

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: September 17, 2015

TO: County Development Review Committee

FROM: John Lovato, Development Review Specialist Sr.

VIA Penny Ellis-Green, Growth Management Director
Vicki Lucero, Building and Development Services Manager
Wayne Dalton, Building and Development Services Supervisor

FILE REF: CDRC CASE # V 15-5060 Homero Arras Variance

ISSUE:

Homero Arras, Applicant, requests a variance of Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow an existing illegally constructed retaining wall, gazebo, and a chicken coup within a FEMA Special Flood Hazard Area on a 2.53 acre lot without submitting the required technical analysis.

The property is located at 12 N. Paseo De Angel, within the Traditional Historic Community of La Cienega/La Cieneguilla, within Section 27, Township 16 North, Range 8 East, (Commission District 3).

Vicinity Map:



NBA-1

REQUEST SUMMARY:

The subject lot was created in 2007, as part of the Vallecita De Gracia Subdivision. The property currently has a mobile home, a gazebo, a chicken coup, and a retaining wall. A permit for a 1,960 square foot mobile home was issued in 2014, as permit number #14-291.

The Applicant requests a variance of Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow an illegally constructed 8' retaining wall, 196 square foot gazebo, and 80 square foot chicken coup within a FEMA designated Special Flood Hazard Area.

On January 12, 2015, the Applicant received a Notice of Violation and a stop work order for unpermitted development on the property as he was constructing the wall, gazebo, and chicken coup. After review of the property and the FEMA Special Flood Hazard Area, it was determined that the gazebo, retaining wall, and chicken coup were illegally constructed in a FEMA designated Special Flood Hazard Area.

The property consists of 2.53 acres, and approximately 1/3 of the property is located within the FEMA designated Special Flood Hazard Area. There are other buildable areas for the proposed structures outside the FEMA designated Special Flood Hazard Area.

The Applicant states that he constructed the block wall because people are entering his property through the drainage with motorized vehicles and horses and incorporated a gazebo and chicken coup into the design.

Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) states: corals, fences, and barns and other accessory structures are allowed provided that a detailed technical drainage analysis is performed by a certified licensed engineer, and the structure is not habitable, designed to have low flood damage, offer minimum resistance to flow of floodwaters, and anchored to prevent floatation.

Placement of walls, fences, and structures in the FEMA designated Special Flood Hazard Area will impede flows and may cause the base flood elevation to rise and cause upstream or downstream flooding.

The Applicant states that he does not want to provide a detailed technical drainage analysis prepared by a certified licensed engineer as the cost would be too much. Therefore he is requesting a variance.

Article 4, § 4.6 of Ordinance No. 2008-10 states specific variance procedures and criterion that recommending and approval bodies must consider, as follows:

- A. The Board of County Commissioners (Board) after recommendation by the County Development Review Committee (CDRC) shall hear and render judgment on a request for variance from the requirements of this Ordinance.

NBA-2

- B. The CDRC may recommend and the Board take action on an appeal of the Floodplain Administrator's decision only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.
- C. Any person or persons aggrieved by the decision of the Board may appeal such decision to a court of competent jurisdiction within thirty days of the Board's decision.
- D. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- E. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Ordinance.
- F. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C (2) of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- G. Upon consideration of the factors noted above and the intent of this Ordinance, the Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance (Article 1, Section C).
- H. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- I. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

Article 4, § 4.6.J. of Ordinance No. 2008-10 states that the prerequisites for granting a variance are as follows:

- a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- b. Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be

NBA-3

commensurate with the increased risk resulting from the reduced lowest floor elevation.

- d. Variances may be issued by the BCC for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - i. the criteria outlined in Article 4, Section D (1)-(9) are met, and
 - ii. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

The owner of the property Homero Arras, acquired the property by Warranty Deed recorded in or as Instrument # 1731583 in the Santa Fe County Clerk's records dated March 7, 2014. (Exhibit 2)

Notice requirements were met as per Article II § 2.4.2, of the Land Development Code. In advance of a hearing on the Application, the Applicant provided a certification of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for twenty one days on the property, beginning on August 24, 2014. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on August 24, 2014, as evidence by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners (Exhibit 3).

Growth Management staff has 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.

This Application was submitted on February 6, 2015. County staff has been working with the Applicant to bring this case before the CDRC. The Applicant was going to hire a certified Professional Engineer to do the detailed drainage analysis but decided it was too costly and decided to move forward with the variance request.

A technical drainage analysis is required for any structure that is placed within the FEMA designated flood hazard area. The Federal requirements state that the structures to be placed within these areas are to not allow a 1 foot of rise in FEMA designated Special Flood Hazard Areas. Federal guidelines also state that variances for development shall not be allowed if there is a rise in the Base Flood Elevation.

APPROVAL SOUGHT: A variance of Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a 8' retaining wall, a 196 square foot gazebo, and an 80 square foot chicken coup within a FEMA designated Special Flood Hazard Area.

VARIANCES: A variance of Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management)

**GROWTH MANAGEMENT
AREA:**

El Centro, SDA-2

HYDROLOGIC ZONE:

The property is located within the Traditional Historic Community of La Cienega Basin Hydrologic Zone. Minimum lot size in this area is 10 acres per dwelling unit. Lot size can be reduced to 2.5 acres per dwelling unit with proof of 100 year water supply through a geohydrologic reconnaissance report, and adoption of water use covenants.

FIRE PROTECTION:

La Cienega Fire Department.

WATER SUPPLY:

Domestic Well

LIQUID WASTE:

Conventional Septic System

AGENCY REVIEW:

<u>Agency</u>	<u>Recommendation</u>
County Fire	None
Floodplain Administrator	Denial

STAFF RECOMMENDATION:

Denial of a variance of Article 3, Section 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) and removal of the structures within the FEMA designated Special Flood Hazard Area.

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 must obtain a Development Permit from the Building and Development Services Department for the gazebo, wall, and chicken coup. (As per Article II, § 2).
2. The retaining wall must be approved and stamped and certified by a licensed Professional Engineer.

EXHIBITS:

1. Letter of request
2. Warranty Deed
3. Legal Notice
4. Article 3, § 3.5 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management)
5. Article 4, § 4.6 (Variance Procedures) of Ordinance No. 2008-10
6. Site Plan
7. Site Photographs

NBA - 5

8. Aerial of Site and Surrounding Area
9. Letter of Opposition (LCVA)

This letter is designed to get permission to have my retain wall. The purpose by the fact that I built is because people used as a fun area. For example they used with motorcycles, horses, etc, so it was destroying. Is a water leak that is connected with the sewer. The use of this fence is to expand and use it as a Soil Retainer. As well as allowing me to use it as a place to have my chickens. I also have placed a small 14' x 14' Gazebo For my horses in the arroyo.

