of the Association are specified in the Articles and Bylaws. The Association has the duties, among others, to maintain the Common Easements.

- 11.2.1. If the Association, as a corporate entity, loses its corporate powers or is dissolved, a non-profit, unincorporated association shall be formed forthwith and without further action or notice, and shall succeed to all rights and obligations of the Association hereunder until a qualified nonprofit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not inconsistent therewith, by the Declaration, the Articles of Incorporation and the Bylaws, respectively, as if they were created for the purpose 'of governing the affairs of an unincorporated association.
- 11.2.2. The President and Secretary of the Association, or any two (2) members of the Board of Directors, may execute, acknowledge and record, in the real property records of Santa Fe County, New Mexico, a certificate of identity stating the names of all of the members of the then current Board and the then current Architectural Review Committee. The most recently recorded affidavit shall be conclusive evidence of the identity of the persons then composing the Board and Architectural Review Committee in favor of any person relying thereon in good faith.
- 11.2.3. The affairs of the Association shall be managed by the Board of Directions, which shall exercise all of the rights and powers and perform all of the duties and responsibilities, set out in this Declaration and the Articles and Bylaws for the Association.
- 11.2.4 The Board shall, from time to time make, establish, promulgate, amend and appeal the Subdivision Rules. The Board shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year, and shall distribute such statement to each member and each Mortgagee upon request. The Association shall take such action as may reasonably be necessary to enforce or carry out the purposes of this Declaration and the Subdivision Rules.

Article 12 – Assessments

- 12.1 Mutual Covenants to Pay Assessments. Each Owner, by acceptance of a deed to a Lot or a contract of sale therefore, covenants and agrees with each other Owner and with the Association, to pay all assessments levied by the Association against such Owner's Lot, as provided under this Declaration or the Bylaws. The Declarants, at the Declarants sole option, will be exempt from any annual or special assessment fees. Until such time that the Bylaws are adopted assessments will be levied by the consent of 68.18% of the Owners.

12.2. Lien for Non-Payment of Assessments. All sums assessed and fines imposed by the Association, but unpaid, chargeable to any Lot or its Owner, shall constitute a continuing lien on such Lot. If any assessment shall remain unpaid for thirty (30) days after the due date thereof, the Board or managing agent shall assess a late fee of \$100.00, together with interest on the unpaid assessment at a rate equal to twenty percent (20%) per annum, commencing on the date such assessment was due, together with reasonable costs and any attorney's fees incurred in connection with the collection thereof. In any suit for collection or foreclosure of such lien, the Owner shall be required to pay the costs and expenses of such proceeding, all reasonable costs of collection and all reasonable attorneys' fees.

The Owner shall also be required to pay to the Association any assessment due for the Lot during the period of foreclosure. The managing agent or Board shall have the power to bid on the Lot at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Any encumbrance holding a lien on a Lot may pay, but shall not be required to pay any unpaid assessments due with respect to such Lot, and upon such payment such encumbrance shall have a lien on such Lot of the same rank as the lien of encumbrance for the amounts paid.

12.3. Personal Debt of Owner. The amount of any assessments assessed against each Lot shall be the personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing same. Notwithstanding anything to the contrary contained herein, the Association shall seek any sums due for the unpaid assessments from a person in possession of a Lot pursuant to a real estate installment sale contract for a period of forty-five (45) days following notice to such Person on unpaid assessments, before seeking such sums from the legal Owner of such Lot.

12.4 Joint Liability for Assessments Upon the Transfer of Lot. The grantee of a Lot shall be jointly and severally liable with the prior Owner for an unpaid assessments up to the time of the grant or conveyance; provided, however, that upon payment of a reasonable fee established by the Board, and upon written request, any such prospective grantee shall be entitled to a statement from the managing agent or Board setting forth the amount of the unpaid assessments, if any, with respect to the subject Lot; the amount of the current yearly assessment, the date that such assessment becomes due, and credits for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association. If such statement is not tendered by the Association within ten (10) business days of its actual receipt of such request, then such requesting grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for any unpaid assessments against the subject Lot unless such lien has been recorded with the Santa Fe County Clerk prior to the date the request is received by the Association.

12.5. No Waiver of Assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Easements on his Lot, by abandonment of his Lot or by any other means whatsoever.

- 12.6. Initial Assessment Upon Lot Purchase. Upon the closing of the initial purchase of each Lot from the Declarant, each Owner shall pay an initial assessment to the Association in the amount of \$250.00, which assessment shall be added to and held with the general funds of the Association.

Article 13 - Duties and Responsibilities of Owners

- 13.1. Owner's Responsibility to Repair. Each Owner shall be responsible for the maintenance and repair of his Lot and all structures located thereon, including, without limitation, the structure's exterior surface and roof, including painting and surfacing, areas surrounding the structures, the plumbing, electrical, heating and air conditioning systems servicing the structures, the parking areas, water laterals serving the Lot to the junction of the lateral with the utility line in the street, and for the prompt rebuilding of the structure in the event of partial or complete destruction. All maintained areas shall be kept in clean and orderly condition.
- 13.2. Maintenance of Landscaping. Each Owner shall maintain the landscaping of his Lot in a neat and attractive manner. All grass, mass plantings and other plantings shall be mowed, trimmed and cut as necessary at regular intervals.
- 13.3. Observance of Responsibilities. Each Owner shall comply with the provisions of this Article 8 and will cause the Owner's family, agents, guests, contractors, employees and any person renting or leasing the Owner's House or Lot to do likewise.
- 13.4. Rights of Action. The Board of the Association shall have a right of action against Owners, and the Owner's family, agents, guests, contractors, employees and any person renting or leasing the Owner's House or Lot, for failure to comply with the provisions of this Article 8 of the Declaration. In addition to any other enforcement rights, if an Owner fails to fulfill his maintenance responsibilities, after reasonable notice from the Association and an opportunity for the Owner to cure such failure, the Association may enter the Lot and perform such maintenance. The Board shall be entitled to recover all costs, expenses and reasonable attorney's fees incurred in the enforcement of this Article 8, and the same shall constitute a special assessment against such Lot.

Article 14 - Responsibilities of Association

- 14.1. Maintenance of Private Roads. The Association shall maintain, in good condition and repair, roads and appurtenant drainage structures within the Subdivision. The Association shall also assess Owners for a pro-rata share of the cost for maintaining Avenida de Compardes from Salida Tierra Bello to Avenida Eldorado along with interior roads in Tierra Bello Subdivision and shall cooperate with other users of such road for the maintenance of the same. Specifically, the Association shall enter into a shared maintenance agreement with the Tierra Bello Subdivision Homeowner's Association, Inc for the shared maintenance of Tierra Bello Subdivision roads.
- 14.2. Maintenance of Other Common Easements. The Association shall own,

maintain and keep in good repair all improvements constructed by Declarants of the Association within other Common Easements, including without limitation signage, mailboxes and trails

- 14.3.** Maintenance of Drainage Structures; Easement. Declarants and the Association are each granted a perpetual easement to enter upon each Lot for purposes of correcting drainage problems or structures. Prior notice of entry shall be given to the occupant, except in an emergency.
- 14.4.** Solid Waste Disposal. The Association may contract with a private trash hauler, licensed by the State of New Mexico, to provide periodic solid waste picks up service to all Lots in the Subdivision. No Lot Owner shall contract individually for these services. The cost of trash hauling services shall be assessed to the Owners of improved lots.

Article 15 - General Provisions

- 15.1** Enforcement. In addition to the enforcement rights afforded to the Association in Article 8, the Association (acting by and through the Board), Declarants, an Owner, and the record title holder(s) of all or any portion of that certain property described as being within Tierra Bello Subdivision on that certain plat of survey recorded in Plat Book _____, Page _____ as Document Number _____, of the real property records: of Santa Fe County, New Mexico, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by a party to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter. The prevailing party (ies) in any action brought to enforce the provisions of this Declaration shall be entitled to recover all costs, expenses and reasonable attorneys fees incurred in such action.
- 15.2** Notices. Any notices required or permitted under this declaration shall be delivered to the respective addressee or deposited in the United States mails, postage prepaid, certified or registered mail, return receipt requested, addressed to the owners at the respective addresses as shown in records maintained by Declarants or Association. Each Owner will be responsible for providing the Association and Declarant with such Owner's current address. Any Owner may change his address by giving notice thereof to Declarants at: 286 River Bank Road, Lamy, New Mexico, 87540, and notice of Declarant or Association address change will be done by certified mail. Should an Owner not notify the Delcarant and the Association of a change in address, the Owner forfeits any right he may have concerning notice and vote.
- 15.3** Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

15.4 Binding Effect; Amendment.

The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date that this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each; provided, however, that Owners holding at least 66.18% of the voting power of the Association may, by executing, and acknowledging an appropriate instrument, not more than one (1) year and not less than ninety (90) days prior to the expiration of said initial twenty (20) year period or prior to the expiration of any ten (10) year extension period thereafter, release the land subject hereto from all of the restrictive covenants contained in this Declaration, and may, by executing and acknowledging an appropriate instrument, at any time, with a 66.18% of the majority vote by the owners, change, amend, modify or revise any of said restrictive covenants, except as prohibited herein. Every amendment must be recorded in the Office of the County Clerk, Santa Fe County, New Mexico.

15.5 Annexation. Declarant may, from time to time, and in its sole discretion, and without necessity of any approvals by any Lot Owner, subject real property which is contiguous to the Subdivision and which is now or hereafter owned by Declarants or owned by other person with the permission of such other persons, to this Declaration whereby such property will have all of the rights and obligations of membership in the Association, including the right to use the Common Easements and improvements.

The annexation of any such property shall become effective when Declarants shall have recorded in the Office of the County Clerk, Santa Fe County, New Mexico, an amendment to this Declaration which describes the real property to be annexed, declares that such property is held pursuant to this Declaration, and states the amended total number of Lots within the Subdivision for assessment and voting purposes, and the filing of a subdivision plat of the annexed property. No property may be incorporated into the Subdivision without Declarants' consent. Covenants for any additional annexed lots may be modified at Declarants' sole discretion. However, no off site built structures, prefabricated buildings or mobile homes will be allowed.

15.6 Binding Effect This Declaration shall be binding upon and shall inure to the benefit of Declarants, the Owners, and their respective heirs, successors and assigns, and shall run with the land.

IN WITNESS WHEREOF, DECLARANTS HAVE EXECUTED THIS DECLARATION THIS _____ DAY OF _____, 2013.

CIMARRON VILLAGE LLC.

Joseph F. Miller

Alma M. Miller

ACKNOWLEDGMENTS

STATE OF NEW MEXICO}
COUNTY OF SANTA FE}

This instrument was duly acknowledged before me this ____ day of _____,
2013 by Joseph F. Miller and Alma M. Miller, Cimarron Village LLC.

Notary Public

My commission expires

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
ELDORADO AREA WATER AND SANITATION DISTRICT AND THE BOARD OF
COUNTY COMMISSIONERS OF SANTA FE COUNTY REGARDING MUTUAL
WATER SERVICES COOPERATION**

The Eldorado Area Water and Sanitation District, a political subdivision of the State of New Mexico ("District"), and the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico ("County"), enter into this Memorandum of Understanding this 9th day of October, 2012.

RECITALS

WHEREAS, the District has rights and responsibilities specified by Law, specifically the Water and Sanitation District Act (NMSA 1978, Section 73-21-1 *et seq.*) and operates a water utility supplying water to its customers within the boundaries of the area served by the District, as shown on Exhibit "A" attached hereto and incorporated herein by reference (the District's "Service Area");

WHEREAS, the County, through its Utility Division, operates a water utility whose principal source of supply is the Buckman Direct Diversion, a joint project of the County and the City of Santa Fe;

WHEREAS, the County, through its Land Use Division, administers the New Mexico Subdivision Act, the Zoning Enabling Act, the Santa Fe County Growth Management Plan (SGMP), and the Santa Fe County Land Development Code (LDC);

WHEREAS, the County and the District share a number of important shared goals, including providing safe water to citizens, providing fire protection, sponsoring water conservation and reuse practices, and providing healthy wastewater management;

WHEREAS, consistent with these shared goals, the County, through its Utility Division, is willing to assist the District from time to time to improve the reliability of the District's system in times of drought or mechanical failure or as otherwise agreed to by the parties by providing access to water supplies from the Buckman Direct Diversion or from any other sources;

WHEREAS, the County's statutory duty through the Subdivision Act, the Zoning Enabling Act, the Santa Fe County Growth Management Plan, and the Santa Fe County Land Development Code is to assure that proposed development within the County is consistent with statutory requirements and with the LDC, and specifically to assure that a 99-year water supply exists for any proposed development within the County's land use jurisdiction;

WHEREAS, the County acknowledges that the District's sources of water supply are more than adequate at the present time to serve its customers, and also acknowledges Partial Licenses No. RG-18529 and 18556 issued by the Office of the State Engineer and the acknowledgement in those Licenses that the District has available to it 783.43 acre feet per year of water rights with which to supply customers, and further acknowledges that the County's

water experts have thoroughly reviewed the District's sources of supply in connection with recent applications to develop property and have agreed with the District that more than adequate water resources currently exist to serve existing customers and to serve new developments within the District's service area;

WHEREAS, from time to time, disagreements have arisen between the County and the District concerning the District's inherent authority under the Water and Sanitation District Act and the County's functions under the New Mexico Subdivision Act, the Zoning Enabling Act, the Santa Fe County Growth Management Plan, and the Santa Fe County Land Development Code, and it is desirable that the County and District work to reduce conflicts in the future in a way that is consistent with the County's statutory obligations, but in a way that fully respects the District's status as a political subdivision of the State and an independent public utility accountable to the voters;

WHEREAS, a constructive way to assure progress on all of these objectives is for the County to agree that the District has provided sufficient present information concerning the District's water supply to justify the County's acceptance of a 'will serve' letter from the District that the District is ready, willing and able to provide a customer with water service as adequate for purposes of the Subdivision Act, the Zoning Enabling Act, the Santa Fe County Growth Management Plan, and the Santa Fe County Land Development Code for a minimum of three (3) years, and for the County and the District to agree to work towards providing the District with water from the Buckman Direct Diversion project or other sources as available to assist the District in times of drought or mechanical failure or as otherwise agreed by the parties;

WHEREAS, the parties find that it is in their mutual best interest to avoid misunderstanding and disagreement over the areas to be served by each party, and wish to define a mechanism for deciding whether potential customers outside of the District's current Service Area boundaries will be served by the District or the County;

WHEREAS, the County and District are amenable to making such an agreement and to agreeing to work towards a stronger relationship in subsequent agreements so that these and other issues vital to the health, safety and welfare of the community are effectively addressed.

