

variance, I don't know if maybe legal would want to respond to this but this request wasn't noticed for any type of off-site advertising variance and I think they would have to go through the proper procedures for that.

CHAIRMAN CAMPOS: One, there's no notice, and two you're asking to be treated from everybody else because this rule has been applied in the county for a long time. That's the way I see it. Okay, so you accept all other conditions, Governor?

GOVERNOR RIVERA: Yes, and I want to say thank you to the staff and Santa Fe County for the cooperation on this. Thank you.

CHAIRMAN CAMPOS: Thank you, sir. This is a public hearing. Anybody wants to be for or against it? Ma'am, you want to come forward. Sir, you want to talk about it, in the plaid shirt and the closed eyes? Come on up so we can swear you in.

[Duly sworn, Christine Sanchez testified as follows:]

CHRISTINE SANCHEZ: Christine Sanchez, 212-B Los Pinos Road. What I'm against is the road, the entering and stuff like that. This is one of my main concerns. When the Downs were there before, my family had almost been hit quite a few times. We've had to wait on Los Pinos - now it's called Los Pinos but before it was 54 or 56. But waiting there, it was more than 15 minutes. Sometimes it would be a half hour waiting to get out.

CHAIRMAN CAMPOS: To get onto the frontage road?

MS. SANCHEZ: Yes. And that was when the Downs was there. Now there are more people. There's more neighbors around the Downs. Las Estrellas is right next to the entrance of the Downs and I think there's another road, I can't think of the name right now. But they have suggested that they're going to put in an extra lane. I know there's going to be liquor served there at different times, whether it's the racing or the restaurant, but when we had it, when it was just the two roads that it is now, people were passing left and right and they were serving drinks then.

My concern is if I save even one life that is more than enough for me. I just would want you guys to be thinking about that. I know they said they're going to have somebody, I don't know if it's engineering or what it is to see the flow of traffic. But in my day, in my lifetime I've never seen somebody that's paying for this and that company coming back and saying, No. This isn't a good solution. So much traffic coming in. It's going to impact our community.

Another thing is the four-foot berm that they have said they wanted to put up for noise. Right now you can hear I-25 where I live. So to me, I can imagine whenever there is horseracing or anything like that the noise level is going to be higher. I was told that just talking here is 50 whatever it is, decibels. It's way higher. If I hear the highway from where I live I imagine this other stuff would be a lot louder. I don't think a four-foot berm would cut the noise or the trees that they want to put up. Something else has to be done.

For the roads, they had told us that maybe they would give us stickers on our cars so that if the sheriffs or the state police, whoever was going to direct traffic, whenever they saw that sticker they would let us go by right away. I don't think that's a good solution. To me even that extra road they want to do, the extra lane is just a band-aid. That's my opinion. The time, 12:00, I think is kind of late only because at the time when the Downs was there

SFC CLERK RECORDED 02/03/2005

there were no people around. Now there's people up to their fence line all the way around. I was just in Atlanta, Georgia, there for a concert, and their time limit was 11:30 and they were a big residential area. So I think if other towns and even the City of Santa Fe for the rodeo grounds, everything has to end at 10:00 because they're trying to be respectful to their neighbors. If it's the drag, whatever it is that they have there it has to be closed by 10:00 period, no ifs, ands, or buts.

Another thing that I'm concerned about is the pollution, the light pollution. There's going to be a lot of light out there. I don't think anybody has said anything about that. But we are a small community and I think that should be addressed. We want to be good neighbors and they're coming into our community and they said they were going to be helping out with like a community center or something. Well, saying it and doing it are two different things. I don't think they have written anything down exactly what they wanted to do.

We want to keep our community. It is a small community. We already have Las Golondrinas, the traffic from them and the traffic from Sunrise Springs. The roads have not been improved with those two that are right there on Los Pinos Road. This is going to be a lot more traffic. I just feel that we're not going to be -- we're not Las Vegas and we need to be toned down a little bit. We're the community of La Cienega. We need your help, and every time I come to a meeting, whether we stay late. Tonight is a late night. I don't want to be forever, but I always look at the sign up here. Protection of property, religion and language. I think that's what you guys are here to do. I understand that it's their property. They want to develop it but I think it just needs to be toned down a little bit for our community.

Like they said, they've come back I think a couple of times for the manure and they're putting up money for it to be taken away. In all good conscience, in all good conscience, I have to say this that they made a compact with the state and they have not abided by their commitment. And I just want to ask you why do you think that they would commit and do what they said they were going to do to you if they haven't done it for the state.

I love my community and I'm not saying that there can't be progress, but I think the things I brought up, and I think because we are a little community, I hope you guys will protect us and I want to say thank you very much for your time. Thank you.

CHAIRMAN CAMPOS: Thank you, Ms. Sanchez.

EDWARD A. RIVERA: Again, Edward A. Rivera. I am all for the development of the Downs at Santa Fe. It has a long history. I think a lot of people don't realize that it is a part of the community and when it closed it also impacted the community. Some people had to move away from Santa Fe when the Downs closed because their livelihood left so they followed the tracks to other cities. I think the County can make this work. There are racetracks in other cities that are right inside the city itself, in Los Alamos, in Phoenix and other cities. And I'm sure it will be a success and it makes good economic sense. I'd be glad to see it open again.

CHAIRMAN CAMPOS: Mr. Catanach, do you have a comment?

MR. CATANACH: Mr. Chair, I haven't been out on the property since before they came in for a master plan amendment and the question has been asked more than once if

SFC CLERK RECORDED 02/03/2005

the chain link fence has been installed around the manure pile. The Fire Marshal had a concern that there should be a chain link fence installed to keep kids out of that area and I believe we asked the Downs the question and the response was yes, but the question keeps coming up. I see Ed is nodding.

CHAIRMAN CAMPOS: Governor, has that been installed?

GOVERNOR RIVERA: Yes. Allan Mosely told me it was, so it was. I haven't seen the manure pile in a while but I understand it's almost gone.

CHAIRMAN CAMPOS: Okay. Great. Ms. Lucero, access to homes. As Ms. Sanchez asked, there were long waits to be able to get onto the frontage road when there were events at this site. How do you address that from the County perspective?

