

SUMMARY:

The Appellants, request an appeal of the Land Use Administrator's decision to approve a Summary Review Subdivision (Case # 14-3080) of 11.32 acres into four lots.

The Appellants state they are very concerned about the access to the proposed Summary Review Subdivision. The community has done extensive planning efforts focused on new development access via Los Suenos Trail (Hager Road). The 1999, Arterial Roads Task Force final report recommended construction of Los Suenos Trail.

The Appellants further state; "the residents rightly view these detailed and intentional planning prescriptive as a commitment by the County that the new development will be required to use appropriate access not to increase significant new traffic onto their internal, already inadequate community roads which narrows to thirteen feet wide at points."

Staff Response: Los Suenos Trail (Hager Road) has not been constructed and there is no timeframe when Los Suenos Trail (Hager Road) build out will occur. There is no proposal to build out Hager Road at this time. Hager road was developer driven as the proposed access for Suerte Del Sur and 7 other lots. Suerte Del Sur's Master Plan has expired and is no longer in place. Camino Peralta is a County owned and maintained road, it is 18' in width, and is the only access road that services the proposed lots.

The Appellants state Article III, Section 2.4.2b3 requires that all lots created under this section shall be provided with adequate access for ingress and egress, utility service, fire protection, and emergency services weather by a road meeting County requirements constructed within an easement and utility easement or by direct access to a public right-of-way. All on and off-site roads shall meet the design standards for local roads as set forth in Appendix 5.B.3 which requires a 24' driving surface.

Staff Response: The proposed Summary Review Subdivision is proposing direct access to a public Right-of-Way (Camino Peralta) which meets the requirements of Article III, Section 2.4.2b3, which states that all lots created under this section shall be provided with adequate access for ingress and egress, utility service, fire protection, and emergency services weather by a road meeting County requirements, constructed within an easement and utility easement, or by direct access to a public right-of-way. All on and off-site roads shall meet the design standards for local roads as set forth in Appendix 5.B.3 which requires a 24' driving surface with six inches (6") of compacted subgrade and six inches (6") of crushed gravel base course. Camino Peralta is an existing 18' foot road with no shoulders or center stripe. Although the road narrows at points, the majority of the road is 18' feet with a chip seal driving surface and posted 25 MPH (Speed Limit) and is owned and maintained by Santa Fe County. The on-site road must be constructed to local road standards.

NB30-2

The Appellants state restrictive covenants exist on the subject property, that require all tracts and lots to use Hager Road as the primary access for purposes of ingress, egress, and utility placement. These covenants were created to insure proper access would be created for the subdivision.

Staff Response: Private restrictive covenants are not enforced by Santa Fe County. The provisions of the covenants are not part of the County's review and approval of any Application. Although the covenants designate Hager Road as the primary access to the properties, they do not prohibit additional points of access and Hager Road is not constructed.

This Appeal was submitted on July 7, 2015.

Growth Management staff has reviewed the Application (Two Bend LLC) # 14-3080 for compliance with pertinent Code requirements and found the Application for a Summary Review Subdivision is in compliance with Code criteria.

APPROVAL SOUGHT: Appeal of the Land Use Administrator's decision to approve (Case # 14-3080) Two Bens LLC. Summary Review Subdivision.

GROWTH MANAGEMENT AREA: El Centro, SDA-2

HYDROLOGIC ZONE: Basin Hydrologic Zone, minimum lot size per Code is 10 acres per dwelling unit. Lot size can be reduced to 2.50 acres with signed and recorded water restrictions. The Two Bens Application created four lots of 2.55 acres, 2.78 acres, 2.91 acres, and 2.97 acres with signed and recorded water restrictions.

FIRE DISTRICT: Agua Fria.

FIRE PROTECTION: The Fire Prevention Division reviewed the Summary Review Subdivision and recommended approval of the Application.

ACCESS: Access to the subdivision was proposed to be from Camino Peralta, which is a County owned and maintained road. The Public Works Department recommended approval of the Application with conditions that the Applicant comply with Site Planning and road design and construction standards of the Code for the internal road as well as provide adequate drainage structures in accordance with the Code.

WATER SUPPLY: The Subdivision proposed the use of Domestic Wells and met Code requirements.

LIQUID WASTE:

The Subdivision proposed the use of Conventional Septic Systems and met Code requirements.

STAFF RECOMMENDATION:

Staff recommends that the CDRC uphold the Land Use Administrator's decision to approve the Application and deny the requested appeal.

EXHIBITS:

1. Letter of Appeal
2. Article II, § 2.3.4b (Appeals)
3. Article III, § 2.4.2b.3 (Required Improvements and Standards)
4. Article V, Appendix 5.B.3
5. Proposed Plat
6. Site Photographs
7. Aerial of Site and Surrounding Area
8. Two Bens response.