IT IS THEREFORE UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. The County recognizes and understands that the District is a Water and Sanitation District duly organized and existing under the Water and Sanitation District Act, with all the powers, authorities, rights and responsibilities specified therein, and the County recognizes the right of the District under the Water and Sanitation District Act to supply water to existing and new customers and to supply new development within its Service Area boundaries. The County agrees that it will not extend its water facilities into the District's Service Area without the prior written approval of the District.
2. With respect to the previous paragraph, the parties recognize that the County has statutory responsibilities with respect to such new development within the District's

2025 APR 15 10 43 AM

Service Area boundaries. In furtherance of the continued cooperation between the District and the County concerning the District's capacity to provide service to new customers, the County agrees that the information provided by the District concerning the adequacy of its water supply is such that, for a minimum of three (3) years from the date of the execution of this agreement, no further information is needed, and the County will accept a 'will serve' letter from the District that it is ready, willing and able to provide a customer with water service as adequate for purposes of the required review under the New Mexico Subdivision Act, the Zoning Enabling Act, the Santa Fe County Growth Management Plan, and the Santa Fe County Land Development Code, without further technical review or inquiry. The County may extend this procedure beyond three years if it finds that the procedure is consistent with its responsibilities.

3. The County recognizes that the District has the authority to extend the boundaries of its Service Area to serve new customers outside of its current Service Area boundaries. If a potential new customer outside of the current District Service Area but within two miles of the District's current Service Area boundaries requests service from either party, the parties agree to consult together and mutually agree whether the potential customer will be served by the County or the District.
4. The County and the District agree to work towards a subsequent agreement whereby the County provides the District with water from the Buckman Direct Diversion project to assist the District in times of drought or mechanical failure or as otherwise agreed by the parties, on terms specified in the subsequent agreement.
5. The County and the District agree to work together from time to time on other mutually beneficial agreements for infrastructure improvement projects, service boundary expansion, system operations and other improvements on terms specified in subsequent or separate agreements.
6. This agreement shall be perpetual. This agreement may also be amended from time to time, in writing, by agreement of the parties.

IN WITNESS WHEREOF the parties have executed this Memorandum of Understanding as of the dates documented below.

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

By: *Liz Stefanics*
Liz Stefanics, Chair

10/9/12
Date

ATTEST:

Valerie Espinoza by VT

Valerie Espinoza, County Clerk



Approved as to form:

Stephen C. Ross

Stephen C. Ross, County Attorney

**THE BOARD OF DIRECTORS OF
THE ELDERADO WATER AND SANITATION DISTRICT**

By: *James Jenkins* 9-7-12
James Jenkins, EA WSD Board President Date

ATTEST:

Stephen Wust

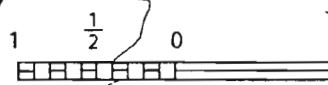
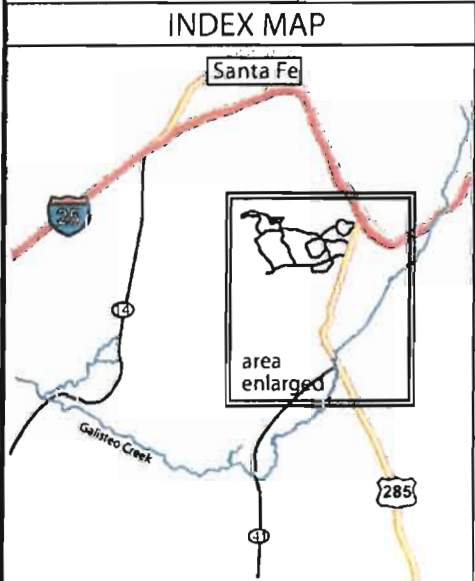
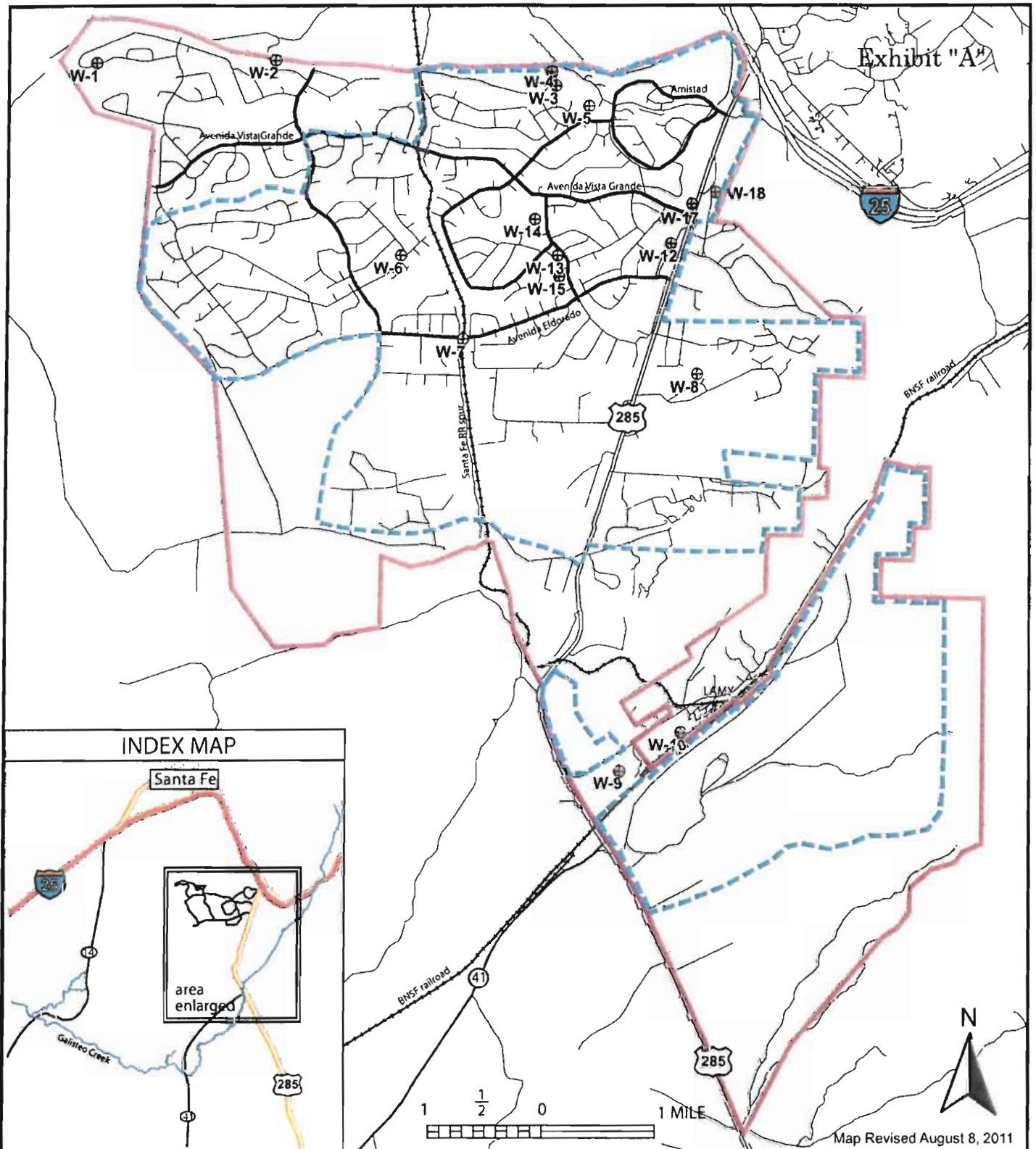
Stephen Wust, Ph.D., EA WSD Board Secretary

Approved as to form:

Catherine Robinson

Catherine Robinson, EA WSD Board Attorney

Exhibit "A"



Map Revised August 8, 2011

LEGEND

- W-1 EAWSD Wells (with well numbers)
- Boundary of EAWSD Service Area as of September 2010
- EAWSD District Boundary as of September 2010

GLORIETA GEOSCIENCE, INC.
 P.O. Box 5727, Santa Fe, NM 87502
 (505) 983-5446 Fax (505) 983-6482
 www.glorietageo.com

February 15, 2013

Via Certified Mail, Return Receipt Requested

Santa Fe County Development Review Committee
102 Grant Avenue
Santa Fe, NM 87501

Re: *CDRC CASE# V12-5360*
Henry Sanchez Variance

Dear Chairman and Committee Members:

My wife and I own a home in Vista Redonda and write to urge you to deny the referenced Application for a variance under Article III, § 2.3.6b.2 (Height Restrictions for Dwellings or Residential Accessory Structures) of the Land Development Code, as recommended by your staff. Our reasons are as follows:

1. Article II, § 3.1 (Variances) of the Land Development Code, provides in part:

“Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions (emphasis added) or these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance.”

The subject property does not present any “unusual topography or other such non-self-inflicted conditions” that require or necessitate the Accessory Structure (garage) to exceed the 18-foot maximum height limit established by the Code. For that reason alone, the request for variance should be denied. The fact that the Applicant claims that “human errors” are to blame for exceeding height limits, or the financial hardship of correcting non-compliance, are not justifications for granting a variance. The variance criteria do not consider financial reasons as extraordinary hardship. Furthermore, if a variance is granted, the purpose of the Code would be nullified.

2. The east side of our property in Vista Redonda looks directly at the subject property, with an unobstructed view. The height of the Accessory Structure makes it overly obtrusive and out of scale with the landscape of the ridgetop. The height limitations in the

Code have a purpose, and such an adverse impact on adjacent property caused by excessive height, should be taken into consideration in responding to a request for a variance.

3. Our understanding is that the Applicant's Agent, James McCreight, owns adjacent land to the subject property and plans to sell lots and build homes on such land. Granting a variance in this case sets a bad precedent for such future development in that it would create an incentive for the developer to build first and ask for a variance later, if the development violates the Code. This approach most certainly nullifies the purpose of the Code.

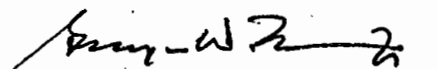
We understand that the residence on the subject property was permitted at a maximum height of 18 feet. Even at that height, under Article III, § 2.3.6b.2, the roof of a one-story pitched roof dwelling on a ridgetop must be screened from a public way. Paseo Encantado N.E. in Vista Redonda is a County road and, therefore, a public way. Such screening is subject to a site visit and approval of the Code Administrator and is also required by Article III, § 2.3.10a.3.

We also strongly support the recommendation of your staff that, under Article III, § 2.3.8a.2, the roof of the Accessory Structure be re-constructed to be non-reflective and blend with the natural earth tones of the site.

Compliance with the Code is of the utmost importance and variances thereunder should only be granted in this case if there is "extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions" requiring the Accessory Structure to exceed the maximum height of 18 feet established by the Code. That is not the case here.

Thank you for your consideration of the positions taken in this letter.

Sincerely,


George W. Martin, Jr.

GWM/ps
E-Mail: gwm@hcmp.com
cc (via e-mail): John Lovato
Gary Friedman
Susan Mize
Harvey Simon
William Larson

REC'D CIVIL RECORDS 2/15/2013

- 2.4.2b For all summary review subdivisions containing five (5) or fewer parcels, Sections 2.4.2a.ii. and iii. Shall be completed by the applicant at least fifteen (15) calendar days prior to the administrative decision.

History. Section 2.4 was amended by Ordinance 1996-8 to include notice requirements for most projects.

2.5 Zoning

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

2.6 Subdivisions

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

2.7 Other Requirements

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

SECTION 3 - VARIANCES

3.1 Proposed Development

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

3.2 Variation or Modification

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

3.3 Granting Variances and Modifications

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

3.4 Height Variance in Airport Zones

All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal in the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed

NMSA (1978)

3-21-8. Appeals to zoning authority; grounds; stay of proceedings.

A. The zoning authority shall provide by resolution the procedure to be followed in considering appeals allowed by this section.

B. Any aggrieved person or any officer, department, board or bureau of the zoning authority affected by a decision of an administrative officer, commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, commission or committee from whom the appeal is taken certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of district court after notice to the official, commission or committee from whom the appeal is taken and on due cause shown.

C. When an appeal alleges that there is error in any order, requirement, decision or determination by an administrative official, commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or any ordinance, resolution, rule or regulation adopted pursuant to these sections, the zoning authority by a majority vote of all its members may:

(1) authorize, in appropriate cases and subject to appropriate conditions and safeguards, variances or special exceptions from the terms of the zoning ordinance or resolution:

(a) that are not contrary to the public interest;

(b) where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship;

(c) so that the spirit of the zoning ordinance is observed and substantial justice done; and

(d) so that the goals and policies of the comprehensive plan are implemented; or

(2) in conformity with Sections 3-21-1 through 3-21-14 NMSA 1978:

(a) reverse any order, requirement, decision or determination of an administrative official, commission or committee;

(b) decide in favor of the appellant; or

(c) make any change in any order, requirement, decision or determination of an administrative official, commission or committee.

History: 1953 Comp., § 14-20-6, enacted by Laws 1965, ch. 300; 1979, ch. 256, § 1; 1983, ch. 160, § 1; 2008, ch. 64, § 1.

Dr. Jay Shelton
50A La Barbaria Trail
Santa Fe, NM 87505
505 988 3996 hm
505 699 1234 cell
jshelton@newmexico.com

Feb. 20, 2013

Wayne Dalton

Re: William Fredrick Wagner Family Transfer / Density Variance Application

Re: Tomorrow's hearing

Mr. Dalton,

I have a medical appointment tomorrow afternoon that may prevent me from getting to the hearing on time, and hence I want to communicate to you my feelings on this matter.

I own and live on abutting property on the east side of the property in question. You may recall I've been in to see you (many months ago) about this matter

My wife and I are opposed to watering down acreage minimums.

I know this is primarily a legal issue, and I am not an expert in such matters. But if there is any uncertainty or discretion within the legal realities, I would urge you to consider the wildfire safety issue.