MS. LUCERO: Mr. Chair, the applicant did provide a TIA regarding the traffic and I believe the recommendation of the TIA was that deceleration lanes and an acceleration lane be constructed for traffic exiting the facility and traveling northbound. It also recommended improvements to upgrade the access to comply with State Highway Department access manual with the right turn deceleration southbound and a left turn deceleration lane northbound into the facility. I believe the applicants are in agreement with this. We sent this out to the Highway Department for review and we have not yet received a response. The Public Works Department did review the application and they made some comments regarding County Road 54.

I also understand the Fire Marshal had a concern regarding emergency access, so the applicant has agreed to dedicate one lane for emergency use only.

CHAIRMAN CAMPOS: Okay, there's also condition 34, the applicant must provide traffic controls to Los Pinos Road, Entrada La Cienega and Las Estrellas during special events. Okay, so the other issues, the berming and the noise level. What if it turns out that the noise is much higher than we expect today? What authority do we have to go in there and regulate as a County to protect the residents in the area?

MS. LUCERO: Mr. Chair, there is a condition regarding noise.

MR. CATANACH: I think it's number 4.

MS. LUCERO: Yes, Mr. Chair, it's condition number 4 that a noise study shall be conducted at the first concert event to determine noise levels and mitigation measures if required. If noise levels exceed Code regulations and cannot be mitigated to conform certain uses may not be allowed in the future.

CHAIRMAN CAMPOS: Okay. What about the midnight close time? Is that too late if you're in a situation like this?

MS. LUCERO: Mr. Chair, that was actually a condition that was imposed on the master plan when they came in at that time, and that pertains to outdoor activities, so concerts and other special events need to cease by midnight.

CHAIRMAN CAMPOS: All outdoor events.

MS. LUCERO: All outdoor events.

CHAIRMAN CAMPOS: By midnight. Don't you think that's a little late?

MS. LUCERO: I know that the community had raised some concerns

SFC CLERK RECORDED 02/03/2005

regarding that even if outdoor activities cease by midnight people wouldn't actually be leaving the facility until one or two o'clock in the morning. That may be late to have people out there in traffic.

CHAIRMAN CAMPOS: What about the light issues? Lighting. Do you have a condition that regulates that? Number 11 - shall be shielded, lighting analysis shall be required at the final development plan. Do you feel that's adequate to protect the residents?

MS. LUCERO: I believe so. Mr. Chair, the applicants have actually submitted a preliminary lighting analysis and from what they submitted it seems to comply but they will need a more detailed one at final development plan.

CHAIRMAN CAMPOS: Final development does not come back to us?

MS. LUCERO: Mr. Chair, staff's recommendation and the recommendation of the LCDRC was that that would be handled administratively.

CHAIRMAN CAMPOS: Okay. Any other questions? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I just want to thank the LCDRC for doing a great job in terms of asking a lot of questions to the applicant and straightening out a lot of the concerns that they had. And I want to thank Christina and Edward for showing up and voicing their concerns. And a lot of those concerns are addressed in the conditions. I want to ask a question to the Governor and one of the main concerns that I have, Governor, is that no activities would start - and I just want to reaffirm it to the public, that no activity would start in this area until all the manure is gone, removed. And I just want to hear it from you that you're still looking at it the way we're looking at it.

GOVERNOR RIVERA: Yes, Commissioner. Yes, we're agreeing to that condition and the condition is that all the horse manure will be removed.

COMMISSIONER ANAYA: Okay.

GOVERNOR RIVERA: I don't know if there's anything else out there.

COMMISSIONER ANAYA: I appreciate that, because that's one of the main issues that was brought up from the beginning and I appreciate that.

GOVERNOR RIVERA: And we understand that it is actually no violation that we have created that requires us to remove it. We did it at the request of the neighbors, so that's a point I wanted to make clear, that there's absolutely no violation out on that property.

COMMISSIONER ANAYA: And I understand that and I appreciate that that you are doing that. Other than that I think that this has been an ongoing process. I think we've come to - this is going to be good economic development. I hate to just see this building just rot, just fall down. I'm glad to see we're going to repair it and we're going to have some activities there. But I want you to be really concerned about the issues that for example Christina brought up and that is the road issue and making sure it's safe when people are exiting or entering Los Pinos Road and into the Downs. So I think it's been a long, long process. I think it's going to be a good thing. I just want to thank everybody for working on it and bringing the issues, and finally coming together on this.

SFC CLERK RECORDED 02/03/2005

Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Any other questions?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: I think it's important and I lot of times we don't learn things that we should learn in school because we're not taught, number one. And I think, I can see that to hear it over and over in my district about Pojoaque Pueblo, why aren't they paying to the state? Governor, would you mind, I think it's important that we educate people in terms of why exactly that's the case, that the sovereign Pueblos don't have to pay in those compacts unless they're willing to do so. If you wouldn't mind briefly, just explaining.

GOVERNOR RIVERA: Commissioner Montoya, thanks for asking that question. It's actually an issue I've been dealing with for about ten years. The Pueblos in New Mexico are sovereign governments that aren't subject to tax. And what the compacts are requiring is basically a revenue sharing that exceeds any other tax in New Mexico. We are in one of the most important law suits for Native Americans and states in the country. It's the only lawsuit of its kind in the country. And the only way we got it into court is by having the state sue us.

So in order to protect tribal sovereignty we had to take action to force us to be sued, to take us into court so that we could have our day in court and prove that charging the tribes in order to get a compact is illegal, both under federal law and under the state constitution. Thank you.

COMMISSIONER MONTOYA: Thank you, Governor. I'll yield to Commissioner Sullivan.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I just had a quick question for staff. You say that the staff is going to administratively approve the final development approval, but the memorandum here indicates that we're being requested to approve preliminary and final development plan approval. Vicki, can you explain that to me?

MS. LUCERO: Mr. Chair, Commissioner Sullivan, the applicant was requesting preliminary and final development plan approval. After reviewing the application, staff was just recommending preliminary in order to allow the applicant to address the conditions that we've imposed. And once those have been addressed then the final would be approved or handled administratively.

COMMISSIONER SULLIVAN: I see. So what you're asking the Commission for tonight is only preliminary development plan approval.