Graeser & McQueen, LLC
— ATTORNEYS AT LAW —

Tuesday, January 6, 2015

Caleb Mente
Building and Development Services Division
Santa Fe County, Growth Management Department
cmente@santafecountynm.gov

Re: 2 Bens LLC Summary Review Subdivision Application 143080

Dear Caleb,

This firm represents the Puesta Del Sol Property Owners Association, Inc. (PDS). PDS is very concerned about the 2 Bens LLC application because of its proposed access using Camino Peralta.

Extensive planning efforts by the community have focused on new development access via Los Suenos Trail (Hager Road). The 1999 Arterial Roads Task Force final report recommended construction of Los Suenos Trail, stating specifically "New roads recommended by the Task Force for this Subregion are intended primarily to service future development.. the Task Force recommends that the roads cited above be in service before significant build out of this area occurs." ARTF Final Report at pg. 9.

In 1999 the EZA by ordinance (1999-4) incorporated the Santa Fe Urban and Extraterritorial Future Roads Plan into the Extraterritorial Area Arterial Roads Plan. That ordinance included the ARTF recommendation regarding Los Suenos Trail, and Los Suenos Trail is shown as a future arterial on the August, 1999 Future Road Network map adopted by both the County and City.

The 2006 Tres Arroyos del Poniente Community Plan (Resolution 2006-41) also relied on Los Suenos Trail for new development, adopting the ARTF recommendation.¹

PDS residents rightly view these detailed and intentional planning prescriptives as a commitment by the county that new development will be required to use appropriate access, not to increase significant new traffic onto their internal, already-inadequate community roads.

Camino Peralta is suboptimal to serve even PDS, narrowing to as little as thirteen feet wide at points. It is both dangerous and irresponsible to allow development to increase traffic on Camino Peralta.

The summary review application process (Art. III Sec. 2.4.2b.3) requires:

...all lots created under this Section shall be provided with adequate access for ingress and egress, utility service, fire protection, and emergency services whether by a road meeting county requirements constructed within an easement and utility easement or by direct access

¹ One of the four principal issues identified in the community planning process was "Inability of the existing and planned infrastructure to fully support this potential development." TAP Plan, Pg. 4.



NBD-5

to a public right-of-way. All on and off-site roads shall meet the design standards for a local road as set forth in Appendix 5.B.3

Appendix 5.B.3 in turn requires a 24 foot wide driving surface, a requirement that Camino Peralta does not meet.

If the 2 Bens LLC project is allowed to access through the PDS subdivision, there is no basis on which to deny similar requests to the entire remaining undeveloped and unplatted portions of the Hager Estate. The impact on PDS will be devastating to the tranquility and rural character that PDS residents have worked so hard to preserve. The requirement to access through Los Suenos Trail must be imposed now, with this application, if the planning efforts and County commitments are to have any meaning.

The restrictive covenants governing the subject property unambiguously state, "All Tracts and Lots shall be required to use 'Hager Road' as the primary access for purposes of ingress, egress and utility placement." While we understand that the County does not enforce private covenants, in this case those covenants were imposed by the Archdiocese specifically at the request of PDS in order to ensure that previous commitments were met. Paul Duran, acting as agent for the Archdiocese at the time, confirmed that intent and the commitment (see attached September 30, 2004 email correspondence). On the basis of that community history alone a condition of approval limiting access to Camino Peralta is both reasonable and necessary.

De facto serial subdivisions such as this one have resulted in failure to ensure appropriate infrastructure commensurate with the needs of development in the area,² the costs of that failure should not be borne by PDS residents. PDS has raised this issue with the County in the past (see attached letter dated September 11, 2005), as well as their concerns about access through their community (see attached letter dated October 7, 2006)

There is an agreement in place, the *Road Construction and Maintenance Cost Sharing Agreement*, for construction of Hager Road (Los Suenos Trail). Moreover, there is also an escrow agreement in place, the *Hager Road Construction Escrow Agreement*, providing for \$700,000 to be held in escrow to fund construction of the road. The Applicant would be best served by coordinating with the parties to those agreements to have the road constructed and then using it as the primary access for its proposed land division.

The 2 Bens LLC application is very much a trial balloon, to see if the County will allow individual owners to do land divisions without complying with the access road obligation. If this application is approved as submitted you can be assured that many more will follow.

PDS has no objection to the proposed land division otherwise. Moreover, PDS is sensitive to public safety concerns and does not object to construction of the proposed connection to Camino Peralta so long as access is limited by a gate with an emergency access lock and that a condition of approval limiting access to Camino Peralta for emergency egress and emergency vehicle access only is imposed.