This region of the county is rated in the very highest risk category. Adding more residents increases the risk to all of us even more because of two factors. 1) There is only one road that serves us. In the event of a panic evacuation, residents will be racing down this road likely with poor visibility due to smoke and possibly even flames. I worry about accidents blocking other residents from driving out – one-car accidents due to panic speeds and poor visibility, and multi-car accidents involving fire and sheriff vehicles trying to come in on the same road, or even residents who are unwisely trying to rescue a pet or... at their homes. Portions of the road are effectively one lane – we pull over to let opposing traffic go by; so one disabled vehicle can block the road. The point is that the more people trying to use the road in an emergency, the more likely it is that none of us will be able to get out due to such accidents.

2) Fires in La Barbaria Canyon need not come from the outside – they can be started inadvertently by residents in the canyon. The more residents in the area, the more likely is this cause for a wildfire.

REC'D CLERK RECORDED 02/20/2013

And the problem in the future could get much worse. If a 10 acre lot is permitted in this case, the precedent could lead to many many more such lot divisions in the long-term future; any parcel 20 or more acres might also be split into 10 acre pieces.

Although I am not a legal expert, it appears to me that there are legal bases to deny this application:

Santa Fe Land Development Code, Section 3 Variances, 3.1 seems to say that variances are not permitted which "result in conditions injurious to health or safety".

And NMSA (1978) 3-21-5 Appeals to zoning authority, C (1) (a) seems to require that variances "are not contrary to the public interest."

This proposed lot split is clearly not in the public interest because of the increased fire risk to all residents, and the lot split would be injurious to health and safety.

I urge that this application be denied.

Sincerely,

Jay Shelton



GRAESER LAW FIRM

227 East Palace Avenue, Suite M
PO Box 220
Santa Fe, New Mexico 87504-0220

Christopher L. Graeser
Jessica B. Cooper, of counsel

T 505.424.8175
F 888.781.5968

Thursday, February 14, 2013

Wayne Dalton
Building and Development Services Manager
Santa Fe County
102 Grant Ave
Santa Fe, NM 87501

Re: Wagner Family Transfer/Variance Application, 11-3090

Dear Wayne,

Please forward this letter to the County Development Review Committee and the Board of County Commissioners, as appropriate.

We represent the La Barbaria Trail Association, and individual residents of La Barbaria Trail who oppose the Wagner family transfer/density variance application. Please see my letter of January 2, 2013 regarding the family transfer aspect of this application. This letter will address the new alternative request for a variance, which is governed by Art. II, Sec. 3 of the Code. The Wagner application does not qualify for a variance because there is no showing of extraordinary hardship or inhibition of code purposes.

Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. Art. II, Sec. 3.1.

In this case, the applicants offer no evidence of an extraordinary hardship due to "unusual topography or other such non-self-inflicted conditions" and no evidence of such conditions "inhibiting the achievement of the purposes of the Code." Rather, the applicants only state that they "desire to create two lots." This is neither an extraordinary hardship nor proof that any Code purposes are being inhibited by requiring compliance with its lot size provisions.

We urge the CDRC and BCC to reject the application, as granting the request would not be in accordance with law.

Sincerely,

Christopher L. Graeser

cc: clients
Joseph M. Karnes

SEC CLERK RECORDED 2/13/2013



227 East Palace Avenue, Suite M
PO Box 220
Santa Fe, New Mexico 87504-0220

Christopher L. Graeser
Jessica B. Cooper, of counsel

T 505.424.8175
F 888.781.5968

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cc: clients
Joseph M. Karnes

Dr. Jay Shelton
50A La Barbaria Trail
Santa Fe, NM 87505
505 988 3996 hm
505 699 1234 cell
jshelton@newmexico.com

Feb. 20, 2013

Wayne Dalton

Re: William Fredrick Wagner Family Transfer / Density Variance Application

Re: Tomorrow's hearing

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I urge that this application be denied.

Sincerely,

Jay Shelton

SEC. CLERK RECORDED 5/8/2011

Thursday, February 21, 2013

Santa Fe County Development Review Committee
Santa Fe County
102 Grant Ave
Santa Fe, NM 87501-2061

TO: County Development Review Committee
Jose Larranaga, Development Case Manager

CC: Jim Siebert, Applicant Agent

RE: CDRC CASE # 12-5450 Cielo Colorado Subdivision

My name is Wyatt Fenn. My wife, Crystal Fenn, and I live at 20 Acote Court within the Lot 15A-2 subdivision where Cielo Colorado LLC plans to develop the remainder of Lot 15A-2 in the future.

To be brief, a major concern with the proposed Master Plan is the 10' non-vehicular trail/path on the south side of the to-be-developed Camino Acote and the plan to connect it with roads and non-existent trails to access the Eldorado Wilderness (privately owned) which we as residents do not have a right to access. I feel that to continue to propose such a plan through, and to, private property is unethical, a misleading marketing ploy and a disservice to the existing community. In essence, it entices residents to break the law.

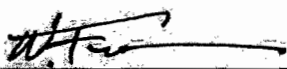
Our concern with what we have seen in the Master Plan is the developer's response to the Land Development Code-8.4 as presented in the packet on page NBC-90 (hand written page number). The Cielo Colorado LLC plat (page NBC-102) shows a 10' path/trail on the south side of the to be developed extension of Camino Acote. The path extends eastward to the end of the Cielo Colorado LLC property and per a statement on page NBC-28, intends to connect with a trail identified on a plat on page NBC-39 and terminate at the border of the Eldorado Wilderness.

As Lot 15A-2 exists today, there are no established and agreed upon trail easements within the subdivision. As the developer's plan currently illustrates, the 10' trail within their new development terminates at their eastern property line and thus puts non-vehicular traffic on to the currently developed Camino Acote. Since there is no trail system on the private properties, the non-vehicular traffic will become a safety problem on the road. It is my feeling that placing a trail next to a road will only draw the trail users (horseback riders, bike riders and hikers) to use the road for obvious reasons.

Also, as stated on page NBC-28, the developer suggests that they continue to develop a trail system to connect to the Eldorado Wilderness. Again, as stated on page NBC-28, the residents on the east side of highway 285 do not have the right to access the Eldorado Wilderness.

Thank you for your attention. I look forward to the presentation of this letter to the Commission for consideration.

Sincerely,


Wyatt Fenn
20 Acote Court
Santa Fe, NM 87508

Jose Larranaga

From: JOHN P HAYS <johnhnm@msn.com>
Sent: Thursday, February 07, 2013 4:34 PM
To: Jose Larranaga; siebert.associates@comcast.net; d1@comcast.net
Cc: Gregory W Hart; Thomas Boyer; David Hultin; Rich Bechtold; murphmorg2@msn.com
Subject: New Cielo Colorado Master Plan

Follow Up Flag: Follow up
Flag Status: Flagged

Ed, Jim & Jose:

I wanted to voice the one concern I have about the proposed new master plan for Cielo Colorado. Essentially, the entire road system is one giant cul-de-sac, with only a single point of entry to Highway 285. My concern is that if there was a major emergency (such as a wildfire) there could be problems getting out of the area, especially if there was an accident where Camino Acote takes the sharp turn down the hill. I experienced this once in another subdivision (there was a fire in the apartment buildings next to the only entrance) and it wasn't pleasant.

At one point, a secondary access was proposed to exit near the County recycling center. Although that was to address the County's concern about low lying area of Camino Acote, it would seem like a good idea in any event. There is also a very rough road along the telephone line from Camino Acote to East Ranch Road which might be minimally improved to allow emergency access. (I seem to recall that original Disclosure Statement for Cielo Colorado identifying this as an emergency route).

I would appreciate Jim and Ed taking a look at this, and would also request that the County staff bring this to the CDRC's attention as well.

Thank you.

Sincerley,

John Hays
77 Camino Acote
Santa Fe, NM 87508
505-989-1434

SEC CLERK RECORDED 2/7/13 4:34 PM



From: Lanman [<mailto:lanmanclan@q.com>]
Sent: Thursday, February 14, 2013 4:28 PM
To: Liz Stefanics
Subject: Cielo Colorado Subdivision

Dear Liz,

I am a resident of the Ridges which is a homeowners subdivision in your district located east of US 285 south. I was just notified of a new subdivision of 67 lots to be built in the Cielo Colorado Subdivision which is adjacent to the Ridges.. As these new homes will be connected to the Eldorado Water District, I am concerned as our water supply situation is dire. Just a few years back there was a moratorium on building due to water shortages. For some reason all of a sudden this water shortage situation just disappeared. Due to the continued drought our water supplies are even in more danger, yet the County approves adding 67 more homes to an already taxed water system. As I understand it, the aquifer for the Eldorado Water District is the same as that supplying water in La Cienega. I know that many wells in that area are drying up, thus any more water taken from the aquifer will directly affect La Cienega water supplies and ultimately affect the Ridges and Eldorado. Our homes and property will be uninhabitable and worthless without water. Therefore this new demand on water must be stopped. I encourage you to reexamine this new subdivision proposal and vote for disapproval.

Thank you for your consideration in this matter.

Sincerely,

Henry R Lanman Jr

Henry & Tina Lanman
86 Príncipe De Paz
Santa Fe, NM 87508
lanmanclan@q.com
505-466-4591

REC'D CLERK RECORDED 2/14/13 11:33

Jose Larranaga

From: Carole Buhaj <buhajcarole@bluep.com>
Sent: Sunday, February 17, 2013 3:28 PM
To: Jose Larranaga
Subject: Development on Tract 15A2, Lot 1

Categories: Red Category

Dear Mr. Larranaga:

I am very concerned about the possible development on Tract 15A2 and Lot 1 in particular. I do not understand how covenants can just be changed for one person who has much money at the expensive of so many other residents who made their purchases of land and homes based on those covenants. I am especially concerned about the possible decrease in size of both homes and lots. Another major concern with this possible increase in density is the effect it will have on the water supply. It is beyond me that as we are having more and more concerns regarding from where our future water will come, some people act as if the supply is limitless. I do not understand why the moritorium was ever taken off since conditions seem to be worsening.

I will not be able to attend any meetings until after March 1st since I will be out of town until that time.

Respectfully yours,

Ronald J. Gole --- a landowner on Camino Acote for more than 19 years

REC'D
CLERK
RECORDED
2/20/13
10:33 AM

Drs. Damian Gessler and Christina Babcock Gessler
15 Acote Court
Santa Fe, NM 87508

February 20, 2013

Mr. Jose Larranaga
Growth Management / Land Use
102 Grant Ave
Santa Fe, NM 87501-2061

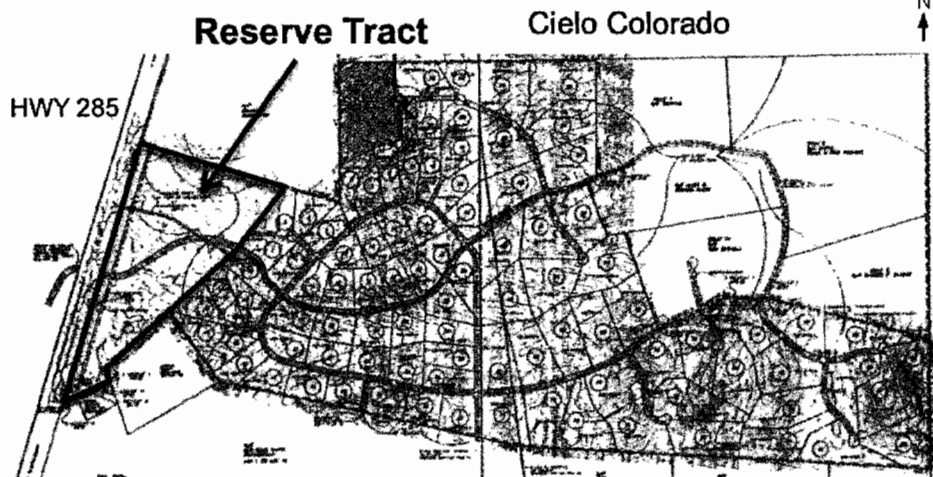
Re: CDRC CASE # Z/S 12-5450 Cielo Colorado Subdivision
Master Plan Zoning for a 67-lot residential subdivision on 257.16 Acres +/- within
Tract 15A-2 of the Eldorado at Santa Fe subdivision

Dear Mr. Larranaga,

We are residents within Tract 15A-2 of the Cielo Colorado Subdivision. After meetings with our neighbors, please find here our concerns on the zoning request for 67 new lots. We look forward to working productively and constructively with the developer to resolve these issues:

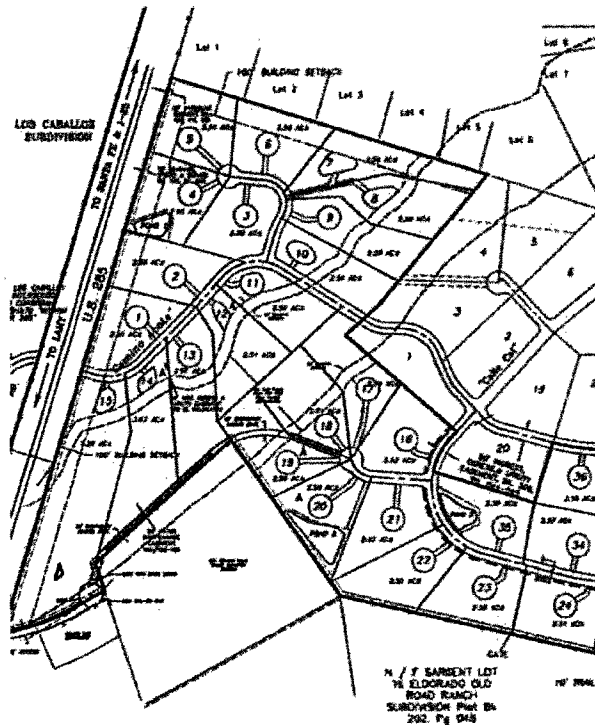
1. **The proposed Master Plan is contrary to guidelines established in the adopted 'US 285 South Highway Corridor Plan.'** Specifically, the original 1995 Cielo Colorado Master Plan and amended 2000 Master Plan had a marked reserve not part of the Master Plan proper that served as a buffer between HWY 285 and the residential houses:

Eldorado



1995 (amended 2000) Master Plan

The new 2013 Master Plan populates the Reserve Tract with 15 lots:



Proposed 2013 Master Plan (detail)

The above plat includes Affordable Housing units. Lots 1, 5, and 15 locate homes at 100' from HWY 285. We have been recently privy to variants of the detail and understand that a revised plan with fewer houses may be submitted, yet to our knowledge both the above and revised plans are subject to the following factors:

1. Ordinance (2005-8 sec 8.8.A.1) requires 100' setbacks, but the US 285 South Highway Corridor Plan (Resolution 2004-73, July 2004, p. 87) recommends at least 160' and preferably 200' noise set-backs;
2. The area is open and has little vegetation except for low grasses, making development highly visible, exaggerating the visual and noise impact, and yielding further weight to the noise setback required to achieve the US 285 South Highway Corridor Plan recommended 57 dBA level at residence;
3. HWY 285 is 4-lane, 55 mph speed-limit highway along the entire adjoining section of the plat. This fast road is the maximum allowable speed-limit for a non-limited access road in New Mexico, and is a main through-fare for trucking with its concomitant road noise;
4. HWY 285 is a WIPP nuclear radioactive waste transfer route;
5. Camino Acote is the main, and currently only, ingress and egress for the neighborhood; its layout and impact affects all residents in the community. The relevant section 'Rural Crossroads' of the US 285 South Highway Corridor Plan for Camino Acote is endorsive of residential zoning, with the expressed Intent

that it "remain rural in nature with no new commercial activity or zoning" (p. 175). The Plan further notes opportunities to "reinforce [read: not change] overall community character."