MS. LUCERO: That's staff's recommendation, yes.

COMMISSIONER SULLIVAN: Okay. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Any other questions or comments?

COMMISSIONER MONTOYA: Mr. Chair, I'd like to move for approval.

CHAIRMAN CAMPOS: I have some question.

SFC CLERK RECORDED 02/03/2005

COMMISSIONER MONTOYA: Could I make a motion and then you can ask a question.

CHAIRMAN CAMPOS: Well, I'd rather not have a motion until all the questions are talked about.

COMMISSIONER MONTOYA: Okay. You can do it either way, I guess.

CHAIRMAN CAMPOS: Governor, on number 18, it says all outdoor activities shall cease by midnight. Would you be opposed to an additional clause that would say this may be amended by the BCC for good cause?

GOVERNOR RIVERA: I'm talking with my staff about that and we feel we've gone to the residents and we've discussed what it is that we would be doing. I don't foresee this being a regular basis, but I think that it passed the local scrutiny already and that's why we're submitting it as-is.

CHAIRMAN CAMPOS: So you're saying you would not agree to that.

GOVERNOR RIVERA: I would prefer to keep it as-is.

CHAIRMAN CAMPOS: Okay. Is there a motion?

COMMISSIONER MONTOYA: Mr. Chair, if there's no other questions, I'd like to move for approval of the preliminary development plan, with the amended language on number 25 that would read prior to issuance of building permits, and then on number 30, if we could limit that or implement that at the time that the business begins, which would be in 2006, that advertising off-site businesses would be prohibited.

CHAIRMAN CAMPOS: I think the issue there is jurisdictional. There's no advertisement as to a variance. Therefore we would have no authority at this time to consider that request. I think that's what staff indicated earlier.

COMMISSIONER MONTOYA: Oh, is that correct?

COMMISSIONER DURAN: It is somewhat. I think what Commissioner Montoya is suggesting is that until they actually start using the property, if the motion passes, they would be able to use it for other advertising. I think that's different than a variance to use it after they start operating out of there.

CHAIRMAN CAMPOS: I guess, Mr. Catanach, could you address that issue. Or Mr. Ross?

MR. CATANACH: If I understood that, that the sign that's advertising Cities of Gold would be allowed and then - it would be allowed until they actually occupy, open for business. And then the question came up that then they would advertise I guess the Downs on that sign. But it's not just an issue of the business advertising on that sign. It's an issue of if the sign's structure itself meets standard. So I think if the applicant would like to continue to advertise Cities of Gold and if in fact the sign doesn't meet standards for size of sign and height, that this applicant would come back for a variance and clarify what they are going to advertise on that sign and what the dimensions of that sign are. If that sign meets sign standards.

CHAIRMAN CAMPOS: Mr. Ross. I know it's late.

MR. ROSS: Mr. Chair, I don't think there's a need for a variance because

SFC CLERK RECORDED 02/03/2005

the sign is grandfathered right now and until what's approved here actually begins operation I don't think there's a violation of Code necessitating a variance. If that's the motion. The intent of the condition on the sign parameters anyway, so I think at some point they'll have to address those as well, if the sign is non-conforming under the new requirements.

COMMISSIONER DURAN: Second.

COMMISSIONER SULLIVAN: What was the first condition?

CHAIRMAN CAMPOS: The first amendment was number 25, saying that the financial guarantee would have to be put up before building permit.

COMMISSIONER MONTOYA: Prior to issuance of building permit.

CHAIRMAN CAMPOS: Prior to issuance of building permit as opposed to I guess sooner. That's number 25. And then 30, what language -

COMMISSIONER MONTOYA: Advertising of off-site business is prohibited until 2006? Is that what I heard maybe the date of occupancy? Is prohibited after -

CHAIRMAN CAMPOS: Until the property is open for business? We're just talking about that one particular sign, right? We're not talking about other signs. We're talking about the particular sign that exists can be used for off-site advertising until this business opens in 06?

GOVERNOR RIVERA: I'm not an attorney but I think the language without the day is probably safer, to just say that until it opens for business and becomes a permanent sign.

COMMISSIONER DURAN: I'd agree.

CHAIRMAN CAMPOS: Now any other comments or suggestions.
Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think midnight is too late. It takes so long to get the cars out of that place, particularly if one lane is going to be dedicated for emergency access which it well should be. I just feel that that is quite an imposition. If you took this condition literally, then it would be okay. All outdoor activity. That would mean the gates are locked and everyone was going home. That would be okay. But you know that's not what's going to happen. What's going to happen is that the events are going to continue until midnight.

CHAIRMAN CAMPOS: The concert ends.

COMMISSIONER SULLIVAN: The concert is going to end and then you're going to have an hour and a half of cars and honking and drinking and what have you and carousing until everybody gets out the gate. I just feel personally that that's a valid point brought up here this evening that that should be cut back perhaps to 11:00.

COMMISSIONER MONTOYA: What time does a concert end? I've never been to one.

COMMISSIONER SULLIVAN: That's the problem. They never seem to end. They move from the concert to the parking lot to the highway.

SFC CLERK RECORDED 02/03/2005

COMMISSIONER DURAN: Days. How long did Woodstock last? Did you ask the applicant if 11:00 would be acceptable to him?

CHAIRMAN CAMPOS: I want to say I do share that concern but I also want to state the concern I stated earlier about having some, reserving for the Commission some authority to amend the cease time in the future if there's good cause for that. That gives us flexibility to regulate something that might get out of control. Governor?

GOVERNOR RIVERA: How about 12:01?

CHAIRMAN CAMPOS: How about 10:00.

GOVERNOR RIVERA: I think 11:30 wouldn't make a difference if that will help in any way. I think a concert probably ends probably at the latest at 11:30. It depends on how good they are and if they get an encore or not.

CHAIRMAN CAMPOS: Well, they have to start earlier then.

GOVERNOR RIVERA: But I think 11:30 would be acceptable, but I go back to my original point is that we have dealt with the local community and got this passed as 12:00. But we would come down to 11:30. That's meeting half way.