Homero Armas

EXHIBIT

1.

NBA-

4

Prepared By and Return to:

Fidelity National Title of New Mexico, Inc
300 Paseo De Peralta, Suite 101
Santa Fe, NM 87501

GF# FT000154943-NM21

WARRANTY DEED

JK2, Inc., a New Mexico Corporation

for consideration paid, grant to

Homero Arras, an unmarried man

whose address is **705 E. Alameda Unit 7, Santa Fe, NM 87501** the following described real estate in Santa Fe County, New Mexico:

Lot 1, Block 2 of Vallecita de Gracia Subdivision, as shown on plat of survey filed on January 14, 2011 in Plat Book 726, Page 021-025, as Instrument No. 1623646, records of Santa Fe County, New Mexico.

with warranty covenants.

SUBJECT TO: Patent, reservations, restrictions, and easements of record and to taxes for the year 2014, and subsequent years.

Witness our hands and seals this 5th day of March, 2014

JK2, Inc., a New Mexico Corporation

BY: *James W. Brown*
James W. Brown, Director/President

ACKNOWLEDGEMENT

STATE OF NEW MEXICO

COUNTY OF Bernalillo

This instrument was acknowledged before me this 5th day of March, 2014 by James W. Brown, Director/President on behalf of JK2, Inc., a New Mexico, a New Mexico Corporation

My Commission Expires:

(Seal)

Teresa C. Jardis
Notary Public



OFFICIAL SEAL
TERESA C. JARDIS
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 2-2-18



NBA-7

SANTA FE NEW MEXICAN

Payment Receipt

Monday, August 24, 2015

Transaction Type: **Payment**
Ad Number: **0000137064**
Apply to Current Order: **Yes**

Customer Type: **Voluntary**
Customer Category:
Customer Status: **Active**
Customer Group: **.Default**

NBA-8

Payment Method: **Credit Card**
Bad Debt: **-**

Customer Trade:
Account Number: **23314**

Credit Card Number: **xxxxxxxxxxxx0463 - Visa**
Credit Card Expire Date: **October 2015**

Phone Number: **5056602707**

Payment Amount: **\$89.68**
Amount Due: **\$0.00**

Company / Individual: **Individual**
Customer Name: **ARRAS
HOMERO**

Reference Number:
Charge to Company: **The New Mexican, Inc.**

Customer Address: **12 N PASEO DE ANGEL**

Category: **Classified**

SANTA FE, NM 87507 USA

Credit to Transaction Number:
Invoice Text:
Invoice Notes:

Check Number:
Routing Number:

CERTIFICATION OF POSTING

I hereby certify that the public notice posting regarding Land Development
Case # V15-5060 was posted for 21 days on the property beginning

The 24th day of August
2015. **

Homero Arros
Signature

*Photo of posting must be provided with certification

****PLEASE NOTE:** Public notice is to be posted on the most visible part of the property. Improper legal notice will result in re-posting for an additional 21 days. It is the applicant's responsibility to ensure that the notice is on the property for the full 21 days.

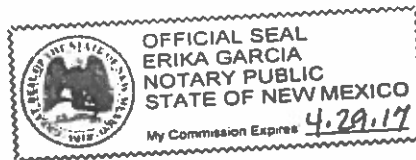
STATE OF NEW MEXICO }
 }
COUNTY OF SANTA FE }

The foregoing instrument was acknowledged before me this 24th day of
August, 2015, By Homero Arros.

Erika Garcia
Notary Public

My Commission Expires:

4/29/17



NBA-9

Street, Apt. No., or PO Box No. 17 N PASO DE ANGEL
 City, State, Zip+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
Domestic Mail Only; No Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Postmark Here: SANTA FE, NM 87507
 AUG 24 REC'D

Sent to CARLOS y AUDRA VALLES ARRIETO
 Street, Apt. No., or PO Box No. HC 74 Box 492
 City, State, Zip+4 PEÑOS, N.M. 87552
 PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
Domestic Mail Only; No Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Postmark Here: SANTA FE, NM 87507
 AUG 24 REC'D

Sent to J K 2 INC
 Street, Apt. No., or PO Box No. 11741 SKY VALLEY WAY NE
 City, State, Zip+4 ALBUQUERQUE, NM 87111
 PS Form 3800, August 2006 See Reverse for Instructions

Street, Apt. No., or PO Box No. 125 N PASO DE ANGEL
 City, State, Zip+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
Domestic Mail Only; No Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Postmark Here: SANTA FE, NM 87507
 AUG 24 REC'D

Sent to RIGOBERTO GUTIERREZ
 Street, Apt. No., or PO Box No. 125 N PASO DE ANGEL
 City, State, Zip+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
Domestic Mail Only; No Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Postmark Here: SANTA FE, NM 87507
 AUG 24 REC'D

Sent to MARK MICHELLE CARRA
 Street, Apt. No., or PO Box No. 13 N PASO DE ANGEL
 City, State, Zip+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

Street, Apt. No., or PO Box No. 2420 SYCAMORE LOOP
 City, State, Zip+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
Domestic Mail Only; No Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Postmark Here: SANTA FE, NM 87507
 AUG 24 REC'D

Sent to CRASHO y OLIVIA LUZ SALES
 Street, Apt. No., or PO Box No. 4 N PASO DE ANGEL
 City, State, Zip+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
Domestic Mail Only; No Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$3.45
Certified Fee	\$2.80
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$6.74

Postmark Here: SANTA FE, NM 87507
 AUG 24 REC'D

Sent to CARLOS y EVAN SALES
 Street, Apt. No., or PO Box No. 4 N PASO DE ANGEL
 City, State, Zip+4 SANTA FE, N.M. 87507
 PS Form 3800, August 2006 See Reverse for Instructions

REAL ESTATE CONTRACT

THIS CONTRACT IS MADE in triplicate this 7th day of March, 2014, by JK2, Inc., a New Mexico Corporation whose address is 11741 Sky Valley Way NE, Albuquerque, NM 87111 hereinafter called the Seller, and Homero Arras, an unmarried man whose address is 705 E. Alameda Unit 7, Santa Fe, NM 87501 hereinafter called the Purchaser. Whenever a masculine pronoun is used, it shall also be considered as referring to the female gender and plural pronouns, whichever is proper.