6. The development area includes an arroyo, noted in the US 285 South Highway Corridor Plan just north of the transfer station. The Plan makes the specific recommendation that "No buildings, structures, or parking should be permitted on the knoll or in the natural boundaries of the arroyo." (p. 182).

We believe that the proposed development will negatively impact the neighborhood. With 800 parcels of land for sale in the Santa Fe area, we believe there is significant risk that construction of a cul-de-sac and lots close to HWY 285 will not be followed by a timely sale of these lots, and even with some sold, will remain an isolated area, dis-attractive to the residents of the larger HWY-285 area yet attractive to passers-by on HWY 285 seeking off-road, overnight parking or other activities. We ask the County Development Review Committee and the developer to work with us to construct a Camino Acote reserve tract entrance that enhances the developer's investment in the larger neighbor as well as the quality of life for its residents.

2. The proposed Master Plan is otherwise congruent with the 1995 plan, along with its short-comings. Yet it has been 18 years since the original plan; conditions have changed, and we encourage the Committee and the developer to see this new development in a new light.

Since 1995, the days are hotter, trees are fewer, and impact on the land is greater. The 1995 plan had an 11 acre "Park" which has since become inaccessible and remains in the current plan of questionable utility. The 1995 plan had no trails, no sidewalks, no set-aside green-space integrated with the residential lots. In short, it failed to leverage the spectacular potential of Cielo Colorado. Yet Cielo Colorado still secures fabulous vistas onto the Galisteo Basin and Sandias to the south, the Jemez to the west, and the Sangre de Cristos to the north. Cielo Colorado is a testament to the natural beauty of New Mexico. The eastern edge of the development adjoins the Eldorado Wilderness; we regularly see mule deer, bobcats, hawks, road runners, and other wildlife that have long been vacant from the denser areas. We ask the Committee and developer to be cognizant of Cielo Colorado as a place of exceptional value. We ask that when considering zoning variances and master plan approval, that the Committee and the developer seek the following goals:

- Housing location and density to be cognizant of its impact on the views and investment of long-time residents;
- Re-vegetate areas or plant new junipers to break-up contiguous rows of houses;
- Think creatively to integrate the park, housing, and trails to enhance the quality of life of the residents—new and old.
- In Cielo Colorado, less-is-more, and thoughtful development along the lines of Cielo Colorado's most coveted asset—its location and views—can be in the best interests of the community, the developer, and its residents.

Sincerely,

 
Damian and Christina

Dr. Toni L. Carrell & Dr. Donald H. Keith

39 Condesa Road
Santa Fe, NM 87508

February 20, 2013

County Land Use Administrator
PO Box 276
Santa Fe, NM 87504

Reference: CDRC Case# Z/S 12-5450 Cielo Colorado Subdivision

To Whom It May Concern:

We are writing concerning the above referenced proposed subdivision off Highway 285 on Lot 15A2. The subdivision will consist of approximately 67 lots with the majority ranging in size from 2.5 acres to approximately 5 acres. The additional lots will increase the current intensity of use from 42 existing lots to 109; a 150% increase.

This increase will come with an associated rise in traffic, noise, and pressure on our existing private road. It will also be one of the largest subdivisions on the east side of Highway 285. But our major concern is the proposed intensity of use, particularly of those lots west of the power line, all 47 of which are slated to be 2.5 acres.

This subdivision is adjacent to our property on Camino Acote (Tract 8 of four parcels ranging from 12.5 – 18 acres on Lone Coyote Ridge at the eastern end of Lot 15A2). Homes on Camino Acote, Calle Cal, and Acote Court in Lot 15A2 range in value from mid \$500,000s to over \$1 million. The majority of these homes are on lots of 5 acres or more. In that regard our neighborhood is similar to that of the Ridges in quality and ambiance, rather than Cimarron, which are primarily 2.5 acre lots.

Our concern is that with so many homes on lots of 2.5 acres and with the minimum house size of only 1200 sq. ft. heated (the minimum required in our underlying CCRs) the quality of the homes to be built will adversely impact the real estate values of the current land owners. Further, because all of the small lots are to the front of the subdivision including fronting Highway 285, it will dramatically change the nature and feel of the neighborhood, further depressing our property values.

Certainly the developer has the right to create a subdivision and to make a profit. But it should be done in such a way as to take into consideration the rural, open feel, ambiance, and quality of the existing neighborhood and to do no damage to our property values. As the Cielo Colorado

REC'D CLERK RECORDED 04/04/2013

subdivision is currently proposed, in our opinion, it does neither. Instead it could do irreparable harm.

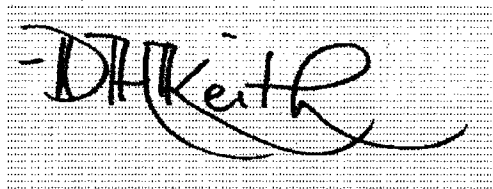
We strongly urge the Commissioners to require a reduction in the intensity of use of the lots west of the power line to insure that quality, nature and value of our properties are preserved.

Thank you for your consideration.

Regards,



Dr. Toni L. Carrell



Dr. Donald H. Keith

REC'D CLERK RECORDED 04/04/2013

County Land Use Administrator
PO Box 276
Santa Fe, NM 87502-0276

REF: CDRC Case #Z/S 12-5450 Cielo Colorado Subdivision

To the County Land Use Administrator,

A concerned landowner near the site of the proposed Cielo Colorado subdivision has informed me that approximately 15 lots are home to a colony of Gunnison's prairie dogs. The Gunnison's prairie dog is a candidate species for listing under the ESA. The species has declined by 98-99 percent across its historic range, and the remaining populations are suffering "death by a thousand cuts" from myriad threats, including development projects such as the one proposed here.

In the City of Santa Fe, city ordinance requires humane relocation of Gunnison's prairie dogs before construction. I ask that you follow the City's example and either deny the permit in the interest of conserving an imperiled species, modify the permit to allow the prairie dogs to remain where they are, or require that Cielo Colorado humanely relocate prairie dogs that would be displaced or killed by this development. Thank you for your consideration of these concerns,



Taylor Jones
Endangered Species Advocate
WildEarth Guardians
516 Alto Street,
Santa Fe, NM, 87501
505-490-5141
tjones@wildearthguardians.org



**JAMES W. SIEBERT
AND ASSOCIATES, INC.**

**915 MERCER STREET * SANTA FE, NEW MEXICO 87505
(505) 983-5588 * FAX (505) 989-7313
jim@jwsiebert.com**

February 21, 2013

Jose Larranaga
Commercial Development Case Manager
102 Grant Ave.
Santa Fe, NM 87501

Re: Cielo Colorado

Dear Mr. Larranaga:

Within the last few days I have received several calls from residents within and adjoining Lot 15 A-2 expressing concerns regarding the design of the Cielo Colorado Master Plan. In an effort to address those concerns the applicant is proposing the following changes to the Master Plan:

- The lot count has been reduced from 67 to 63 eliminating four lots at the entry from US 285 that was considered by the concerned residents as too dense for the entry to the subdivision.
- The building setback at the northwest boundary of the master plan adjacent to the Cimarron Subdivision has been increase to 100 feet to address a concern of one of the adjoining homeowners.
- An emergency access has been added from a cul-de-sac to the access to the County Transfer Station. This access is dependent on the County Commission approving an exchange of easements.

2013 FEB 21 10 48 AM RECEIVED CLERK

- The park has been relocated and expanded adjacent to the proposed emergency access. This allows for 20 foot basecourse road to serve the park as requested by the County Trails Division. We would ask that this serve as the trail location for the master plan.

Please include the enclosed master plan and phasing plan in your presentation to the CDRC.

Sincerely,


James w. Siebert

Xc Ed Dezevallos
Chris Dezevallos

[Type text]

2013/08/28 09:02 AM RECEIVED



GLORIETA GEOSCIENCE, INC.

P.O. Box 5727
(505) 983-5446Santa Fe, NM 87502
Fax (505) 983-6482

October 15, 2012

Vince Chavez
Jerri Trujillo
Office of the State Engineer
Water Rights Division
PO Box 25102
Santa Fe, NM 87504-5102

Re: Eldorado Area Water and Sanitation District Third Quarterly Water Level
Monitoring Report of 2012

Dear Vince and Jerri,

I am submitting this report on behalf of the Eldorado Area Water and Sanitation District (EAWSO). Please see the attached tables of data, graphs and data CD containing the monthly water level measurement data obtained from EAWSO wells starting in October 2008 and ending in September 2012. This report constitutes the 3rd quarter of 2012, which began on July 1 and ended on September 30, 2012. The water level data were collected by EAWSO's operations contractor, OMI-CH2M-Hill. Manual measurements were made with an electric sounder and/or steel tape, where possible. The measuring point of each well is the top of well casing, access port, or top of sounder tube. Descriptions of the measuring points are included as a table contained in this report. Changes to the measuring points are highlighted in the table and show the date of the modification. The data were corrected to depth below ground surface using the measuring point height data collected by OMI staff.

Please contact me with any questions.

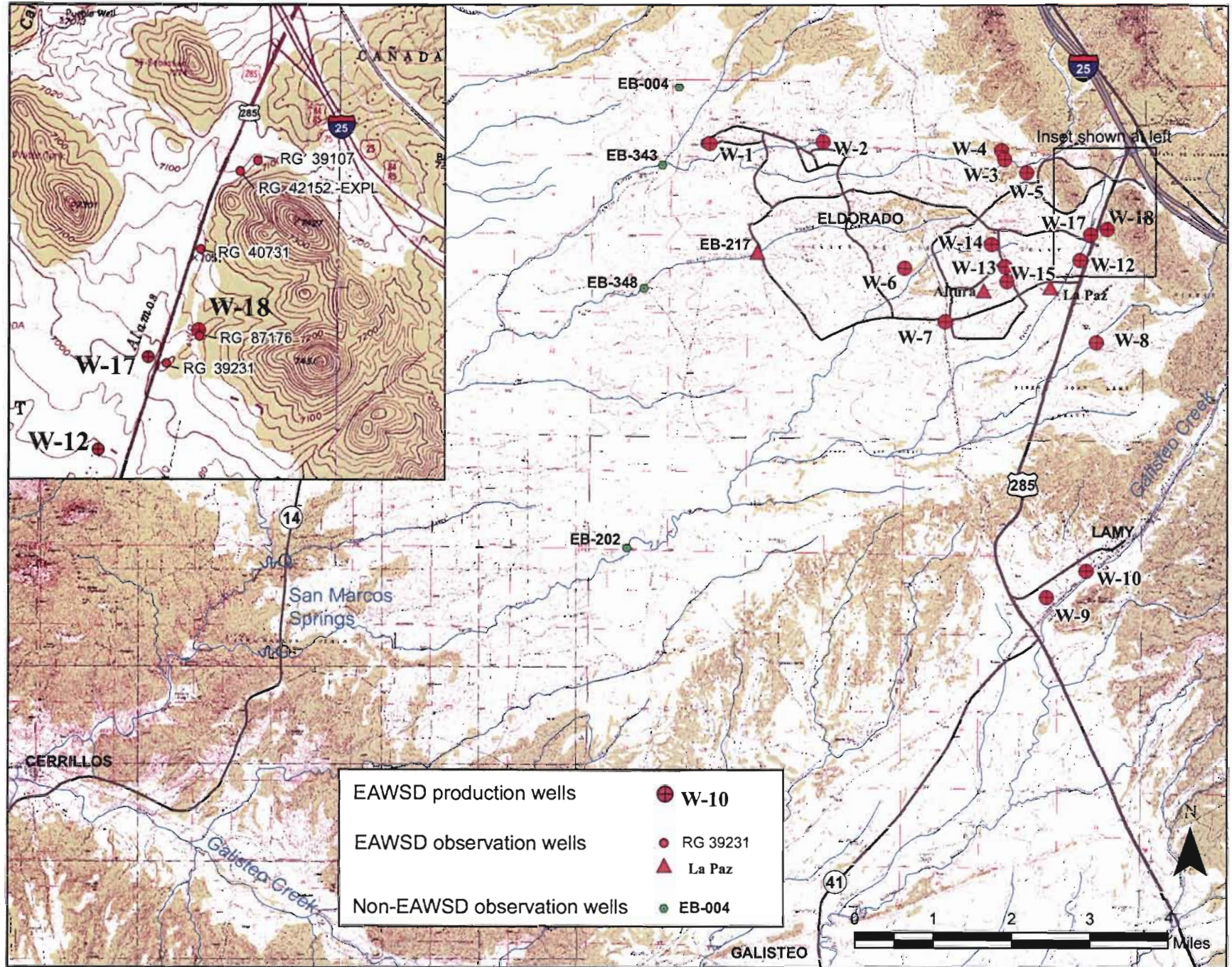
Sincerely,

Meghan Hodgins
Project Manager
Glorieta Geoscience, Inc.