² "The County Code ties off-site road requirements to the scale of each development as it comes in for approval. This leaves some roads under built and does not adequately address the need for road improvements resulting from the cumulative impacts of many small lot splits..." Sustainable Growth Management Plan 155, §10.2.2.2.

Please let us know if you wish to discuss this matter with us or our client.

Sincerely,



Christopher L. Graeser

cc: Puesta Del Sol Property Owners Association, Inc.
JenkinsGavin
Rachel Brown

enc: Restrictive Covenants for the Archdiocese Hager Properties
Road Construction and Maintenance Cost Sharing Agreement
First Supplement to Road Construction and Maintenance Cost Sharing Agreement
Hager Road Construction Escrow Agreement

for compliance with the requirements of the Code, and shall make and file a report to the County Development Review Committee evaluating the application and recommending that the County Development Review Committee approve, disapprove, or approve the application with modifications and/or conditions or recommending that the County Development Review Committee recommend the same to the Board depending on which body has final authority pursuant to Section 2.3.2e.

2.3.2b The Code Administrator may hold an informal conference with the applicant and any interested person at any time prior to the making of his recommendation. The Code Administrator shall give at least three (3) working days' notice, either orally or in writing, to the applicant or any interested person who has requested in writing that he receive notice of any informal conference held under this Subsection b.

2.3.2c At least twenty one (21) calendar days prior to any public meeting at which an application will be heard, the applicant shall post notice of the filing of the application prominently on the land, building, or other structure which is the subject of the application in such a way as to give reasonable notice to persons interested in the application and shall provide written verification of the posting of the notice to the Code Administrator.

2.3.2d For development other than subdivisions under the New Mexico Subdivision Act (which shall comply with the public agency review process as set forth in Article V, Section 5.3.3d.), the Code Administrator may refer an application to an appropriate agency or official of the State of New Mexico for an opinion concerning whether the application would be disapproved or approved with conditions or modifications. Unless otherwise required by law, the opinion of the state agency or official shall be advisory. The Code Administrator may delay the making and filing of his recommendation for up to sixty (60) calendar days to await the opinion if he believes that such a delay is in the public interest.

2.3.2e The County Development Review Committee has final approval authority on preliminary and final development plans and on appeals of the Code Administrator's decisions and has recommendation authority on variances, preliminary and final plats, and all master plans, including zoning, for which the Board shall have final approval authority. Plats for Type V subdivisions containing six (6) or more parcels go directly to the Board for review and approval, in accordance with Article V, Section 5.5.4b.

L → 2.3.4 Appeals

L → 2.3.4a Filing an Appeal

All appeals under the Code shall be filed in writing with the Code Administrator.

L → 2.3.4b Appeal of Code Administrator Decision under Section 2.3.1 to the County Development Review Committee

i. Any person aggrieved by a decision of the Code Administrator under Section 2.3.1 may file an appeal to the County Development Review Committee within five (5) working days of the date of the Code Administrator's decision. The County Development Review Committee shall hear the appeal within sixty (60) calendar days of the date the appeal is filed. The County



NBD-8

Development Review Committee shall make and file its decision approving or disapproving the application or approving the application with conditions or modifications.

- ii. A decision of the County Development Review Committee on an appeal shall become final thirty (30) calendar days after the decision is filed, unless within that month an appeal of the decision has been filed by an interested person including the Code Administrator, pursuant to Section 2.3.4c of this Article or the Board on its own initiative has decided to review the decision.

2.3.4.c Appeal of Development Review Committee Decisions to the Board

- i. Any person aggrieved by a decision of a Development Review Committee may file an appeal in writing to the Code Administrator within thirty (30) calendar days of the date of the decision of the Development Review Committee. The Board shall hear the appeal within sixty (60) calendar days after the date the appeal is filed. The Board shall timely make and file its decision approving or disapproving the application or approving the application with conditions or modifications.
- ii. The decision of the Board shall become final on the date when the decision is filed.

2.4 Notice and Conduct of Public Hearing

2.4.1 Notice by County

Notice of a public hearing to be held by a Development Review Committee or the Board, shall be given as provided by resolution of the Board and as otherwise required by law. Copies of the public notice policies shall be posted in the Code Administrator's office. Public hearings shall be conducted as provided by policies established by the body holding the hearing or as required by law. All interested persons shall be allowed a reasonable opportunity to be heard at a public hearing held under the Code.

2.4.2 Notice by Applicant

2.4.2a For all zoning cases, master plans, development plans, variances, preliminary and final subdivision plats, Type V subdivisions containing six (6) or more parcels and appeals of these matters, the following public notice requirements shall be completed by the applicant at least twenty one (21) calendar days prior to the public meeting:

- i. A notice shall be published in the legal section of the daily newspaper which covers the area in which the project is located;
- ii. Certified letters, prepared by the Code Administrator, shall be mailed return receipt requested to all property owners within one hundred (100) feet (excluding rights-of-way) of the subject property;
- iii. The subject property shall be posted, in the manner outlined in Section 2.3.2c of this Article II.