CHAIRMAN CAMPOS: If we start at 10:00 then you meet us half way at 11:00. It depends where you start. I agree. I think that 11:00 is a good time to close shop. And I think we need to reserve some authority. I think that's a friendly amendment to end by 11:00 and allow the BCC authority amend cease time if justified by good cause. That way we can keep control of this and make sure that this doesn't get out of control and that the community's protected.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: I would have a problem with the 11:00 but I guess I would want to know how the Tingley Coliseum operates. I've never been to a concert either.

COMMISSIONER DURAN: I don't remember if I've been or not. It's late.

COMMISSIONER ANAYA: Are they getting out at ten? Are they getting out at eleven? Or what are their restrictions. I'd like to see what Tingley does, what Popejoy Hall does. I'd like to hear that. But for the sake of the residents in my district, I don't have a problem with 11:00 but I think we should revisit that later and if it doesn't turn into a problem then I don't have a problem with that either.

CHAIRMAN CAMPOS: So you're saying 11:00 and reserving the authority of the BCC to make an adjustment if there's good cause in the future? What about that? Who's the maker?

COMMISSIONER MONTQYA: I would agree with 11:30 and then your language.

COMMISSIONER DURAN: And the seconder agrees.

CHAIRMAN CAMPOS: 11:30 plus language to reserve the authority?

COMMISSIONER MONTQYA: Because that covers you.

CHAIRMAN CAMPOS: If things are getting out of hand we can still

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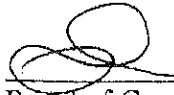
change it to 11:00 later in the future. Okay. We have a motion. We have a second. It's been amended. Number 18 has been amended to 11:30 with language allowing the BCC to regulate the cease time if there is good cause in the future.

The motion to approve LCDRC Case #DP 01-5014 with conditions as amended passed by unanimous [5-0] voice vote.

ADJOURNMENT

Chairman Campos declared this meeting adjourned at approximately 10:50 p.m.

Approved by:



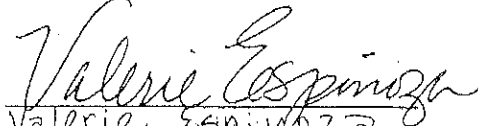
Board of County Commissioners
Paul Campos, Chairman

Respectfully submitted,

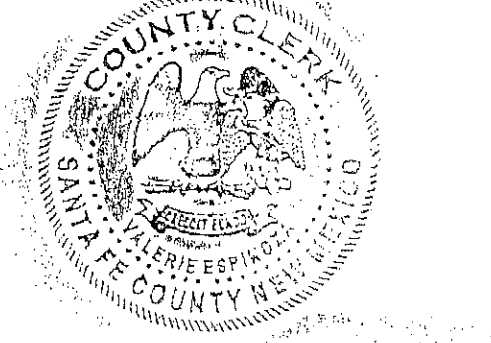


Karen Farrell, Commission Reporter

ATTEST TO:



Valerie Espinoza
SANTA FE COUNTY CLERK

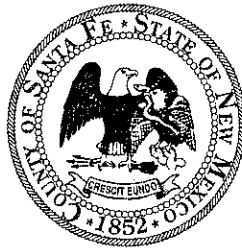


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Harry B. Montoya
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Roman Abeyta
County Manager

**BCC CASE # MIS 10-5150
THE DOWNS AT SANTA FE MASTER PLAN EXTENSION
THE PUEBLO OF POJOAQUE DEVELOPMENT CORPORATION,
APPLICANT**

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as “the BCC”) for hearing on April 13, 2010, on the Application of the Pueblo of Pojoaque Development Corporation (hereinafter referred to as “the Applicant”), for an extension of an existing Master Plan for the Downs at Santa Fe and modifications of certain conditions of the Master Plan. The BCC, having reviewed the Application and supplemental materials, Staff report and conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests a two-year time extension of its existing Master Plan and the removal of the following conditions of the Master Plan: removal of all manure and unpermitted trash; limit of (6) special use permits for major events prior to Final Development Plan approval; limit of flea market use to one weekend per month.
2. The property is located within the La Cienega Traditional Historic Community, at 27475 I-25 West Frontage Road, within Sections 26 & 27, Township 16 North, Range 8 East (Commission District 3).
3. The trash and manure have been removed from the site.



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4. Limiting major outdoor events may hinder the use of the site by the general public.
5. The site lends itself as a venue for major events that would be beneficial to the inhabitants of Santa Fe County.
6. Major outdoor activities have been allowed on this site, noise levels have been measured and mitigation measures were not needed.
7. The local community supports the possible future use and growth of the markets at the Downs.
8. The elimination of these conditions would allow the Land Use Administrator the discretion of permitting markets and events on this site.
9. The Application meets the criteria set forth in Article V, Section 5.2.4 (Master Plan Approval) and Article V, Section 5.2.7 (Expiration of Master Plan) of the Land Development Code.
10. Janna Werner representing the Applicant agreed to Staff conditions.
11. Carl Dickens, President of the La Cienega Valle Association, spoke in favor of the Application including the removal of existing conditions.
12. Walt Borten, Santa Fe Traditional Flea Markets, testified on how the proposed flea market at the Downs at Santa Fe would operate.
13. The Commission recommends the following special conditions of approval:
 - a. The Applicant shall comply with the conditions of the approved Master Plan except as modified by this Order.

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b. The Applicant shall comply with any applicable ordinance(s) adopted by the County prior to the submittal of preliminary and final development plan.

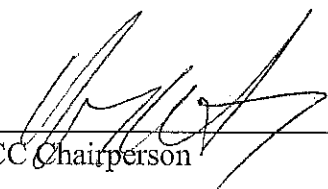
14. After conducting a public hearing on the request and having heard from the Applicant and public, the Board of County Commissioners hereby approves the request for an extension of the Master Plan and the deletion of the following conditions from the Plan, subject to the Applicant's compliance with the special conditions as stated above:

- 1) removal of all manure and unpermitted trash;
- 2) a limit of six (6) special use permits for major events prior to Final Development Plan approval;
- 3) a limit of flea market use to one weekend per month.

IT IS THEREFORE ORDERED that the Application is approved, and the Applicant is allowed an extension of its existing Master Plan, as modified herein, subject to the conditions set forth herein.

I certify that the Application was approved by the Board of County Commissioners on this 11th day of May, 2010.