CC: Doug Gaumer, OMI-Eldorado
Jerry Cooper, EAWSO
David Denig-Chakroff, EAWSO

Attachments

EAWSO MONITORING PLAN OVERVIEW MAP



NOTES regarding well measurement procedure:

OMI manual measurements are made from a measuring point as shown on sheet "MP info"
All MP heights were updated to OMI measured and documented locations and heights
as of 11-30-2010

OMI well sounder (Red 500' Solinst) probe replaced in October 2011, length checked with steel tape for calibration

Well 1 has been shut down since ~ September 2008
due to incomplete cleaning causing acidic water and sediment in water

Well 2 has cascading water which precludes manual (sounder) measurements of water level during pumping.

Wells 3 and 5 are not in use (not used for several years)
An obstruction in 5 (RG-18515) prevented measurement in June-12 (well is still equipped with pump)

Well 4 last pumped in February 2009 Well 4 - tape broke off in well in July-09

Well 6 pumping water level declined down to pump in April 2012 and had to be shut down

Well 14 is not measured directly - The observation well located near well is measured in its place.
Well 14 was down for repairs between Nov-08 and June-09

Well 15 was down for repairs for Nov-09
Obs well at W-15 was used for WL meas. instead of W-15 except for Feb thru June 2010 when Well 15 was measured

Well 13 is not accessible for sounder measurements and SCADA data is inaccurate
Well 13 has not been pumped since July-08 due to interference/back pressure from Well 14 and 15 and booster pump.

Well RG-39231 (the DOM well in depression near US-285) has meter that must be reported to OSE
An obstruction prevented measurement of RG-39231 in June-12

Old well 9 and 6-inch well near Well 9 were measured in the past but are not part of the monitoring plan and
therefore are not reported

Well 10 - no pumping from June-08 to May-09, lines flushed in June-09, pumped in July-09 and Oct-Dec-09
(Sept meter failure - did not pump)

Well 17 - Emergency permit pumping June to September 2008
- OMI pumped Well 17 in March to flush lines and test the newly installed SCADA system
- 56,000 gallons was pumped from Well 17 in March
- the well was run briefly in June to test the installed SCADA system
- Full permitted pumping began in May 2010

| All SCADA dtw are approximate (and incorrect) and manual data should not be used unless no other option

Ranney well - monthly measurements

Rancho Viejo wells - Quarterly measurements

2010 CLEAN RECORDING 09/09/09 09/09/09 09/09/09

Eldorado Area Water & Sanitation District

Reported by OMI as of September 2010, or otherwise noted				Measuring Points height measured to top of cement pad, unless otherwise stated
Well I.D. RG No.	Well I.D. EAWSD #	Measuring Point (ft)	Measuring Point Elevation (+/- 10 ft amsl)	Description of Measuring Point
RG 18528	1	1.15	6550	top 1.5-inch sounder tube, remove plug
	1	2.09	6551	top of casing (changed in July 2011)
RG 18529	2	1.98	6665	top well cap, remove plug
RG 18543	3	1.78	6911	top 1.5-inch access pipe, remove cap - to ground surface
RG 18550	4	1.77	6828	top 1.5-inch x 0.5-inch reducer coupling, remove plug - to ground surface
RG 18515	5	1.77	6974	top reducer on well cap, remove plug
RG 18571	6	1.43	6750	top 1.5-inch sounding tube, remove plug
RG 18595	7	1.37	6763	top sounding tube, remove plug
RG 18531	8	1.99	6852	top 1.5-inch sounding tube, remove plug
RG 18556	9	1.25	6415	top well cap, remove access pipe with cap
RG 18524	10	1.10	6448	top 0.5-inch port in well cap, remove plug
RG 18517	12	1.10	6970	top 0.75-inch coupling in side well casing, remove plug
RG*	13	1.85	6866	top 0.75-inch port on well cap, remove plug
RG**	14	1.73	6852	lower edge, top 0.75-inch port in well cap, remove plug
RG-65707-X4	Obs. Well at W-14	1.47	6855	Test Well @W-14 MP = top of casing, at notch
RG***	15	2.32	6849	notch at top 0.75-inch pipe in well cap, remove pipe cap
RG-65707-X2	Obs. Well at W-15	2.25	6852	Test Well @W-15 MP = top of casing, at notch
RG-****	17	1.87	7003	top of casing, remove well cap, use 1-inch PVC inside casing for sounder
	17	2.30	7003	top of well cap, 1-inch PVC thru casing, remove PVC cap (est. Feb 15, 2012)
RG - 92331	18	2.99	7028	top of 2-inch coupling at top of well, remove cap (est. July 2011)
	18	2.50	7028	Top of well casing cap, remove 1.25" plug (est. April 2012)
RG-65707-X3	La Paz (1-96)	2.49	6911	Top of well casing, meas. to ground surface (rebar)
RG-65707-X1	Altura (4-97)	3.20	6821	Top of well casing
RG 40731	Country Store	1.42	7065	top of casing, remove well cap
RG 39231	Trailer	1.40	7006	top of casing, remove well cap, meas. to ground surface (rebar)
RG 87176	4" Well	1.10	7025	top of casing, remove well cap, meas. to ground surface (rebar)
	4" Well	1.67	7026	top of open PVC casing, open steel shroud to access casing (changed 11- 2010)
RG 42152-EXPL	Camino Valle 1	2.60	7090	top of 1-inch port in well cap, remove port cap, meas. to ground surface (rebar)
RG 39107	Camino Valle 2	1.14	7088	top of 0.75-inch port in well cap, remove port cap, meas. to ground surface (rebar)
RG 18572	Casa Del Oro and Balsa	1.57	6534	Top of 1.5-inch sounder access port (remove threaded plug) in welded well cover
RG-23040	Ranney Ranch	1.38	6320	Top of casing, remove well cap, meas. to ground surface
RG-38073-EXP3	RV Obs Well 1	1.76	6597	top of 1.5-inch port, top of well, meas. to cement pad
NA	RV Gallina	1.28	6491	top of pipe hanger, access for narrow electric sounder, meas. to ground surface
NA	RV Pickett	1.30	6550	top of well, steel plate, 0.5-inch hole, meas. to ground surface

* Well #13, RG18529-S

** Well #14, RG18528, RG18543, RG18550)-S

*** Well # 15 (RG 18528, RG 18529, RG 18543, RG 18550, RG18515, RG 18571, RG 18595, RG 18531) - S

**** Well #17 (RG18528, RG18529, RG18543, RG18550, RG18515, RG18571, RG18595, RG18531, RG18517) - S

Well 15 reading taken at test well (TW)

Well 14 reading taken at test well (TW)

All measurements are from the Top of Casing (TC) or Measuring Point (MP)

Static water level reading results from two reading 5 minutes apart with no more than 0.02 feet difference in readings

Sample Location=MP, TC, or TW

amsl = above mean sea level

Eldorado Area Water & Sanitation District

Well Pumping & Non-Pumping Levels

Year	2012														
Month	August														
Well I.D. RG No.	Well I.D. EAWSD #	Date	Time PUMP Off (hrs)	Static Depth (Ft)	Time Sampled	Date	Time PUMP On (hrs)	Time Sampled	Pumping Depth (Ft)	Drawdown (ft)	Rate (GPM)	Measuring Point (ft)	Cant Get Reading Why	Operator	
RG 18528	1	8/15/12		174.73	9:36a							2.09		JG	
RG 18529	2	8/15/12		160.37	9:54a							1.98		JG	
RG 18543	3	8/15/12		74.03	10:40a							1.78		JG	
RG 18550	4											1.77	Obstruction	JG	
RG 18515	5											1.77		JG	
RG 18571	6	8/15/12	24.0	223.93	10:16a							1.43		JG	
RG 18595	7	8/15/12	24.00	186.91	9:01a	8/16/12	3.00	10:40	190.06	3.15	29	1.39		JG	
RG 18531	8	8/1/12	24.00	65.80	11:45a	8/13/12	24.00	0	166.45	100.65	25	1.99		JG	
RG 18556	9	8/1/12		49.88	10:00a							1.25		JG	
12" Casing	old well 9	8/1/12		49.58	10:07a							0.96		JG	
6" Casing	casing at 9	8/1/12		41.99	10:14a							1.21		JG	
RG 18524	10	8/1/12		43.00	11:30a							1.10		JG	
RG 18517	12	8/15/12		74.89	8:34a							1.10		JG	
RG-18529-S	13											1.85	Obstruction	JG	
RG-18528-POD3	14	8/16/12	3.00	264.21	10:03a	8/24/12	3.00	9:53a	288.51	24.30	129	1.47		JG	
RG-18528-POD4	15	8/15/12	4.00	245.48	2:42p	8/13/12	24.00	10:35a	253.80	8.32	165	2.25		JG	
RG-18528-POD5	17	8/16/12	24.00	77.92	12:45p	8/13/12	24.00	9:28a	206.93	129.01	95	2.30		JG	
RG 92331	18	8/13/12	24.00	104.43	8:52a	41136.0	24.0	11:45a	205.9	101.48	228.0	2.50		JG	
1-96.	La Paz	8/15/12		173.91	8:53							2.49		JG	
4-97	Altura	8/16/12		195.30	11:21							3.20		JG	
RG 40731	Country Store	8/16/12		130.80	11:40							1.42		JG	
RG 39231	Trailer											1.40		JG	
RG 87176	4" Well	8/15/12		107.62	11:30							1.67		JG	
RG 42150-EXPL	Camino Valle 1	8/15/12		49.00	11:17							2.60		JG	
RG 39107	Camino Valle 2	8/15/12		47.37	11:05							1.14		JG	
RG 18572	Casa Del Oro and Balsa	8/15/12		64.18	9:20							1.57		JG	
	Ranney Well	8/15/12		60.28	9:16							1.38		JG	
	RV Gallinas	8/16.12		128.21	8:48a							1.28		JG	
RG38073Ex2	RV Obs 2											1.76			
	RV Pickett											1.30			
Well 15 reading taken at test well (TW)															
Well 14 reading taken at test well (TW)															
All measurements are from Measuring Point (MP)															
Static water level reading results from three readings three minutes apart with no more than 0.02 feet difference in readings															
Sample Location=MP, TC, or TW															
Well 1 reading taken from top of casing not sounding tube Measuring point is 2.09 ft above grade															

Eldorado Area Water & Sanitation District

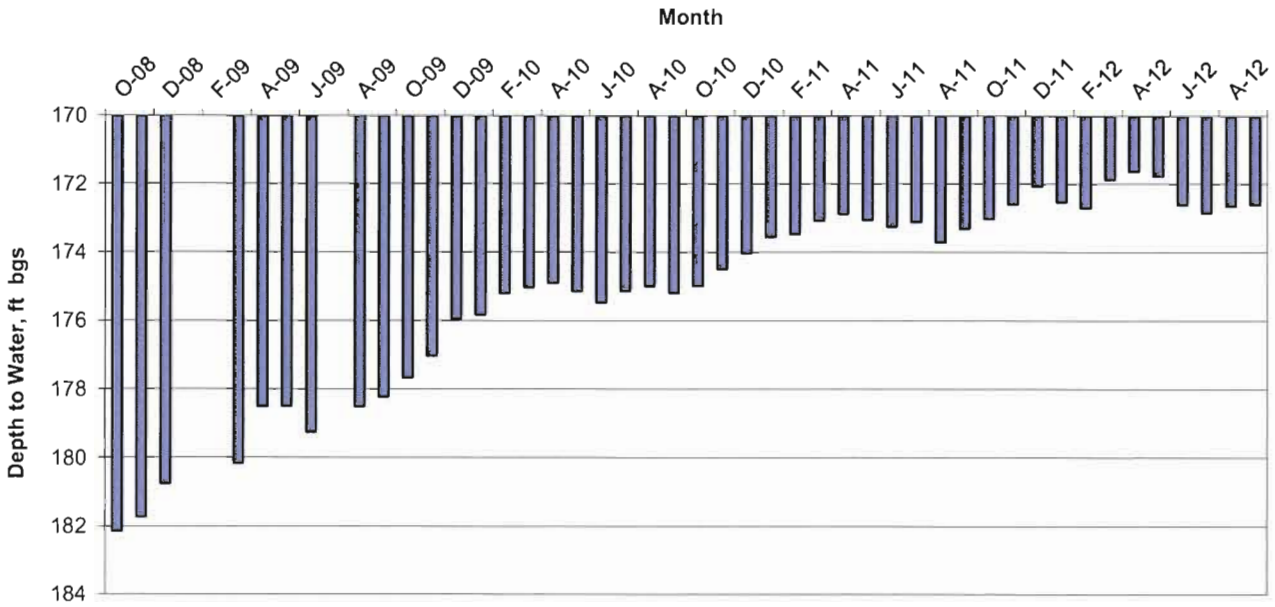
Well Pumping & Non-Pumping Levels

Year	2012													
Month	September													
Well I.D. RG No.	Well I.D. EAWSD #	Date	Time PUMP Off (hrs)	Static Depth (Ft)	Time Sampled	Date	Time PUMP On (hrs)	Time Sampled	Pumping Depth (Ft)	Drawdown (ft)	Rate (GPM)	Measuring Point (ft)	Cant Get Reading Why	Operator
RG 18528	1	9/1/12	24+	174.69	1:07p							2.09		ig
RG 18529	2	9/1/12	24+	161.03	1:20p							1.98		ig
RG 18543	3	9/10/12	24+	74.65	10:12a							1.78		ig
RG 18550	4											1.77	Obstruction	ig
RG 18515	5											1.77	Obstruction	ig
RG 18571	6	9/10/12	24+	223.93	1:35p							1.43		ig
RG 18595	7	9/10/12	5hrs	189.41	2:45p	9/11/12	3hrs	11:30a	191.00	1.59	28	1.39		ig
RG 18531	8	9/10/12	24+	63.78	11:27a	9/11/12	2.5hrs	2:02p	145.68	81.90	29	1.99		ig
RG 18556	9	9/10/12	24+	47.55	10:30a							1.25		ig
12" Casing	old well 9	9/10/12	24+	46.83	10:37							0.96		ig
6" Casing	casing at 9	9/10/12	24+	41.03	10:45							1.21		ig
RG 18524	10	9/10/12	24+	40.79	11:04a							1.10		ig
RG 18517	12	9/10/12	24+	74.95	2:03p							1.10		ig
RG-18529-S	13											1.85	Obstruction	ig
RG-18528-POD3	14	9/11/12	3hrs	267.97	2:26p	9/11/12	2hrs	10:45a	290.66	22.69	117	1.47		ig
RG-18528-POD4	15	9/11/12	1.0hrs	249.61	2:43p	9/11/12	2hrs	10:30a	252.69	3.08	225	2.25		ig
RG-18528-POD5	17	9/11/12	24+	80.55	11:07p	9/10/12	24+	9:00a	222.65	142.10	100	2.30		ig
RG 92331	18	9/10/12	24+	107.91	9:05a	9/11/12	24+	11:45a	208.4	100.4	227.0	2.50		ig
1-96.	La Paz	9/10/12	24+	174.71	3:40p							2.49		ig
4-97	Altura	9/11/12	24+	195.41	3:00p							3.20		ig
RG 40731	Country Store	9/10/12	24+	132.55	9:30p							1.42		ig
RG 39231	Trailer											1.40	Obstruction	ig
RG 87176	4" Well	9/10/12	24+	106.39	9:15a							1.67		ig
RG 42150-EXPL	Camino Valle 1	9/10/12	24+	49.42	9:54a							2.60		ig
RG 39107	Camino Valle 2	9/10/12	24+	48.15	9:43a							1.14		ig
RG 18572	Casa Del Oro and Balsa	9/10/12	24+	64.19	2:25p							1.57		ig
	Ranney Well	9/25/12	24+	60.30	1:48p							1.38		ig
	RV Gallinas	9/18/12	24+	128.30	1:50p			well was pumping				1.28		ig
RG38073Ex2	RV Obs 2	9/18/12	24+	237.13	2:06p							1.76		ig
	RV Pickett	9/18/12	24+	83.35	2:40p			well was pumping				1.30		ig