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.

NBD-9

which cannot meet the terrain management performance standards shall not be further subdivided or replatted in a manner which creates an additional number of non-conforming lots or parcels. Additionally, lot line adjustments shall not result in a conforming lot becoming non-conforming based on terrain management performance standards.

2. Reviews

(a) Lot Size Requirement Review.

The Code Administrator shall review the application for compliance with the density regulations in Article III, Section 10 of the Code. If the application is for a Small Lot Inheritance Transfer or a Small Lot Family Transfer, the lot size standards in Article II, Section 4 shall apply.

(b) Special District Review

The Code Administrator shall review the location of the lots indicated on the plat and, if a lot is located in a Special Review District, pursuant to Article VI of the Code, will inform the applicant of any additional submittals or reviews required and make the applicable review.

(c) Environmental Review.

The Code Administrator shall inform the applicant of any additional submittals and make the reviews required under Article VII, Environmental Requirements.

(d) Other Reviews

For summary review subdivisions, the Code Administrator shall review the disclosure statement to determine whether the subdivider can fulfill the proposals contained therein, and whether the disclosure statement is consistent with this Code.



3. Required Improvements and Standards

(a) Roads and Access - On-site and Off-site

(1) Except as provided below in paragraphs (6) - (9) of this Subsection, all lots created under this Section shall be provided with adequate access for ingress and egress, utility service, fire protection, and emergency services whether by a road meeting county requirements constructed within an easement and utility easement or by direct access to a public right-of-way. All on and off-site roads shall meet the design standards for a local road as set forth in Appendix 5.B.3, except that the minimum width of any easement created for access purposes shall be no less than twenty (20) feet for access to two (2) lots and no less than thirty-eight (38) feet for access to three (3) or more lots. However, for off-site roads the Code Administrator may reduce the road easement width to no less than twenty (20) feet if adequate drainage control is provided and may allow the road surface to be hard packed dirt with a compaction of ninety-five percent (95%) of the maximum density. All roadways and access shall be subject to the provisions of Section 10.207 of the Uniform Fire Code and to the policy established by the County Fire Marshal regarding fire apparatus access roads under Section 10.207. Provision of easements may also be accomplished by contiguous access easements



NBD-10

along property line of adjacent parcels or lots which, when added together, provide the total required width.

- (2) Roads serving two (2) or fewer lots may be treated as driveways and do not have to be constructed until the time of building construction. The number of driveways accessing a public road shall be minimized. The use of shared driveways is encouraged
- (3) When a tract to be developed borders an existing road having a right-of-way insufficient to conform to the minimum standards required by these regulations, which right-of-way will be used by the proposed development, sufficient right-of-way shall be platted, and dedicated or reserved in such a way as would make the resulting right-of-way or road conform with Code requirements.
- (4) The maximum grade of built roads shall be eleven percent (11%). Installation of culverts, where applicable, shall be required at intersections of driveways with County roads.
- (5) Road Construction and/or Road Cut Permits must be obtained if road or driveway construction is to precede any other development on any lot.
- (6) Divisions of land for grazing or farming as identified in Article II, Section 2.3.1.a.ii(c) are exempt from on-site and off-site road requirements.
- (7) Divisions of land that create no parcel smaller than one hundred forty (140) acres as identified in Article II, Section 2.3.1.a.ii(e) are exempt from on-site and off-site road requirements, except when more than one (1) such parcel is created in an area of land, the Code Administrator may require on and off-site road improvements.
- (8) Other land divisions as listed in Article II, Section 2.3.1.a.ii. (a) through (h) may be exempt from road construction standards at the discretion of the Code Administrator.
- (9) In addition to the requirements of this Section, summary review subdivisions shall meet the road improvements of Article V, Section 5.5.6.