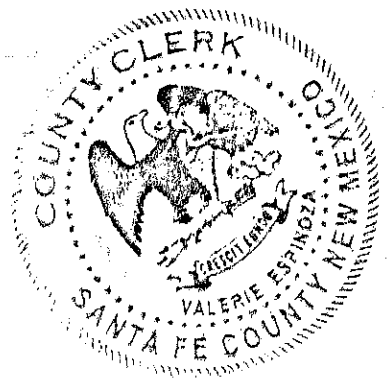
The Board of County Commissioners of Santa Fe County

By: 
BCC Chairperson

SFC CLERK RECORDED 05/12/2010

ATTEST:

Valerie Espinoza
Valerie Espinoza, County Clerk



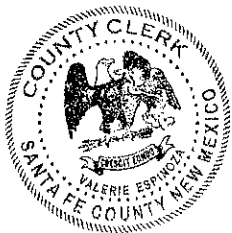
Approved as to form:
Stephen C. Ross for
Stephen C. Ross, County Attorney

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC ORDER
PAGES: 13

I Hereby Certify That This Instrument Was Filed for
Record On The 12TH Day Of May, 2010 at 03:41:49 PM
And Was Duly Recorded as Instrument # 1598639
Of The Records Of Santa Fe County

Deputy *Marcello* _____
Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM



SFC CLERK RECORDED 05/12/2010

XIV. A. 4. **BCC CASE # MIS 10-5150 The Downs At Santa Fe Master Plan Extension The Pueblo of Pojoaque Development Corporation, applicant, Requests a Two-Year Time Extension of a Previously Approved Master Plan. The Request Includes Modifications to Conditions Which Require That All Manure and Unpermitted Trash Be Removed, Which Limits The Downs to Six (6) Special Use Permits for Major Events Prior to Final Development Plan Approval, and Which Limits Flea Market Use to One Weekend per Month. The Property is Located Within the La Cienega Traditional Historic Community, at 27475 I-25 West Frontage Road, Within Sections 26 & 27, Township 16 North, Range 8 East (Commission District 3)**

MR. LARRANAGA: Thank you, Mr. Chair. On August 14, 2001 the Board of County Commissioners granted master plan approval to allow recreational/non-residential uses at The Downs at Santa Fe on 321 acres subject to conditions. On July 14, 2004, the BCC granted approval of reconsideration and clarification of conditions to the previously approved master plan. On November 9, 2004, the BCC granted approval of a preliminary development plan for Phase I, subject to conditions, and final development plan to be approved administratively.

The Land Use Administrator has determined that the accumulated time period for the master plan and reconsideration of the master plan and preliminary development plan are due to expire July of 2010. The applicant is requesting a two-year time extension of the approved master plan. Article V, Section 5.2.7.b states: Master plan approvals may be renewed and extended for additional two-year periods by the Board at the request of the developer.

The applicant also requests the deletion of conditions, on the prior approvals, which require that all manure and unpermitted trash be removed, which limits The Downs to six special use permits for major events prior to Final Development Plan approval, and which limits flea market use to one weekend per month.

Condition # 4 of LCDRC CASE # MIS 01-5013 The Downs at Santa Fe Variance and Reconsideration states: All manure and unpermitted trash on the site, including the area adjacent to Por Su Gracia Subdivision, must be removed within the two year time extension granted by the BCC.

As conditioned by the BCC, the applicant has removed the manure and trash. The applicant requests that this condition be removed from the master plan. Staff has made several site inspections and has verified the removal of the trash from the site. A portion of the manure was spread out on the property and the remainder of the manure has been removed from the site. One of the handouts that you received was from the New Mexico Environment Department on the manure removal. ???ex

Condition # 6 of LCDRC CASE # MIS 01-5013 The Downs at Santa Fe Variance and Reconsideration states: The applicant may request special use permits for events at the Downs prior to final approval of this project provided that a complete development plan for Phase 1 is submitted within six months of the master plan approval. The County

DRAFT

may issue special use permits for six major outdoor events prior to submittal of final development plan. A noise study will be conducted at the first event to determine noise levels and mitigation measures. If noise levels are excessive at the first event, no similar type events will be held until mitigation measures are in place.

The applicant requests that this condition be removed from the master plan and allow the Land Use Administrator to determine the quantity of events to be allowed on the site. A revised development plan is unforeseen in the immediate future by the applicant. Limiting major outdoor events to six, prior to submittal of final development plan, may hinder the use of the site by the general public. Major outdoor activities have been allowed on this site where noise levels have been measured and mitigation measures were not needed.

The term major outdoor event is not defined in the Code and therefore has been difficult for Staff to determine what type of activities fall under this category. What constitutes a major outdoor event is left to the interpretation of the Land Use Administrator. This site lends itself as a venue for major events which would be beneficial to the inhabitants of the County. Prior events serve as testimony of the capability of this venue to host large-scale activities with minimal impact to the local community while improving the economic growth of Santa Fe County.

This site has hosted two major events and per the terms of the existing condition only four major events may occur prior to submittal of a final development plan. The elimination of this condition would allow the Land Use Administrator the discretion of permitting events via a Special Use Permit and not limiting the use of this venue for major events.

Condition # 8 of Case # Z 01-5010 Downs at Santa Fe Master Plan states: The flea market use will be limited to no more than one weekend per month, permanent structures will not be allowed.

The applicant requests that this condition be removed from the master plan. The applicant is proposing that the Land Use Administrator determine the quantity of flea markets to be allowed on the site. Permits for permanent structures, for the use of vendors, shall not be issued until such time that a Final Development Plan is approved and recorded with Santa Fe County.

The Land Use Administrator has allowed the La Cienega Community to have flea markets and farmers markets at this site. The local community is very enthusiastic of the possibility of future use and growth of the markets. The elimination of this condition would allow the Land Use Administrator the discretion of permitting markets at the request of the local community. And one of the other handouts was a letter of support from the La Cienega Valley Association.