Well 15 reading taken at test well (TW)
 Well 14 reading taken at test well (TW)
 All measurements are from Measuring Point (MP)
 Static water level reading results from three readings three minutes apart with no more than 0.02 feet difference in readings
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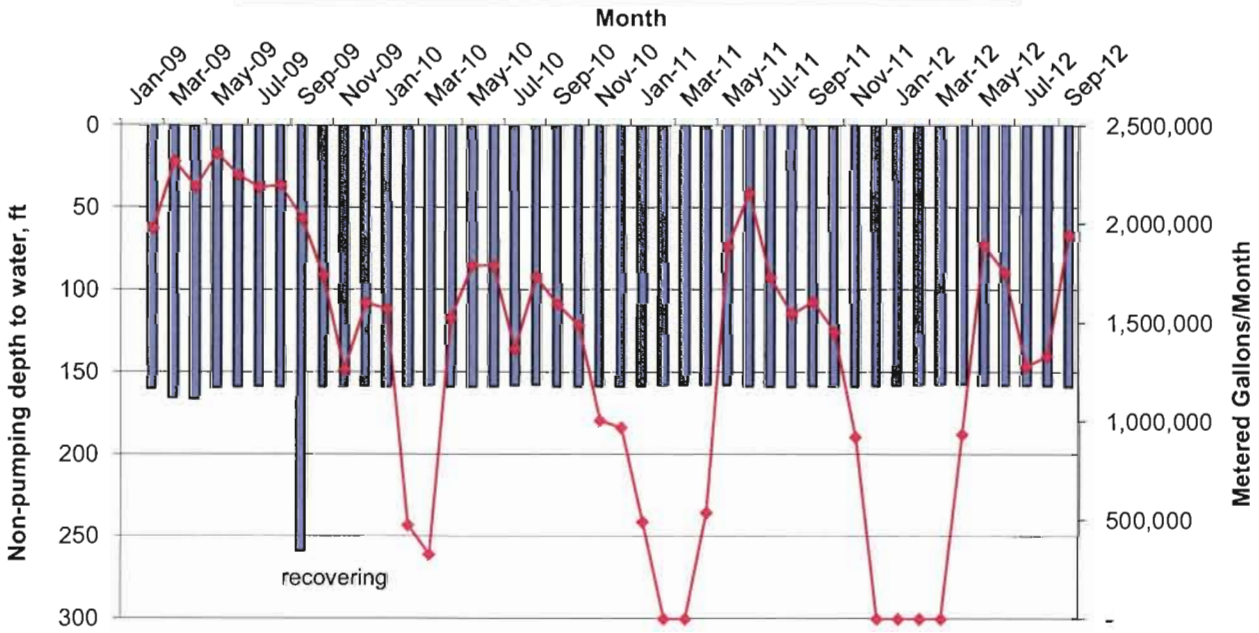
Well 1 Manual Water Level Measurements

Well 1 has not pumped since Sept-08

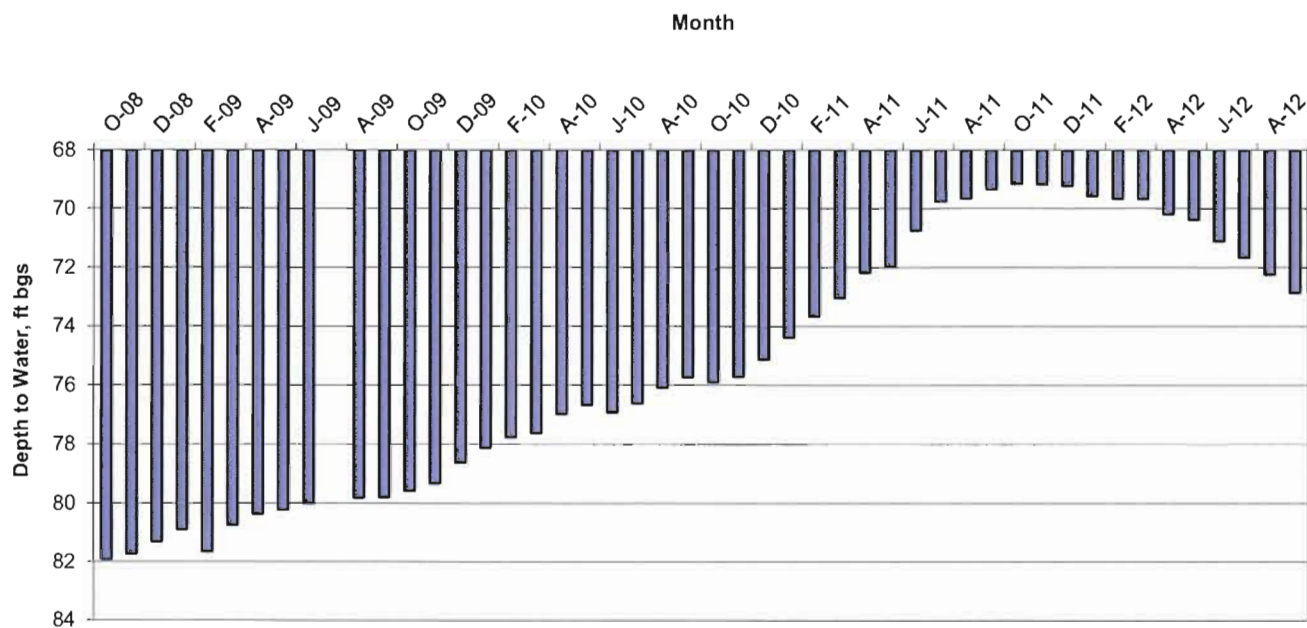


Well 2 Non-Pumping Water Level and Well Diversion

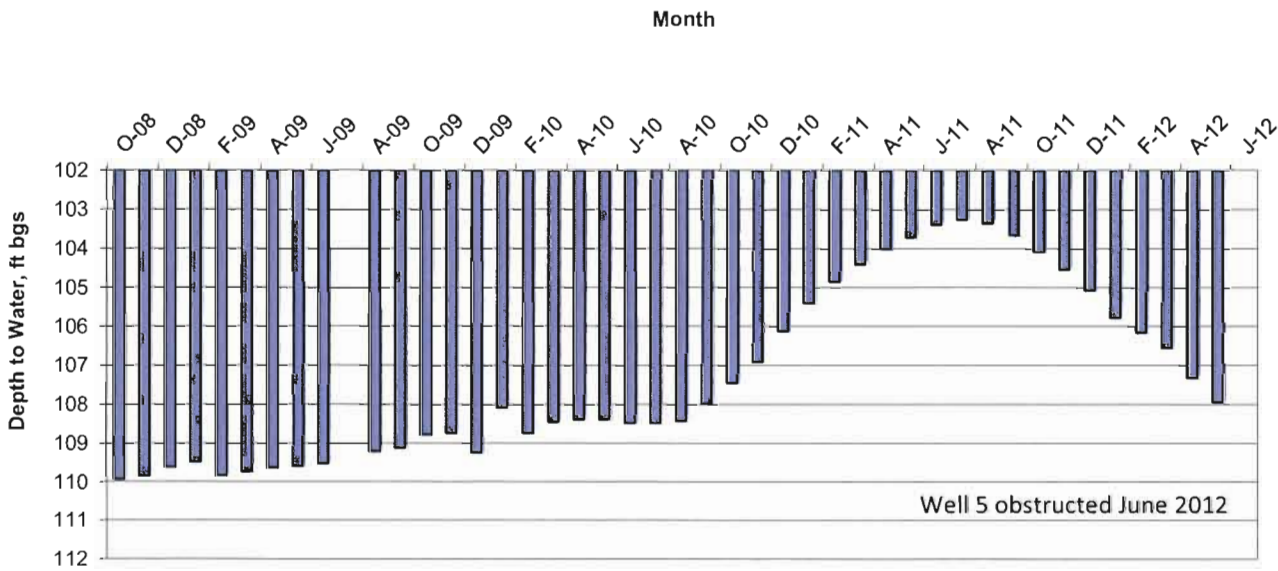
Non-pumping Water Level Metered Gallons/Month



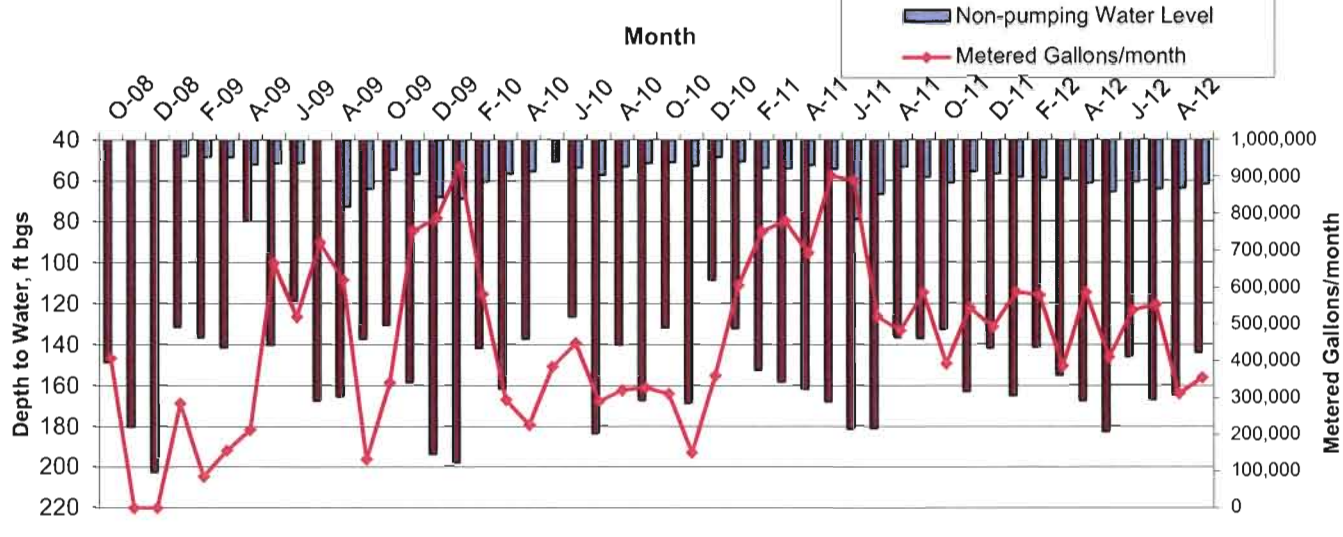
Well 3 Manual Static Water Level Measurements



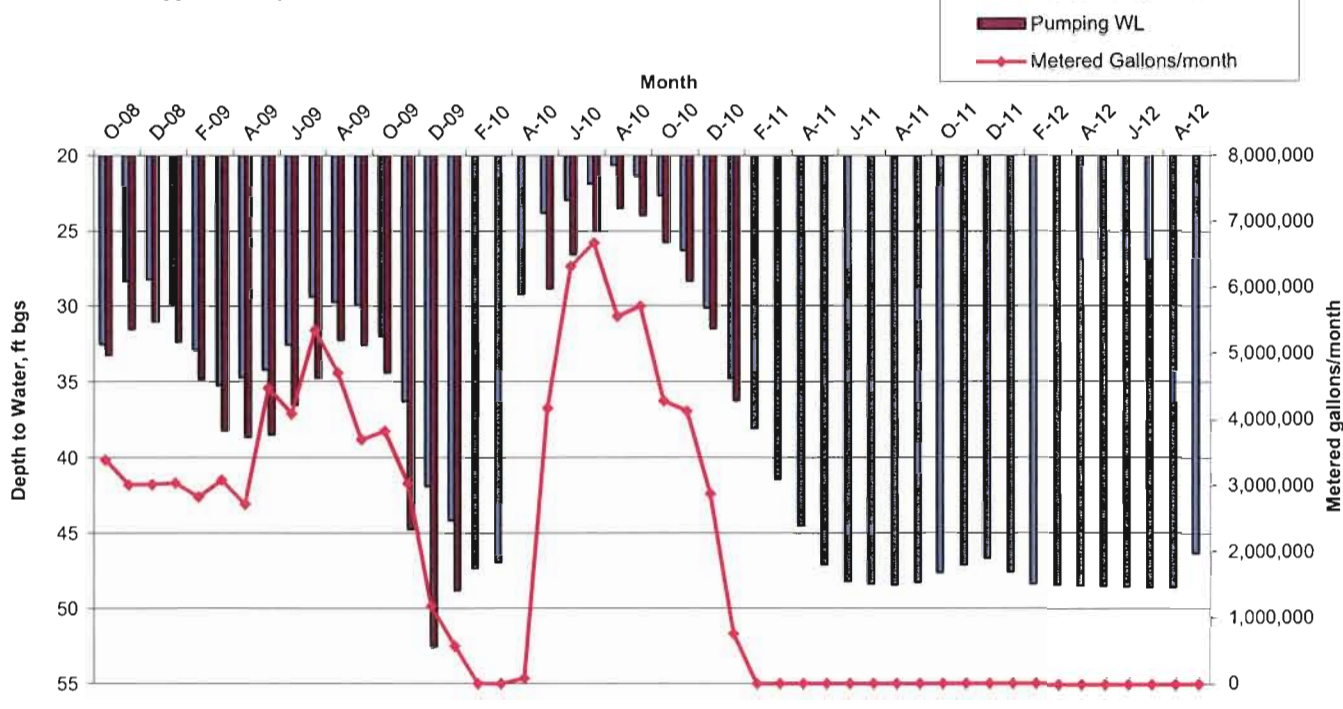
Well 5 Manual Static Water Level Measurements