1. SALE: The Seller, in consideration of the promises and agreements herein made by the Purchaser, agrees to sell and convey to the Purchaser the following described real estate, hereinafter called the Property, in the County of Santa Fe and State of New Mexico: (12 N. Paseo de Angel, Santa Fe NM 87507)

Lot 1, Block 2 of Vallecita de Gracia Subdivision, as shown on plat of survey filed on January 14, 2011 in Plat Book 726, Page 021-025, as Instrument No. 1623646, records of Santa Fe County, New Mexico.

Subject To: Patent, reservations, restrictions and easements of record and to taxes for the year 2014 and subsequent years.

The Seller agrees, upon completion of all terms and conditions of this contract by the Purchaser, that the Purchaser shall then receive the Warranty Deed and related documents placed in escrow with this Contract.

2. PRICE AND PAYMENT: The Purchaser agrees to buy the above-described Property and to pay Seller therefore the total sum of Ninety Thousand and no/100 (\$90,000.00), payable as follows: Fourteen Thousand Five Hundred Dollars (\$14,500.00), cash down payment, the receipt of which is hereby acknowledged, and the balance of Seventy Five Thousand Five Hundred Dollars and no/100 (\$75,500.00), payable as follows:

Purchaser shall pay the Seller the principal sum of (\$75,500.00) in monthly principal and interest payments of (\$450.45), at the rate of (6.0%), amortized over (30) years from said contract date. The first monthly payment shall be due on the 7th day of June 2014 and on the 7th day of each month thereafter.

The interest for March and April, shall be deferred and collected at the time of the full payoff of said contract.

Balloon payment for the remaining principal balance and unpaid interest shall be due within (36) months from said contract date.

The Buyer will receive a 5% discount on the principal balance if it is paid in full before the 24th month of said contract date.

There shall be a grace period of (10) days after due date granted to the Purchaser. If payment is not received after the (10) consecutive day: a late fee of (\$40.00) shall be assessed.

There shall be no prepayment penalty.

Buyer shall be responsible for payment of Property Taxes and shall provide proof of payment to the Seller annually.

The payments as above provided shall be paid to the escrow agent and continue until the entire unpaid balance of the purchase price (exclusive of any prior lien or obligation being assumed) plus any accrued interest due to the seller is fully paid. Said unpaid balance shall bear interest at the rate of (6.0%) per annum from the effective date of April 7, 2014.

APPLICATION OF PAYMENTS: Check and Initial only one of the following two paragraphs.

- (a) Payments, excepting prepayments, shall be applied to regularly scheduled installments in the Initials order in which the same were due and shall be credited as though, the payments were made on their respective due dates.

- (b) Payments shall be applied as of the date of receipt by Escrow Agent first to accrued interest then to principal balance of this Contract.

Initials
HA

All payments shall be assumed to be regular payments, and not prepayments, unless otherwise specified by Purchaser in writing at the time of delivering such payments to Escrow Agent. Unless otherwise provided, Purchaser may prepay the unpaid balance in whole or in part at any time. Any prepayment shall be credited first to accrued interest, then to the principal balance of this Contract exclusive of assumed liens or obligations, then to assumed liens or obligations as described in this paragraph. Notwithstanding any prepayments, Purchaser shall make the next regularly scheduled payments.

e-Recorded 1731583 03/07/14 SFC

NBA-11

Should Purchaser fail to make any of the payments or perform any other obligations required hereunder, including the payment of any assumed obligation, and if Seller's attorney makes written demand therefore pursuant to Paragraph 5 below, the Purchaser shall pay within the time allowed the additional sum of \$250.00, unless otherwise stated, for Seller's attorney's fees.

The following lien(s) or obligation(s) is currently outstanding on the property:

Type of Lien or Obligation Holder Loan Number Recording Data: Book & Page

NONE

IF ANY LIENS(S) OR OBLIGATION(S) IS/ARE CURRENTLY OUTSTANDING ON THE PROPERTY, CHECK AND INITIAL ONLY ONE OF THE FOLLOWING THREE PARAGRAPHS. ONLY THAT PARAGRAPH SHALL APPLY.

(a) Purchaser assumes and agrees to pay the above-mentioned prior lien(s) or obligation(s) in accordance with its/their terms. Purchaser shall make the installment payments on the prior lien(s) or obligation(s), together with installment payments on this Contract, to the Escrow Agent named below, who will remit the payments to the person or company to whom they are payable. Purchaser shall advise the Escrow Agent of any change in the amount of the payment due on any assumed obligation(s). Failure to make such payments at the time required shall be a default under this Contract. At such time as the unpaid balance of the purchase price due the seller is fully paid, this Escrow shall terminate and the purchaser shall thereafter make the installment payments on said prior lien(s) or obligation(s) directly to the Seller, person(s) or company(ies) to whom they are payable.

(b) Purchaser assumes and agrees to pay the above-mentioned prior lien(s) or obligation(s) in accordance with its/their terms. Purchaser shall make the installment payments on the prior lien(s) or obligation(s) directly to the person or company to whom payable. Failure to make such payments at the time required shall be a default under this Contract.

(c) Purchaser does not assume or agree to pay the above described lien(s) or obligation(s). All payments due on such lien(s) or obligation(s) shall be remitted by the Escrow Agent to the person or company to whom they are payable out of the payments made by Purchaser. If the payments due from Purchaser are insufficient to satisfy the amounts due to be made on the above-described lien(s) or obligation(s), Seller shall pay Escrow Agent such additional funds as are necessary to keep such lien(s) or obligation(s) current.

Should Purchaser fail to pay any such installment payments prior to the same becoming delinquent, Seller may pay the same for the protection of the Property and his interest therein. Payment by Seller shall not be deemed a waiver of Purchaser's default, and the amount so paid by Seller shall be immediately due and payable to Seller and shall bear interest until paid at the same rate as provided in Paragraph 2 above.

3. PURCHASER TO PAY INSURANCE, TAXES AND PAVING LIENS, AND SELLER'S RIGHTS:

(a) **Insurance.** The Purchaser agrees to keep the insurable improvements upon the Property insured against the hazards covered by fire and extended coverage insurance, with an insurance company satisfactory to Seller in the sum of not less than \$Vacant Land, for the benefit of Purchaser and Seller as their interests may appear, and furnish a copy of the insurance policy or certificate of the insurance policy to Seller annually prior to expiration of existing insurance.