Recommendation: Staff has reviewed this application and has found the following facts to support this submittal: the application meets code criteria to allow a two-year extension of the master plan; the trash and manure have been removed from the site; limiting major outdoor events may hinder the use of the site by the general public; major outdoor activities have been allowed on this site where noise levels have been measured and mitigation measures were not needed; the site lends itself as a venue for major events which would be beneficial to the inhabitants of Santa Fe County; the local community supports the possibility of future use and growth of the markets; the elimination of these

SFC CLERK RECORDED 05/12/2010

DRAFT

conditions would allow the Land Use Administrator the discretion of permitting markets and events on this site.

Staff's review of the applicant's request has established findings that this application meets the criteria set forth in Article V, Section 5.2.4 and Article V, Section 5.2.7 of the Land Development Code. Staff recommends approval of a two-year time extension for the master plan for The Downs at Santa Fe and the removal of the previously approved conditions, #4, #6 and #8, subject to the following conditions:

1. The applicant shall comply with the conditions of the approved master plan.
2. The applicant shall comply with any applicable ordinance(s) adopted by the county prior to the submittal of preliminary and final development plan.

And Mr. Chair, I stand for any questions.

CHAIRMAN MONTOYA: Okay, questions. Commissioner Vigil.

COMMISSIONER VIGIL: Thank you. Thank you, Mr. Larrañaga. With regard to permitting, I need to get some clarification on this. We would be the permitting entity to allow for this flea market to occur. Is that correct?

MR. KOLKMEYER: Mr. Chair, Commissioner Vigil, that's correct.

COMMISSIONER VIGIL: So is it a business license that they would require from us?

MR. KOLKMEYER: We had discussions this morning, Commissioner Vigil, with the Finance Department because there's kind of three different enterprises that have been discussed so far – the flea market, the farmers market and then entertainment activities. The flea market as we understand it right now would be conducted through a person who would contract with the Pueblo to do that and every vendor there would require a business license. We haven't determined yet exactly how we would deal with the farmers market and the growers, or now the music events also would be licensed. But in each case they would have to do a special use permit, for each of those clusters of activities.

COMMISSIONER VIGIL: Do they fall within our permitting requirements?

MR. KOLKMEYER: Yes.

COMMISSIONER VIGIL: Every one of those activities?

MR. KOLKMEYER: Not all of them. The flea market currently does, and that will happen first because we won't do the growers market, the farmers market probably until some later period. A little bit later on when the season occurs. And then with the special events, like the music events or any other festivals or things that would occur, we assumed we would do it the way that we did it with the music events with the Pueblo on previous occasions.

COMMISSIONER VIGIL: Does the Pueblo charge a separate fee for use?

MR. KOLKMEYER: The arrangements between any of the activities of the flea market, the farmers market would be done through contracts between those entities and the Pueblo.

COMMISSIONER VIGIL: Okay. And the one request that's confusing to me is that we are requiring that the booths, for lack of a better word, and they're asking that they not. Is that correct?

MR. KOLKMEYER: The condition is no permanent structures, as I

SFC CLERK RECORDED 05/12/2010

DRAFT

understand it at this point, and the issue there is again, one of the reasons for the extension of the master plan is because this is sort of a preliminary step in working with the Pueblo, the County and the community in trying to figure out how things might evolve on this site over the next couple of years. So we don't want to start getting into building or removing things until the Pueblo would decide how they want to do their master plan. So this is a great way to figure out what kinds of activities that can occur there fairly immediately because we would hope to start in mid-May and bring revenue into the Pueblo, the community and the County, and then figure out and move slowly towards the completion of the master plan. So we don't want to do too much from our perspective right now of adding or removing structures.

COMMISSIONER VIGIL: And I guess I wanted some real clarification for the vendors' purposes. Would the vendor be paying a usage fee every time they use the facility? And to whom would that user fee be paid?

MR. KOLKMEYER: That would be an arrangement between the vendor and the Pueblo, as I understand it. The Pueblo is represented here this evening they can probably answer that question for you.

COMMISSIONER VIGIL: Yes. I'd like to see how that is actually structured. And it's seeming to me that the master plan has not been proposed yet.

MR. KOLKMEYER: Well, there was an original master plan, and so this is an extension to that so we can figure out again because that master plan was done - how many years ago? The original?

MR. LARRAÑAGA: 2001.

MR. KOLKMEYER: So that's ten years old, so things have changed. In fact if you go back and you look at the conditions on there originally the community at that point wasn't particularly behind having flea markets. So things have changed quite a bit. And again, to the question you were asking earlier, we don't - one of the things we want to do is work out those fiscal arrangements so it's very clear what we do and how we proceed. We've never really done flea markets. We did a special use permit for the Oshara flea market last year and that was the same person who will probably be doing these so you could ask him that question a little bit later on too. But we want to really make sure that we're proceeding here and looking at activities that really fit that environment and that site right now.

COMMISSIONER VIGIL: When the County hosted some of the farmers market activities at the County Fairgrounds, was that just a temporary permit?

MR. KOLKMEYER: Yes.

COMMISSIONER VIGIL: Okay. Thank you, Mr. Chair.

CHAIRMAN MONTROYA: Okay. Any other questions for staff.

JANNA WERNER: Mr. Chair, honorable Commissioners. My name is Janna Werner. I'm general counsel for the Pueblo of Pojoaque Development Corporation, and we're requesting that the council approve our application. I'll try to be short. Basically, we're asking for two primary changes. The first is a request that the master plan be extended for two years. The second is a request for amendments to conditions to the master plan.

The first condition I want to talk about is condition #4 which required the removal

SFC CLERK RECORDED 05/12/2010

DRAFT

of any manure or stable waste that had been stored on the property. As of the early part of 2008 absolutely all manure waste and unpermitted trash that had been stored on the property was finally removed. That had been removed in stages over a number of years. I believe that staff provided to you the letter from the New Mexico Environment Department which was our final approval of the land application of any of the final waste compost and an approval of a report and plan. So that condition actually has now been satisfied. We believe it's moot and we're requesting that it be removed as a condition from the master plan.

Next, I'd like to address two other conditions to the master plan that we would like amended. Those conditions are condition #6 and condition #8. Condition #6 referred to a variety of matters but the most important thing that we're talking about here today is that special use permits for limited – and a total amount to only six. For condition #8 flea markets were limited to only one weekend per month. We've been working with the community with a concept to have a traditional flea market there, long range, a farmers market, and there have been ongoing special events, primarily entertainment, and a couple of horse events.