(b) Other Off-Site Improvements

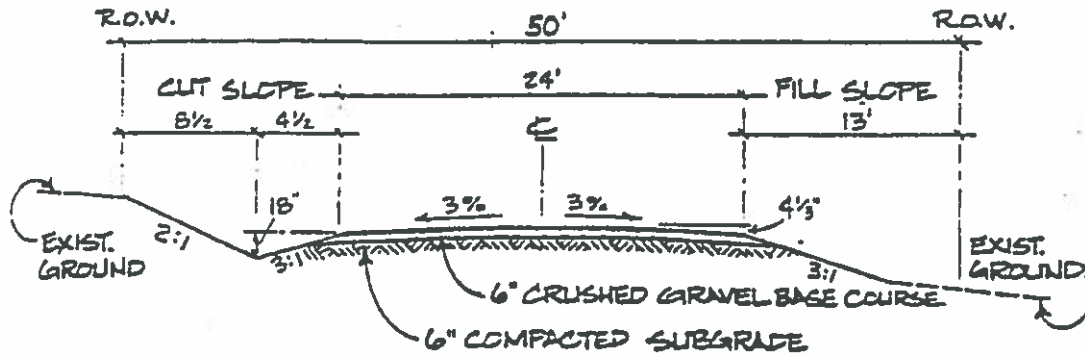
If the Code Administrator determines that it is necessary for health, safety, or welfare reasons, the applicant may be required to construct improvements to existing off-site facilities or to construct planned facilities or portions of planned facilities which can provide relief to existing facilities. The purpose of requiring such improvements is to assure that such facilities which may be negatively impacted, either individually or cumulatively, by the addition of new development, will function efficiently. For the purposes of this Section, off-site facilities include but are not limited to, water systems and sewer systems.

(c) Special Provisions for Family Transfer Improvements

Off-site improvement requirements do not apply to lots created by Family Transfer for the first lot per immediate family member, Small Lot Family Transfer, or Small Lot Inheritance Transfer provided that the recipient does not sell or transfer such lot for three years from the time the plat is recorded. For second and subsequent lots and for lots sold or transferred by the recipient prior to such three year period off-site improvement requirements of this Code shall be met at the time of sale. For Family Transfers to be exempt

NBD-11

LOCAL ROAD



- NUMBER OF LOTS: 0 - 99
- ESTIMATED A.D.T.: 0 - 999
- A plasticity index of 8% to 12% is required.
- 95% maximum density compaction is required.
- This standard applies to all local roads including subcollectors, places, lanes and cul-de-sacs.