(b) **Taxes.** Unless otherwise stated herein, the property taxes for the current year have been divided and prorated between Seller and Purchaser as of the date of this Contract, and the Purchaser is responsible for and will pay the taxes and assessments of every kind hereafter billed.

Purchaser will have the Property assessed for taxation in Purchaser's name. Upon request by Seller, Purchaser will send copies of the paid tax receipts each year to Seller.

(c) **Paving and Other Improvement Liens and Standby Charges.** Unless otherwise stated herein, the Purchaser assumes any paving and/or other improvement lien and/or stand by charges now assessed against the Property and agrees to pay all installments of principal and interest thereon that hereafter become due.

(d) **Seller's Rights.** Should the Purchaser fail to pay insurance premiums and assessments, paving liens, improvement liens or standby charges, or other such matters prior to the same becoming delinquent, Seller may pay the same (but is not obligated to do so) for protection of the Property and his interest therein. Payment of such charges shall not be deemed a waiver of any default of Purchaser for failure to pay such charges, and such amounts as have been so paid shall be immediately due and payable to Seller, and shall bear interest until paid at the same rate as provided in Paragraph 2 above.

4. PURCHASER'S RIGHT, SELLER'S RETENTION OF INTEREST:

Purchaser shall be entitled to take possession of the Property and retain possession unless and until Purchaser's interests under this Contract shall be terminated by Seller as provided in Paragraph 5 below. Legal title to the Property shall remain in Seller's name until this contract has been fully performed upon the part of Purchaser and the Warranty Deed delivered as specified.

INITIAL
ALA

NBA-12

5. SELLER'S RIGHTS IF PURCHASER DEFAULTS:

(a) **Default Notice.** Time is of the essence in this contract, meaning that the parties shall perform their respective obligations within the times stated. If Purchaser fails to make any of the payments required in Paragraph 2, herein, at the times specified, or fails or refuses to maintain insurance or to pay taxes, assessments or other charges against the Property, or fails or refuses to repay any sums advanced by the Seller under the provisions of Paragraph 3 above, the Seller may make written demand upon the Purchaser, with such notice to specify the default and the curative action required, at his address as follows: 705 E. Alameda Unit 7, Santa Fe, NM 87501 or at such other address that Purchaser may designate by a notarized statement delivered to the Seller, which change of address will be effective on the seventh (7th) calendar day after receipt by the Seller.

(b) **Manner of Giving Default Notice.** Notice in writing shall be given by certified mail, return receipt requested, addressed to the Purchaser at the effective address for Purchaser as provided in Paragraph 5(a), with a copy to Escrow Agent. Purchaser expressly acknowledges that notice to him by mail, in the manner above specified, is sufficient for all purposes, regardless of whether he actually receives such notice.

(c) **Purchaser's Failure to Cure Default Results in Termination of Contract or Acceleration of Entire Unpaid Balance.** If the Purchaser fails or neglects to cure any default within thirty (30) days after the date Seller's default notice is mailed, then the Seller may, at his option either declare the whole amount remaining unpaid to be then due and proceed to enforce payment of the entire remaining unpaid balance, plus any accrued interest, together with reasonable attorney's fees, or he may terminate Purchaser's rights to the Property and retain all sums paid as liquidated damages to that date for the use of the property, and all rights of Purchaser in the Property shall thereupon end. If the final day for curing the default shall fall on a Saturday, Sunday, or non-business day of the Seller, then the period for curing the default shall extend to the close of business on the next regular business day of the Seller.

Acceptance by Seller of any payment tendered shall not be deemed a waiver by Seller, or extension of the time for cure, of any other default under this Contract. In the event of termination, Purchaser hereby waives any and all rights and claims for reimbursement for improvements he may have upon the Property.

(d) **Affidavit of Uncured Default and Election of Termination.** A recordable affidavit made by Seller, his agent, or Escrow Agent, identifying the parties, stating the legal description of the Property or the recording data of this Contract and stating the date that notice was duly given as provided above, that the specified default has not been cured within the time allowed and that the Seller has elected to terminate, and delivered to the Escrow Agent shall be conclusive proof for the Escrow Agent and any subsequent Purchaser or encumbrancer for value of such uncured default and election of termination.

(e) **Purchaser Becomes Tenant.** Upon termination, Purchaser has no continuing right to possession. If Purchaser remains in possession of the Property after this Contract has been terminated as above provided, Purchaser shall then become a tenant at will, for a rental amount equivalent to the installment payment theretofore required as monthly payments under this Contract, with the first such rental payment due immediately, in advance, and such tenancy being subject to termination by either party upon thirty (30) days separate prior written notice. Seller's acceptance of such rental payment(s) shall not be deemed as any waiver of his rights, nor shall it constitute any manner of estoppel.

(f) **Legal Right to Evict Purchaser.** Forcible entry and detainer proceedings, in addition to any other appropriate legal remedies, may be utilized by the Seller if necessary to obtain possession of the Property following termination of this Contract and termination of Purchaser's continued tenancy thereafter. If such proceedings are filed, Purchaser shall be liable for Seller's reasonable attorney's fees plus the legal costs of such action.

6. TITLE INSURANCE OR ABSTRACT:

Unless otherwise provided herein, Seller is delivering a Contract Purchaser's Title Insurance Policy to Purchaser or Abstract of Title to Escrow Agent at the time this Contract is made, showing merchantable title to the Property as of the date of this Contract, subject to the matters referred to in this Contract, and Seller is not obligated to provide any other or further evidence of title.

7. PURCHASER'S RIGHT TO SELL:

(A) **First Provision:** Purchaser shall be entitled to sell, assign, convey or encumber his entire interest in this Contract (but not a portion thereof) and the Property to any person or entity, hereinafter called Assignee, and may retain a security interest therein, without obtaining the consent or approval of the Seller. The Purchaser shall not, however, be released from his obligations hereunder by any such sale, assignment, conveyance or encumbrance. In the event Purchaser does sell, assign, convey or encumber said interest, then Purchaser, his Assignee, or any subsequent Assignee shall deliver a copy of such written sale, assignment, conveyance or encumbrance document to Escrow Agent.

Such sale, assignment, conveyance or encumbrance document shall specify the address of the Assignee and upon receipt of such document by the Escrow Agent, Seller shall only be required to send notice of default to the most recent Assignee who has given notice of such sale or assignment and his address to the Escrow Agent as provided herein. If such document is not received by the Escrow Agent, any notice of default need be sent only to the last person or entity and address for which written notice has been provided to the Escrow Agent as provided herein.