Our request to the Commission is that those two existing conditions be removed and instead we simply provide, or that the commission simply provides that the Land Use Administrator has the discretion to determine the number of events at The Downs and when a special use permit is needed.

Let me then, if I may, address several of the issues that have come up with questions from the Commission. I think if we go back to the year 2006 and historically everyone knows that the Downs at Santa Fe was primarily intentioned as a horse racing facility. Since that time the New Mexico Legislature passed a law and limited and said that they were only going to issue one more racing license to one more facility in the state. In late 2008 the State Racing Commission granted the license to Raton and denied our license. As a result everything in our master plan had been somewhat on hold pending an outcome of whether or not our racing license was granted.

At this time the flea market is the one event we actually have had discussions about. Now, exactly what form that will take is still being considered. Most likely it will be in the form of a rental agreement or a management agreement to another company. That company then would be in charge of the vendors and what the vendors pay, etc. and the whole management of the flea market. That's the concept that we're looking at right now. There have been a couple of discussions but that is not finalized in a final contract.

Not all events out there do we require any type of a rental fee. Some are done at no charge; some are done at minimal charge. It depends on what the event is.

So with that, if there are any future plans for development, obviously consistent with the conditions that the staff is suggesting for this approval, any future development or activities that require more action from the Commission we will be back here as those are formulated. But here now we're requesting those changes so that we can proceed with a farmers market for the local farmers out there, for a traditional flea market and for other miscellaneous entertainment.

CHAIRMAN MONTOYA: Okay. Questions for the applicant?
Commissioner Vigil.

COMMISSIONER VIGIL: Thank you. If I recall correctly, and I remember being on the Solid Waste Management Authority when issues came up with

SFC CLERK RECORDED 05/12/2010

DRAFT

regard to removal of the manure, it really wasn't so much the manure, although that was a requirement to have it removed, but one of the issues that surfaced as a community was the fact that there were needles and waste there that might be toxic to the land, the aquifer, all of that. This particular letter from the Department doesn't address anything but manure. Do you have any information about that?

MS. WERNER: Mr. Chair, Commissioner Vigil, all of the removal was done through the NMED. They were there. They had investigations and we've had meetings. I was not aware of any needles out there. I know that there were some reports in the NMED – I had seen those reports but I hadn't seen anything – I think it's important to look and the context of this is perhaps more information than you need. The Downs at Santa Fe uses effluent water from the City wastewater plant to water the landscape. And because of that The Downs at Santa Fe has a discharge permit from the New Mexico Environment Department. And it was only through that that there was any way that the NMED was looking at the stable waste that had been stored out there.

Part of the ongoing NMED permitting process, we do continue to test, groundwater sampling test every quarter. And those have all been within state norms. Actually, they're less than half of the state norm.

COMMISSIONER VIGIL: Okay. With regard to a proposed master plan, will it be specifically a flea market for the sale of goods and perhaps farmers market products or will art also be a part of this? Is there a proposal to – this should be vendors to a certain percentage.

MS. WERNER: Mr. Chair, Commissioner Vigil, if I understand your question correctly, currently we're not proposing any long-term changes to the master plan except to all these events. And how the vendors are treated would be through the company with whom we will be contracting. So that will be an arrangement through the person with whom we're contracting and the vendors. We do not anticipate any direct contracts between the vendors and the Pueblo of Pojoaque Development Corporation.

COMMISSIONER VIGIL: Thank you, Mr. Chair.

CHAIRMAN MONTROYA: Any other questions? Okay. Thank you, Jenna. This is an open, public meeting – public hearing, so if there's anyone that would like to speak on this case please come forward. Carl.

[Duly sworn, Carl Dickens testified as follows:]

CARL DICKENS: My name is Carl Dickens. I'm the president of the La Cienega Valle Association. And this is really an exciting moment for me. Usually I'm a little worried about coming up and speaking before you. This is an opportunity that we have supported, encouraged and we're embracing. This is really our opportunity to support the Pueblo of Pojoaque in what we feel will be a very wonderful opportunity for everybody in our community. And some of the things I wanted to address – Commissioner Vigil, you asked about will there be art? We already have a Downs committee that's working on activities specifically for youth. And I talked to the flea market operator and he will have a space that will be allowed for performances for kids, music for kids, art activities. We have people in our community who already are coming forward to participate and be actively involved in that.

I also want to explain the process that we went through in terms of notifying our community about what the Downs is proposing. We put in our newsletter that goes out to 1250 homes. We've had a series of two different meetings. We've posted notices on our

SFC CLERK RECORDED 05/12/2010

DRAFT

community notice boards. And in our meetings what I found was fascinating is people weren't so concerned about now. They wanted to see the future. So they were already talking about things that they would like to see happen there. They talked about bringing the Santa Fe Rodeo out to the Downs facility.

So we're actively supportive of this and really look forward to the opportunity of working with the Pueblo of Pojoaque in what we think will be a really beneficial use of that property for everyone involved. Thank you.

CHAIRMAN MONTOYA: Thank you, Carl. Anyone else?

[Duly sworn, Walt Borten testified as follows:]

WALT BORTEN: Thank you. My name is Walt Borten and my partner Sarah Cook and I own Santa Fe Traditional Flea Markets. We are in conversation with the Pojoaque Pueblo about conducting the market there, and I'm here specifically to respond to a couple of your questions, Commissioner Vigil, if you approve, Mr. Chair.

At the market at Oshara which we ran last summer, and our indoor market this winter and El Museo, we've had a mixture of contemporary artists, jewelry designers, people selling antiques, people selling what we call flea – stuff from grandma's attic, and kids selling their leftover toys. And it's been a lot of fun. The way we work is we rent the facility from the owner of the facility, and then we rent spaces at a very affordable rate to the individual vendors. We keep an eye on what's being sold. There are very specific restrictions from a state standpoint, but we're not rigid about it. If it's fun and reasonable and not junky we encourage people to come back. The market regulates it pretty well.

So I wanted to respond in specific to that question and to stand for any other questions you might have.

CHAIRMAN MONTOYA: Thank you, Walt. Commissioner Vigil.

COMMISSIONER VIGIL: Are these types of activities exempt from GRTs?