Well 8 Manual Water Level Measurements and Metered Diversion

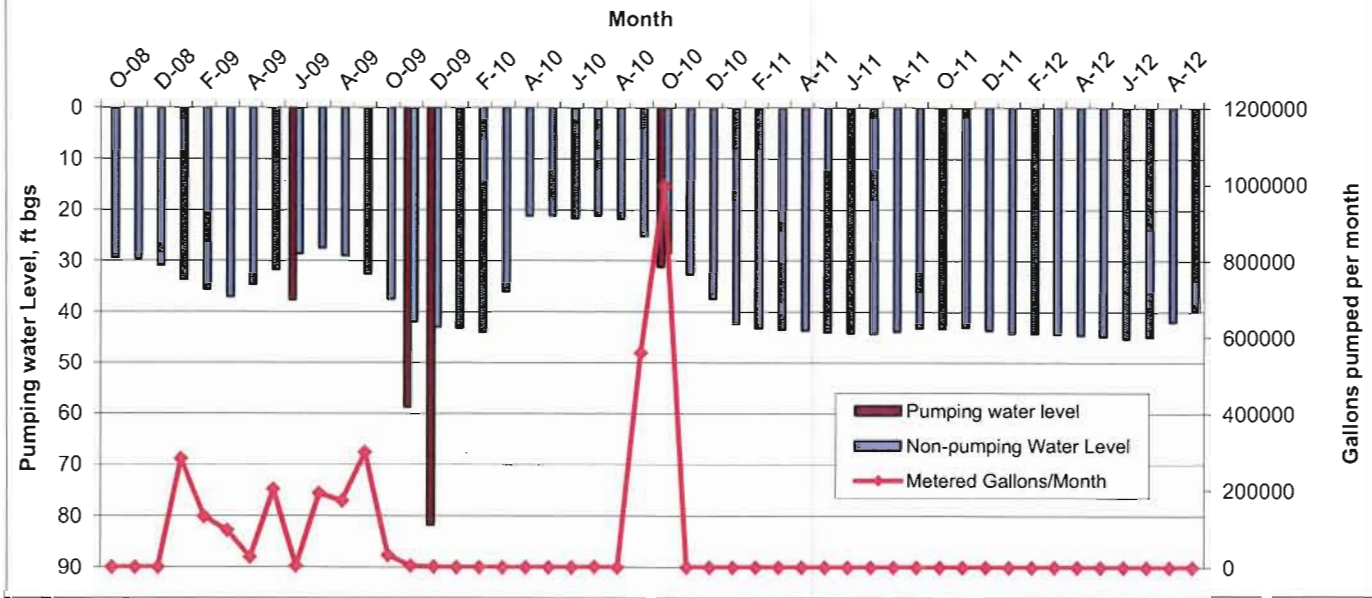


Well 9 Water Level Measurements and Well Diversion

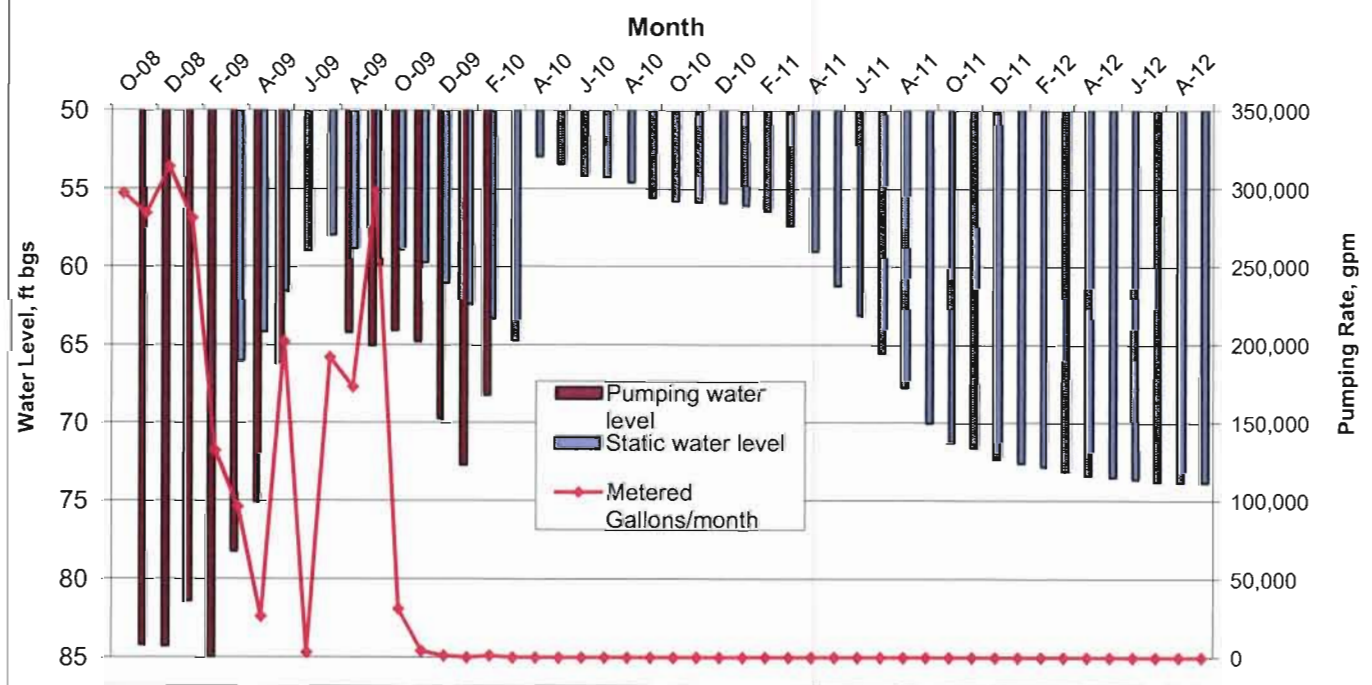


ESD OPERATIONS RECORDS 8/18/2011 11:02:48 AM

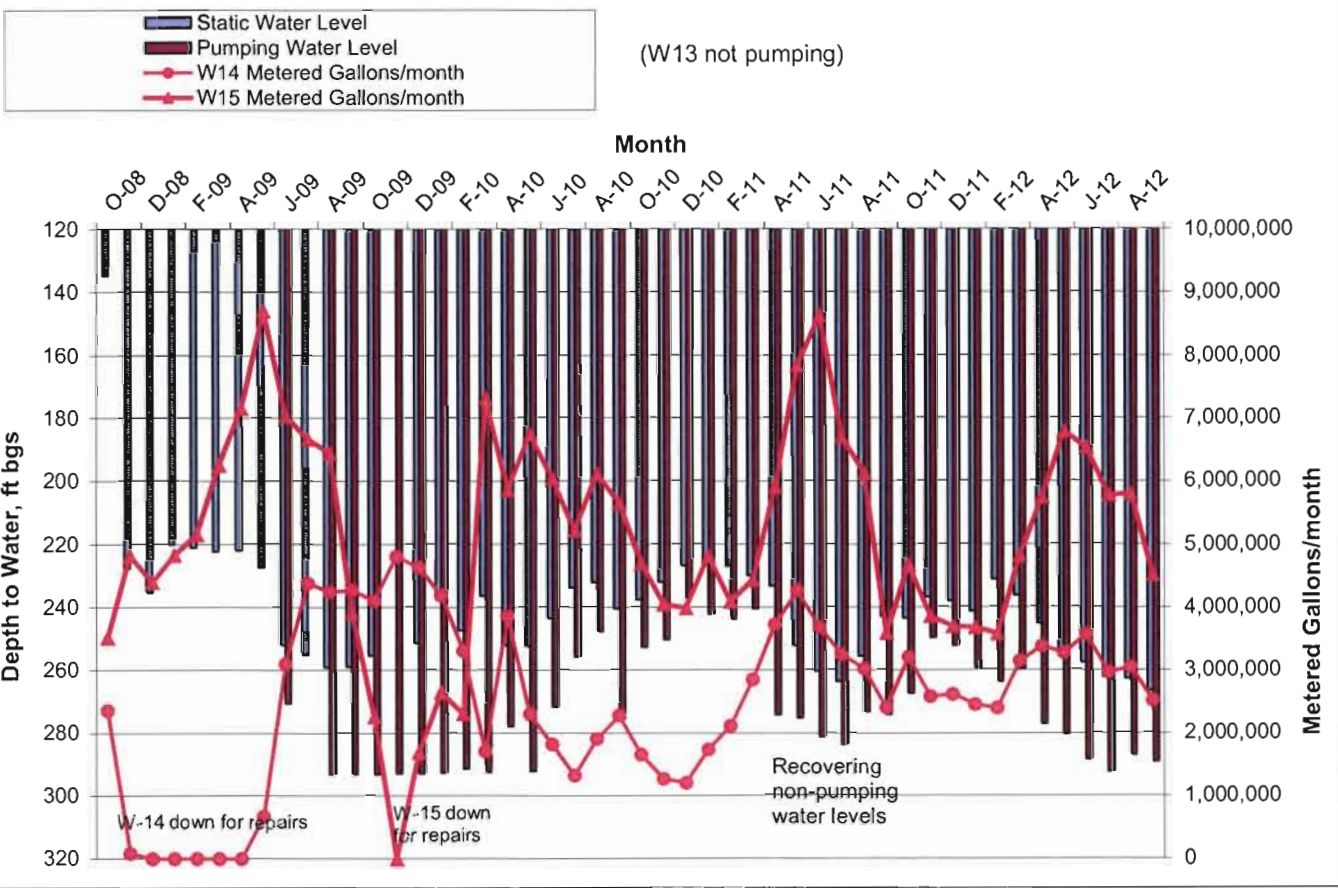
Well 10 - Water Level Measurements and Well Diversion



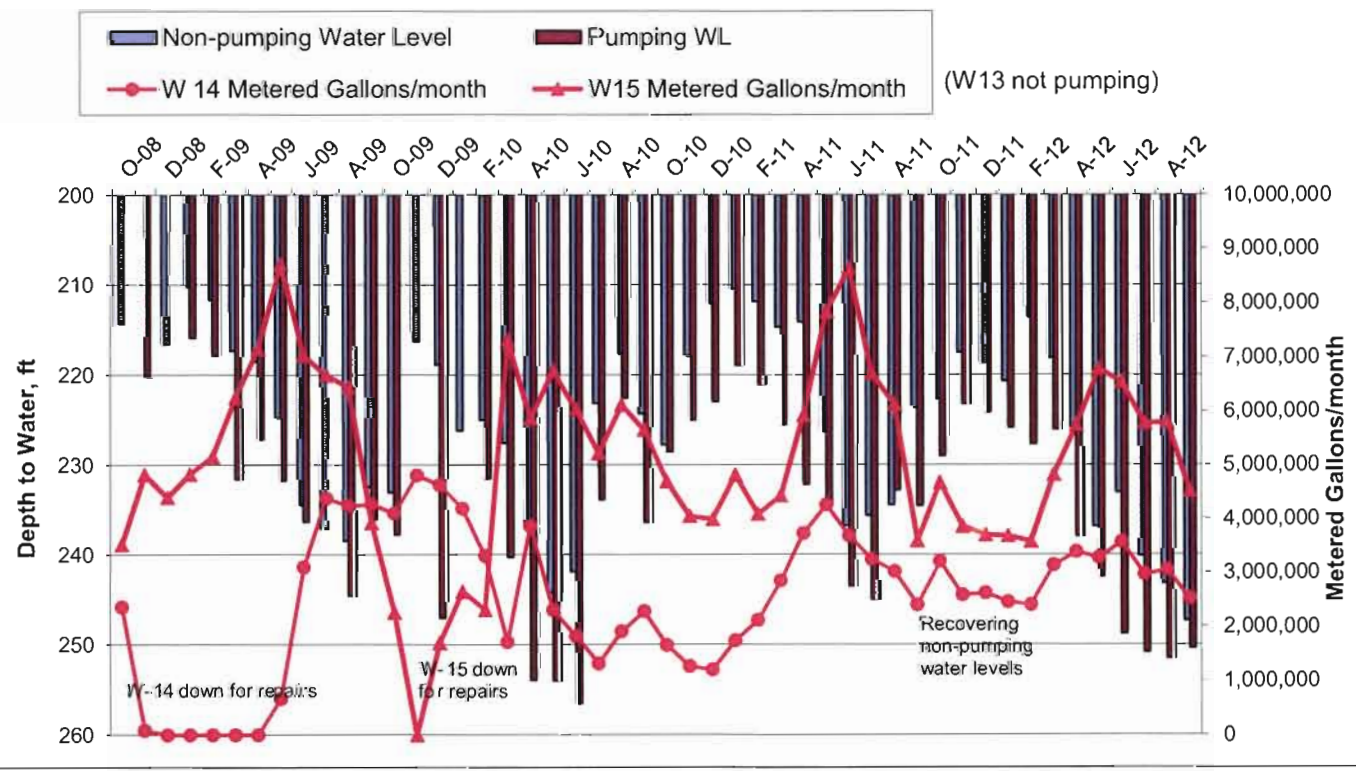
Well 12 - Manual Water Level Measurements and Well Diversion