(B) **Special Alternative Provision:**

CAUTION: THE FOLLOWING PROVISION SEVERELY RESTRICTS THE RIGHT OF PURCHASER TO SELL, ASSIGN, CONVEY OR ENCUMBER THIS CONTRACT AND THE PROPERTY. If the parties wish to invoke this provision, they should check the box as indicated and each initial as provided. If the Special Alternative Provision is elected, the First Provision does not apply.

XX Purchaser shall not be entitled, directly or indirectly, to sell, assign, convey or encumber all or any portion of the Purchaser's interest in this Contract or in the Property without first obtaining the written consent of Seller, and Seller shall not be under any obligation of any kind to give such consent. In the event that Purchaser shall, directly or indirectly, sell, assign, convey or encumber or contract to sell, assign, convey or encumber, directly or indirectly, all or any portion of the Purchaser's interest this Contract or in the Property without the consent of Seller, it shall be an event of default subject to the rights of Seller in Paragraph 5 herein.

CAUTION: If the Property is subject to any prior mortgage(s), Deed(s) of Trust or Real Estate Contract(s), then the provisions thereof should be examined carefully for any conflict with the above clause.

c-Recorded 1731503 03/07/14 SFC

8. **BINDING EFFECT:** This Contract shall extend to and be obligatory upon the heirs, executors, administrators, personal representatives, successors and assigns of the parties to this Contract.

9. **APPOINTMENT OF AND INSTRUCTIONS TO ESCROW AGENT:**

The parties hereby appoint as Escrow Agent:
Investor Escrow
1442 S. St. Francis Drive
Suite C
Santa Fe, NM 87505
(505)471-6100

The following papers are herewith placed in with Seller:

- 1. Signed Original recorded Contract.
- 2. Original Warranty Deed signed by Seller.
- 3. Original Special Warranty Deed signed by Purchaser.

Add following information, if applicable:

Name and address of mortgagee:

Name and address of Escrow Agent under any other contract on the Property:
N/A

(a) The fee(s) of the Escrow Agent shall be paid as follows: Buyer.
If such fee(s) is/are paid wholly or in part by Purchaser, such amount shall be in addition to the amounts due from Purchaser as provided in Paragraph 2, herein. The Escrow Agent is instructed to accept all monies paid in accordance with this Contract and remit the money received (less applicable escrow fees) as follows: Seller

(b) All payments shall be deemed provisionally accepted when tendered, subject to determination by the Escrow Agent of the correct amount and its timeliness.

(c) Upon full payment of all amounts due and owing to the Seller under this Contract by the Purchaser, the Escrow Agent is directed to release and deliver the escrow documents to the Purchaser.

(d) If the Seller or his agent delivers an Affidavit of Uncured Default and Election of Termination (as described in Paragraph 5 above) to the Escrow Agent, then the Escrow Agent shall release and deliver the escrow documents to the Seller. The Escrow Agent shall be entitled to rely on such Affidavit as conclusive proof of termination.

(e) The Seller is instructed that after each and every written demand is mailed to the Purchaser, pursuant to Paragraph 5 above, and a copy thereof is furnished to the Escrow Agent, not to accept less than the full amount of the sum stated as due in the written demand, plus the additional \$200.00, unless otherwise stated, for Seller's attorney's fees.

(f) The Escrow Agent is entitled to charge its standard fees current as of the date the service is rendered, but all changes shall become effective only after sixty (60) days written notice to the party or parties paying the fee of the Escrow Agent.

(g) Seller and Purchaser will each indemnify and save harmless the Escrow Agent against all costs, damages, attorney's fees, expenses and liabilities, which it may incur or sustain in connection with this Contract, including any interpleader or declaratory judgement action brought by Escrow Agent, but excepting failure of the Escrow Agent to comply with this Paragraph 9.

(h) The Escrow Agent shall have the right to resign as Escrow Agent under this Contract by giving the parties sixty (60) days written notice of intent to resign. The parties shall thereupon mutually select a successor Escrow Agent and give written notice to the Escrow Agent of such selection. If the parties fail, for any reason, to mutually select a successor Escrow Agent and give Escrow Agent written notice of such selection within sixty (60) days after mailing by the Escrow Agent of notice of intent to resign as aforesaid, then the Escrow Agent may select the successor Escrow Agent. Delivery by the Escrow Agent to the successor Escrow Agent of all documents and funds, after deducting therefrom its charges and expenses, shall relieve the Escrow Agent of all liability and responsibility for acts occurring after the date of the assignment in connection with this Contract.

10. **SEVERABILITY CLAUSE:** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of the remainder of this Contract.

The parties have signed and acknowledged this Contract effective as of the date stated at the beginning of this Contract.

INITIAL
HA 

CAUTION: YOU SHOULD READ THIS ENTIRE CONTRACT BEFORE SIGNING. IF YOU DO NOT UNDERSTAND THIS CONTRACT, YOU SHOULD CONSULT YOUR ATTORNEY.

NBA-14

_____ (a) Escrow Set-Up fee in amount of \$ _____ _____ (b) Signed copy of this Contract _____ (c) Warranty Deed _____ By: _____ Escrow Agent	_____ (d) Special Warranty Deed _____ (e) _____ _____ (f) _____ _____ (g) _____ _____ Date: _____, 2013
---	--

e-Recorded 1731583 03/07/14 S.F.C.


 COUNTY OF SANTA FE)
 STATE OF NEW MEXICO) ss

 REAL ESTATE CONTRACT
 PAGES: 6

 I Herby Certify That This Instrument Was Filed for
 Record On The 7TH Day Of March, A.D., 2014 at 11:14:39 AM
 And Was Duly Recorded as Instrument # 1731583
 Of The Records Of Santa Fe County

Deputy - PBARAJAS

 Witness My Hand And Seal Of Office
 Geraldine Salazar
 County Clerk, Santa Fe, NM

N/3A-16

- e. Elevated so that the lowest floor including basement is a minimum of two (2) feet above the base flood elevation.
- G. Utility and infrastructure in the floodplain shall be designed and demonstrate that:
 - a. New and replacement water supply systems are designed to minimize or eliminate infiltration of flood waters into the system;
 - b. New and replacement sanitary sewage systems are designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters;
 - c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding;
 - d. Placed in accordance with Article VII, Table 7.3 of the Land Use Code as amended.