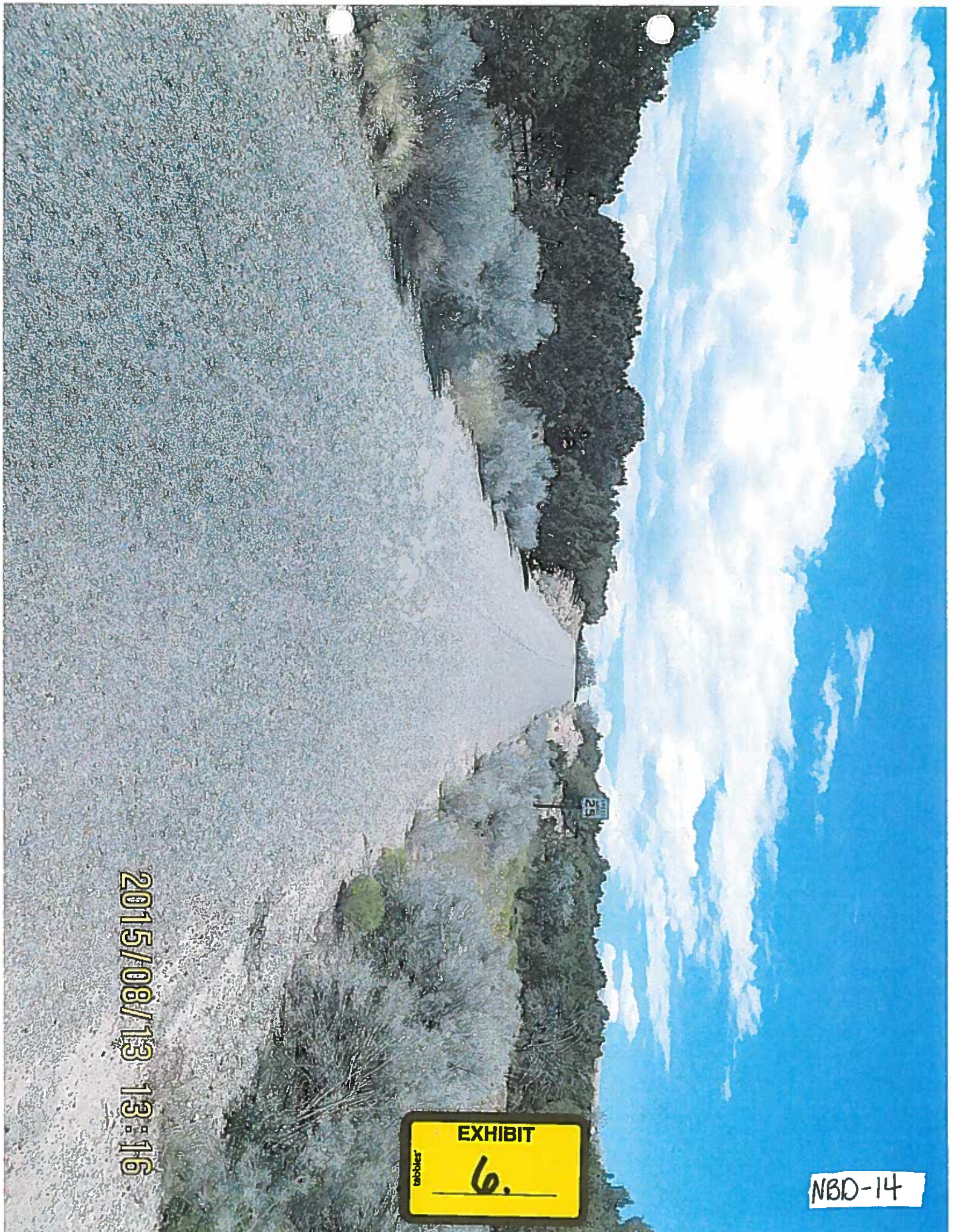


NBD-12

2015/08/13 13:16

EXHIBIT
6.