MR. BORTEN: No, they're not.

COMMISSIONER VIGIL: So the vendors have to charge that? And how do those transactions get reported?

MR. BORTEN: In the city I do two things. First, I have a City license for the event, which I purchase at the beginning of the year. I obtain each vendor's CRS number and I deliver their application for a City license, which is issued for \$10 for the 12-month period, the calendar year. And then Anita in the office over there writes that license. Now, the collection of gross receipts is a state matter. It's between the individual as you know.

COMMISSIONER VIGIL: Right.

MR. BORTEN: But we do license each vendor and provide a license to them with their CRS number. The City knows that they're there. And I have talked with staff about a similar procedure for the market at the Downs if we in fact do that.

COMMISSIONER VIGIL: That's good. Thank you, Mr. Chair. Thank you, Walt.

CHAIRMAN MONTOYA: Okay. Thank you, Walt. Anyone else like to speak on this case? Okay seeing none, the public hearing is now closed.

COMMISSIONER HOLIAN: Mr. Chair.

CHAIRMAN MONTOYA: Commissioner Holian.

SFC CLERK RECORDED 05/12/2010

DRAFT

COMMISSIONER HOLIAN: Thank you, Mr. Chair. First of all I would like to say that I'm really pleased to see the plans for the Downs going forward and I would like to thank our County staff for working with the Pojoaque Pueblo and the community in making these plans a reality. I think it's going to be not only great economic opportunities for our community but also it's a real community builder and so I am just so pleased with this.

So I would like to move for approval of the master plan extension with staff conditions, but the removal of conditions #4, #6 and #8 and instead to direct the Land Use Administrator to determine the number of flea markets and whether or not to approve special use permits. Did I get that right?

CHAIRMAN MONTOYA: Yes.

COMMISSIONER ANAYA: Second.

CHAIRMAN MONTOYA: Motion by Commissioner Holian, second by Commissioner Anaya. Discussion? Commissioner Stefanics and then Commissioner Anaya.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. Steve, I'd like to delve into the issue a little bit of Native American owned land. So Pojoaque Pueblo owns the Downs.

MR. ROSS: Right.

COMMISSIONER STEFANICS: So what authority do we then have over Native American lands?

MR. ROSS: Well, it's not trust land so we have the same authority we would have under any other lands.

COMMISSIONER STEFANICS: So, Mr. Chair and Steve, if any tribe bought some property in the unincorporated area of Santa Fe that they currently didn't own they would be subject to property tax?

MR. ROSS: Yes, conceivably.

COMMISSIONER STEFANICS: Gross receipts tax? Any fees on construction and permits, etc?

MR. ROSS: Right.

COMMISSIONER STEFANICS: Okay. Thank you, Mr. Chair.

CHAIRMAN MONTOYA: Okay. Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chair. First I'd like to thank Governor Rivera for working hard to remove the manure. I know that that was a big issue in the La Cienega area. The folks out there were concerned about it and so were we. So thank you, Governor, for you and your staff removing that manure. And I'd also like to thank Carl Dickens, the president from La Cienega Association for working hard as the president and notifying people and working closely with the Pojoaque Pueblo and the Governor. It makes our decision a lot easier when you have people in support of a project. So with that, thank you.

CHAIRMAN MONTOYA: Okay. Thank you, Commissioner. Any other discussion? I'd just like to add my thanks to the community, Carl, Jose Varela Lopez, the La Cienega Association and recognize Alan Mosely, Tim Vigil, Paul Aragon, along with you, Janna, in terms of the work that the Pueblo is doing in working and collaborating with the community. It's a real partnership and it's going to be a win-win for the community and for Santa Fe County. So thank you.

SFC CLERK RECORDED 05/12/2010

DRAFT

The motion passed by unanimous [5-0] voice vote.

SFC CLERK RECORDED 05/12/2010

1. Suitability of the site to accommodate the proposed development;
3. Suitability of the proposed uses and intensity of development at the location;
4. Impact to schools, adjacent lands or the County in general;
5. Viability of proposed phases of the project to function as completed developments in the case that subsequent phases of the project are not approved or constructed;
6. Conformance to applicable law and County ordinances in effect at the time of consideration, including required improvements and community facilities and design and/or construction standards.

5.2.5 Filing of Approved Master Plan

The approved master plan with maps which has been approved by and received signatures of the County Development Review Committee Chairman and Board Chairman shall be filed of record at the County Clerk's Office.

5.2.6 Amendments and Future Phase Approvals

- a. Approval of the master plan is intended to demonstrate that the development concept is acceptable and that further approvals are likely unless the detailed development plans cannot meet the requirements of applicable law and County ordinances in effect at that time. Each phase of the development plan must be considered on its own merits.
- b. The Code Administrator may approve minor changes to the master plan. Any substantial change in land use or any increase in density or intensity of development in the approved master plan requires approval by the County Development Review Committee and the Board.
- c. Any changes approved by the Code Administrator pursuant to Section 5.2.6b of this Article shall be subject to the review and approval of County Development Review Committee and the Board at the time of development plan or plat approval.
- d. The phasing schedule may be modified by the Board at the request of the developer as economic circumstances require as long as there is no adverse impact to the overall master plan. (See Article V, Section 4.5)

5.2.7 Expiration of Master Plan

- a. Approval of a master plan shall be considered valid for a period of five years from the date of approval by the Board.
- b. Master plan approvals may be renewed and extended for additional two year periods by the Board at the request of the developer.
- c. Progress in the planning or development of the project approved in the master plan consistent with the approved phasing schedule shall constitute an automatic renewal of the master plan approval. For the purpose of this Section, "progress" means the approval of preliminary or final development plans, or preliminary or final subdivision plats for any phase of the master planned project.

History. 1980 Comp. 1980-6. Sections 4.4, 4.5, 5.1 and 5.2 were amended by County Ordinance 1987-1 to provide for the submittal of a master plan.

5.3 Preliminary Plat Procedure

5.3.1 Introduction and Description

- 5.3.1a Preliminary plats shall be submitted for Type-I, Type-II, Type-III, except Type-III subdivisions that are subject to review under summary procedure as set forth in Subsection 5.5 of this Section, and Type-IV subdivisions.

EXHIBIT

6

V-6