SECTION 3.5 SPECIAL FLOOD HAZARD AREA PERMITTED USES

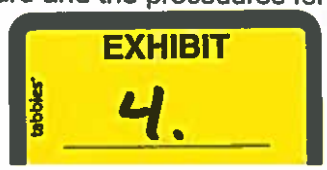



A. Development may occur in or adjacent to the SFHA only when it has been demonstrated through a detailed analysis prepared by a qualified professional engineer licensed in the State of New Mexico, that the provisions of Article 3, the standards of Article 4, and the submittals in Article 5, as well as compliance with the criteria for development in SFHA as required in FEMA 44 CFR §60.3 have been met.



- B. The following uses can be permitted in the regulatory SFHA (Zone A, Zone AE, Zone AO, Zone D, Zone AH, Zone AR, Zone A1-30) provided that such uses are designed and constructed in compliance with Article 3, § 3.5, a Floodplain Development Permit is obtained as required in Article 3, §3.3 and a detailed technical analysis is performed by a licensed professional engineer pursuant to the criteria established in Article 5, submittals are compliant with the criteria established in tabular format in Article 6, and all local, state and federal criteria governing such facilities or structures are met:
- a. Restoration or enhancement of environmental areas;
 - b. Repair and maintenance of existing uses and structures;
 - c. Emergency action to mitigate a hazard and measures to remove nuisances or other violations of law;
 - d. Planting and tilling of gardens, flower beds, shrubs, trees and other common uses and minor landscaping of land appurtenant to residences;
 - e. Repairs, and minor modification of existing single family dwellings;
 - f. Cutting of firewood for personal use;
 - g. Natural water quality treatment or purification;
 - h. Pedestrian, equestrian and bike trails provided signs are clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when flooding is eminent.

NBA-17



- i. Public and private campgrounds provided
 - i. The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when flooding in eminent
 - ii. All service facilities, including but not limited to refuse collection, electrical service, natural gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to two (2) feet above the base flood elevation.
- j. New stormwater pretreatment facilities provided no other feasible located is available;
- k. Cultivation of agricultural land including tilling, construction of minor open ditches and crop irrigation, agricultural production and management;
- l. Sand and gravel extraction operations, provided
 - i. stockpiles associated with these operations are sited outside the SFHA or protected from inundation or erosion by floodwaters
 - ii. crushers, shakers, scales, fuel storage and other equipment are sited outside the SFHA or protected from inundation, floatation, or erosion by floodwater
- m. Parks, golf course greens, bunkers, and driving ranges, soccer and baseball fields, tennis courts and other athletic facilities provided
 - i. signs are clearly posted at all pertinent entrances warning of the flood hazard and the procedures for evacuation when flooding is eminent
 - ii. Parking is provided outside the area subject to inundation and all weather access is available
-  n. Corrals, fences, barns and other accessory structures provided
 - i. The structure shall not be used for human habitation.
 - ii. The structure shall be designed to have low flood damage potential
 - iii. The structure shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters
 - iv. The structure shall be firmly anchored to prevent flotation which may result in damage to other structures
 - v. The structure's service facilities such as electrical and heating equipment shall be elevated or floodproofed to at least two (2) feet above the 100-year base flood elevation, per Article 3, §3.12
- o. Wildlife sanctuaries, nature preserves, forest preserves, fishing areas;
- p. Orchards, vineyards and plant nurseries;
- q. Passive open space areas;

NBA-18

- r. Roadways, bridges and other transportation facilities;
- s. Stormwater conveyance facilities;
- t. Functionally dependant uses such as boat launches and docks;
- u. Non-residential commercial and industrial facilities floodproofed in accordance with Article 3, § 3.12, and FEMA 44 CFR, §60.3;
- v. Utility infrastructure, including transmission and distribution systems for water, liquid waste, electricity, fiberoptics, and communication facilities, provided such infrastructure is protected from inundation by or infiltration of floodwaters pursuant to Article 3, §3.4.G of this Ordinance and FEMA 44 CFR §60.3(a)(4), (5), and (6);.
- w. Construction of new dwelling units or placement of manufactured homes on lots created before the effective date of this Ordinance and only when such structures meet the requirements for development in a SFHA outlined in Article 3 § 3.4, and in FEMA 44 CFR § 60.3(c), and when no buildable area outside the floodplain is available on the lot, tract or parcel.

SECTION 3.6 SPECIAL FLOOD HAZARD AREA PROHIBITED USES

- A. The following are considered prohibited uses, and will not be permitted in the FEMA regulatory SFHA (Zone A, Zone AE, Zone AO, Zone AH, Zone AR, Zone A1-30, and Zone D) except as described in Article 3, §3.4.B:
 - a. Construction or placement of single family residential dwellings, guest houses, factory built or manufactured homes, including basements;
 - b. Storage or production of hazardous waste;
 - c. Storage of materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
 - d. Public or private charter schools, academies, high schools, middle schools, elementary or primary schools and private or public daycare centers;
 - e. Critical structures including hospitals, medical centers, convalescent care facilities, police and fire stations unless all alternative locations in Zone X have been considered and rejected;
 - f. Landfills, dumps, or transfer stations;
 - g. Private liquid waste disposal structures;

NBA-19

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 or 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