NBD-14





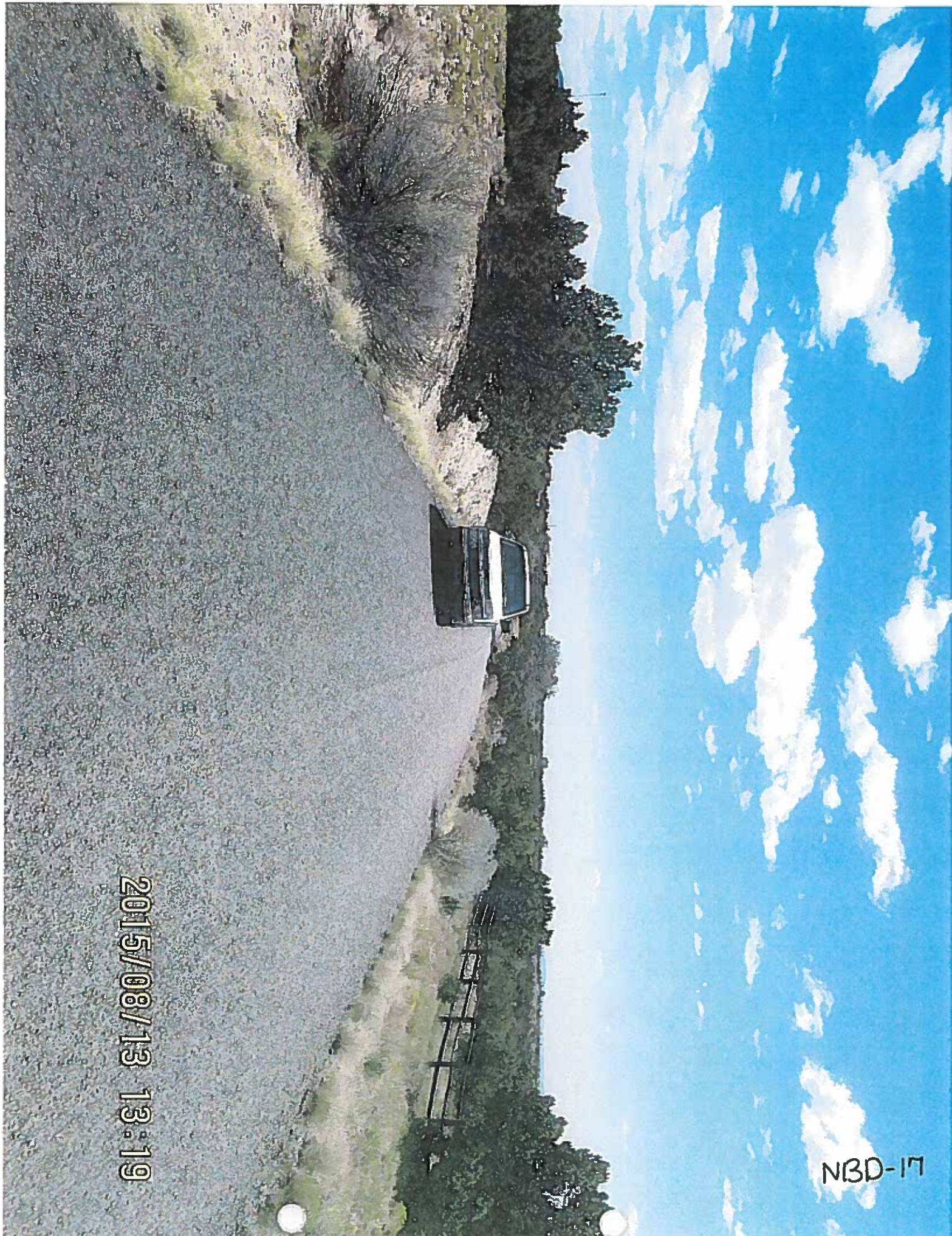
2015/08/13 13:18

NB0-15

2015/08/13 13:16

NBD-16





2015/08/13 13:19

N3D-17



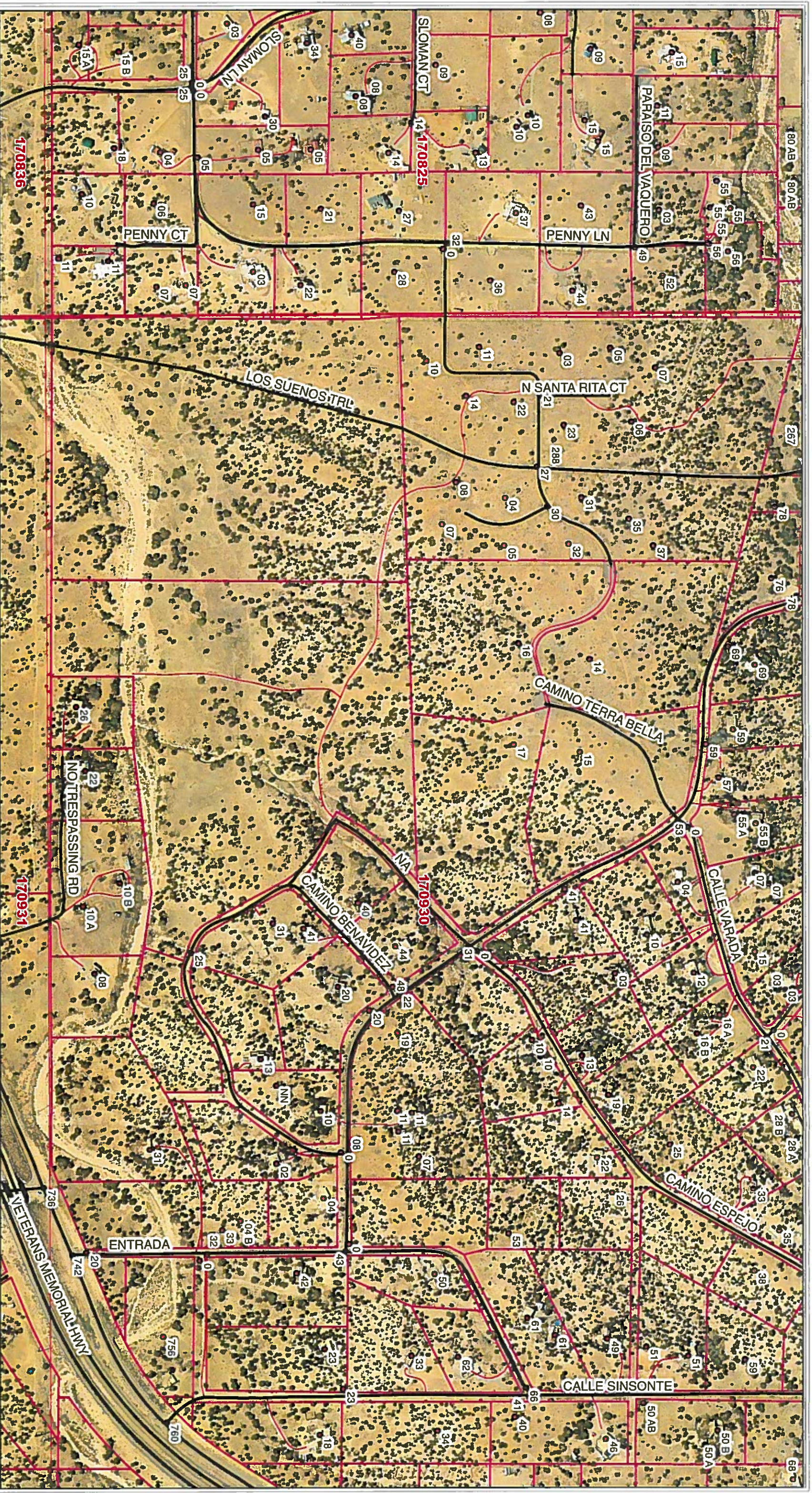
2015/08/13 13:17

NBD-18

CAMINO PERALTA

2015/08/13 13:16

NBD-19



Legend

-  ROADS
-  DRIVEWAYS
-  PARCELS

1:5,000

1 inch represents 416,666667 feet



2014 Imagery
2 FOOT CONTOURS

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



September 8, 2015

NBD-20

tabbles

EXHIBIT

7.

CASSUTT, HAYS & FRIEDMAN, P.A.