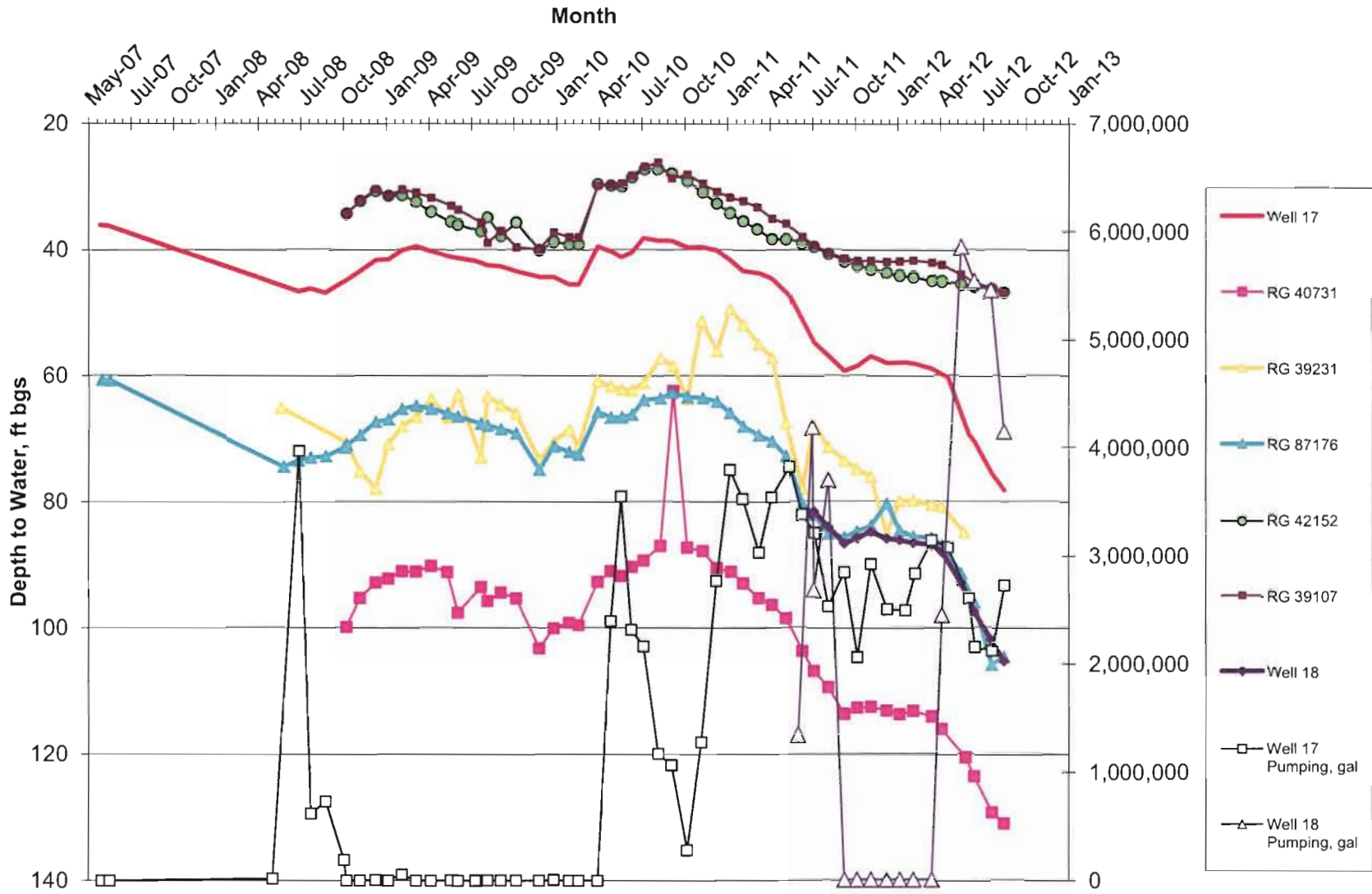
Well 14 (Observation Well) Water level Measurements and Well Diversion



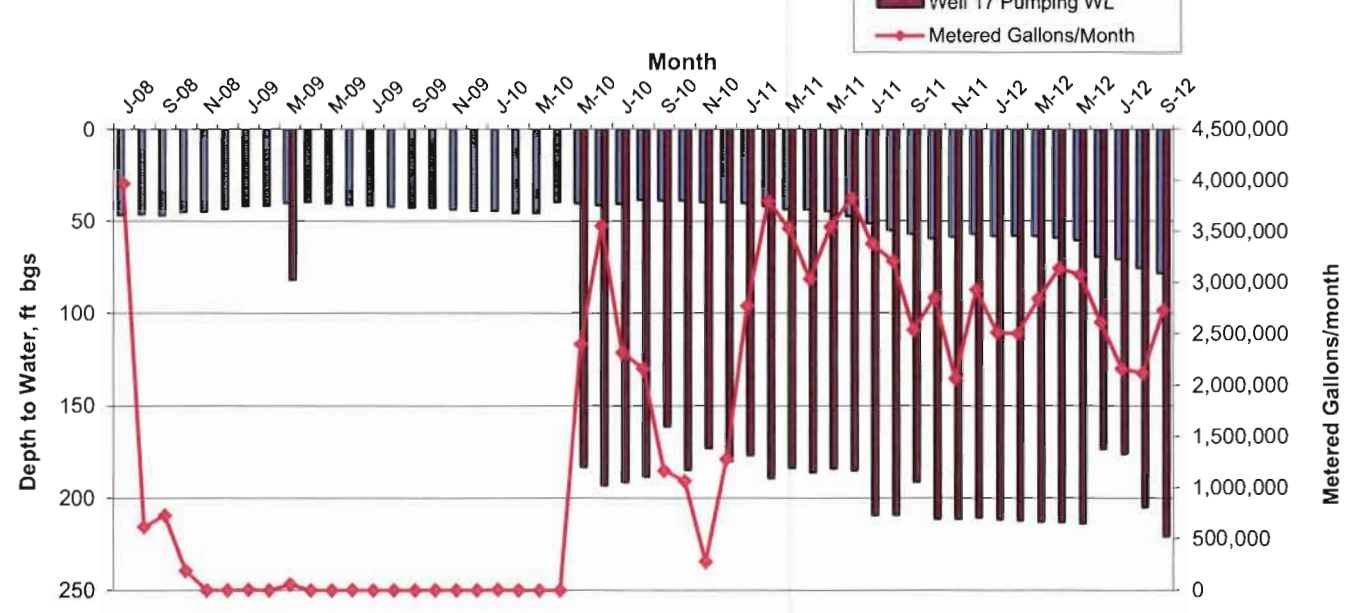
Well 15 (Observation Well) Water Level Measurements and Well Diversion



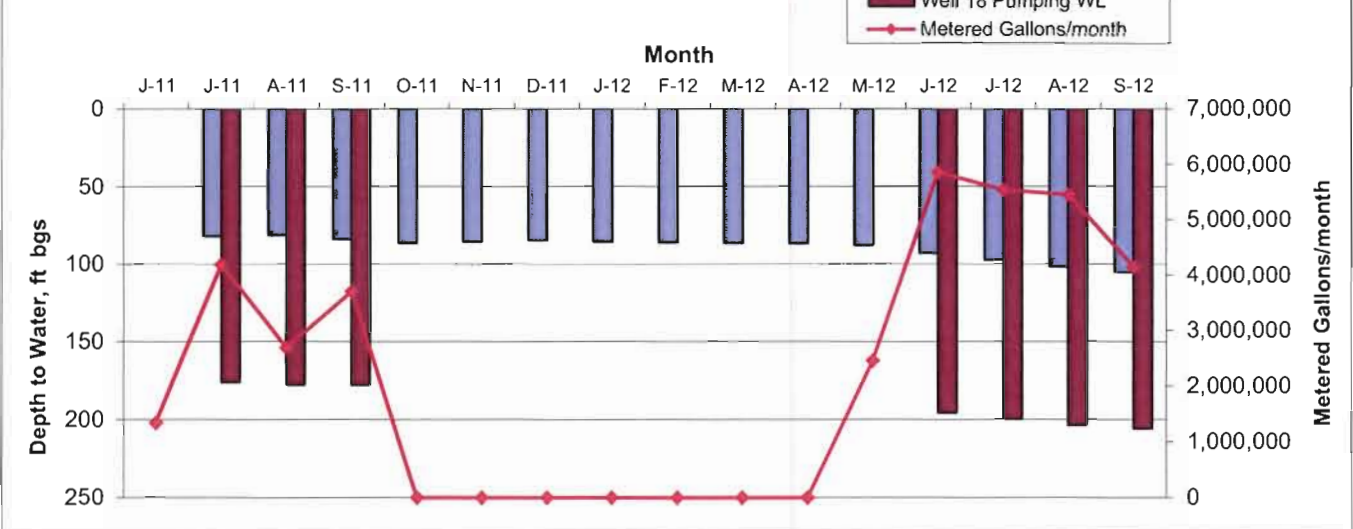
Well 17 and Nearby Domestic Wells Water Level Measurements



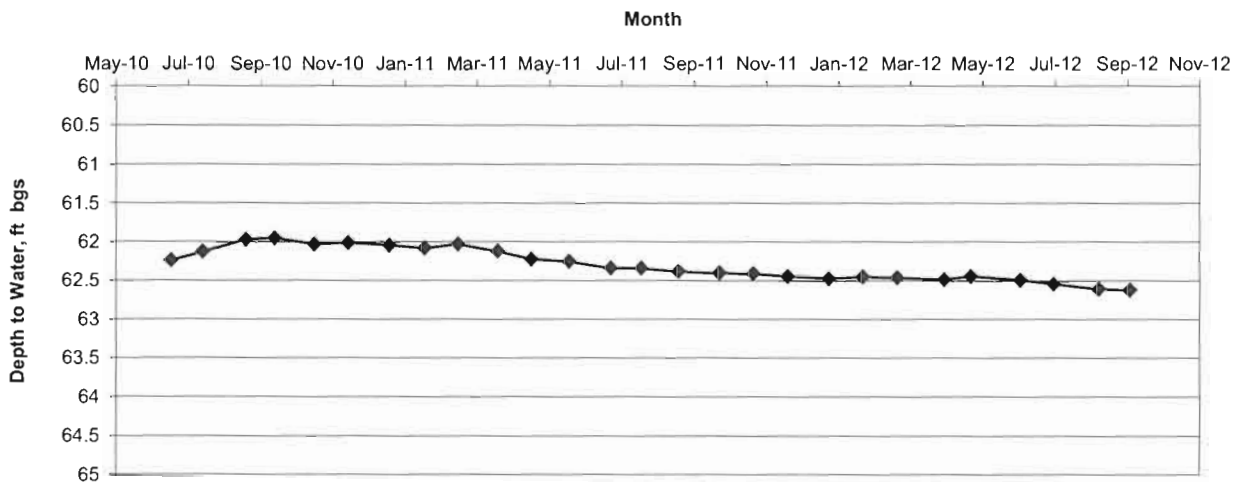
Well 17 Manual Water Levels and Well Diversion



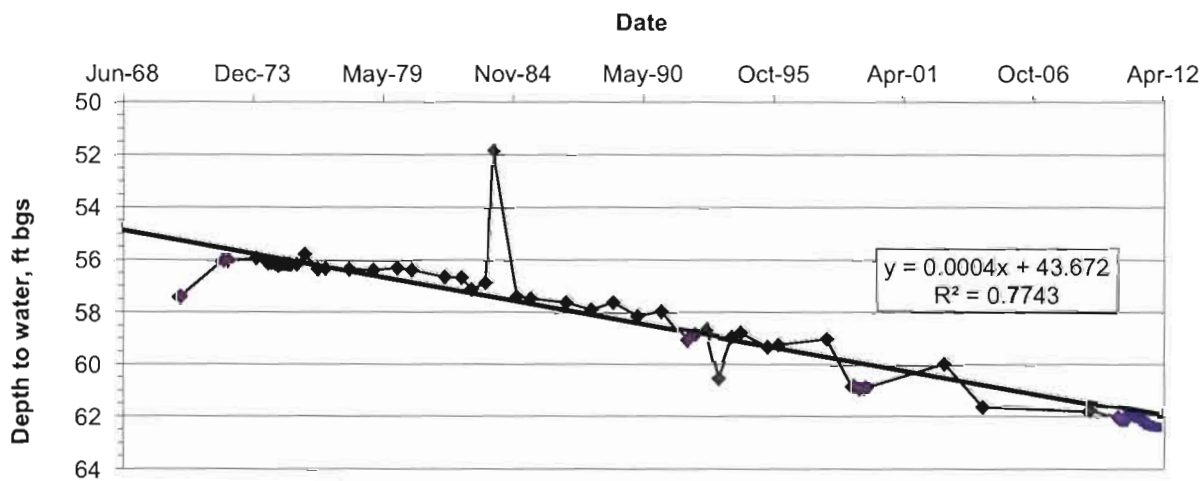
Well 18 Manual Static and Pumping Water Levels



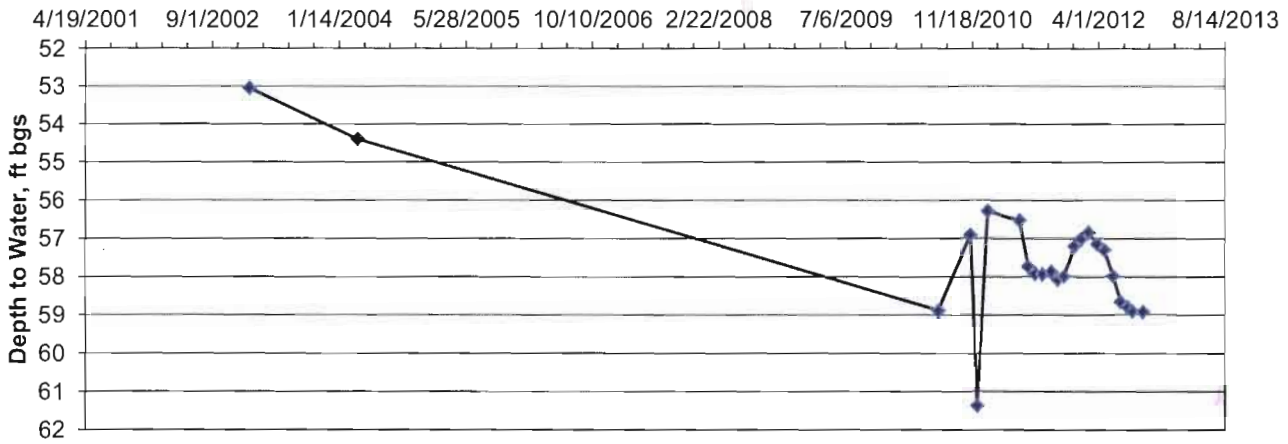
RG-18572 Manual Water Level Measurements



RG-18572 Water level Measurements 1970 to present (plus trendline)



Ranney Well, EB-202 Water Level Measurements



Rancho Viejo Wells Water Level Measurements