NBA-20

EXHIBIT

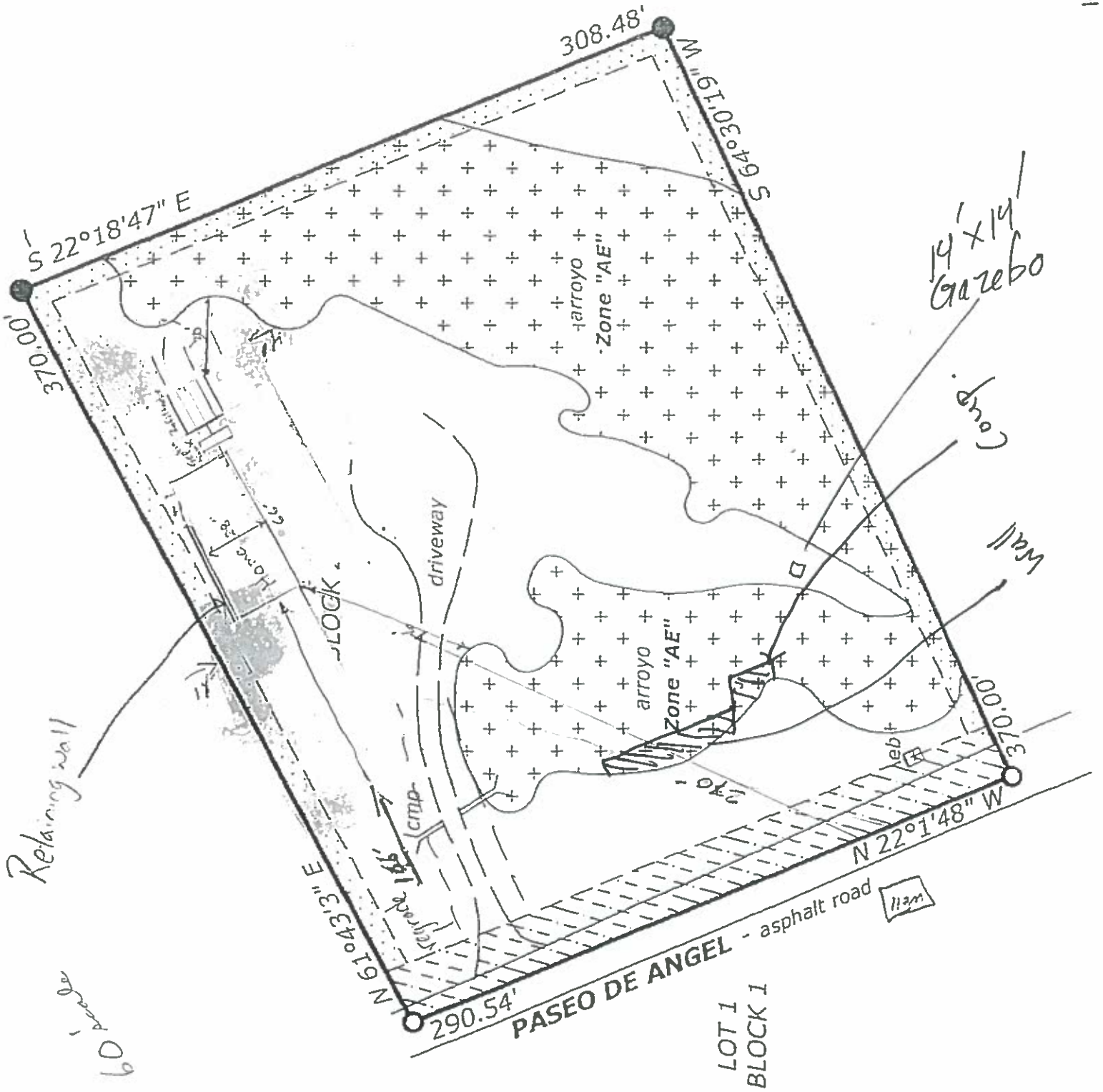
tabbles

5.

II - 9

REVISOR SITE PLAN

Homeno



Site Plan

tabbles[®] EXHIBIT 6.