ATTORNEYS AT LAW

www.chflaw.com

John P. Hays
Gary S. Friedman*
Susan C. Baker**

530-B Harkle Road
Santa Fe, NM 87505
(505) 989-1434
FAX (505) 992-8378

Via Hand-Delivery

August 31, 2015

John Lovato
Building and Development Services
Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87501

**Re: Two Bens, LLC – Summary Review Subdivision
CDRC Case #14-3080
Appeal Hearing September 17, 2015**

Dear Mr. Lovato:

I am writing on behalf of Two Bens, LLC to respond to the appeal of this matter to the CDRC by the Puesta del Sol Property Owner's Association, Inc., on the grounds set forth in Christopher Graeser's letter dated January 6, 2015 (the "Appeal").

The Archdiocese of Santa Fe Catholic Foundation recorded a Declaration of Restrictive Covenants on certain properties it owned in January of 2006. Two Bens' Lot 4C is part of the property subject to the Covenants. The Appeal raises objection to Two Bens' proposed subdivision based on those Covenants. However, private restrictive covenants are not enforced by governmental entities such as Santa Fe County, and the provisions of the Covenants are not properly considered in an appeal of the County staff's approval of the Summary Review Subdivision application. Under the Covenants' Section 6.1, they may only be enforced by the Archdiocese and the owners of properties subject to the Covenants. Neither the County nor the Puesta de Sol Association has any standing to enforce the Covenants against Two Bens, LLC, its Lot 4C or its proposed Subdivision. In addition, the Archdiocese has stated its position that the use of Hager Road/the Los Suenos Trail extension as primary access will not be required under the Covenants until it has been constructed. See enclosed letter from Mary P. Dunn, Executive Director of The Catholic Foundation of the Archdiocese of Santa Fe.



NBD-21

In accordance with the Covenants, an easement is being created as part of the subdivision of Lot 4C that will accommodate a future connection to Hager Road once it is constructed, thereby allowing Hager Road to serve as primary access. Two Bens' predecessor in title met its financial obligations under the Covenants to fund the construction of Hager Road. Furthermore, Two Bens is obligated to contribute its pro rata share of additional costs, if necessary.

This small, four-lot subdivision in no way warrants the construction of a multi-million dollar arterial roadway. Such a substantial investment is intended for and should only be made to support "significant build out of this area" (per the 1999 Arterial Roads Task Force Final Report).

The Appeal also raises an objection to the Two Bens Subdivision based on Article 2.4.2b.3 of the Santa Fe County Land Development Codes, which states that:

[A]ll lots created under this Section shall be provided with adequate access for ingress and egress, utility service, fire protection and emergency services *whether by a road meeting country requirements constructed within an easement or utility easement or by direct access to a public road.* (emphasis added).

The Two Bens Subdivision will be accessed directly off of Camino Peralta, which is a County-maintained road. Under Article V, Section 8.1.9d of the Land Use Code, any road accepted for maintenance by the County (such as Camino Peralta) must meet County road standards. The Subdivision therefore has "adequate access" for the stated purposes "by direct access to a public road" and the requirements of this section of the Land Use Code are met.

Moreover, County Staff has not raised any concerns about the condition of Camino Peralta as it relates to the Two Bens Subdivision. We have also been informed by the County Public Works Department that no requests have been made by members of the public to improve Camino Peralta. To the extent any repairs or improvements do need to be made to Camino Peralta, those would be pre-existing conditions on a public road to be addressed by the County, and are not caused by, or the responsibility of, the Two Bens four-lot subdivision.

For these reasons, the approval of the Two Bens Subdivision was appropriate and complies with all applicable County requirements, and the Appeal has no basis and should be denied. We look forward to answering any questions which the members of the CDRC may have at the September 17, 2015 hearing.

Sincerely,


John P. Hays

cc: Two Bens, LLC
JenkinsGavin Design & Development, Inc.

NBD-22



The Catholic Foundation
ARCHDIOCESE OF SANTA FE

4333 PAN AMERICAN FREEWAY NE | SUITE D | ALBUQUERQUE, NM 87107

September 11, 2014

Mr. Nick Miller
The Miller Group
10 Bisbee Ct., Suite B
Santa Fe, NM 87508

Dear Nick,

This letter confirms our telephone conversation this morning regarding your letter dated September 2, 2014. Your letter provides documentation that the owners of Lot 4 of the Hager Property were granted access to Camino Peralta by Santa Fe County on July 19, 2006. In response to your inquiry, the Catholic Foundation is not in a position to object to your use of Camino Peralta if you become an owner of Lot 4, but neither do we hold any control or influence over the matter if any other party objects.

It is important to confirm that once the Hager Road, a.k.a. Los Suenos Trail Extension, is constructed the Restrictive Covenants to which you refer in your letter will dictate that you use the Hager Road as your primary access, and we will be obligated to enforce that requirement.

If you have any other questions, please call me at (505) 872-2901.

Sincerely,

Mary P. Dunn
Executive Director