NBA-21

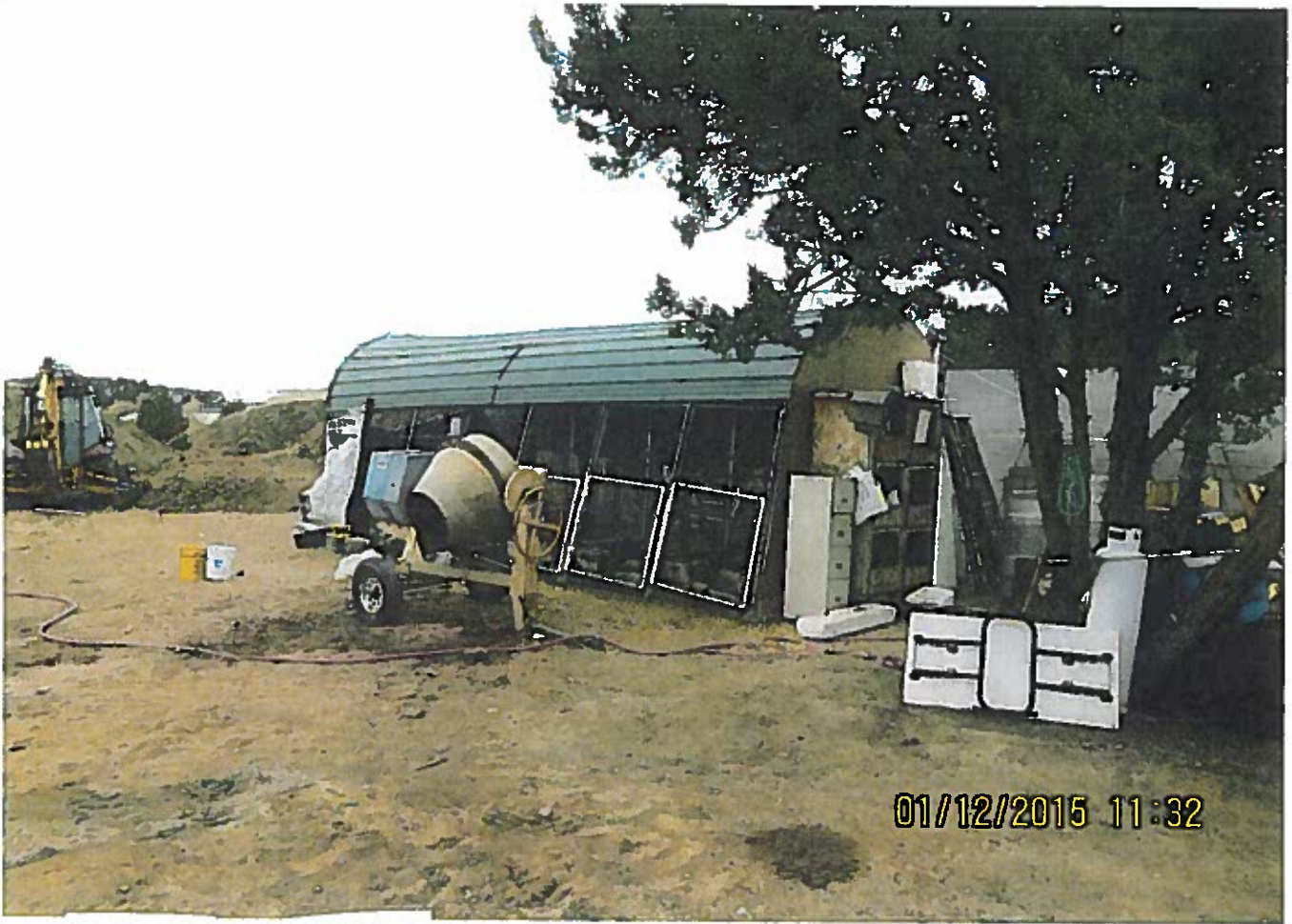
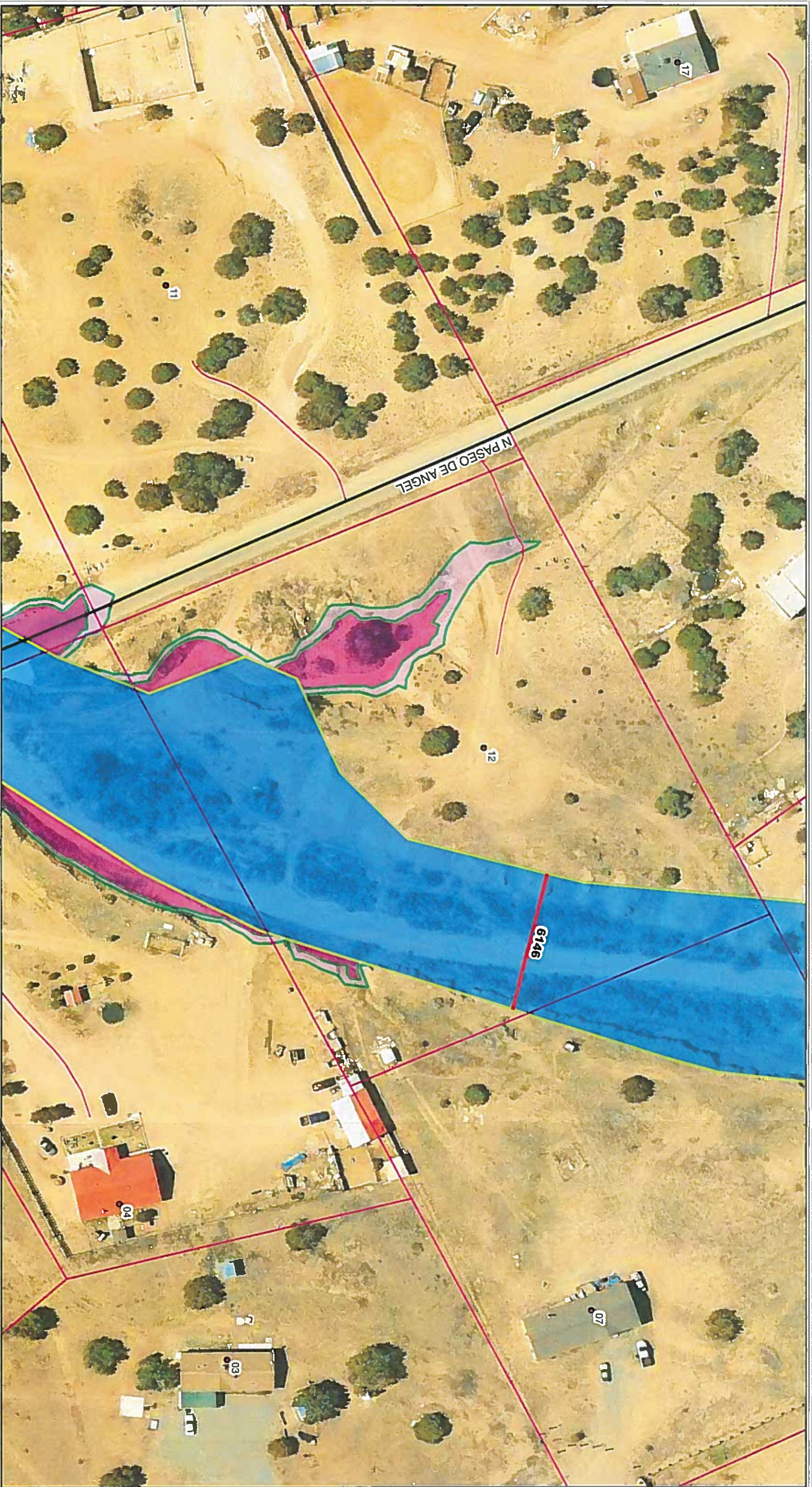


EXHIBIT
7.

NBA-22



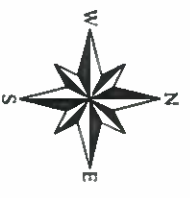
NBA-23



- Legend**
- ROADS
 - DRIVEWAYS
 - 0.2 % Annual Chance Flood Hazard
 - 2011 Zone A (No BFEs Determined)
 - 2011 Zone AE
 - 2011 Floodways
 - 2011 Zone AO
 - 2011 Zone D
 - PARCELS

tabbles®
EXHIBIT
8.

1:781
 1 inch represents 65.097863 feet
 0 15 30 60 90 120
 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 9, 2015

La Cienega Valley Association
PO Box 23554
Santa Fe, New Mexico 87502
Preserving Our Rural Way of Life

July 2, 2015

Penny Ellis-Green, Director
Growth Management Department
Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87501

Re: Family Transfers

Mark Silva
5 Pasco de Angel South
Permit – 15-3034

Paul and Esther Arellanes
66 Luna Road
Permit – 15-3036

Variance Request

Homero Arras
12 N Paseo de Angel
Illegal retaining wall, gazebo and
chicken coup in a flood plain.

Dear Ms. Ellis-Green,

The La Cienega Valley Association (LCVA) protests the two proposed small lot family transfers, Permit #15-3034 and Permit #15-3036 based on limited water availability and the continuance of creating a subdivision of over 400 homes via lot splits and family transfers. The LCVA respects the rightful and honest use of family transfers but unfortunately all too often family transfers are not used for their intended purpose and instead are created as a source of rental revenue.

La Cienega and La Cieneguilla residents, with the support of the Santa Fe Growth Management Department, need to fully understand that family transfers in an area, with unique and sensitive geological aquifer features, cannot continue. The LCVA will continue our efforts to educate residents on these facts and will continue to work with Santa Fe Public Works Department to implement the La Cienega Watershed conditions.

In regard to these family transfers the LCVA wants to ensure the following:

1. Both property owners meet the 5-year residency requirement
2. Each transfer includes the La Cienega Watershed Conditions
3. The new homes be required to share an existing well
4. That wells for these homes be metered and monitored for usage



NBA-25